

Working in High Risk Areas: trustee duties and regulatory expectations

The Lift, London



Role of the Charity Commission

Charity Sector in England and Wales

CHARITY
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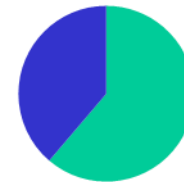
Number of
registered charities



Sector Income



Sector Income



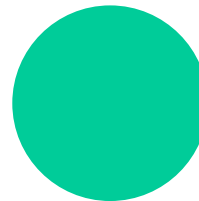
Charity Sector in England and Wales

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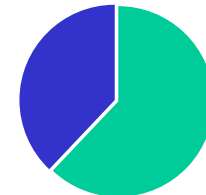
Number of
registered charities



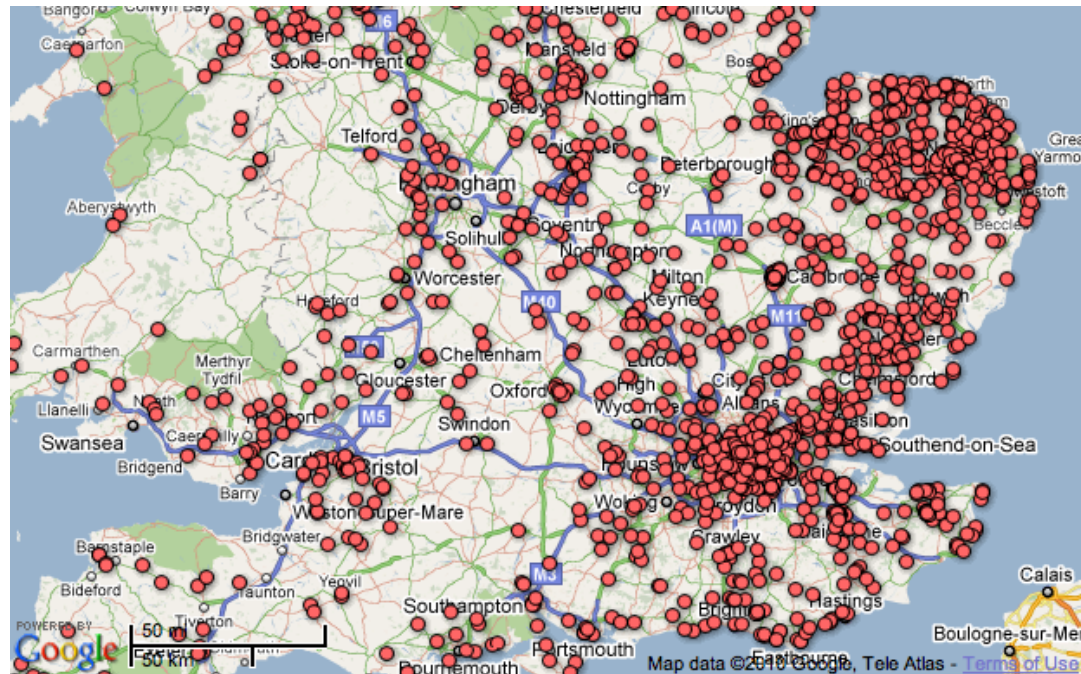
Sector Income



Proportion of Sector
Income



162, 624 registered
charities in
England and Wales



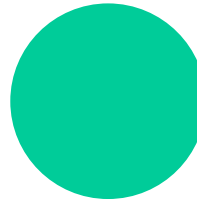
Charity Sector in England and Wales

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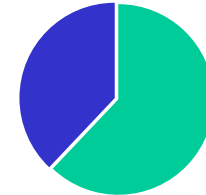
Number of
registered charities



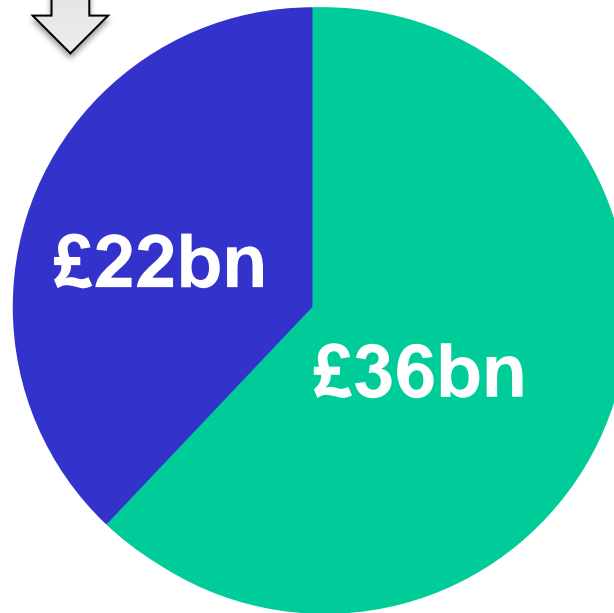
Sector Income



Proportion of Sector
Income



Sector Income:
£68billion

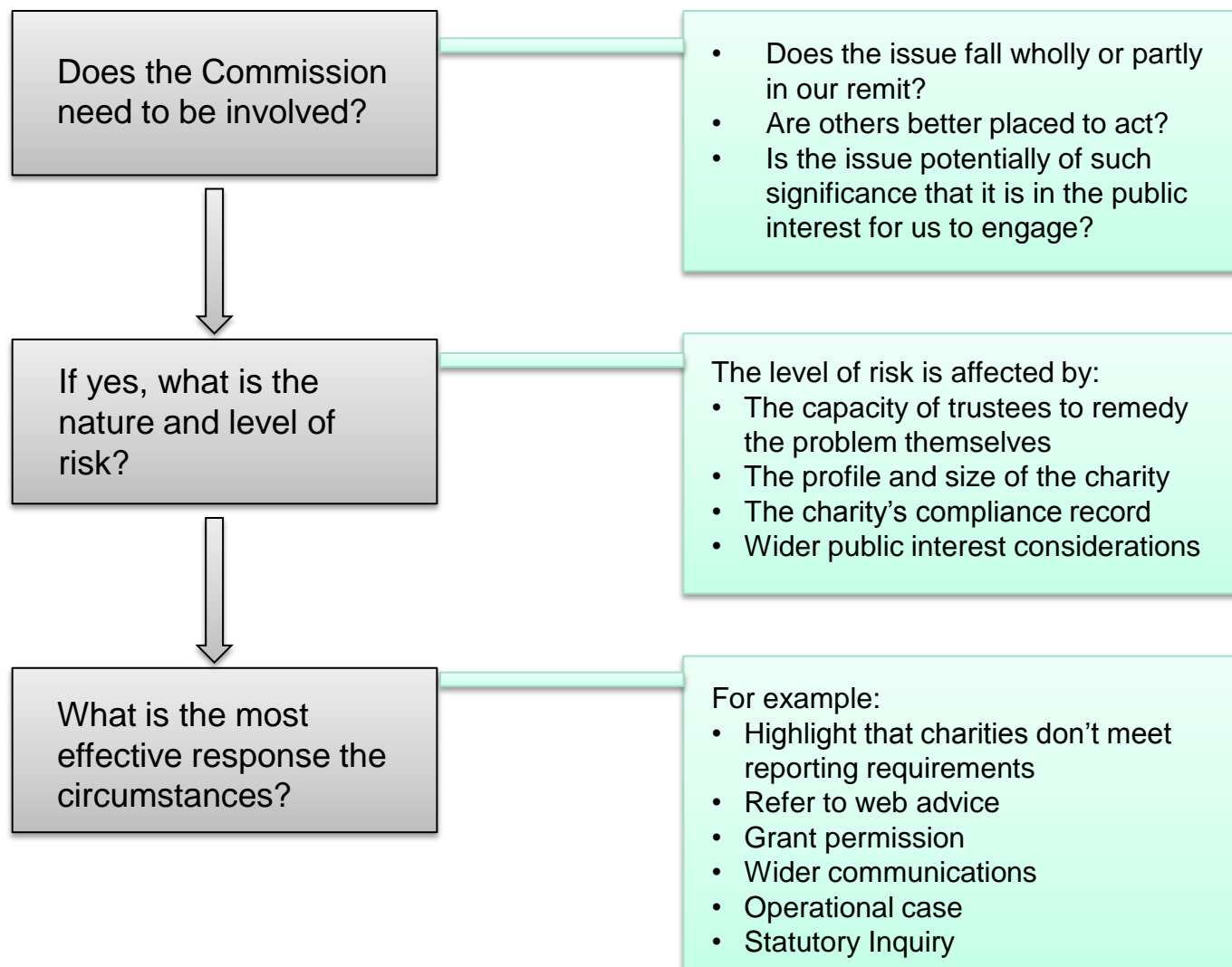


Role of the Charity Commission



- Register charities
- Regulate charity compliance with charity law
- Provide advice and guidance to promote effective use of charity resources

Our Approach



Trustee Duties

The law and good practice – England & Wales

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Commission guidance explains what trustees:

- **Must** do – legal and regulatory requirements
- **Should** do – good practice

We expect trustees to:

- Follow and apply the good practice to their charity
- Be able to explain and justify their approach

Following good practice will help you:

- Run your charity effectively
- Avoid difficulties and basic errors
- Comply with your legal duties

1. Ensure your charity is carrying out its purposes

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It's about:

- Understanding your charity's purposes – what you can and can't do
- Knowing how your charity's activities fulfil its purposes and benefit the public
- Knowing what difference your charity is really making

2. Comply with the governing document and the law

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It's about:

- Being familiar with your governing document
- Being up to date with filing accounts, returns and any changes to its details
- Knowing enough about other laws that apply to your charity

3. Act only in your charity's best interests

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It is about:

- What furthers the charity's purposes
- Making balanced, adequately informed decisions
- Recognising and dealing with conflicts of interest
- Making sure trustee payments or benefits are permitted
- Being prepared to question and challenge
- Accepting majority decisions

4. Manage your charity's resources responsibly

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It's about

- Managing risks, protecting assets (reputation) and people
- Having and following appropriate controls and procedures
- Responsibility for, and to, staff and volunteers

5. Act with reasonable care and skill

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It's about:

- Using your skills and experience
- Deciding when you need advice
- Getting the information you need (financial, management)
- Being prepared in case something does go wrong

6. Ensure your charity is accountable



It's about:

- Fulfilling statutory accounting and reporting requirements
- Being able to demonstrate that your charity complies with the law and is effective
- Showing accountability to members and others with an interest in the charity
- Ensuring that staff and volunteers are accountable to the board

Why good practice matters

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In some cases, you will be unable to comply with legal duties if you don't follow good practice, e.g:

- Deal with conflicts of interest
- Have sufficient financial controls
- Manage risk appropriately
- Take expert advice when you need to

The law and good practice - International

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International Humanitarian Laws has basic principles:

- Humanity
- Impartiality
- Neutrality

States have agreed a total of 18 multilateral treaties addressing different aspects of terrorist acts including

- International Convention for the Suppression of the Financing of Terrorism (the “Terrorism Financing Convention”) -183 State Signatories
- UN Security Council Resolution (UNSCR) 1373- obliged members states to implement measures to combat and prevent further acts of terrorism

The law and good practice – International (2)

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Financial Action Task Force (FATF):- issued 9 Special recommendations against Terrorist Financing including recommendation 8 relating to non-profit organisations and states:-

- *Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:*
- *by terrorist organisations posing as legitimate entities;*
- *to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and*
- *to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.*

The law and good practice – International (3)



UK Laws with Extra- territorial effect:-

1. Bribery Act 2010-

- giving, promising of a financial or other advantage to another party where that advantage is intended to induce the other party to perform a particular function improperly,
- requesting or agree to receive a financial or other advantage from another party where that advantage is intended to induce that party to perform a particular function improperly, where the acceptance of that advantage is in itself improper conduct, or where that party acts improperly in anticipation of such advantage.
- giving or promising of a financial or other advantage which is intended to influence the official in order to obtain business or an advantage in the conduct of business unless the foreign official is required or permitted by law to be influenced by such advantage.

2. Section 19 Terrorism Act 2000 –

- obligates a person who during the course of their employment believes or suspects another person has committed terrorist financing offences must report to a 'constable' as soon as reasonably practical

What's next?

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- Read the *recently revised*: Essential Trustee
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/451020/CC3.pdf
- Share the document with your fellow trustees

Assessing Risk

Issues affecting risk of working in 'country'

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Compliance

Lack of appropriate anti-money laundering or counter terrorism laws and regulations

Financial

Restricted banking and financial services (either due to sanctions or collapse of services)

External

Political instability
Areas where terrorists, proscribed groups and designated individuals operate

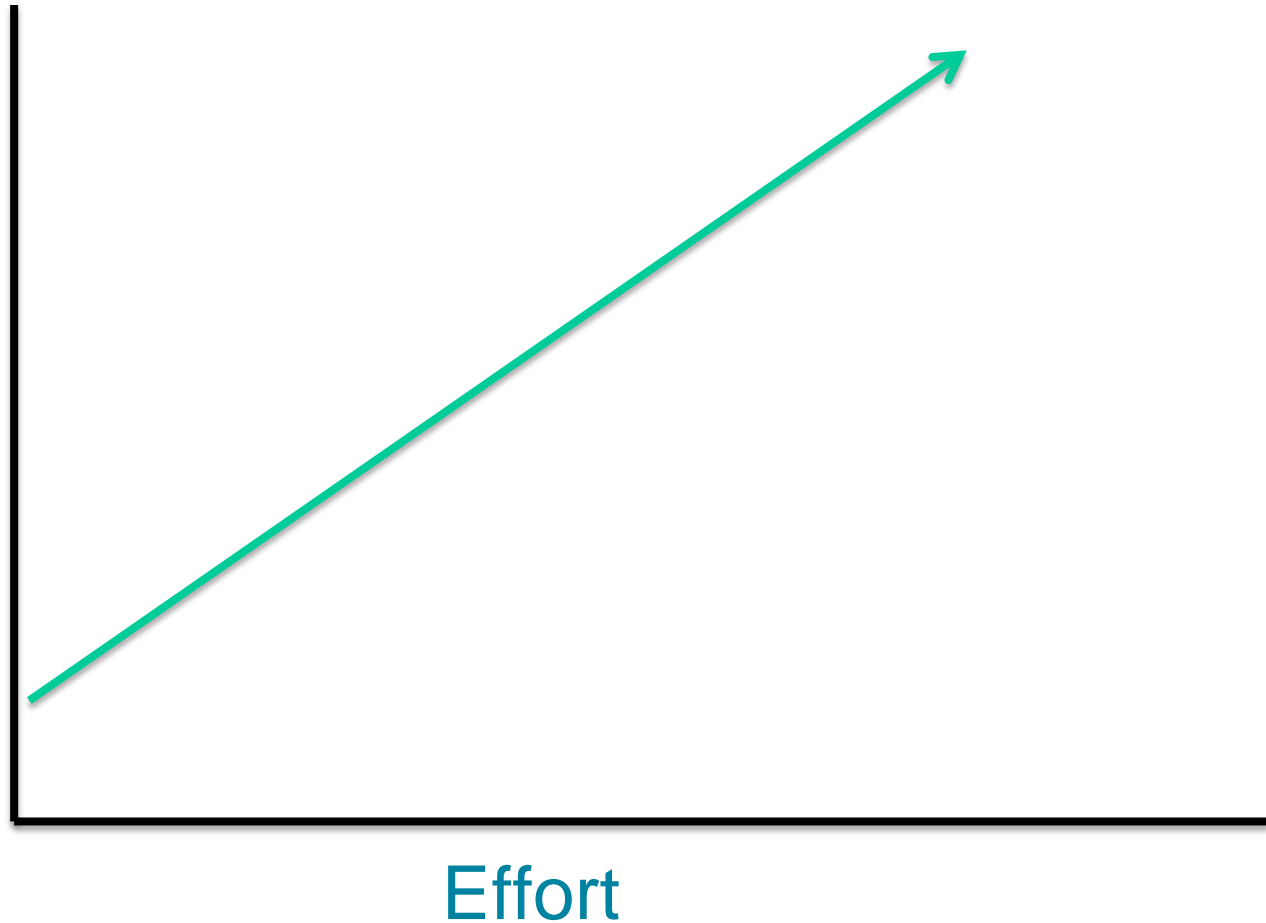
Operational

Lack of project oversight
Safety concerns for staff

Assessing Risk and responding

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Risk



What do you do already?

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1. What risks do you already assess? Do you use any 'risk tools'?
2. Are there other risks you might consider using now?

Risk Tools: Compliance Toolkit, Chapter 2

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Tool 4: Risk management

Risk Matrix

A Risk Matrix is another common method for assessing risk, which can be used in conjunction with the SWOT and PESTLE analyses. Trustees may find this method useful when assessing areas of risk, for example when planning a new project to be carried out with a new partner organisation. The identification of appropriate risks may be best undertaken by involving those with a detailed understanding of the charity's operations and work and/or detailed knowledge of the particular operating environment or the nature of particular projects.

The level of risk should be measured by both the likelihood of something occurring and the severity of impact if it were to happen. The risk matrix can subsequently be used as a risk register for ongoing monitoring and review of risk throughout the life of a project. An example of a section of a risk matrix can be found below.

Risk Matrix

Areas	Risks	Likelihood	Impact	Controls
Reputation	A real or perceived link or association between the charity and terrorist activity damages the charity's reputation	LOW	HIGH	<ul style="list-style-type: none"> Draw up detailed partnership agreements Review partner's governance structures Review project audit and monitoring, including field visits Include an impact and risk assessment for all projects Take references and contact other affiliates of the partner for recommendations Request standard documentation and invoices Check the consolidated list of designated individuals and entities (see Chapter 1 of toolkit)

Compliance Toolkit: Protecting Charities from Money
Chapter 2: Due Diligence, Monitoring and Verification of End Use of Charitable Funds
Tool 4: Risk management

Tool 2: Risk management

Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis

This example shows how a SWOT analysis can be used by trustees to help identify and assess the risks associated with entering into a new partnership with another organisation to carry out the charity's purposes.

STRENGTHS: attributes of the partner, project or activity that will help to achieve the objective or improve the outcome.

WEAKNESSES: attributes of the partner, project or activity that might cause problems, be harmful to the quality of the outcome, or potentially prevent the objectives from being achieved.

OPPORTUNITIES: conditions or resources which could be used to help achieve the objectives, or which could help to improve the outcome.

THREATS: events or conditions which could restrict the achievability of the objectives, or which could damage the quality of the outcome.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/340418/CT-2-T4.pdf

Tool 3: Risk management

PESTLE Analysis

A PESTLE analysis may help when assessing the risk arising from the impact of external factors on a charity, particularly when working internationally.

POLITICAL	Factors may be altered by the government's influence on a country's infrastructure. This may include tax policy, employment laws, environmental regulations, trade restrictions, tariffs, reform and political stability. Charities may need to consider where a government does not want services or goods to be provided.
ECONOMIC	Factors include economic growth, interest rates, exchange rates, inflation, wage rates, working hours and cost of living. These factors may have major impacts on how charities operate and make decision.
SOCIAL	Factors include cultural aspects, health and safety consciousness, population growth rate and various demographics.
TECHNOLOGICAL	Factors include ecological and environmental aspects and available products and services. Charities may need to innovate, having considered the compatibility with their own technologies and whether they are transferable internationally.
LEGAL	Factors include any law which may impact on the charities' operations, including NGO regulation and criminal and terrorist legislation which will differ from country to country.
ENVIRONMENTAL	Factors include an awareness of climate change or seasonal or terrain variations which may affect charities' service delivery methods.

Compliance Toolkit: Protecting Charities from Money
Chapter 2: Due Diligence, Monitoring and Verification of End Use of Charitable Funds
Tool 3: Risk management

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What next?



- Consider whether your risk assessments covers all the relevant risks
- For more guidance, read Chapter 2 of the Compliance Toolkit: Section C, pages 9 to 15

Scenario

‘Know Your’ Principles

‘Know Your’ Principles

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- Know your Donor
- Know your Beneficiaries
- Know your Partner

Know your Donor

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Trustees need to:

- Be reasonably assured that the donation is not from any illegal or inappropriate source
- ensure that it is otherwise appropriate for the charity to accept money from the particular donor, whether that is an individual or organisation
- ensure that any conditions that may be attached are appropriate and can be accepted

Know your Beneficiaries

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Trustees need to:

- Ensure your charity is furthering its purposes
- Have clear selection criteria and a process informed by sound risk assessment and management
- Ensure the beneficiaries can/will benefit from your charity's activities
- Ensure you are aware of any risks involved working with those beneficiaries

Know your Partner

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Why is it important that you charity knows its Partner?

- Ensure a relationship with the partner is appropriate for the charity
- Ensure the partner can practically deliver on the promises it has made

Know your Partner

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Know your Partner tools

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Tool 8: Know your partner

'Know Your Partner' – key issues to think about

Key Partner Details	<p>Are you satisfied with the partner's status and governance? Consider checking:</p> <ul style="list-style-type: none">• Its governing document• The proscribed organisation list• The designated entity list• The consolidated list of financial sanctions targets <p>Carry out internet searches and review local media to identify if, for example, the organisation has any links with political activity.</p>
Representatives and structures	<p>Who are the key senior personnel? Have you checked that they do not appear on the Designated Individuals list?</p> <p>Are the organisation's size, management and operational structure fit for purpose?</p> <p>Can you be reasonably sure the organisation is able to deliver the services required?</p> <p>How easy is it to contact the organisation's senior representatives and other key staff?</p>
Practical working relationship	<p>What do you know about the partner? Have you worked with them before?</p> <p>Does your experience of working with the partner in the past raise any concerns?</p> <p>Are its aims and values compatible with those of your charity?</p> <p>Are there likely to be any language, communication or cultural problems? How can these be overcome?</p> <p>Is the partner already working with other organisations? Will this present any problems?</p> <p>Are there arrangements in place to enable you to monitor the charitable services provided? Are you confident about any third parties involved in monitoring and feedback?</p>

Compliance Toolkit: Protecting Charities from Harm
Chapter 2: Due Diligence, Monitoring and Verification of End Use of Funds
Tool 8: Know your partner

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346938/CT-2-T8.pdf

Tool 9: Know your partner

VERIFICATION OF PROPOSED PARTNER FORM

Basic information

Name of partner	<input type="text"/>
Working name (if applicable)	<input type="text"/>
Principal address	<input type="text"/>
Website	<input type="text"/>
Main contact	
Name	<input type="text"/>
Telephone & email	<input type="text"/>
Trustees	
Name	<input type="text"/>
Address	<input type="text"/>
Name	<input type="text"/>
Address	<input type="text"/>
Name	<input type="text"/>
Address	<input type="text"/>
Name	<input type="text"/>
Address	<input type="text"/>
Senior management staff	
Name	<input type="text"/>
Position	<input type="text"/>
Name	<input type="text"/>
Position	<input type="text"/>

Compliance Toolkit: Protecting Charities from Harm
Chapter 2: Due Diligence, Monitoring and Verification of End Use of Charitable Funds
Tool 9: Know your partner

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/340427/CT-2-T9.pdf

Scenario

What next?

- Read Chapter 2 of the Compliance Toolkit, Section G: *Working with Partners and Protecting the Charity*
- Have a due diligence policy that works for your charity and satisfies your oversight as trustees

Monitoring and verifying end use of funds

Monitoring and verifying end use of funds

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What are the legal duties of the trustees?

Trustees have a duty to ensure funds are used only in furtherance of the charity's purpose.

Trustees need to take reasonable and proper steps to ensure that any money or resources have reached their intended beneficiaries.

Monitoring is an important way of ensuring this is the case.

Monitoring and verifying end use of funds

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What does this mean in practise?

As a minimum, this means:

- Ensuring there is an audit trail for the movement of funds from the charity to the partner and the project
- Ensuring there is an audit trail and proper records that show the partner has spent the funds on legitimate goods/services
- Some form of proactive monitoring to be satisfied that the funds were actually used as intended
- Scrutiny for any suspicious signs and, where found, dealing with them appropriately

Monitoring and verifying funds

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The extent and nature of monitoring will depend on factors specific to your charity and the projects undertaken.

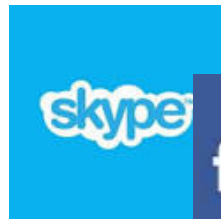
What does monitoring look like at your charity?

In your groups, share examples of the monitoring you undertake on some of your higher risk projects.

Monitoring tools

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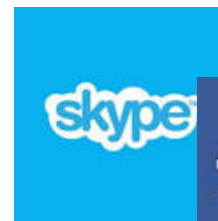
- Remote monitoring by the charity



- On-site inspections/visits, also carried out by others



- Feedback direct from beneficiaries



- Read Chapter 2 of the Compliance Toolkit, Section J: *Monitoring*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413719/CT-2.pdf

- *Share good practice with other charities*

Scenario

Moving and Holding funds

Protecting funds

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What is the duty of a trustee?

Trustees must exercise proper control over the charity's financial affairs and take steps to ensure there is no misuse of charity funds or assets.

Protecting funds

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What does this mean in practice?

As a minimum, all charities must:

- Have appropriate financial controls in place to ensure that all funds are fully accounted for and are spent appropriately
- Keep adequate records for both the receipt and use of all funds, together with audit trails of decisions made
- Deal responsibly with incidents when they occur, including reporting to the relevant authorities
- Give careful consideration to what other practical measure they may need to adopt where risks are high

Bank accounts

- Charity trustees have a legal duty to protect their charity's funds and ensure that they are properly and legitimately used for the charity's purposes
- It is difficult to see, where regulated banking services are available, how trustees could show they discharged this duty if they did not use them in order to ensure that the charity's funds were properly secured
- Trustees should therefore use banking arrangements to receive, hold and move charity funds where they are available
- However, there may be exceptional or particular circumstances why formal banking facilities are not available to charities moving funds internationally

Operating in Cash



We recommend:

- Cash payments are for small amounts only
- Cash should be taken out from the bank account for such payments, and not from incoming cash
- Details of payments should be recorded and supporting documentation for the cash payment should be authorised by someone other than the person who maintains the cash or the person making the payment
- The balance of cash in hand, and the records, should be kept securely
- Regular spot checks of the cash float should be made by an authorised person independent of the person who maintains the petty cash

Moving cash out of the UK

- Must comply with the legal requirement to declare cash to HMRC when leaving/entering the UK (over €10,000)
 - ✗ Failure to declare or account for money may lead to seizure by the UK Border Agency
- HMRC also expects to see evidence that reasonable steps have been taken to establish that funds spent overseas have been spent charitably.
 - ✗ Failure to do so may mean tax exemptions are restricted

Using intermediaries

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What are we talking about?

- Money Service Businesses
- Informal Value Transfer Systems (Hawalla / Chiti)
- Payment services (e.g mobile money transfer)
- Other charities and NGOs

Using intermediaries

Trustees should consider:

- Agreeing a policy, and the circumstances when such methods may be used
- How the necessary audit trail will be kept, demonstrating funds moving from a UK bank account and evidence of collection
- Subsequent transfers should, where practical, be avoided until receipt of a previous transfer can be confirmed

Protecting funds

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Risk assessments will need to consider:



Tools: Holding, moving and receiving funds safely

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[Chapter 4 Tool 1: Practical advice on operating bank accounts](#)

Ref: Chapter 4 Tool 1: Practical advice on operating bank accounts - PDF
PDF, 70.9KB, 1 page

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[Chapter 4 Tool 8: Using other charities or NGOs to transfer funds outside the UK - checklist](#)

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PDF, 66.7KB, 1 page

<https://www.gov.uk/government/publications/charities-holding-moving-and-receiving-funds-safely>

Q&A