

|  |
| --- |
|  |
| Investigations Work-Handling Statutory Inquiry Cases and the Five Key Stages of an Inquiry |
|  |
| OG117-5 |
| Last Updated: 20/06/2019  Last Reviewed: 25/02/2016 |
|  |
|  |

|  |
| --- |
|  |

**Contents**

[Policy Statement/Overview 1](#_Toc124845373)

[Summary of the guidance 1](#_Toc124845374)

[**Casework Guidance** 1](#_Toc124845375)

[**20 June 2019** 1](#_Toc124845376)

[Handling Statutory Inquiry Cases and the Five Key Stages of an Inquiry 1](#_Toc124845377)

[1.  Conduct of the Statutory Inquiry 1](#_Toc124845378)

[2.  The Five Stages of an Inquiry 3](#_Toc124845379)

[3.  Using our regulatory powers 5](#_Toc124845380)

[4.  Outcomes and impact of a Statutory Inquiry 7](#_Toc124845381)

[5.  Concluding the substantive investigation and closing the inquiry 9](#_Toc124845382)

[6.  How we report on our Statutory Inquiries 10](#_Toc124845383)

[Statement of Results of an Inquiry 10](#_Toc124845384)

[Thematic Reports 11](#_Toc124845385)

[Formal Reports 12](#_Toc124845386)

**OG117-5 Investigations Work - Handling Statutory Inquiry Cases and the Five Key Stages of an Inquiry**

# Policy Statement/Overview

## Summary of the guidance

**Casework Guidance**

**20 June 2019**

## Handling Statutory Inquiry Cases and the Five Key Stages of an Inquiry

### 1.  Conduct of the Statutory Inquiry

Officers carrying out a statutory inquiry are under a duty to act fairly and independently. They do not represent the interests of either the complainant (if there is one) or the trustees. Inquiries are carried out having regard to the principles of best regulatory practice contained in our [Regulatory and Risk Framework](https://www.gov.uk/government/publications/risk-framework-charity-commission).

Where we open a section 46 statutory inquiry we will usually inform the charity trustees as soon as possible, although there will be occasions where action may need to be taken to protect beneficiaries or assets, before notification is given.

Caseworkers must be aware of the need to consider human rights, equality and diversity issues. When communicating with charities, caseworkers should offer to translate documents into another language, another format, eg Braille or Audio or to meet any other requirements needed.

We have agreed with the Auditing Practices Board that we will notify a charity auditor when we open a statutory inquiry. Again, this will be usual practice unless there are reasons to believe that such notification would be detrimental to the statutory inquiry itself, for instance if it prevents us from protecting the charity's beneficiaries or assets. We also notify HMRC when we open an inquiry into a charity.

The notification letter to the trustees will set out the regulatory concerns, why we are opening the statutory inquiry and what the charity can expect from the investigation process. The letter may also ask questions or request information or documents, usually by direction under section 47 of the Charities Act 2011. The letter should point out that the charity trustees are bound to answer any questions that we ask and provide any documents and information. It should explain the consequences for non-compliance or limited, partial or inadequate responses.

Our current policy is to usually issue a public statement whenever a statutory inquiry into a charity is opened because it is in the public interest to do so. The charity's entry on the public register of charities links to this statement whilst the inquiry is open. This link changes to the published report of the inquiry once it concludes.

There are a number of exceptions to when the Commission will not issue a public statement if for example, it considers that this would not be in the public interest, or if the charity's trustees are not aware that an inquiry is being opened. The circumstances in which we might not issue a statement on the opening of an inquiry and also our policy on answering media queries on live enquiries is in our published policy on reporting on our work, on our [website](https://www.gov.uk/government/publications/how-the-charity-commission-reports-on-its-current-regulatory-work/how-the-charity-commission-reports-on-its-regulatory-work)

### 2.  The Five Stages of an Inquiry

Typically a statutory inquiry will include the following elements:

* **Setting the scope of the inquiry and our case strategy.** We will allocate a lead investigator and set up a team running the inquiry. In most cases, we will promptly write to the trustees of the charity concerned to explain why we have opened an inquiry and its focus and aims. When the issues justify it, we may use our regulatory powers before we tell the charity that we have opened the inquiry. We review our case strategy regularly and make changes in the light of new evidence or circumstances.
* **Information and Evidence gathering, analysis and verification.** Information may have been obtained already by the pre investigation assessment and/or other regulatory case processes. However, the statutory inquiry will usually need to obtain further information about the causes for concern and may carry out a books and records visits to the charity in addition to seeking information and responses to questions from trustees and others who have involvement with the charity. New evidence will need to be evaluated as it is collected and used to inform our actions. Further investigation may give rise to other new causes for concern. Evidence gathered will always be in relation to our statutory inquiry and the causes for concern that the statutory inquiry raises. These processes will continue throughout the proactive stage of the inquiry.
* **Consideration and use of regulatory powers.** The nature of what the statutory inquiry has found will determine the action to be taken to resolve what has gone wrong and whether that action is for the trustees, the Commission or both. The Commission can, on the opening of an inquiry use regulatory powers of remedy and protection including those in sections 76, 79 and 84 of the Charities Act 2011. These powers are discretionary. We will not always use our powers during the conduct of an inquiry, and will only do so where this approach is lawful, appropriate and proportionate in the circumstances. Interim regulatory powers used under section 76(1) of the Charities Act must be kept under review to ensure that their use remains proportionate. Longer term remedial action can involve setting out a plan of action against timescales for delivery under section 84 of the Charities Act, or may include the use of the Commission's permanent protective powers under section 79 of the Act.
* **Conclusion of the proactive investigation stage and follow-up**. We will conclude our substantive investigations when we have:
* taken the action necessary to resolve the concerns
* discussed our conclusions with the trustees
* made clear to the trustees what follow-up action is required to resolve our concerns and by when

This usually marks the end of the proactive stages of the investigation.

* Publishing a Statement of Results of Statutory Inquiry:

The Commission's policy is to report the outcome of every statutory inquiry by publishing a statement of results of inquiry on our website. The statement will usually be published within 3 months of concluding our proactive investigation.

Our reports inform charities and the public about our role as regulator, about the statutory process and about the action that we have taken in a particular statutory inquiry. They also raise awareness about particular issues and we hope they widen the impact of our involvement in individual cases.

Trustees and others affected by/ or named in the statement will usually be given an opportunity to see the draft or where appropriate, the relevant extracts, and to comment where they consider there to be factual inaccuracies before publication takes place. We will usually provide current (and where relevant, former) trustees with a copy of the full draft statement, whereas it's more likely that we will send only relevant extracts to third parties. If a report is anonymised or names are redacted, then we may decide not to invite comment before publication. The process is not an opportunity for others to challenge the Commission's regulatory outcomes or judgements and if an individual disputes the statement's factual accuracy they must direct the Commission to the relevant supporting evidence so that we can consider these matters and determine whether or not this affects the draft findings. We do not send the draft statement to the initial complainant, beneficiaries of the charity or members of the public.

Trusteeship is a public office, a position of trust carrying fiduciary responsibilities and duties. The public has a legitimate interest in being assured that those duties are being complied with. We therefore issue a press release when the report of the Statement of Results of Inquiry is published on our website. Our policy on when we might not publish a report or when we might delay publication is explained in our policy on our [website](https://www.gov.uk/government/collections/inquiry-reports-charity-commission).

### 3.  Using our regulatory powers

* Our regulatory powers may be used throughout the course of a statutory inquiry dependent upon the extent of misconduct or mismanagement or risk to charity property we find and whether we need to take action to protect beneficiaries or assets. Our aims in using these powers are:
* to prevent the continuation or repeat of any misconduct or mismanagement, if necessary by removing those responsible or by placing charity assets under other control; and
* to ensure that the charity's current or future assets are secure and will be properly administered

The powers we use are contained at [section 76 of the Charities Act](http://www.legislation.gov.uk/ukpga/2011/25/section/76) with additional powers under sections 47, 52, 79, 84, 85, 111 and 48. Some of these powers may be used outside a statutory inquiry. These powers include:

Information gathering powers to allow us to require individuals to:

* provide accounts and statements in writing
* return answers in writing to questions or inquiries
* provide copies of documents in their custody or control
* attend at a particular time and to give evidence (answer questions) or produce documents
* provide information in their possession
* provide a copy of, or extract from, any document, or transmit a document to the Commission for inspection

Temporary protective powers used in relation to individuals involved with the charity and allow us to:

* suspend any trustee, charity trustee, officer, agent or employee
* appoint an interim manager for the charity
* suspend or remove a charity trustee etc from membership of a charity

Temporary protective powers used in relation to charity property which allow us to:

* vest charity property with the Official Custodian for charities or require for it to be vested with him
* order debtors not to make payments to the charity
* restrict transactions or payments being made by the trustees without first receiving our authority

Permanent protective powers to effect change within a charity and protect beneficiaries and assets allow us to:

* appoint additional charity trustees
* remove any trustee, charity trustee, officer, agent or employee because of misconduct or mismanagement and the necessity to protect charity property or ensure proper application of that property
* establish a scheme for the proper administration of the charity
* remove charity trustees by the Commissioners' own motion in the particular circumstances contained at section 80(1) & (3) of the Charities Act
* appoint charity trustees by the Commissioners' own motion in the particular circumstances contained at section 80(2) of the Charities Act
* determine membership of a charity
* give specific directions for protection of charity
* direct application of charity property

Information about using individual powers is contained in OG117-6 to OG117-10.

### 4.  Outcomes and impact of a Statutory Inquiry

We want our intervention to stop abuse taking place and put the charity on a sound footing once more. In doing this the possible outcomes for a statutory inquiry may be one or more of the following:

* The evidence does not substantiate issues of misconduct or mismanagement or risk to charity property and that no remedial action is necessary
* There is evidence of misconduct or mismanagement but as a result of actions taken by the charity or by the Commission during the statutory inquiry the causes for concern have been rectified and there is no longer any need to act to protect the property of the charity
* There is evidence of misconduct or mismanagement or a risk to charity property and the trustees are able and willing to commit themselves to dealing with remaining problems in accordance with a detailed action plan agreed with us and monitored by us
* There is evidence of misconduct or mismanagement or a risk to charity property and the trustees require detailed and longer term assistance from one of our specialist Permissions and Compliance teams which will enable them to remedy matters
* Serious irregularities are identified which require use of our permanent protective powers
* It is necessary to use our powers to institute legal proceedings under section 114 of the Charities Act. Such instances are likely to be rare but may be required where trustees are unable or unwilling to remedy such matter that require remedy or to compromise or settle claims with a view to avoiding or ending such proceedings
* There is evidence of misconduct, mismanagement or misuse of property but the matter has been resolved by the involvement of another agency

The impact of our action will be measured in terms of:

* assets recovered
* current assets protected
* future assets protected

Added together these will give an overall picture in monetary terms of the charitable assets that have been recovered or protected.

Our intervention may have added value in other equally important ways, including:

the protection of vulnerable beneficiaries

* reduced public exposure to unregulated/ unlawful/ unauthorised fundraising
* a charity that no longer operates or applies funds outside its trusts
* charities that comply with charity law and are effectively governed
* transparency in a charity's operations including published reports and accounts
* moribund charities that now function
* unmanaged conflicts of interest have been removed or managed
* charity relationships with third parties are properly managed in the best interests of charity
* direct charitable expenditure has increased or targets are in place to increase this expenditure
* advice and guidance provided to ensure the charity's governance improved
* useful and effective regulatory advice and guidance given
* trustees acting on regulatory advice
* an internal dispute was resolved and the charity is properly functioning again
* a charity can support beneficiaries more effectively
* charitable funds can be used more effectively
* significant and necessary improvements in governance
* accounting procedures more efficient
* internal dispute overcome and charity functioning
* public no longer exposed to unregulated/ unlawful/ unauthorised fundraising
* trustees are complying with charity law by obtaining necessary consent
* improved accuracy of the register of charities
* Commission reassured that issues are being handled/ resolved by the charity
* charities' independence maintained
* charity on notice to improve
* ensuring charities comply with safeguarding issues
* clearer guidance available/ issue brought to the attention of sector
* contribution or support given to other agency/ regulator

We refer to these as beneficial impacts.

Our intervention will also impact on whether:

* a charity's reputation/ public trust and confidence in it has been protected
* public trust and confidence in the charitable sector is protected

### 5.  Concluding the substantive investigation and closing the inquiry

The substantive part of our investigation will be concluded once we are satisfied that:

* Any protective Orders that need to be discharged have been (vesting Orders, freezing Orders and those appointing an interim manager may in exceptional circumstances need to stay in place but under review even though the investigation has ended)
* The trustees are able and willing to continue with regulatory action in line with an action plan agreed with us or a section 84 direction imposed by us both of which will require Commission monitoring
* All the issues have been remedied and the charity is operating on a proper footing; or
* No further action is required as evidence confirms that complaints or concerns made were unfounded or not substantiated

Following conclusion of the substantive investigation, we aim to publish the statement of results of the inquiry within 3 months of concluding the substantive inquiry, which marks the closure of the investigation.

### 6.  How we report on our Statutory Inquiries

Section 50(1) & (2) of the Charities Act gives the Commission discretion to decide whether or not to publish reports or such other statements of the results of a statutory inquiry as it sees fit. The purpose of writing a report can be to set the record straight or report on our findings where there is high public interest to hold charities accountable to the public. However, it is also to communicate lessons to a wider audience. This helps improve wider compliance by ensuring other charities are aware of the need to comply and what to do. It also increases the Commission's own accountability to the public and the charity sector.

The Commission's policy is to publish the outcomes of our statutory inquiries on our website, usually in the form of a Statement of Results of Inquiry (SORI), although Thematic Reports may be used or, on rare occasions, a Formal Report under section 34 of the Charities Act. Occasionally we will decide not to publish the results of a statutory inquiry. Our approach to publication and criteria are set out on our [website.](https://www.gov.uk/government/collections/charity-commission-reports-decisions-alerts-and-statements)

### Statement of Results of an Inquiry

The statement will set out the issues investigated and how they came to our attention. It will outline findings, action taken by charity trustees and the Commission, and the outcomes achieved. In protracted cases or where there is high public interest we may produce an interim statement.

Alternatively, in less complex cases we may produce a truncated report or a summary of the issues.

We normally send the draft statement report findings to the trustees of the charity who are the subject of our investigatory findings and/ or accountable for them to give an opportunity to comment on factual accuracy on matters related to those findings before publication. We may also on a case basis provide a third party whose conduct is identifiable and specifically and materially criticised by our findings in the report to be published an opportunity to similarly respond on factual accuracy on the extracts related to them.

It is not the Commission's policy to routinely name individuals in statements of results or generic reports. However, we will name individuals where it is necessary or desirable to identify them. For example, we may wish to name an individual where it would be unfair not to do so to others. Additionally, we may publish names where the case has attracted media attention and the names are already in the public domain. We will also name individuals who appear to us to pose a continuing risk to the sector or the public. This will include individuals whom we remove from office, or disqualify as trustee. In those cases the individual concerned will have an opportunity to comment on relevant factual accuracy of those extracts before publication. We will also flag the charity's Register entry for two years where we have published a Statement of Results of Inquiry.

It is important to be clear on the distinction between factual findings on the one hand and regulatory conclusions on the other. The report making process is designed to protect the factual integrity of the findings in our reports. Our conclusions represent our independent regulatory judgement on the findings.

We may also refer to or highlight particular cases in other Charity Commission publications, for example, [Dealing with wrongdoing and harm](https://www.gov.uk/government/publications/dealing-with-wrongdoing-and-harm-2017-18) or the Commission's Annual Report.

### Thematic Reports

The format of these reports is similar in nature to a statement of results of statutory inquiry but will cover a number of statutory inquiries that are similar in nature and outcomes or may cover a single statutory inquiry into a particular class of charity.

### Formal Reports

Section 342 of the Charities Act 2011 enables us to submit a formal report of a statutory inquiry where the Attorney General (acting ex officio) or the Commission (with the Attorney General's consent) intends to institute legal proceedings in which the report will be used in evidence. Such instances are rare.

A report being used for this purpose is more extensive than a statement of results of a statutory inquiry and will usually contain appended evidence.

The report is also likely to contain details of methodology of our statutory inquiry, the evidence uncovered and the conclusions drawn from that evidence. Where a report directly or by implication criticises individuals, those individuals must be given the opportunity to rebut those criticisms.