

|  |
| --- |
|  |
| Investigations Work – Pre Investigation Assessment and section 46 inquiry criteria |
|  |
| OG117- 4 |
| Last Updated: 25/02/2016Last Reviewed: 25/02/2016 |
|  |
|  |

|  |
| --- |
|  |

**Contents**

[Policy Statement/Overview 1](#_Toc124764733)

[Summary of the guidance 1](#_Toc124764734)

[Casework Guidance 1](#_Toc124764735)

[OG 117-4  25 February 2016 1](#_Toc124764736)

[OG 117 Pre Investigations Assessment and section 46 inquiry criteria 1](#_Toc124764737)

[1. Legal basis for opening an inquiry 1](#_Toc124764738)

[2. The purpose of pre investigation assessment 2](#_Toc124764739)

[3. What type of cases will be referred to Statutory Inquiry? 2](#_Toc124764740)

[4. The Criteria for deciding to open an Inquiry 3](#_Toc124764741)

[5. Outcomes of the pre investigation assessment 5](#_Toc124764742)

**OG117-4 Investigations Work - Pre Investigations Assessment and section 46 inquiry criteria**

# Policy Statement/Overview

## Summary of the guidance

### Casework Guidance

### OG 117-4  25 February 2016

## OG 117 Pre Investigations Assessment and section 46 inquiry criteria

### 1. Legal basis for opening an inquiry

Under [section 46 of the Charities Act 2011](http://www.legislation.gov.uk/ukpga/2011/25/section/46), the Commission ‘may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes…’ This is the legal framework under which an investigation will be conducted and which formalises the Commission's engagement with the charity under investigation.

### 2. The purpose of pre investigation assessment

To ensure that we exercise our discretion and apply our criteria consistently and fairly before we open an inquiry we undertake a pre investigation assessment. The pre investigation assessment examines the causes for concern and whether the triggers for an inquiry are met. The assessment will also take into account the principles of best regulatory practice to ensure that the decision being taken is:

* Proportionate
* Accountable
* Consistent
* Transparent
* Targeted

### 3. What type of cases will be referred to Statutory Inquiry?

Inquiry referrals may come as a direct result of our work with other agencies, but usually as a result of a case escalating from another team in the Commission, which may be from:

* First Contact (if the issues are significantly high risk from the outset)
* an inspection by the Compliance Visit and Inspections Team
* a monitoring case by the Monitoring and Enforcement Team
* a compliance case in one of the Permissions and Compliance Teams

An inquiry is a fact finding exercise, to examine the issues and is not in itself a predetermination of wrongdoing. The exception to this is those cases where it is clear at the point of opening an inquiry there has been wrongdoing and we may need to consider exercising temporary and protective, or more remedial powers at that time.

A statutory inquiry allows access to additional regulatory compliance powers.

We can open a statutory inquiry into any exempt charity only if we are asked to do so by the principal regulator for that charity.

The opening of a statutory inquiry / class inquiry is a reviewable matter by the Tribunal. The Tribunal can review the decision to open a statutory inquiry into a particular charity or with regard to a class of charities. The charity (if a corporate body) or those who have control or management of the charity can apply to the Tribunal for the decision to be reviewed. When we notify the opening of a statutory inquiry we must inform the trustees how they can apply for a decision review and how they may challenge the decision in the Tribunal.

###  4. The Criteria for deciding to open an Inquiry

Because our decision to open a statutory inquiry is the exercise of a quasi-judicial power and one which may be scrutinised by the Tribunal, we need to be clear about why, in any particular case, we intend to use this power. Our reasons must be clearly recorded and show proper regard to the section 46 criteria and [Regulatory and Risk Framework](https://www.gov.uk/government/publications/risk-framework-charity-commission) that underpins the use of our regulatory powers.

It is only when regulatory issues are serious that we would consider that an investigation is proportionate. This means that if we are considering opening an inquiry, we will have assessed the seriousness of the regulatory issues against the [Regulatory and Risk Framework](https://www.gov.uk/government/publications/risk-framework-charity-commission) and the severity of the circumstances connected with it in the particular case.

The criteria for, and decision to open an inquiry are based on one or more of the following factors:

indications of misconduct or mismanagement in the administration of the charity

[*The terms misconduct and mismanagement are taken from* [*section 76 of the Charities Act*](http://www.legislation.gov.uk/ukpga/2011/25/section/76)*.* ***Misconduct*** *includes any act (or failure to Act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful or improper.* ***Mismanagement*** *includes any act (or failure to act) in the administration of the charity that may result in charitable resources being misused or the people who benefit from the charity being put at risk. A charity's reputation may be regarded as property of the charity*]

* indications of [potentially] significant breach of trust or non-compliance with charity law
* indications of [potentially] significant risk to charity property, beneficiaries or work
* there are reasonable grounds to believe that there may be a need to use the Commission’s regulatory powers of remedy and protection which are only available if an inquiry has been opened
* it is necessary to establish or verify facts or collect evidence or is a more effective way of doing so
* the need to provide public assurance or otherwise safeguard public trust and confidence in the charity or charities more generally

Each case will be assessed on its own facts and merits and may be affected by **the capacity, conduct and response of the trustees**, namely whether there are indications that:

* the trustees may have been careless, negligent or reckless because they have not taken sufficient care
* there may be serious and/or deliberate abuse and/or wrongdoing by a trustee/ trustees or those otherwise involved in the control or management of the charity
* the trustees may be unwilling, unable and/or incapable of taking the necessary action to protect the charity and remedy the regulatory concerns to the Commission’s satisfaction
* the trustees have not responded, have only partially responded or the level of cooperation by the trustees or action taken is not as expected
* the charity’s response has not provided the necessary reassurance or satisfied the Commission at this stage; or
* the culpability and/or capability of the trustees is unclear at this stage, and a judgment cannot be made on the evidence to date at this time

Even if the criteria is met, and the assessment of the capacity, conduct and response of the trustees supports the decision to open an inquiry, we may **not take a matter into investigation** if:

* the risks and regulatory issues are best contained in regulatory engagement outside of a formal investigation
* the risks and nature of the concerns are not in the round so serious as to warrant an investigation
* in light of the Commission’s general duties identified in [section 16 of the Charities Act 2011](http://www.legislation.gov.uk/ukpga/2011/25/section/16) we believe opening an investigation would not be proportionate and/or an effective use of our resources, in light of either the likely outcome and/or what other matters we are considering investigating at that time
* it is likely to prejudice another agency’s operational activity or performance of its functions

The decision to open an inquiry may also be affected by the extent to which the risks and issues are already being managed by the charity trustees or other agencies, whether the abuse or non compliance is ongoing or has stopped and how long it has been going on.

### 5. Outcomes of the pre investigation assessment

Outcomes of this assessment include:

* the case will be taken on by the Investigations team to conduct a statutory inquiry
* referral for a compliance visit or formal monitoring within Investigations, Monitoring and Enforcement, where:
* there is a regulatory issue and further action is required but, because of a request by another agency, an inquiry cannot be conducted at this time
* the regulatory issue is resolved but the matter should be referred for a period of formal monitoring to ensure continued compliance
* the regulatory issue is in the process of being resolved but further follow up actions are required of the charity to address the issue

referral to the Permissions and Compliance Teams in circumstances where other regulatory issues are identified in line with the [Regulatory and Risk Framework](https://www.gov.uk/government/publications/risk-framework-charity-commission)