



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

# **An Introduction to the Compliance / Legal Framework**

**Aarti Thakor**

*Head of Legal (Compliance)*

*Charity Commission*

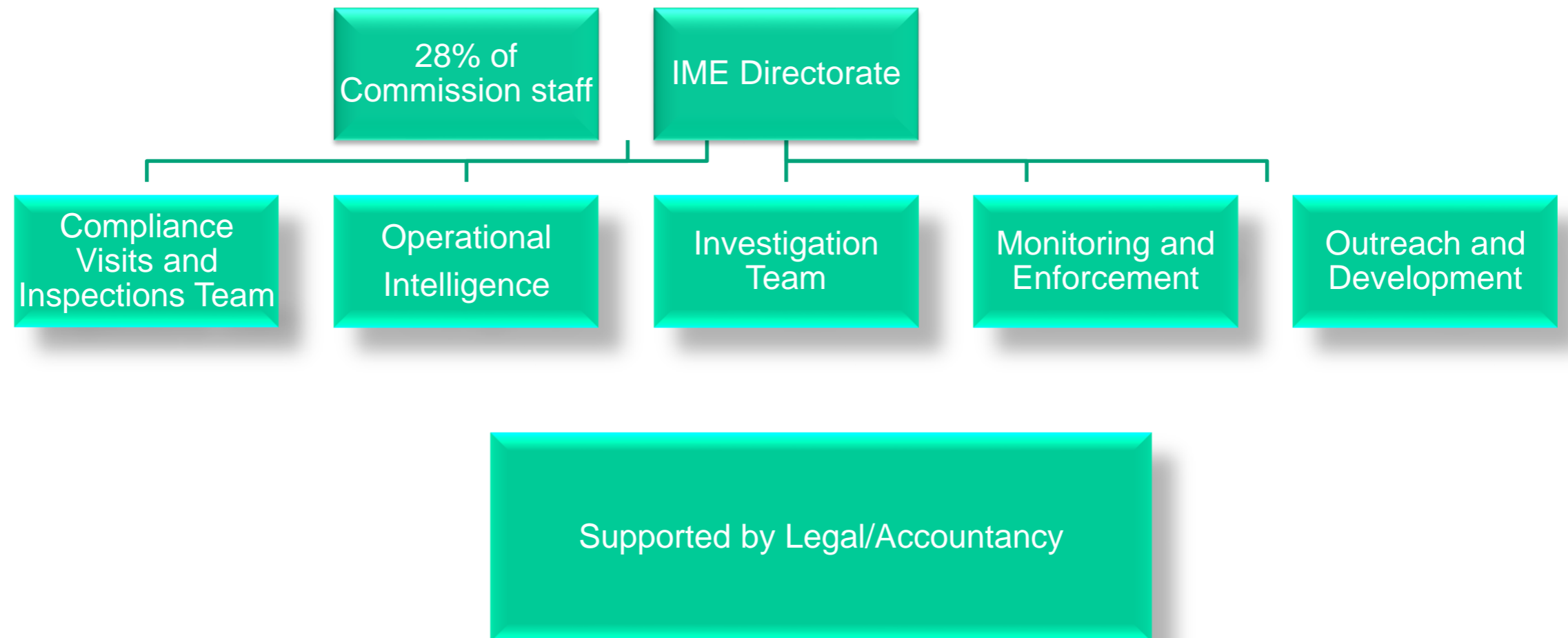


## Role of Investigations, Monitoring & Enforcement

- To protect charity property and reputation and promote compliance with the law
- Risk-based and proportionate approach
- Identify and Investigate abuse - put charities back on a proper footing and secure the legitimate use of charity funds
- Disrupt and Prevent - help charities protect themselves by raising awareness of risks and compliance issues
- Proactive and focussed approach to oversight and monitoring, informed by intelligence
- Successful outreach and public accountability
- Effective and credible cooperation with other agencies



# Compliance: Investigations, Monitoring & Enforcement





## Regulatory Approach

### Investigation

- Formal inquiry into a charity or class of charity conducted under section 46 of the Charities Act 2011

### Monitoring

- (Covert and overt) Compliance visits/books and records inspections
- Information/intelligence gathering

### Awareness

- Proactive messaging (alerts, safer giving)
- Published guidance (toolkit for trustees)
- Inquiry reports

### Co-operation

- Sharing information/intelligence with partner organisations
- Collaborative working

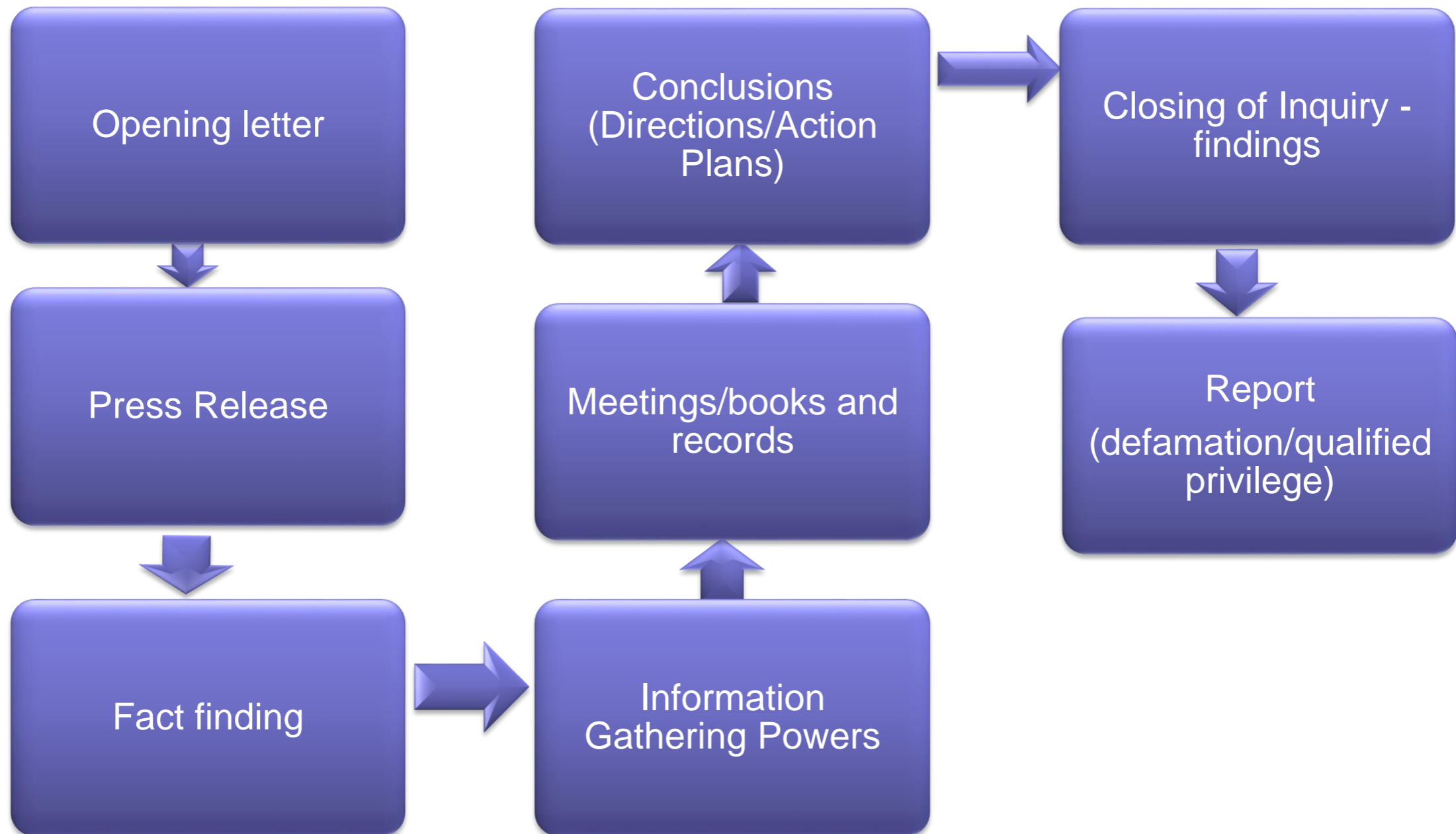


## Statutory Inquiries: S46

- Section 46 is a wide discretionary power
- The Commission's Risk Framework and Application of Risk Framework documents set out the published policy on when an Inquiry is opened –
- Basis for decision to open is the referral to Pre investigations assessment and PIA's decision log
- Challenges of judicial review nature of this power in the Tribunal pursuant to Schedule 6



## Inquiry Progression





## IME Regulatory Approach and Outcomes

- Letters directing trustees to provide answers pursuant to section 47
- Investigative meetings requiring trustees to attend and provide answers
- Compliance visits and inspections
- Books and records inspections
- Section 52/47 Orders to obtain information e.g. financial information from trustees, account statements from banks, project information from volunteers
- Findings made which may require further regulatory intervention e.g. appointment of new trustees, an interim manager, or suspension of existing trustees
- Action Plans requiring certain activities to be taken within a certain period of time
- Possible case for restitution
- Referral to other regulators
- Supporting criminal investigations involving suspected abuse of charities (TF, Fraud )
- Alerts – e.g. heavy focus on Aid Convoys – cash and vetting of volunteers
- Safer Giving messages to the public on how to support those affected



## Statutory Compliance Powers - Overview

Statutory powers exercised under concurrent jurisdiction of the High Court

### 1. Information Gathering Powers

- Power to call for documents and search records
- Direct an individual to provide evidence or produce documents

### 2. Temporary and protective powers, including

- Suspending trustees, officers and agents
- Appointing an interim manager
- Freezing bank accounts and restricting transactions

### 3. Permanent remedial powers, including

- Removing and appointing trustees
- Making new governing documents
- Directing action to be taken in the interests of the charity
- Directing the application of charity assets

**New powers under the 2016 Act- Official Warnings, Disqualification**



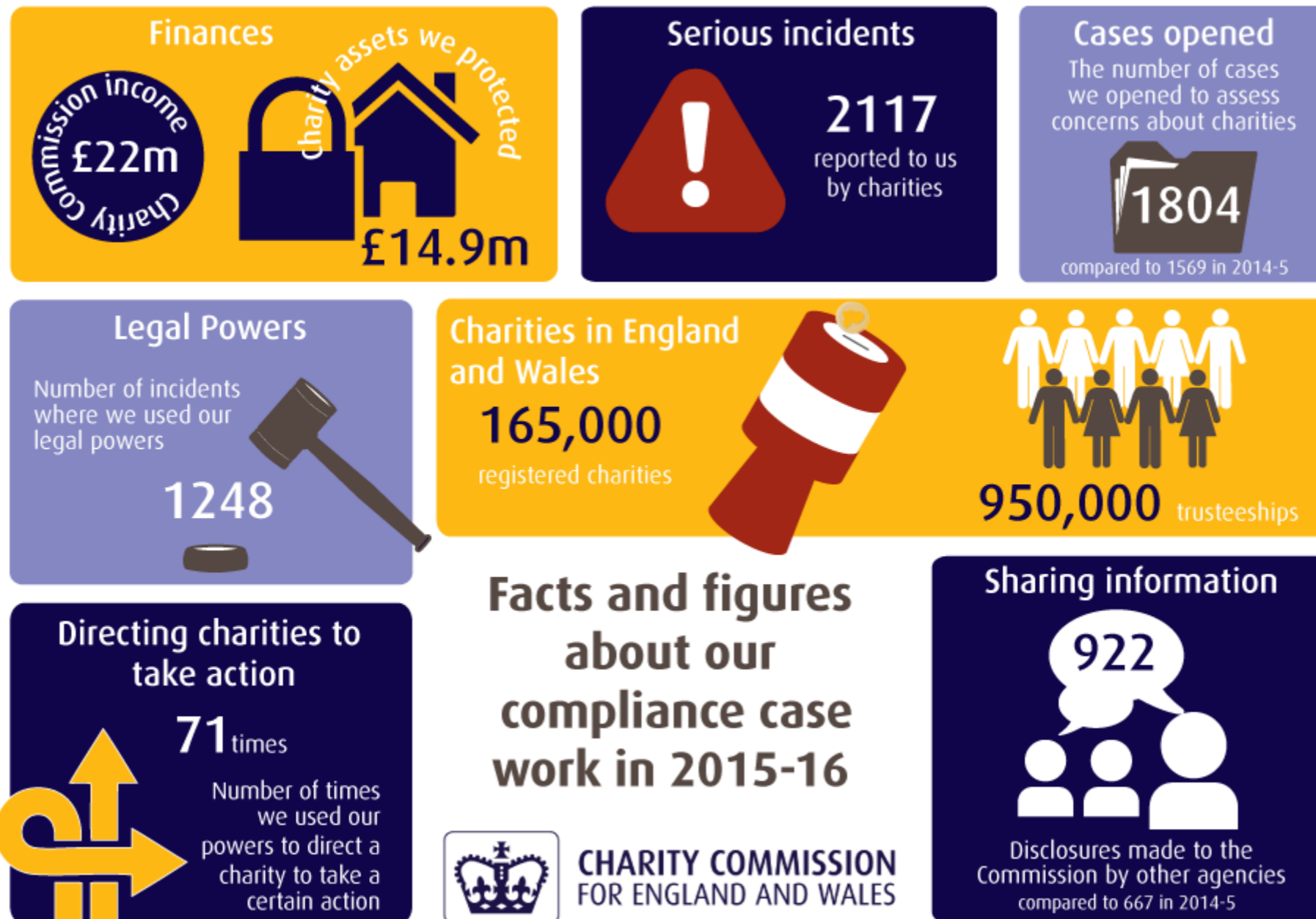


## Summary: Commission perspective

- Essential elements of effective regulation include:
  - A risk based approach is vital
  - working with charities to prevent abuse and non compliance happening in the first place
  - dialogue with and understanding of the sector being regulated
  - jointly developing the laws and regulations with charities
  - support to ensure they have the capacity to comply with the rules
  - a proportionate approach not a one size fits all
  - encouraging a culture of compliance and self regulation



# Reporting on Compliance Work





## Reporting on Compliance Work

- [Annual Publication on Tackling Abuse and Mismanagement in Charities](https://www.gov.uk/government/publications/tackling-abuse-and-mismanagement-2015-16/tacklingabuse-and-mismanagement-2015-16-full-report)  
<https://www.gov.uk/government/publications/tackling-abuse-and-mismanagement-2015-16/tacklingabuse-and-mismanagement-2015-16-full-report>
- **Surf Action** : Surf Action is a military charity where investigated allegations that the directors and trustees received unauthorised private benefit in the form of salaries. The charity had appointed its employees as 'directors' which in law meant that they became charity trustees, and appointed other 'trustees', who had no standing in law. As a result of our work, the directors stepped down, the trustees resigned, new trustees were found and the charity is now operating effectively.
- **GYSO**: We investigated this charity after one of the trustees was convicted of theft. We were unable to contact the trustees despite repeated efforts. We used our formal powers of direction to obtain the charity's bank statements and full donation histories from those hosting online donation platforms. Our investigation resulted in the removal of the charity from the register of companies, from our register and from 2 charity donation platforms.
- **St Paul's School** We opened an inquiry after a police investigation into allegations of historic abuse, and 3 reportable incidents in 2013; we found some weaknesses in the systems for trustees' oversight of safeguarding. The trustees have since fully implemented an action plan to ensure they are in full compliance.



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# **Information Gathering and Sharing Powers**



## Information Gathering Powers – sections 47 and 52

- Choice of power used influenced by a number of factors
  - (i) Type of case - inquiry or non-inquiry
  - (ii) Nature of information required - original or copy documents, verbal or written statements
- Use of s.47 specifically in connection with an inquiry - s.52 provides broader power to seek information relevant to the discharge of *any* of our functions
- Direction under either 47 or 52 can be useful to obtain information from third parties to disclose privileged information or to enable disclosure of information where voluntary release might amount to breach of confidence
- Section 52 can not require person to attend meeting or give answers in writing but it extends to information relevant to discharge of any of Commission functions and not merely to that which gives rise to inquiry



## Section 47 – obtaining evidence for an Inquiry

- Only to be used if an inquiry is open
- Commission can direct any person if they have or can reasonably obtain information:
  - to provide accounts and statements in writing, or to provide answers in writing to questions posed
  - to verify any accounts statements or answers by statutory declaration
  - provide copies of documents which are in the custody or control of a person which “relates to any matter in question at the inquiry”
  - To attend and give evidence on oath or produce documents



## Section 52: Power to call for documents

- To Commission can by Order:
  - Require any person to provide any information which is in that person's possession and which relates to any charity or relevant to the discharge of the Commissions functions.
- No inquiry needs to have been opened
- Original documents can be obtained not merely copies
- The Commission can also inspect records and documents
- Section 52 is appealable to the Tribunal
- Mostly used for banks for financial information, legal advisors for advice to the charity, trustees for charity information such as trustee minutes/records etc.



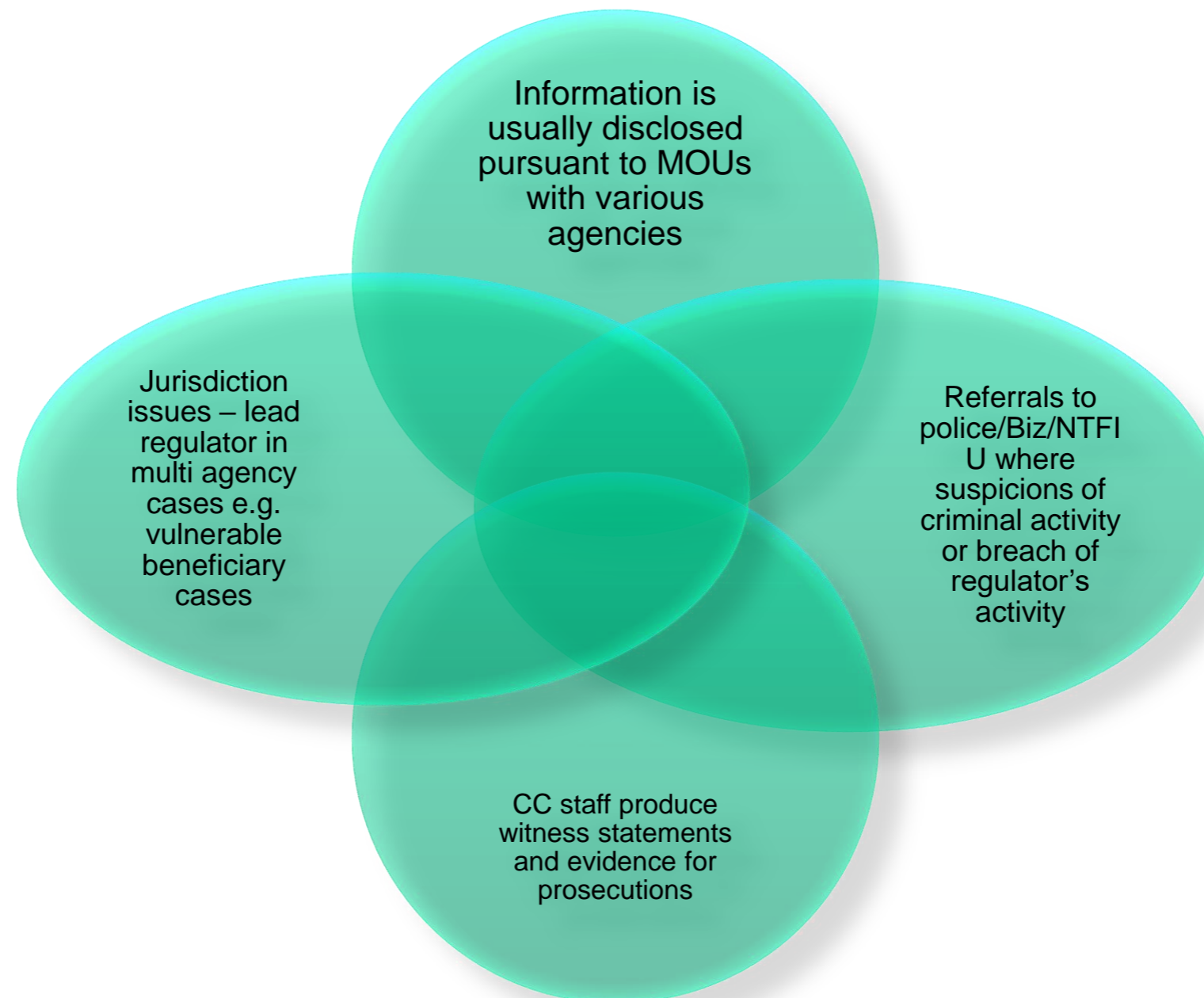
## Sharing information: ss54-59

- Sections 54 - 59 permits the exchange of information by the Commission with most public bodies: “may”, not must
- Any relevant public authority may disclose information to Commission for purpose of enabling or assisting Commission to discharge any of its functions - limits on HMRC disclosure
- Commission may disclose to any relevant public authority information received in connection with any of Commission’s functions if:
  - (i) disclosure made for purpose of enabling or assisting public authority to discharge any of its functions, or
  - (ii) if information relevant to discharge of any functions of that public authority
- Subject to any restriction to which information was disclosed to Commission
- Information received from HMRC subject to HMRC consent prior to further disclosure





## Multi - agency working





## Section 60: Providing false or misleading information

- Charities Act 2011 s60- makes it a criminal offence to recklessly or knowingly provide false information (fine or 2 years' imprisonment)
- If information is provided in purported compliance with requirement imposed by Act **or** in circumstances in which person providing information intends or could reasonably be expected to know it would be used for purpose of discharging its functions
- Wilful alteration, suppression, concealment or destruction of document also offence
- Trustees are warned in letters or at the beginning of investigative meetings of this offence



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# Temporary and Protective Powers



## Suspension of a trustee: s76

### **S.76(3)(a) - Suspension of any trustee, charity trustee, officer, agent or employee**

- effect of a suspension Order is that the individual is prevented from acting in the office from which they have been suspended.
- where we are satisfied that misconduct or mismanagement has occurred or where it is necessary or desirable to act to protect the property of the charity.
- Statutory Inquiry must have been opened under section 46 of the Charities Act 2011
- Section 86 of the Act states that we must also send to the charity (if a company) or to each of the charity trustees a copy of the Order and a Statement of Reasons (SoR). These are sent as soon as practical after making the Order.
- that suspension cannot last for more than 12 months, and should only be used as a temporary protective measure



## Interim Managers: s76 and 78

### **Charities Act 2011 s.76(3)(g) and s.78 - Appointment of an interim manager**

- appointment of an interim manager to act as receiver in respect of the property and affairs of the charity
- IM will go through a tender and interview process by the Commission prior to appointment
- Scope of appointment can be different depending on the circumstances. CC can also vary the Order during the period of the appointment
- Commission's role is a supervisory one
- Section 76(6): requirement to review the above Orders at such interval as the Commission sees fit. Good case working practice means this is on a bi-monthly basis
- Power is becoming more widely used, often successfully: case study .  
Lessens resource load on CC
- Costs of the appointment are met by the Charity



## Freezing bank accounts and restricting transactions: s76

**Charities Act 2011 s.76(3)(c) - Vesting or transferring property into the name of the Official Custodian for Charities**

**Charities Act 2011 s.76(3)(d) - Order not to part with property**

**Charities Act 2011 s.76(3)(e) - Order debtor not to make payment**

**Charities Act 2011 s.76(3)(f) - Order to restrict transactions**



## Search and seizure: s48

- Can only be used with magistrate's warrant in circumstances where issues of misconduct or mismanagement or risk to beneficiaries or charity assets so serious that would justify such an intrusion
- Conditions required:
  - (i) S.46 inquiry instituted;
  - (ii) We believe that documents/information required are at premises specified in warrant;
  - (iii) Nature of documents/information could be required under s.52(1);
  - (iv) If Commission were to make an order under s.52(1) requested documents/information would be removed, tampered with, concealed or destroyed
- No power to enter. Never been used.
- Steps can include to preserve or prevent interference with destruction of specified documents, take possession of computer disc or electronic storage devices appearing to contain relevant information, require persons on premises to provide explanation of document/information or state where information can be found



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# Permanent and Remedial Powers





## Commonly used permanent and remedial Powers

Greater  
degree of  
intervention  
under these  
powers

- Charities Act 2011 s.79(2)(a) - Removal of a charity trustee, trustee, officer, agent or employee
- Charities Act 2011 s.76(3)(b) - Appointment of additional trustees
- Charities Act 2011 s.79(2)(b) - Establish a Scheme for the administration of a charity
- Charities Act 2011 s.80(1) - Removal of a charity trustee for statutory reasons
- Charities Act 2011 s.80(2) - Appointment of a trustee



## Removal of trustees

- Requires an Inquiry to be open, and statutory test for the use of any of this power is :
  - that there has been misconduct or mismanagement in the administration of the charity or that it is necessary; **and**
  - It is desirable to act to protect the charity's property.
- Where it is intended to remove an individual without their consent we are required to give prior notice under section 82(1) of the Charities Act to each of the charity trustees before the Order is made.
- Under section 89(5) where the individual being removed does not consent to our action we must give them at least one month's prior notice of the removal and invite representations within a specified time.
- Section 89(1) requires one month's prior public notice to be given unless the Commission considers this is unnecessary and not in the interests of the individual to do so.



## Charities Act 2011 s.84 - Power to give specific directions for protection of charity

- Commission to direct any action considered "expedient in the interests of the charity"
- Only usable where a statutory inquiry under section 46 opened
- Need to also have misconduct and/or mismanagement OR risk to property
- Use of this power is wide-ranging compared to that at section 85 which allows only for direction of property where there is unwillingness to apply it properly

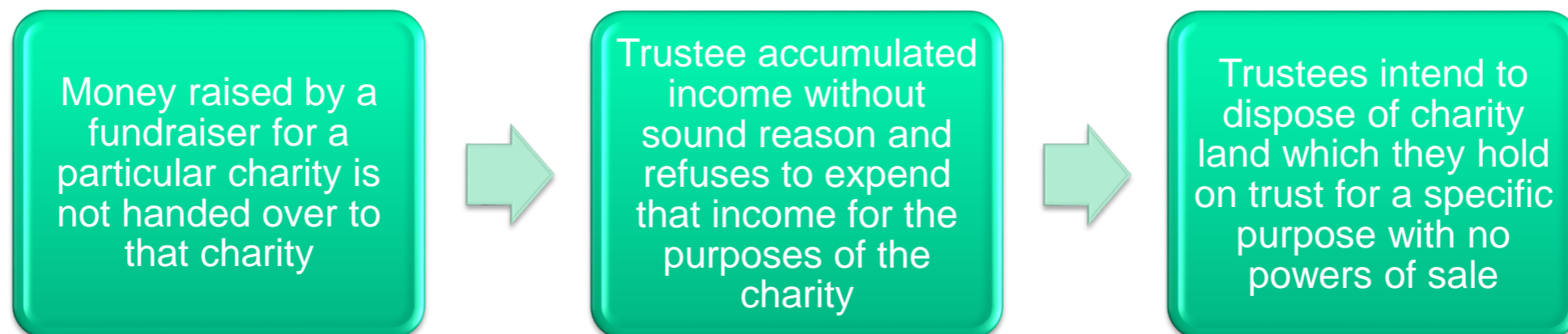
Examples:





## Charities Act 2011 s.85- Power to direct application of charity property

- Allows the Commission to direct a person in possession or control of charity property to apply it in a specific manner
- CC must be satisfied that the property belongs to a charity and the person in question is unwilling to apply the property for its proper purposes
- Examples:





## HRA considerations

Rights mostly engaged by use of compliance powers (qualified rights):

### **Article 8:** right to respect for private and family life

- where our investigations cause persons involved to suffer particular harm to their personal reputation, or sharing information about individuals with third parties, e.g. government departments.

### **Article 10:** freedom of expression

- where we ask a trustee or charity to take action to disassociate themselves from action or particular organisations, for example, by not permitting members of certain organisations to speak at their events, or by support for an organisation or cause or amending the wording of its website.

### **Article 11:** freedom of association

- where we remove a trustee or member from a charity, or where we require a person who wishes to continue as a charity trustee to sever links with other organisations that may bring the charity into disrepute.



## HRA considerations

### **Article 14:** prohibition of discrimination

- May be engaged in relation to any decision we make that engages another human right, where the individual or may be able to claim that we have treated them differently from others on certain grounds, such as race or religion.

### **Article 1, Protocol 1:** protection of property:

- May be engaged when we ‘freeze’ charity property, or direct charity property to be applied for a particular purpose, or vest properties in the Official Custodian, or remove an employee of a charity, or where our regulatory action may have a detrimental impact on a charity’s ability to raise funds.

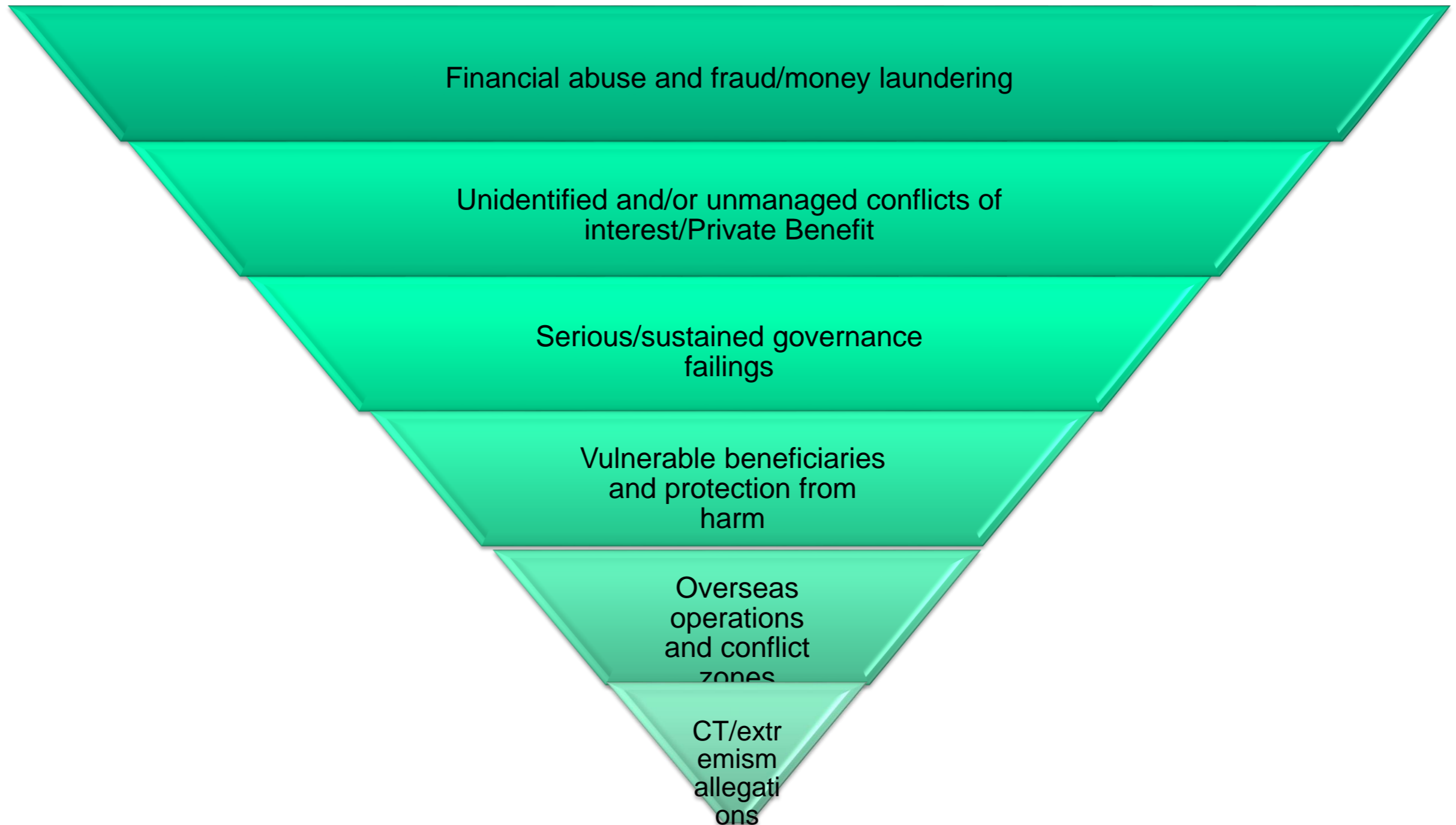


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# Regulatory Strategy



# Regulatory Priorities







## Liability for breaches of duty

- A trustee who acts reasonably but makes an honest mistake resulting in loss to a charity should not be personally liable to make good that loss – especially where they ought fairly to be excused
- Insurance and indemnity provisions
- Commission's restitution policy



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