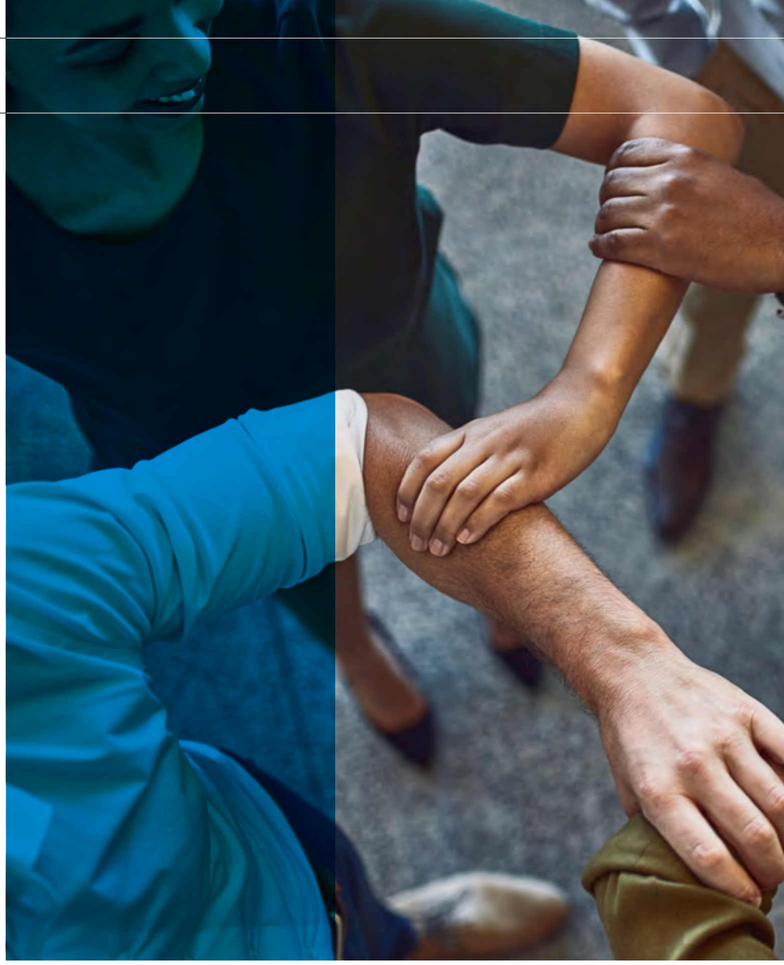
August 2022.

Charity & Non-profit newsletter



Trust in **charities**

Each year the Charity Commission publishes a report about Trust in Charities. This year's report, published with Yonder in April 2022, is subtitled 'and how to inspire trust in the years ahead'.

A subtle change from the more retrospective report from March 2021 Trust in charities post COVID and inspiring trust in the years ahead.

The report finds that despite the 'COVID high'

"there is a stubbornly persistent scepticism regarding how charities use their money and how they behave".

The report seeks to highlight the fundamental importance of proactively demonstrating where the donors' money goes and how that money leads to impact.

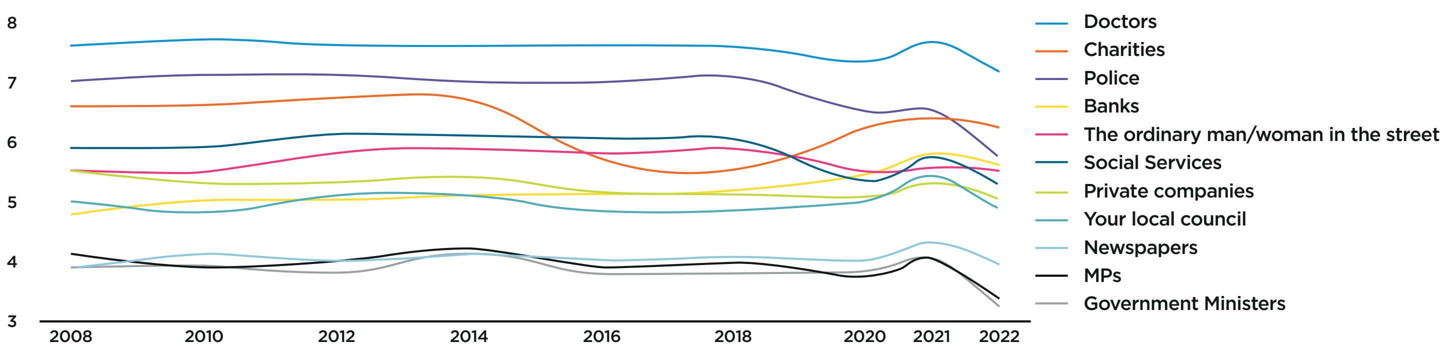
The four public expectations focused on in the report are:

- That a high proportion of charities' money is used for charitable activity
- That charities are making the impact they promise
- That the way they go about making that impact is consistent with the spirit of 'charity'; and
- That all charities uphold the reputation of charity in adhering to these.

The headlines by sector are probably not surprising but the report makes clear that trust is hard to earn particularly in the low diversity, low security quadrant of those surveyed. 37% of that demographic scored charities a 7-10 on a 0-10 scale for trust, a fall of 7% when compared to the prior year.

Change over time: trust in charities vs other sectors

There have been three major trust crises in the past 14 years: 1) charities (2014-2020), 2) the police (2018-2022), and 3) MPs/Government ministers (2022)



Question not asked in 2005

It is clear from the report that some of the most vulnerable, are also the most sceptical, and the most hard to reach: this population may be a challenge for charities to consider in their strategic planning.

The survey asked questions around the level of involvement charities should have in social and cultural debates; the responses demonstrated the wide range of public opinion.

However, the question regarding who held the greatest responsibility for narrowing the gap in living standards and investment that exists between different regions of the UK was emphatically answered with 88% of respondents placing total or a fair amount of the responsibility with Government.

It is the charities' role, based on those surveyed, to support those who are unable to access the level or support or funding that they need, but not to create new frameworks.

As with last year, some of the questions focused on registration and the value of a Charity Regulator. In this year's survey only 50% of respondents had heard of the Charity Commission, a fall from 54% in the prior year. Although proactive regulation remains expected from a Charity Regulator, this has fallen from the 2:1 ratio of the previous year with 48% (prior year 52%) of respondents supporting that the Charity Regulator should try to make sure charities fulfil their wider responsibilities to society, as well as obeying the laws governing charitable activity, and 29% (prior year 27%) suggesting that the Charity Regulator should confine its role to making sure that charities obey the laws governing charitable activity.

The survey spotlights challenges both for charities and the Charity Commission.

For charities there remains a demand for transparent reporting around costs and impact; as they must educate their stakeholders and the public to overcome the perennial concerns around senior employees' salaries and the perceived 'wasted' administration costs. For the Charity Commission, there remains a challenge around the balance of visibility and public perception. There is a dual edge to increased publicity: as increasing evidence of reporting and holding to account may increase the understanding and trust in the Charity Regulator; but by highlighting cases of irregularity may cause justified concerns.

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Q: To what extent do you think each of the following should have responsibility for narrowing the gap in living standards and investment that exists between different regions of the UK?

	The Government	Local politicians	Local people	The charity sector
Total responsibility	43%	16%	5%	2%
A fair amount of responsibility	45%	59%	37%	18%
A little responsibility	6%	16%	38%	41%
No responsibility	1%	2%	10%	26%
Don't know	5%	6%	10%	12%

Tax reliefs claimed by charities in the 2021/22 tax year

HMRC has recently released statistics which show that the total value of the reported tax reliefs on charitable donations in the last year remained similar to the previous year.

For the tax year ending April 2022, tax reliefs for charities and their donors were £5.4 billion, less than 1% different to 2021.

For Gift Aid, the amount paid was down 3% at £1.3 billion. This reduction was a result of HMRC putting on hold more claims than usual in March 2022 for extra risk assessment.

Most of the affected claims were paid in April/May 2022.

The remaining largest tax reliefs were similar to the previous two years:

- Business rates reliefs, down less than 1% to just under £2.4 billion
- Relief for higher rates of tax on Gift Aid donations is forecast to be steady at £0.5 billion
- Inheritance Tax reliefs for donations, down 4% at £0.8 billion
- Smaller reliefs were worth around £0.4 billion
- Just over half of the value of Gift Aid repayments went to charities that received less than £1 million each, in line with previous years.

It is good practice for all entities, including the smallest charities, to have a tax strategy, understanding both taxes payable and what the charity may be entitled to in terms of tax reliefs.

This need not be complicated but it is useful for trustees to understand their charity's responsibilities in respect of the various taxes.

For further information or to discuss your charity's tax position please get in touch with PEM.

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Mismanagement of conflicts resulting in misuse of funds

We highlight the importance of identifying and managing conflicts of interest in our June newsletter. This case provides another example of the pitfalls into which charity trustees may fall.

The regulator opened an inquiry into a military charity, Support the Heroes, in November 2016, after concerns were raised over the management of trustees' conflicts of interests and the fundraising activities of the charity.

In addition the charity featured in a BBC investigative programme entitled 'the Great Military Charity Scandal' broadcast in November 2016 in Scotland.

In the financial years ending 31 March 2015, 2016, and 2017, the charity was found to have only donated £223,000 to charitable purposes, just 17% of the total funds raised.

The inquiry raised concerns over the familial relationship between two of the charity's trustees and was further concerned over conflicts generated through a fundraising arrangement with a commercial partner, a company where, the inquiry identified, the chair of trustees was the long-term partner of the father of the sole director. The company received 67% of the gross proceeds from fundraising activities. The conflict had not been declared which was a breach of the requirements of the charity's governing documents.

The lack of transparency around the charity's fundraising and its agreements with third parties, led the inquiry to conclude that the public were misled, since they were unable to make an informed decision about whether to donate.

The trustees were also found responsible for failing to assess the risk involved in the fundraising agreement, for not assessing other options, or declaring the conflict of interest. The chair was the sole director of the subsidiary which carried out the fundraising activities, and therefore the charity trustees had also failed to ensure that at least one director of a charity's trading subsidiary is not also a trustee of the charity in order to manage conflicts between the separate duties in each role.

Both trustees were found responsible for misconduct and the Commission received signed voluntary undertakings from both that they would not act as trustees of any charity for a period of five years, the charity itself was wound up.

The Charity Commission drew out some key issues for the wider sector from their enquiry which is incorporated in the guidance for charities with a connection to a non-charity and alerts about working with Third Party Fundraisers, subsequently set out in Charity fundraising: a guide to trustee duties (CC20).

It is important for all trustees to understand the organisations that work with the charity and identify and manage any conflicts arising through family relationships, even where these family links are not immediately apparent. If a trustee is concerned there is a conflict of interest further guidance is set out in the Commission publication Conflicts of interest: a guide for charity trustees (CC29).

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Charities Act 2022: Implementation timetable

The Charities Act 2022 amends the current Charities Act 2011. The main elements of the changes are set out in our publication Charities Act 2022. The Charities Act 2022: implementation plan explains how the Department for Digital, Culture, Media and Sport will implement the Charities Act 2022 in three stages. The intended timing of some of the more significant amendments is set out below and a reminder about those to be addressed first follows that.

Autumn 2022

- Power to amend Royal Charters
- Cy-pres powers
- Ex gratia payments
- Remuneration of charity trustees providing goods or service to charity

Spring 2023

- Permanent endowment
- Charity land
- Amendments of the universities and college estates act 1925
- Charity names
- Connected persons

Autumn 2023

- Charity constitutions
- Powers relating to the appointment of trustees
- Remuneration of charity trustees
- Charity mergers

Remuneration for goods as well as services

Unless otherwise set out in the Charity constitution, charities are already able, in certain circumstances, to pay trustees for services provided beyond normal trustee duties and for goods connected to that service. The change in the Act, when implemented in Autumn 2023, will allow trustees to be paid for any goods that they provide. As with any (purchasing) decision it will remain the responsibility of the trustees to ensure that this arrangement with the trustee to supply goods is in the best interests of the charity and that any potential conflicts are identified and properly managed.

Moral or 'ex gratia' payments from charity funds

Charities may be requested to make a payment from charity funds, or to waive their right to receive funds or property on a moral basis.

This most frequently occurs when a charity receives a legacy and there is evidence that the donor has changed their mind after making their will.

Once implemented in Autumn 2023, Royal Charter and statutory charities will be able to process ‘small’ requests without consulting the Commission and delegate decision-making powers to a committee or the charity’s chief executive.

If the payment exceeds the thresholds in the table below, the charity will still need to apply to the Commission for authority to proceed.

All ex gratia payments will still require disclosure in the charity’s annual report and financial statements.

Fundraising appeals (applying the donors intentions where these cannot be precisely followed - cy-près)

Although many charities routinely use the ‘small-print’ of any appeal to grant them flexibility should the appeal exceed or miss its target, there are still instances where a donation can no longer be spent as intended and is ‘trapped’ with an unwanted restriction on its use. The amendments, once implemented in Autumn 2023, will seek to make it easier for charity trustees to use these funds.

For individual donations of less than £120 individually and in total, and where the donor has not stated in writing that the funds should be returned, the trustees apply the funds in a way similar to that originally intended as possible.

For funds where the total proceeds remaining unused/unusable and are less than £1,000, the charity trustees will be able to apply the funds for new purposes; a resolution must be passed by the majority of trustees regarding the revised use.

Where funds are over £1,000, a copy of the agreed resolution must be sent to the Charity Commission for approval prior to any action being taken.

Amending Royal Charters

Some Royal Charters still contain provisions to prevent the amendment of certain sections. These charities will be able to use the new statutory power, when implemented in Autumn 2023, to make changes, provided that change is approved by the Privy Council.

The Charity Commission is expecting to issue further guidance as the amendments are implemented.

It is important that charities remember that although changes to the Charities Act 2022 are coming, they are not yet in force and cannot be applied.

Charity's gross income in its last financial year	Maximum individual payment amount allowed without commission authority
£0 to £25,000	£1,000
£25,001 to £250,000	£2,500
£250,001 to £1m	£10,000
Over £1m	£20,000

Climate-related disclosures increase for large companies

Under the new Climate-related Financial Disclosure Regulations that apply for financial years beginning on or after 6 April 2022, publicly quoted companies, large private companies and large LLPs will now be required to disclose climate-related information within the Annual Report and Accounts in addition to their Energy and Carbon Reporting. Large in this context refers to companies with over 500 employees and £500m turnover.

The regulations include eight different requirements which are closely aligned to recommendations of the Task Force on Climate-related Financial Disclosures. The requirements include: a description of the governance arrangements in relation to climate-related risk and opportunities, how the risk and opportunities are identified, assessed and managed and how these processes are integrated into the overall risk management process.

Even though these regulations will not apply to most charities, and, whilst the Energy and Carbon reporting requirements apply only to those that are large within the meaning of the Companies Act, this is not a topic that should be easily dismissed.

Given the increasing awareness of climate-related risks and the need to take action, it is important for all charities to understand their own impact, what their stakeholders require and consider how they wish to contribute to the growing climate debate.

For charities who deal frequently with government bodies or large companies, the requirement to understand their own energy and carbon production and use may become a more important part of the contracting process and charities should be prepared.

Understanding your governing documents

The Charity Commissions investigations into double default (those failing to file accounts and returns twice in a row) have often extended into further investigations as failing to file accounts can be an indicator of poor governance.

In the case of the Moss Side and Hulme Community Development Trust, the investigation found unauthorized remuneration in breach of the charity's governing documents as well as non-compliance with legal obligations, such as holding an AGM and the orders and directions of the Commission. The trustees were disqualified for being a charity trustee or holding a senior management position within a charity for seven years.

A conclusion was also reached in July 2022 regarding One Community Organisation. This enquiry highlighted a number of issues relating to compliance with the governing document, management of conflicts and management of financial matters. Some of the key findings included:

- Understatement of income in two years amounting to £150,000 (identified from review of the bank statements)
- £280,000 being transferred to the private bank account of the chair of trustees with no oversight beaching the charity's own financial controls policy
- £100,000 of spend unsupported by receipts or other documentation to demonstrate how it was used to further the charity's objects
- £3,000 of purchases from a non-charitable company of which the chair was the sole director, the conflict had not been declared breaching the requirements of the governing document. The chair was active in decisions regarding purchasing from the company and other trustees were not aware of the conflict
- Charity operations taking place outside the area of benefit stated in the governing document
- Decisions made by the chair breaching the requirements of the charity's governing document which required a decision-making quorum of at least two trustees and minutes to be kept of the proceedings and decisions.

The Charity Commission found that trustees were unaware of their accounting responsibilities, how to manage conflicts and lacked sufficient understanding of the duties and responsibilities of being a trustee. Both these cases highlight the importance of trustees understanding their charity's governing documents and internal policies and then ensuring that the charity operates in line with them.

More information can be found from The essential trustee: what you need to know, what you need to do (CC3).

Cashless society?

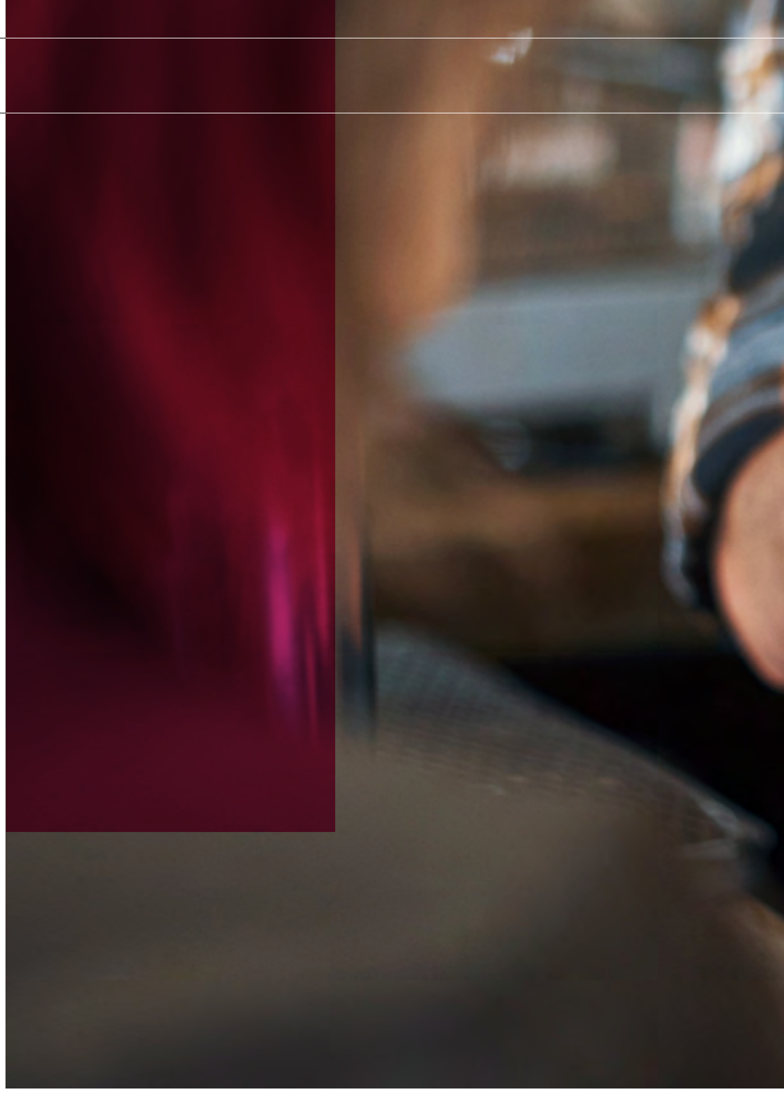
Recent events, including COVID-19 and the Russia/ Ukraine conflict, has driven rapid innovation in the attempt to create a cashless society. Many traditional banks are investing in digital transformation, closing physical branches and upgrading their online presence whilst also tackling the increased cyber threat.

With the increasing numbers using online banking (93% in the UK) and according to Barclays, 88.6% of eligible payments being contactless in 2020, the demand for a cashless society seemingly is now greater than ever before.

The World bank report summarises:

"Having a financial account makes it easier, safer, and cheaper to receive wage payments from employers, to send remittances to family members, and to pay for goods and services. Mobile money accounts also make it possible, even for the poor, to save and cope with adverse shocks. And individual accounts give women more say on their households' finances.

Importantly, the digital revolution is a powerful tool to improve governance. Social programs can now channel transfers directly to their beneficiaries' mobile phones, reducing leakage and delays.... Digitalization also increases transparency as money flows from a country's budgets to government agencies to people, reducing the scope for corruption."



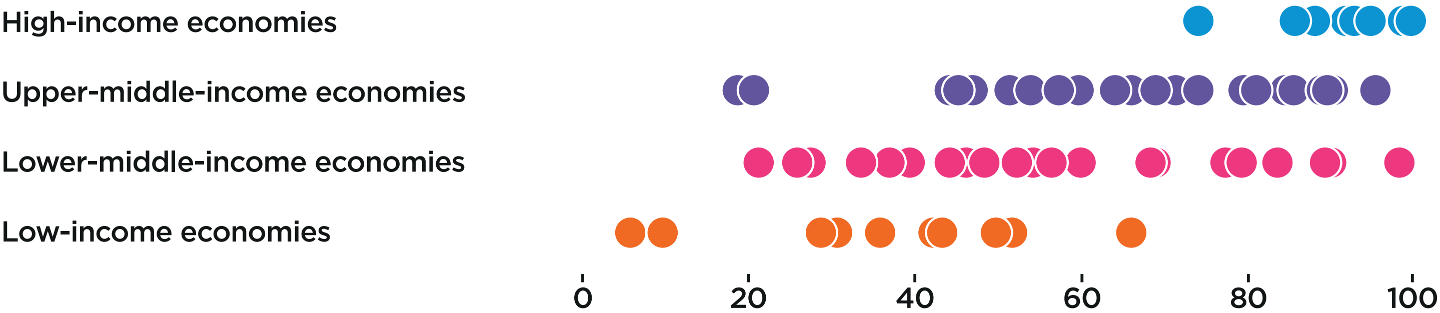
However, despite the innovations there remain many things that must change before this idea can become a reality.

The World Bank Global Findex database records that whilst 90% of adults living in high-income countries have bank accounts, this drops to 45% in medium-income countries and only just over 20% in low-income countries. However, this varies significantly between countries. Notably in sub-Saharan Africa the use of mobile money accounts, first launched to enable people to send remittances to friends and family, has spread and now are used both for payments and savings.

Figure 1.1.1

Account ownership differs significantly even within income groups

Adults with an account (%), 2021



Source: Global Findex Database 2021.

Technological upgrades

The current infrastructure is not capable of supporting the large scale of transactions which would occur should society go cashless.

Additionally, the ever increasing threat of cybercrime would continue to increase, so online security and operational resilience needs to be improved and developed in order to prevent crime and allow the success of digital currency.

Lack of regulation/ fluidity of regulation

With an already concerning lack of regulation around cryptocurrency, major development in moving money safely in the digital space would need to occur.

The talk of a digital Euro, state-issued digital currency, would help to regulate this and would be issued like paper notes and work alongside cash as currency.

Fluid transactions between countries would be needed to ensure the success of digital currency, however this would require aligning regulations to make sure the transactions are not hindered by any deviations.

Initiatives such as the Capital Markets Union could ease the transition within the EU, however it is unclear how transactions could be managed between other countries.

Business model changes

Finally, banks and other financial institutions would have to rethink their business models, as currently they make money from applying fees to cash transactions. These charges would no longer exist in a cashless society.

What next?

Whilst a cashless society is likely to be some years away, baby steps are being taking and ideas explored.

Digital transformation and cashless receipts and payments may benefit charities both in their fundraising and charitable activities.

However, the online access and ever developing technologies bring risks as well as opportunities.

All of which trustees should revisit regularly to ensure that their charity is well placed for the next step, whatever that may be.

Bullying & harassment should not be acceptable in the charity sector

The Charity Commission working group has clarified the respective responsibilities in preventing and responding to incidents of bullying and harassment in charities.

Trustees have a central role to play. They must ensure that:

- Their charity has clear policies
- Allegations are handled appropriately
- Those concerned about bullying or harassment are encouraged to take their concerns to the trustees
- They have a process in place to hear concerns and respond
- They report to the regulator the most serious actual or alleged incidents using the serious incident reporting arrangements.

Intervention by the Charity Commission should be risk focused. It can:

- Respond to serious incident reports
- Focus on the proper governance of the charity
- Ensure that the charity's trustees are responding to incidents appropriate
- Provide regulatory guidance to trustees
- Take steps necessary to prevent further wrong-doing and harm
- Open a statutory inquiry.

The Charity Commission will not resolve individual employment issues or investigate alleged criminal offices (which is the responsibility of law enforcement agencies).

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