

# Anti-Fraud Strategy

February 2010

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## **PART A**

### **1. INTRODUCTION**

- 1.1 The risk of fraud is not unique to charities, but the nature of the relationship which charities have with the public make the prevention and detection of fraud of particular importance. Both individual charities and the sector as a whole, will suffer from the reality and the perception of any fraud which damages public confidence.
- 1.2 It is the trustees of the charity who are responsible for the prevention and detection of fraud in relation to their charity, whether they are a small voluntary organisation or a large national employer. Understanding where the charity may be vulnerable to fraud must be an integral part of any charity's risk management approach and trustees must be satisfied that they have controls in place to manage these risks appropriately. This responsibility cannot be delegated, either to staff or to the regulator.
- 1.3 However, as the regulator, OSCR has a critical role in the prevention and targeting of action in relation to fraud, and this strategy outlines how OSCR approaches its role in relation to charities and to the public.

### **2. WHAT DO WE MEAN BY FRAUD?**

- 2.1 In general terms, fraud can be described as intentional deception for personal gain resulting in detriment to another. Examples of where a charity might be affected by fraud include:
  - embezzlement of charity funds internally by a trustee, staff or volunteer
  - embezzlement of funds in the hands of third parties, e.g. partners or service delivery providers
  - fraudulent grant applications
  - fraudulent charitable status applications
  - fraud on individual members of the public via domestic or international fundraising
  - money laundering.

If such circumstances are proven, it is a criminal act and may attract criminal sanctions.

- 2.2 In the charity context, a common understanding of fraud might also extend to issues which are not strictly fraud but arise from misrepresentation or simple misunderstanding. This includes:
  - lack of clarity about the charitable status of any organisation
  - lack of transparency or concern about fundraising methods
  - uncertainty as to the amount of administration costs, either in relation to fundraising or the charity's core charitable activities
  - disproportionate benefits and payment to trustees.

There is a clear interest, particularly with a view to preserving public confidence in charities, in clarifying such misunderstandings. Both charities and OSCR can help to ensure that there is greater clarity about some of these common misunderstandings.

- 2.3 There is also a potential link to charities in financial difficulties. However, the fact a charity is in financial difficulty may have no relationship to fraud. OSCR may have another, different role to play, particularly in the nature of the individual response we offer. This strategy focuses on fraud, not on financial difficulty.

### 3. OSCR'S APPROACH

- 3.1 In considering how to combat fraud, OSCR takes a risk based, intelligence led approach in keeping with regulatory principles of proportionality, and targeting action where it is needed. Our strategy identifies different aspects of this approach. In doing so, we place particular emphasis on general education and prevention, drawing on the experience and intelligence of other regulators and relevant organisations, as well as our own experience and intelligence.
- 3.2 Our strategy identifies four key aspects:
- prevention
  - intelligence
  - intervention
  - improvement.

The chart at Annex A illustrates the overall approach, and further details of each strand are provided below.

## PART B

### 4. PREVENTION

#### 4.1 Charity trustees

The trustees of a charity are responsible for the prevention and detection of fraud in relation to the charity, even if they delegate some of their executive responsibilities to individual trustees, senior staff or volunteers. Each charity is different and the level of potential exposure to fraud will determine the detail of the financial and other controls which it is reasonable and appropriate for the trustees to put in place; however, basic controls will always be relevant regardless of the size or nature of the charity. It is crucial that trustees understand where their charity may be vulnerable and that they effectively manage identified risks, including considering appropriate training for charity trustees and senior staff.

As a starting point, the charity trustees should be aware of their responsibilities under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). As well as requiring charity trustees to act with the care and diligence it is reasonable to expect of a person who is managing the affairs of another person, the Act makes clear that the charity trustees have a collective responsibility. Further guidance on the duties of charity trustees in general are given in OSCR's [Guidance for Charity Trustees](#). OSCR will also signpost charity trustees to relevant guidance published by other organisations. Examples include the Charity Commission for England and Wales guidance on internal financial controls for charities, which is particularly helpful in providing examples for smaller charities, [CC8 - Internal Financial Controls For Charities](#); and HMRC's guidance on the requirements for payments to overseas bodies which is essential reading for charities working internationally - [Payment to Overseas Bodies](#).

Strictly speaking, there is no requirement for charities to inform OSCR of occasions on which they have encountered fraud, but a number of charities have adopted the good practice of advising OSCR even where the matter has been dealt with. OSCR welcomes this approach; not only does it indicate that charity trustees are taking their responsibilities seriously, but it also provides valuable intelligence which allows OSCR to provide advice and guidance for others to learn from the experience.

## 4.2 The Scottish Charity Register

All charities registered in Scotland can be checked on the online [Scottish Charity Register](#). This forms an important frontline in the prevention of fraud, where members of the public, voluntary funders and statutory funders can establish whether an organisation is a genuine charity. The Scottish Charity Register currently provides information about the area in which the charity operates and a record of whether accounts have been submitted on time and comply with basic requirements. The Scottish Charity Register also includes details of any formal Directions issued to a charity.

## 4.3 Working with umbrella bodies

We have a policy of working with umbrella bodies and membership organisations, which enables us to reach out to larger numbers of charities than we could do on an individual basis. With the creation of a new Policy and Development Team in September 2009, we aim to invest greater resources in working with these organisations. In this context, this work can include not only a programme for addressing basic compliance with the legislation, but can also develop to include discussion on the risk of fraud and the appropriate action by charity trustees.

A specific example of this is OSCR's work with the Network of International Development Organisations in Scotland (NIDOS) where we provide support for a specific training programme aimed at financial management.

## 4.4 Fundraising

Fundraising is an area with significant potential for fraud, but is also an area in which there is some of the greatest misunderstanding. The Fundraising Regulations issued under the 2005 Act prohibit professional fundraising without a formal agreement with the charity, which must satisfy prescribed requirements. There is provision in the Act to introduce regulations of public benevolent collections although, at the time of writing, these are not yet in force.

OSCR has worked with the Institute of Fundraising to develop guidance for charity fundraisers and the public in respect of the Fundraising Regulations: [The Charities and Benevolent Fundraising \(Scotland\) Regulations 2009](#).

OSCR also supports the work of the Fundraising Standards Board and recommends that relevant charities join, adopting its Code of Practice. OSCR's [Memorandum of Understanding \(MOU\)](#) with the FRSB explains how we deal with complaints about FRSB members. It is worth noting membership of the FRSB is not restricted to charities and includes organisations not registered with OSCR.

## 4.5 Doorstep collections

There is an increasing practice of householders receiving leaflets or envelopes requesting cash, or plastic bags asking for the donation of goods. This is an area where there is potential for confusion, as it is not always clear whether the collections are on behalf of a specific charity, or whether the collections are undertaken by businesses which sell the donations for profit.

OSCR has worked with the Charity Commission for England and Wales and the Department for Social Development in Northern Ireland (since April 2009, the Charity Commission for Northern Ireland) to issue [Guidance on Doorstep Collections](#), which allows members of the public to make an informed choice. This includes a checklist to help them identify whether a collection is on behalf of a charity, if this is important to the donor. It was widely circulated in Scotland.

### 5. INTELLIGENCE

#### 5.1 Auditors and independent examiners

Auditors and independent examiners in Scotland, and in England and in Wales, have a common statutory duty to report matters of material significance to charity regulators. This important duty will be a key contribution to the ability of charity regulators to take timely action. The regulators have therefore agreed a common list of matters. Matters of material significance always include matters suggesting dishonesty or fraud; knowledge or suspicion that the charity or charitable funds have been used for money laundering or the funds or the proceeds of serious organised crime; or that the charity is a conduit for criminal activity.

OSCR and the Charity Commission for England and Wales have issued guidance for Auditors and Independent Examiners on their duty to report matters of material significance: <http://www.oscr.org.uk/whistleblowingguidance.stm>. In November 2009, OSCR published its [Guidance on Independent Examination](#), which provides clear practical guidance for charities and their independent examiners on the whole process of independent examination.

#### 5.2 Charity regulators' strategic and operational co-operation

OSCR has the statutory power to share information with other regulators and public bodies. To supplement this, we have in place a number of formal Memoranda of Understanding (MOUs) and arrangements for strategic and operational co-operation. At strategic level, we have quarterly strategic meetings of the Charity Regulators' Forum, which includes the charity regulators of Scotland, England and Wales, Northern Ireland, the embryo regulator of the Republic of Ireland, and HMRC. At operational level, there is a programme of discussion and interchange between regulators on a bilateral and multilateral basis, as well as protocols for the exchange of intelligence and formal referral of complaints in relation to individual cases.

#### 5.3 Financial Crime Information Network

OSCR is currently pursuing membership of the Financial Crime Information Network to further develop our intelligence capability and facilitate the sharing of information across a range of organisations.

#### 5.4 Big Lottery Fund and other statutory bodies

We have a formal [Memorandum of Understanding](#) with the Big Lottery Fund. The Scottish Charity Register provides funders such as the Big Lottery Fund with an assurance of charitable status and a record of compliance in terms of the Annual Return and Accounts; and whether or not any formal Directions are in place. In turn, the Big Lottery Fund and other funders may bring to OSCR's notice concerns which reflect particularly on governance and potential misconduct.

#### 5.5 Crown Office and Procurator Fiscal Service

We have in place a formal [Memorandum of Understanding](#) with the Crown Office and Procurator Fiscal Service (COPFS). In terms of intelligence, COPFS brings to the notice of OSCR any concerns which reflect on the good governance of bodies within the charitable sector, or where there is reason to believe that there has been mismanagement, criminal activity or any other misconduct within the sector. COPFS also contacts OSCR where, during the course of any investigation it carries out or under its direction, it becomes aware of the need to bring to our notice information that might require us to exercise our statutory functions.

## 5.6 OSCR monitoring

OSCR has a function under the 2005 Act to identify and investigate apparent misconduct in the management of the administration of charities and to encourage, facilitate and monitor compliance by charities with the Act. In performing our functions we are required to have regard to principles under which regulatory activities should be proportionate, accountable, consistent, and transparent and targeted only at cases in which action is needed. In addition, we have added the principles of being independent, fair, and informed. The adverse impact of real or perceived fraud on the sector is clearly a potential risk, but OSCR is not a financial regulator as such. Given our regulatory activities are targeted at cases where action is needed, we take a proportionate approach to the risk of fraud and the appropriate resources which we dedicate to this.

In terms of sector wide intelligence, we operate an annual Monitoring Programme which requires submission of an Annual Return and Accounts by all charities; and a Supplementary Monitoring Return from larger charities with gross income over £25k. The range of checks made is published on the OSCR website.

We take an increasingly robust approach to the submission of accounts, following up non-returns and in the foreseeable future the presence of the audit/independent examination report, thereby ensuring that both charity trustees and those undertaking independent scrutiny address their minds to issues of risk, including the risk of fraud. It is a requirement for larger charities (income of £500,000 and over) to include a risk management statement within the Trustees' Annual Report under the requirements of the Charities SORP 2005. OSCR also considers it good practice for smaller charities to make a similar statement.

We undertake risk profiling and individual risk assessments which enable us to identify vulnerabilities. Where we have concerns about fraud, or indeed any other significant areas of non compliance, (for example the application of funds for potentially non charitable purposes, including disproportionate payment to trustees), we can and do use our powers for more rigorous inquiry.

## 5.7 Trading Standards Officers

Other intelligence comes from a variety of sources. Some comes from information entirely in the public domain such as media reporting, and some from other public bodies with which we have the power to share information. Trading Standards Officers are an example of public officials with whom we have set up operational contacts, who have a local and specialised knowledge which has proved of mutual benefit.

## 5.8 OSCR staff

The virtue of OSCR being a relatively small operation is that there is extensive cross-team exchange of information. We are also dedicating more resources through our overall knowledge management, ensuring that we use our corporate intelligence more effectively to strategic and operational effect. We undertake trend analysis and risk profiling, drawn from our own data and that of other regulators, to refine our risk framework for different areas of operation. This informs the development of policy and programmes at a strategic level, and the risk assessment of cases at an individual level.

We consider the corporate and individual learning and development needs required for all our operations through our Learning and Development Plan and its implementation. We source external and specialist training when necessary, and of particular value in this connection is the fact that COPFS provides OSCR Investigation staff with access to training on the criminal justice system, crimes of dishonesty, the law of criminal evidence, and training in precognition and the taking of evidence.

### 5.9 Members of the public

OSCR is also provided with information from former charity staff, trustees and members of the public on an ad-hoc basis which may be sent to us as a formal complaint. We have an online complaints form to assist those with possible concerns, as well as telephone access. Our Inquiry & Intervention Policy available on our website is sent to complainers and the charity concerned. It provides guidance on how OSCR handles information, including how we aim to respect confidentiality for complainers, while respecting the rights and reputation of charities.

General information as well as complaints can, on occasion, be in relation to fraudulent activity. OSCR's response to all such information or complaints will depend on the exact circumstances, the individual risk assessment and whether the Police or other regulators are already involved in the matter as set out in section 6.

## 6. INTERVENTION

### 6.1 Inquiry & Intervention Policy

All complaints received and internal referrals from OSCR staff are risk assessed in line with our Inquiry & Intervention Policy. This includes allegations of serious misconduct and risks to charitable assets that may be associated with fraud. Our assessment process builds on the collation and consideration of available intelligence. The outcome of the assessment determines the level of OSCR's intervention and identifies where onward criminal referral is appropriate at an early stage.

### 6.2 Criminal conduct

OSCR and the COPFS have a detailed agreement in relation to the investigation of allegations of criminal conduct on the part of those involved in the charity sector.

The 2005 Act outlines a number of offences where conviction on summary of procedure can lead to a penalty by way of fine and/or imprisonment and, in one case, indictment. These include provision of false or misleading information to OSCR and failure to comply with an OSCR Direction, and also failure to comply with Fundraising Regulations. These offences are reported directly to the appropriate District Procurator Fiscal.

Where OSCR has evidence of any other criminal conduct or suspicion, which would include fraud, OSCR reports the matter directly to the Crown Office rather than the local Procurator Fiscal. This reflects how seriously both OSCR and the Crown Office take the issue of any criminal conduct, including fraud. The Crown Office considers the information available. Exactly how further the inquiry proceeds will depend on the nature and seriousness of the case in question.

### 6.3 OSCR powers

Whether or not COPFS proceeds by way of criminal action, OSCR has a range of powers including the power to make enquiries, either generally or for particular purposes and, for that purpose, to obtain various types of information. This power is used to support OSCR in conducting any investigation that may be required.

Our specific powers in relation to intervention are outlined in our Inquiry & Intervention Policy. These are employed when action by OSCR is necessary to protect charitable assets or the reputation of the sector. Some of these powers are exercised at our sole discretion and others on application to the Court of Session. The powers include, but are not limited to, the suspension or removal of any person or persons concerned in the management or control of a charity and, in the case of removal, this leads to disqualification as a trustee, restricting the transactions of a charity and removing a charity from the Register.

Where this level of intervention is inappropriate we may limit OSCR's action to making recommendations to a charity to ensure that appropriate controls are in place to manage any ongoing risk and monitor their implementation.

## **7. IMPROVEMENT**

### **7.1 Recommendations to Ministers and Parliament where changes to legislation would assist**

In section 1 of the 2005 Act, OSCR has the power to make Recommendations to Ministers and Parliament, including changes to the legislation. The formal Recommendations are normally contained in our Annual Report and Accounts, and in this context we have already made a number of relevant Recommendations. These include:

- The recommendation in our 2008-09 Annual Report and Accounts that as part of the charity test (**section 7/8**) the legislation should be amended to require a charity to have a continuing connection with Scotland. Currently, a body meets the charity test if it provides (or, in the case of an applicant, intends to provide) public benefit in Scotland or elsewhere. The work of many Scottish charities which operate internationally is well recognised and highly regarded. However, in contrast to the situation in England and Wales, there is no requirement that a charity has a continuing connection with Scotland, for example having an office or one or more trustees resident in Scotland. There is a theoretical risk that an organisation could be on the Scottish Charity Register but OSCR has no effective means of exercising sanction, beyond removing the organisation from the Scottish Charity Register.

While we do not encounter this as a major issue in practice, we believe for the protection of the charity brand and for public assurance and confidence, there should be a specific Scottish connection, and that the legislation should be amended to make this a requirement.

### **7.2 Liaison with the Scottish Government**

In terms of our Framework Agreement with the Scottish Government, OSCR has effective links with the Scottish Government Justice Department and there is the opportunity for the mutual exchange of information which assists the better development of overall Government policy in relation to all aspects of criminal and civil justice. In particular, we have an effective working relationship with the Charity Law Team, which takes the lead in advocacy for implementation of OSCR Recommendations. Both OSCR and the Charity Law Team are hopeful that the Public Services Reform Bill, before Parliament in 2009-10 will provide the opportunity for changes to the 2005 Act which would assist OSCR in the prevention of fraud and other misconduct.

### **7.3 Developing the infrastructure of support**

We recognise the value of quality assured advisers for the sector, and we are exploring ways in which we can assist the development of an effective support infrastructure for the third sector. Charities are so diverse in terms of challenges they face, but effective governance is the key to risk management. In addition to OSCR direct outreach, we are supporting a new sector led initiative, the Evolving Governance Forum. Our new Policy and Development Team will develop a programme for more formal engagement with legal advisors, with a particular emphasis on relevant legal training.

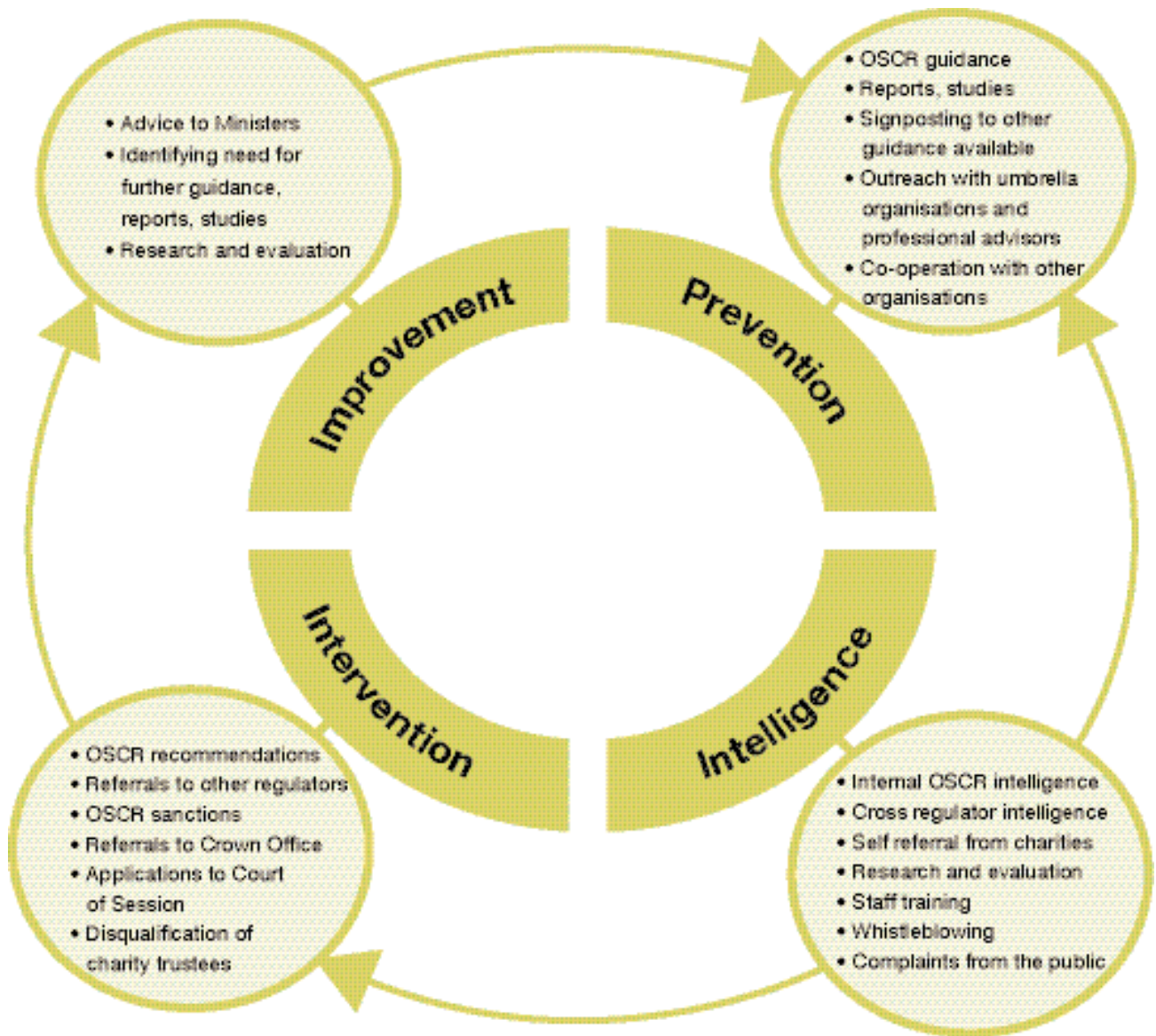
### **7.4 Using lessons learned from casework**

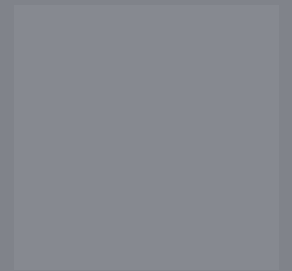
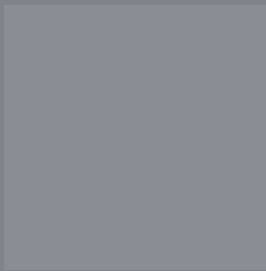
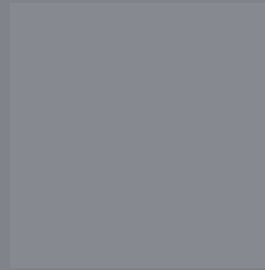
We use lessons learned from casework to develop our intelligence, including identifying the need for and implementing increased co-operation with other regulators and public bodies such as HMRC.

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We also use lessons learned to inform and enhance the requirement for further guidance and development, both directly and in partnership with others. Publications include case studies, for example in our Annual Review which is aimed at a wide audience and is distributed at our Open Meeting, published on our website and circulated to intermediaries and advisers. We encourage intermediaries, advisers, and training providers to use our materials, including case studies, and stress the importance of training for trustees and senior staff. In late 2009 we created a new Policy & Development Team with a specific remit to develop outreach with professional advisers, intermediaries and umbrella groups, with a focus on prevention and improvement.

Overall the lessons learnt from casework feed into the different strands of this strategy to create a cycle of improvement which will assist charity trustees and ensure that OSCR acts as an effective modern regulator.





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