

OUR ROLE  
& SERVICES

Statutory Inquiries  
into Charities:  
guidance for charities  
and their advisers



## The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are over 160,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

## Contents

A. Introduction	2
B. This guidance at a glance	5
C. The Charity Commission as regulator	6
D. The form an inquiry takes and the legal powers involved	9
E. Your rights and legal obligations	17
F. Other sources of help and advice	21

## A. Introduction

### A1. This guidance

This is a guide to help charities and their advisers understand what it means when the Commission opens a statutory inquiry.

The Charity Commission is established by law as the regulator and registrar for charities in England and Wales. Our work seeks to protect the public's interest in charities.

Charities must comply with the law. We deal with problems in charities in a number of ways depending on what the problem is, its severity, the evidence to support it, the impact it has and what is required to resolve it. Deliberate wrongdoing, illegal activity, criminality and serious abuse will be dealt with rigorously and decisively.

Through our work we identify and investigate apparent misconduct or mismanagement in the administration of charities, and work to resolve issues of concern. It is in the most serious cases of abuse and regulatory concern that we may open a statutory inquiry. Our decision to open an inquiry is not taken lightly, and depends on a careful assessment of a set of factors. Before taking the decision to open a statutory inquiry, we will apply our [Risk Framework](#), and we will make sure that an inquiry is carried out in line with the principles of best regulatory practice.

The purpose of an inquiry is to examine the issues in greater detail and investigate and establish the facts of the case so that we can ascertain the extent of any misconduct or mismanagement, establish the extent of the risk to the charity, its work, property, or beneficiaries, and decide what action is needed to resolve the concerns. If the allegations are not substantiated, the inquiry will say so. Our ultimate aim is to stop abuse, ensure compliance and put a charity back on a secure footing. Where this is possible it may include restoring its reputation, protecting beneficiaries or assets and protecting and enhancing the reputation and public confidence in the charitable sector generally.

When opening an inquiry we normally expect to deal directly with the charity trustees as they have general control and management of the administration of a charity and are directly and legally responsible for what happens in it. This guidance is intended to help trustees understand the inquiry process and their rights and legal obligations in relation to it. The guidance may also be useful for a charity's advisers, employees, officers or agents, as what we do in an inquiry can also affect them.

Charities that are based or operate in Scotland or Northern Ireland come within the jurisdiction of the Office of the Scottish Charity Regulator (OSCR) or the Charity Commission for Northern Ireland. Details of these regulators can be found in part F.

### A2. Previous guidance

This guidance supplements other information about our compliance work that can be found on the Commission's website, including our own staff guidance [OG117 - How the Commission deals with Investigations Work](#).

### A3. Scope of this guidance

This guidance is for charities into which we have opened an inquiry, and their advisers. If you wish to make a complaint or raise regulatory concerns about a charity, please refer to the [guidance on our website](#), which states what issues we will consider and the information we need to take them forward.

### A4. Using this guidance

Each section has a topic heading under which we have asked relevant questions you might raise about how we deal with an inquiry. Generally we give a concise summary answer ('The short answer') and then more background ('In more detail').

### A5. Other sources of help and advice

We will always seek to discuss matters raised by the inquiry with the trustees. We deal with the trustees directly, but they may still seek their own independent professional advice. Contact details for organisations that can help charities are listed in part F.

### A6. 'Must' and 'should': what we mean

In this guidance, when we use 'must' we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements. To show which sections contain a legal or regulatory requirement, we print **L** next to the short answer in that section.

We use the term 'should' in advice about what we regard as minimum good practice, but for which there is no direct legal requirement. Often, advice of this kind describes what we think is the best way of complying with a legal requirement. Trustees should follow good practice guidance unless there is good reason not to.

### A7. Some technical terms used

Although we have tried hard to write this guidance in everyday language, we have had to use some technical terms in places. This list explains some of them:

**Statutory Inquiry:** The Charities Act gives the Commission a statutory function to investigate concerns identified in the administration and running of a charity. A statutory inquiry is an investigation conducted under the legal framework set out in section 46 of the Act. We may also open inquiries into groups of charities; these are known as 'class' inquiries. Certain powers to require information or documents from charities and individuals and to act to protect charities can only be used after a statutory inquiry has been opened.

**Trustees:** Trustees serve on the governing body of the charity and are responsible for the general control and management of the administration of the charity. They can be known as directors, board members, governors or committee members.

**Beneficiary:** These are the people who the charity's aims are intended to benefit.

**Charities Act 2011:** This Act sets out the functions of the Charity Commission and gives it a range of powers, including our power under section 46 to open statutory inquiries into charities. Throughout this guidance 'the Act' means the Charities Act 2011.

**Direction:** This is a legal document issued when we require people to take a particular action. This may be to give us particular information or documents, or to attend a meeting with us. The Direction will specify what information or documents must be provided and within what timescale. Serious legal consequences arise if you do not comply with a Direction of the Commission.

**Operational Guidance:** Guidance written mainly for our staff. We are committed to conducting our work as openly as possible, and as part of this we have placed much of our written guidance on charity law and practice on our website.

**Order:** In this guidance an Order is a legal document we make to authorise or prevent particular actions by the charity trustees or other named individuals. Part D considers the powers we use in an inquiry, which will be set out within an Order. Serious legal consequences arise if you do not comply with an Order of the Commission.

**Proscribed organisation:** This is an organisation which the Home Secretary believes to be concerned in terrorism as defined by the [Terrorism Act 2000](#). It is a criminal offence for a person to be a member of, or invite support for, or arrange a meeting for, a proscribed organisation. Proscription means that the financial assets of the organisation become terrorist property and can be subject to freezing and seizure.

**Scheme:** In this context the term ‘Scheme’ refers to a scheme we make under section 79 of the Act. It is a legal document that changes, replaces or extends the trusts of a charity. It may be fully regulating, covering all aspects of a charity’s administration and purposes and replacing its previous governing document, or it may add to or alter some part of the governing document.

**Statutory declaration:** This is a legal document, in the form of a signed statement, often used to enable an individual to give evidence of something about which no independent evidence is available. It is an offence for an individual to make a statutory declaration that contains material they know to be false or do not believe to be true.

**Vesting of property:** If land or other assets of a charity are at risk of misuse or being lost to the charity, we can order that the property be held by or ‘vested’ in the Official Custodian for Charities or another person for safekeeping. Our website gives more information – see [The Official Custodian for Charities’ Land Holding Service](#) (CC13).

## B. This guidance at a glance

This part provides a quick reference to the contents of this guidance.

**Part C** explains where we get our authority to inquire into charities, and our general approach to this work.

**Part D** explains what happens once we have opened an inquiry and describes the statutory powers we can use.

**Part E** sets out our obligations, in line with the principles of best regulatory practice, including to act fairly when we undertake an inquiry and to observe the rights of trustees and other interested parties. It explains the legal obligations for those who help us with the inquiry. It also explains what action you can take if you are dissatisfied with our decisions or the way we have used our powers, and how to complain about our standard of service.

**Part F** gives details of organisations that can help charities.

## C. The Charity Commission as regulator

### C1. What is meant by regulation?

#### The short answer

Regulation refers to the Charity Commission's duties, functions, responsibilities and legal powers to protect charities, and so to increase their effectiveness and the public's trust and confidence in them. Our overall approach to regulating charities and how we assess and manage risks is set out in our guidance [The Charity Commission's Risk Framework – Our regulatory approach to protecting the public's interest in charity](#).

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#### In more detail

We have been given a statutory role to regulate charities and legal powers to help us to do this. These powers are set out in the Charities Act.

Our objectives, as set out in the Act, are to:

- increase public trust and confidence in charities;
- promote awareness and understanding of how charities must operate for the public benefit;
- promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities;
- promote the effective use of charitable resources; and
- make charities more accountable to donors, beneficiaries and the general public.

In fulfilling our objectives we provide a wide range of web based guidance that applies to most charities. We also have online services for updating and changing the information we hold about your charity. When necessary we resolve charity governance issues by using our legal powers to make Schemes or Orders where a charity does not have its own powers.

Our regulatory role focuses on the charity trustees and their conduct. If something goes wrong in a charity we expect the trustees to take responsibility for putting things right. In the most serious cases of abuse we may investigate and open an inquiry. When charities' assets, reputation, services or beneficiaries have been harmed or are at serious risk of abuse or damage, our investigations work aims to stop abuse or damage and put charities back on a proper footing for the future. This will involve opening a statutory inquiry to identify and investigate causes of misconduct or mismanagement in the administration of charities (see section D1) and resolving the problems we find. It may involve using our remedial and protective powers when it is appropriate and proportionate to do so. We will also monitor progress charities make following our intervention.

Our regulatory powers and remit extends to both registered and unregistered charities, including over funds raised for charitable purposes, for example charitable appeals.

## C2. When would the Commission be likely to open a statutory inquiry?

### The short answer

We are likely to consider opening a statutory inquiry where the regulatory issue is in itself serious and in circumstances where there is evidence or serious suspicion of misconduct or mismanagement or where the risk to the charity or to public confidence in charity more generally is high.

The purpose of an inquiry is to investigate and establish the facts of the case, so that we can:

- identify the extent of any misconduct and mismanagement;
  - assess the risks to the charity, its work, assets, beneficiaries and reputation; and
  - decide what action needs to be taken to resolve the concerns and ensure this takes place.
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### In more detail

We consider opening inquiries in the most serious cases. The criteria we consider when deciding to open an inquiry in any case are set out in our [Risk Framework Application Document](#) at section G4, on our website.

In practice, it is likely that the inquiry will be concerned with higher risk issues, although not every higher risk issue will be dealt with in this way. We have identified in the [Risk Framework Application Document](#) at section C1 what we consider to be the serious, higher risk, issues. These are, in no particular order:

- significant financial loss to a charity;
- serious harm to beneficiaries and, in particular, vulnerable beneficiaries;
- misuse of a charity for terrorist purposes (including charity links with or support for terrorism, financial or otherwise, connections to proscribed organisations or misuse of a charity to foster criminal extremism);
- serious criminality and/ or illegal activity within or involving a charity (including fraud and money laundering);
- charities set up for an illegal or improper purpose including the use of abusive tax arrangements;
- charities deliberately being used for significant private advantage;
- where a charity's independence is seriously called into question;
- other significant non-compliance, breaches of trust or abuse that otherwise impact significantly on public trust and confidence in a charity and charities generally.

When a serious concern comes to our attention we consider the seriousness and extent of the risk involved and how the charity is dealing with it. Before we open an inquiry, we undertake a pre-investigation assessment, which will include looking at the concern raised, the source of the concern, what evidence there is to support or discredit this, the strength of this evidence and the potential impact of the issues raised about the charity concerned.

Where the pre-investigation assessment of the issues concludes that the matter does not fall into the most serious categories we will decide what other action may be needed, if any. We may decide that the concerns cannot be substantiated, or are unfounded, at this stage and conclude that no further action is necessary or that the case can be dealt with by giving immediate regulatory advice and guidance to correct the non compliance or prevent it happening again in the future.

We will treat each case individually and look at wider considerations than the nature of the concern alone. Other factors may modify our assessment of the risk posed by the problem and the level of priority, attention and resources we give it. These factors will include whether the risk is ongoing and how much cooperation we receive from the trustees. Even if the trustees are co-operating with the Commission, an inquiry may still be opened. Factors also include considering whether the trustees have acted honestly and reasonably, or the extent of any evidence to suggest they have been careless or reckless, or whether there has been deliberately or wilful wrong doing. These modifying factors and how we consider the conduct and response of the trustees are set out in our document [Application of the Commission's Risk Framework](#) on our website.

It is our normal practice to issue a public statement confirming that an inquiry has been opened. This is in accordance with our published policy that it is in the public interest to do so, given our regulatory role and the accountability of charities for their activities. However, there will be times when we consider that it is not in the public interest to do so. Further details of our approach and policy can be found on our [website](#).

It is not a pre-requisite that we need to let the trustees know about our concerns or give them a chance to respond or take action first, before opening an inquiry.

Our remit does not extend to investigating criminal or taxation matters. Nor are we a prosecuting authority. We will report such matters to the appropriate authorities. However, our concern is that trustees discharge their legal duties as trustees in managing and administering the charity properly and responsibly. Where issues are raised about criminal matters, the use of abusive tax arrangements, or concerns about the operation of a charity are being examined by other regulators, we will consider whether these indicate misconduct or mismanagement in the administration of the charity and whether we need to protect charity property. This may mean that we will consider opening our own inquiry at the same time as another agency or regulator.

## D. The form an inquiry takes and the legal powers involved

### D1. What happens when we open a statutory inquiry?

#### The short answer

When we open a statutory inquiry we will usually contact the trustees directly to tell them why and give them an opportunity to discuss the issues with us. **As we contact the people listed on the Register of Charities it is important to let us know immediately if those names change at any time.**

We are likely to ask for information and documents, and will usually do so using our regulatory powers. We will also usually need access to charity records. We might use our regulatory powers to protect charity beneficiaries and/ or assets. Once an inquiry is complete we will usually report publicly on our action and findings by issuing a Statement of Results of Inquiry. In more detail

A statutory inquiry is a legal power enabling us to formally investigate matters of regulatory concern within a charity and to use our protective powers for the benefit of the charity and its beneficiaries, assets or reputation.

An inquiry will help identify the extent of misconduct or mismanagement in the administration of the charity, if any; assess any risk to the charity and its assets; and decide whether we need to act to protect the property of the charity.

- **Misconduct** includes any act that the person committing it knew (or ought to have known) was criminal, unlawful or improper.
- **Mismanagement** includes doing anything to:
  - lose or misuse charitable resources;
  - undermine a charity's reputation; or
  - put beneficiaries at risk.

Our inquiry will usually focus on whether charity trustees have carried out their duties and responsibilities as trustees under charity law. An inquiry formalises our engagement with the charity and its trustees. Certain legal powers are available to us only where an inquiry is open. We explain the use of these powers in more detail in sections D3 and D4. Given the significance of a statutory inquiry the trustees may wish to consider seeking their own legal or professional advice and can do so at any time during the inquiry.

It is important that trustees and their advisers cooperate with us in taking the inquiry forward by answering our queries in full and doing so within timescales specified. Non-cooperation or failure to comply with Directions or Orders is regarded in itself as evidence of misconduct or mismanagement in the administration of the charity. Also, failure to observe Directions or Orders has serious legal consequences.

It is important to tell us at this stage if the trustees' first language is not English and if interpreters are required for meetings, or, if for any other reasons the trustees have difficulty in understanding the content of letters, Orders or Directions.

Following the assessment of the initial concerns an inquiry will typically have the following phases:

- **Setting the scope of the inquiry and our case strategy.** We will set up the team running the inquiry and will contact 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 an inquiry. We review our case strategy regularly and may change it in the light of new evidence or circumstances.
- **Information and evidence gathering, analysis and verification.** These may include analysing records we already hold, or gathering new information from the trustees and other relevant sources, including an inspection of financial books and records. Where we conduct interviews a note of the conversation will be retained for our records. Sometimes we may tape record meetings with the trustees, in which case we will provide them with a transcript of the meeting. New evidence is evaluated and assessed as it is collected. We will consider to what extent, if any, the causes for concern are substantiated or are not made out by the evidence or require further examination. We will consider using our information gathering powers contained in the Act as explained in section D3. These processes will continue throughout the inquiry. The evidence will be used to form our findings and inform our actions.
- **Consideration and use of regulatory powers.** Whenever possible, we aim to work with trustees to resolve issues through guidance, regulatory advice and supervision without using legal powers to intervene. We will use our legal powers of remedy or protection where this is appropriate and proportionate. Some powers are used on a temporary basis during the inquiry, others are more permanent and extend beyond the end of an inquiry. The extent of our powers is explained in sections D3 and D4.
- **Conclusion of the substantive investigation stage and follow-up.** We will usually conclude our substantive investigations when we have:
  - taken the action necessary to resolve the concerns;
  - shared our findings and conclusions with the trustees. If the concerns are not substantiated or cannot be verified, we will inform the trustees; and
  - made clear to trustees what follow-up action is required to resolve our concerns and by when.This usually marks the end of the proactive or substantive stages of the investigation.
- **Publishing statements of results of inquiries.** A statutory inquiry is a matter of public record and our general policy is to publish a statement of results for every statutory inquiry. We will usually publish the statement on our website within three months of concluding our substantive investigation. The statement will highlight the key issues, our findings and conclusions of the inquiry. It will also set out any wider issues of importance to the charity sector.

Occasionally, it will not be appropriate for us to publish a Statement of Results of Inquiry. We will not publish a Statement if, in our judgement, it would make regulation less effective and damage public confidence in charities. The criteria we use when deciding not to publish a Statement is set out on our website. You can read more about this and our Statements on our [website](#).

Trusteeship is a public office, a position of trust carrying fiduciary responsibilities and duties. The public have 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.

It is our normal practice to issue a public statement confirming that an inquiry has been opened. This is in accordance with our published policy that it is in the public interest to do so, given our regulatory role and the accountability of charities for their activities. Further details of our approach and policy can be found on our [website](#).

Further information about how we deal with media enquiries about our compliance work can be found on our [website](#).

## D2. How long will a statutory inquiry last?

### **The short answer**

It is difficult to predict the length of time an inquiry will take but we aim to conclude an inquiry as soon as possible.

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### **In more detail**

The progress of each inquiry depends on many factors, including:

- the nature and complexity of the issues brought to our attention;
- how much information needs to be obtained;
- the involvement of other agencies;
- emergence of new issues in the late stages of our investigations or at the stage where we are writing the Statement of Results of Inquiry;
- whether we need to adjust our case strategy as new issues arise or new evidence comes in; and
- how responsive and cooperative the trustees and others involved are. This may include banks, legal advisers, and accountants.

Full cooperation from the trustees is critical in achieving a satisfactory and timely conclusion.

Although there is no fixed duration for an inquiry, our aim is to conclude the substantive investigation within nine months and the final stage, which is to publish the Statement of Results of Inquiry, within three months of that.

## D3. What are the Commission's information gathering powers?

### The short answer **L**

These powers take the form of an Order or Direction to obtain information or documents or require named individuals to meet us to answer our questions.

The information will be used in the inquiry and may be used to assess whether we need to use our protective or remedial powers. We will only ask for information that is relevant to the inquiry and our functions.

The person named in the Order or Direction must comply with the request for information within the timescale given to them.

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### In more detail

The information gathering powers in section 47 the Act allow us, among other things, to direct a person within a specific time to:

- give us accounts and statements in writing on any matter in question as part of the inquiry and to verify any such accounts, statements or answers, if necessary by statutory declaration;
- give us copies of documents in their keeping or under their control, which are relevant to any part of the inquiry; and verify any such documents as exact copies of the originals, if necessary by statutory declaration; and
- attend at a specific time and place to give evidence or produce such documents. If we use this power you should let us know immediately if you have any difficulty attending at a particular time or place.

We might also use powers in section 52 the Act to order a person to provide copies or extracts of documents or original documents.

A Direction or Order may be addressed to individual trustees, the charity by name (where it is a company), charity employees, advisers, accountants, auditors, solicitors, banks etc.

Sometimes third parties may need the protection of an Order, for example, to override a duty of confidence they may otherwise have.

We will have regard, as far as relevant, to the principles of best regulatory practice when using these powers, including proportionality. Given the nature of an inquiry and because it is for investigating serious concerns about a charity, our usual practice is to always correspond with the trustees during an inquiry under legal Direction (or Order), although there may be exceptional cases when it is not appropriate to do so. Use of these powers means that the person named in the Order or Direction is legally compelled to provide the information we request or attend a meeting as required. We will only ask for information when it is relevant to the issues in the inquiry, and needed to move the inquiry forward.

It is important that the person named in the Order or Direction replies to us promptly with the information. We will always make clear the date by which we require the information.

If the named person is unable to provide the information they should let us know as soon as possible, saying why they cannot comply, and not leave it until the deadline has passed. Non-compliance with our requests for information has serious legal consequences. Failure to comply in itself may be taken as evidence of mismanagement and/or misconduct in the administration of the charity and we may refer to it in the Statement of Results of Inquiry.

Section 48 of the Act gives us the power to enter premises and seize documents and other information under a magistrate's warrant, although this is not routinely used.

These powers are set out in sections 47, 48 and 52 the Act. You can view them online at [www.opsi.gov.uk](http://www.opsi.gov.uk) – the Charities Act 2011 is listed alphabetically under the relevant year. Further information about when and how we use them can be found in our staff guidance OG117 on our website.

## D4. Temporary protective powers – what are they and when will they be used?

### The short answer **L**

Temporary protective powers enable us to protect charity property (for example by limiting financial transactions or the involvement of particular individuals in a charity) for a temporary period while we continue investigating.

We regularly review our use of these powers to ensure that they stay in place only for as long as is necessary. In particular, the Act limits us to suspending an individual from his or her office or employment within a charity for no more than 12 months.

Anyone named in an Order under our temporary protective powers must comply with that Order. Non-compliance will have serious legal consequences.

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### In more detail

Temporary protective powers are used to protect a charity while we continue investigating. They will always be targeted at the identified areas of risk to limit their impact, as far as is appropriate, on the daily running of a charity. We aim to avoid disrupting legitimate charitable work as far as we can, and will, where possible, continue to work with the trustees to help them protect their charity, beneficiaries or assets.

To use these powers we must be satisfied that there is or has been misconduct or mismanagement in the administration of the charity **or** that it is necessary or desirable for us to act to protect the property of the charity (see section D1). It is likely that we would use these powers to act urgently or for a limited time to protect the charity and so the amount and strength of evidence being relied upon by us would be different from when exercising a power that has a more permanent effect.

We are not required to inform a charity before we use our temporary protective powers. However, unless it would prejudice the inquiry or not be in the interests of the charity, we will explain to trustees why we are using our powers when we issue the Order or as soon as possible afterwards. We will always tell trustees about their rights of appeal (see section E3).

Under section 78 the Act we must regularly review the use of our temporary protective powers to make sure there are still grounds for keeping them in place. Under our current policy, reviews will usually occur every two months and we report their outcome to the trustees and anyone else to whom the Order applies. We will also undertake a review whenever we receive significant new information that may affect whether we keep the Order in place.

Temporary protective powers include:

- suspending a trustee, charity trustee, officer, agent or employee of the charity from their office or employment while we consider removing them from that position;
- vesting charity property in the Official Custodian for Charities;
- preventing a person who holds charity property from parting with it without our consent;
- preventing people repaying any type of debt they have to a charity without our consent;
- restricting the transactions a charity can enter into or the nature or amounts of payments that can be made, without our consent, in the administration of the charity;
- appointing an interim manager to manage the affairs of the charity alongside or instead of the trustees; and
- suspending a trustee, charity trustee, officer, agent or employee from membership of a charity when they are suspended from office or employment and try to use their membership to become reinstated.

Our powers are set out in section 76 and 83 the Act. You can view them online at [www.opsi.gov.uk](http://www.opsi.gov.uk) – the Charities Act 2011 is listed alphabetically under the relevant year.

## D5. Permanent protective powers – what are they and when can they be used?

### The short answer **L**

Permanent protective powers are the remedial powers that enable us to implement long-term solutions to problems identified by an inquiry. These powers and the limits for their use are set out below.

Anyone named in an Order under our permanent protective powers must comply with that Order. Non-compliance with our Order has serious legal consequences.

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### In more detail

Permanent protective powers will be targeted to resolve the charity's problems in the long-term. They are used only in the context of an inquiry.

Before we use permanent protective powers we will make sure that they are necessary and proportionate, and we will generally give the trustees an opportunity to comment on what we intend to do. In some cases the trustees have a legal right to make representations before we act.

To use the following powers we must be satisfied that there is or has been misconduct or mismanagement in the administration of the charity and it is necessary or desirable to act to protect the property of the charity (see section D1).

Permanent protective powers include:

- removing any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to misconduct or mismanagement in the charity or has contributed to it or allowed it to go on;

- removing an officer, agent or employee from membership of a charity when they have been removed from that office or employment and use their membership to seek reinstatement; and
- establishing a scheme for the administration of the charity. Our guidance *Changing your Charity's Governing Document (CC36)* sets out our scheme-making procedures in part D.

Two further protective powers that we may use can have permanent effect, enabling us to:

- direct specific action with regard to the charity's administration or its property (for example, take and act on professional advice, call an Annual General Meeting of the charity to appoint new trustees, or undertake a governance review);
- establish who the members of a charity are.

These powers can be used in an inquiry where there has been misconduct or mismanagement in the administration of the charity, **or** where it is necessary or desirable to protect the property of the charity (see section D1).

These powers are set out in sections 76, 83, 84 and 11 of the Act. You can view them online at [www.opsi.gov.uk](http://www.opsi.gov.uk) – the Charities Act 2011 is listed alphabetically under the relevant year.

## D6. Other powers we might use with an inquiry – what are they and when might they be used?

### The short answer **L**

We may also use other powers to remove or appoint trustees during an inquiry. They are used in specific circumstances where we do not need to establish misconduct or mismanagement or to act for the protection of charity property.

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### In more detail

Whether or not an inquiry has been opened, we can take specific action to remove or appoint trustees in the following circumstances:

- We may remove charity trustees where:
  - within the last five years a trustee (having previously been adjudged bankrupt) has had their estate sequestrated, has been discharged from bankruptcy or has been discharged in respect of a composition, arrangement or trust deed with creditors;
  - the trustee is a corporation in liquidation;
  - the trustee is incapable of carrying out his/her role as trustee because of a mental disorder as defined by the Mental Health Act 1983;
  - the trustee has not carried out his/her role as trustee, and will not declare willingness or unwillingness to act as a trustee; and
  - the trustee is outside England and Wales or cannot be found or does not carry out his/her role as trustee, and his/her absence or failure to act as a trustee impedes the proper administration of the charity.

- We may appoint additional charity trustees:
  - in place of those removed by the Commission;
  - where there are no charity trustees;
  - where the trustees are too few or, by reason of incapacity or absence, they are legally unable to carry out their role as trustee;
  - where there is only one trustee (that is not a corporate body) and we consider it necessary for the proper administration of the charity; and
  - where we consider it necessary to appoint trustees alongside existing trustees, where the existing trustees cannot be found, do not act, or are outside England and Wales.

We may also use our power to:

- direct a person in possession or control of charity property to apply it in a specific way where he or she is unwilling to apply it for its proper purpose.

These powers are set out in sections 80 and 85 of the Act. You can view them online at [www.opsi.gov.uk](http://www.opsi.gov.uk) – the Charities Act 2011 is listed alphabetically under the relevant year.

## E. Your rights and legal obligations

### E1. What is the Commission's commitment to you if your charity is under inquiry?

#### The short answer

By the nature of the work we do, our decisions will not always be popular but we will follow the relevant legal procedures, work to high standards and clearly explain the reasons for our actions.

We undertake to meet certain standards in the way we handle correspondence and enquiries from you. These standards, called [Service First](#), are set out on our website, as is our [complaints procedure](#) which tells you how to complain about the service you have received.

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#### In more detail

In an inquiry our commitment is to:

- assess causes of concern objectively and with an open mind;
- not pursue trivial or obviously groundless complaints;
- let you know the nature of the complaints or problems identified;
- allow you an opportunity to respond to the issues of concern;
- consider your response fairly and objectively;
- where we use protective powers, provide a Statement of Reasons for making the Order implementing those powers, unless that statement would prejudice the inquiry or would not be in the charity's interests;
- inform you at the appropriate time and in writing of your rights of decision review and appeal;
- tell you the name, telephone number and email address of the lead officer conducting the inquiry;
- wherever possible, respond to letters or email correspondence within 15 working days at the latest;
- let you know the reason if our response will be delayed;
- let you know the outcome of an inquiry as soon as possible;
- allow the trustees and other people mentioned by name in a Statement of Results of Inquiry to comment on the factual accuracy of the Statement or relevant part before it is published; and
- provide regulatory guidance and advice when needed.

Section E4 sets out what you should do if you feel unfairly treated.

## E2. Will the information I provide be kept confidential?

### The short answer

During an inquiry we request and collect information for our statutory purposes in connection with that inquiry.

All information, whether personal or otherwise, is held securely but in certain circumstances we may be required to disclose it. Any disclosure will be in accordance with the principles of data protection or with our role as the regulator of charities.

The most common form of disclosure will be where we publish a Statement of Results of Inquiry.

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### In more detail

We ask only for information that is necessary and appropriate to the concerns we are investigating. Therefore, when information is requested we expect this to be provided regardless of the sensitivity of its content. However, we do undertake to treat and handle that information appropriately and with care.

Information provided to us in connection with an inquiry, including under our information gathering powers, will be used for our statutory purposes only. However, we cannot provide an absolute guarantee not to disclose information provided. There may be occasions where we need to provide such information to third parties. We may have to use the information provided to take forward our regulatory concerns. We may also need to disclose it, for example, as a result of a court order or legal requirement where we need to act in the public interest to engage with and pass the information on to other regulators. And, of course, we may need to include the information in our published Statement of Results of Inquiry.

As a public authority we are subject to the Freedom of Information Act 2000 and so information held by us has the potential for disclosure upon request under that legislation. However, where appropriate, we may seek to withhold information received by us during a statutory inquiry under the exemptions contained in that legislation. These include the exemptions relating to inquiries, data protection, commercial sensitivity and information to which the law gives a quality of confidentiality. If the information you provide is particularly sensitive or confidential and this is not likely to be evident, you need to tell us and explain why this is so.

The [Data Protection Act 1998](#) regulates the use of personal data, which is essentially any information, however stored, about identifiable living individuals. As a data controller under that Act the Charity Commission must comply with its requirements.

Any information you give us will be held securely and processed only in accordance with the rules on data protection. We will not disclose your personal details to anyone unconnected to the Charity Commission unless:

- You have consented to their release; or
- We are legally obliged to disclose them; or
- We regard disclosure as necessary so that we can properly carry out our statutory functions.

We may also disclose information about you to another relevant public authority but only where we can lawfully do so, and we determine that for purposes of national security, law enforcement, or other issues of overriding public interest, such disclosure is necessary or appropriate.

We will ensure that any such disclosure is proportionate; considers your right to respect for your private life; and is done fairly and lawfully in accordance with the data protection principles of the Data Protection Act.

However, trustees must remember that the position of trustee is a matter of public record and carries fiduciary responsibilities and duties, and that the public have a legitimate interest in being assured those duties are being complied with.

### E3. What are trustees, employees, officers, agents or other interested parties obliged by law to do or to provide to the Commission?

#### The short answer **L**

We expect charity trustees, employees, officers, agents or any other interested parties we need to engage with to cooperate with our inquiry. Obstruction of our investigation, for instance by refusal or delay in providing information without good reason, or a lack of full and frank disclosure, may in itself be evidence of mismanagement in the administration of a charity. The courts have made clear that they expect charity trustees to cooperate with the Commission irrespective of whether we use our legal powers to request information.

When we issue an Order or Direction the trustees or anyone else named within it must carry out its requirements. Again, failure to do so may be evidence of mismanagement in the administration of a charity and can bring serious legal consequences, as set out below.

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#### In more detail

Where we use our temporary or permanent protective powers, in some circumstances non-compliance may amount to a criminal offence or contempt of court.

In any inquiry we will have to ask for information so that we can assess any allegations made or concerns that have arisen or clarify actions that may have been taken by the trustees. When requested by Order or Direction you must:

- provide any documents or information we ask for;
- make yourself available for interview at an agreed time and place; and
- answer our questions fully and honestly.

Anyone providing information to us (not only as a response to an Order or Direction) needs to be aware that it is an offence under the Act to:

- knowingly or recklessly supply information that is false or misleading; or
- wilfully alter, suppress, conceal or destroy any document that we may require.

Any person guilty of an offence under this section is liable, depending on the type of conviction, to:

- a fine; or
- imprisonment for a term not exceeding two years or to a fine, or both.

## E4. What can I do if I am unhappy about the way I have been treated by the Commission or disagree with decisions or actions that the Commission has taken?

### The short answer

If you are dissatisfied with the way we have treated you, you can use our complaints procedure.

If you disagree with a legal decision we have made you can ask us to look at the decision again through our decision review process. You may also be able to make an appeal to the Tribunal.

If we use our powers during an inquiry, we will always tell you how you can challenge what we have done.

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### In more detail

If you are dissatisfied about the way we have dealt with you during an inquiry, you can complain about the standard of service you have received. Please see the information on our [website](#) about making this type of complaint.

If you think decisions we have made to use powers under the Act, including the decision to open an inquiry, are wrong you can ask us to review them. by writing to the Litigation and Review Officer at [litigationandreview@charitycommission.gov.uk](mailto:litigationandreview@charitycommission.gov.uk) or by using our [online application form](#).

Please note that temporary and protective orders are regularly reviewed by us in the normal course of the inquiry. We are under a legal obligation to do so. So it is important that you tell us about anything during the course of the inquiry (whether we ask you or not) that may impact on whether we discharge the order or keep it in place.

Alternatively, you may be able to challenge a decision in the First-tier Tribunal (Charity) if you are a person entitled to appeal and the decision falls within the schedule of decisions that can be challenged. The Tribunal is an independent legal body which has the power to look again at some of the decisions made by the Commission and to quash, change or add to them. In some cases the Tribunal may direct us to take further action or rectify our decision. If you wish to appeal against our decision help and advice can be found on the Tribunal's [website](#), which gives information on time limits, form of notice of appeal and how to make an application.

There are limits to requesting a decision review or making an application to the Tribunal:

- you should tell us within 3 months if you want to challenge a decision using the decision review process;

and

- an application to the Tribunal must be made within 42 days of the date on which notice of our decision was sent to you;

or, if you are not the subject of the decision

- an application to the Tribunal must be made within 42 days of the notice of the decision being published.

In each case weekends and bank holidays are included in the 42 day period.

Further details about our decision review procedure and the Tribunal can be found on our [website](#).

## F. Other sources of help and advice

A number of organisations exist to help charities. This is not a complete list but it offers a good overview and starting point.

### **Charity Finance Group (CFG)**

This is a membership organisation that specialises in helping charities to manage their accounting, taxation, audit and other finance-related functions.

Charity Finance Group

CAN Mezzanine

49-51 East Road

London N1 6AH

Tel: 0845 345 3192

Website: [www.cfg.org.uk](http://www.cfg.org.uk)

### **Charity Law Association (CLA)**

This is a membership organisation made up of lawyers specialising in charity law. You can contact them for details of lawyers.

Website: [www.charitylawassociation.org.uk](http://www.charitylawassociation.org.uk)

### **Community Matters**

Community Matters is the nationwide federation for community associations and similar organisations. It supports and develops the capacity of community organisations and represents them at a national level.

Community Matters

12-20 Baron Street

London N1 9LL

Tel: 020 7837 7887

Website: [www.communitymatters.org.uk](http://www.communitymatters.org.uk)

### **County Voluntary Councils in Wales (CVCs)**

CVCs provide advice and information to local voluntary organisations on any issue that may affect them. They encourage voluntary action by supporting volunteering, advising on good practice and providing information on funding sources and a range of other issues. They also represent the voluntary sector on cross-sector partnerships. Contact details for all CVCs can be found on the Wales Council for Voluntary Action (WCVA) website (for details see below).

Website: [www.wcva.org.uk/](http://www.wcva.org.uk/)

### **Fundraising Standards Board**

This body operates an open self-regulatory scheme for the fundraising sector, with the purpose of encouraging excellence in fundraising and providing a robust and accessible complaints procedure.

Fundraising Standards Board  
61 London Fruit Exchange  
Brushfield Street  
London E1 6EP

Tel: 0845 402 5442

Website: [www.frsb.org.uk](http://www.frsb.org.uk)

### **LawWorks**

LawWorks provides free legal advice to small charities, not for profit, voluntary and community organisations and social enterprises in England and Wales using volunteer lawyers.

LawWorks  
National Pro Bono Centre  
48 Chancery Lane  
London WC2A 1JF

Website: [www.lawworks.org.uk/](http://www.lawworks.org.uk/)

### **National Association for Voluntary and Community Action (NAVCA)**

NAVCA provides networking opportunities, specialist information and advice, support and training for its members in the third sector. It works to promote the interests of local voluntary and community action with national and local government policy makers.

NAVCA  
The Tower  
2 Furnival Square  
Sheffield S1 4QL

Tel: 0114 278 6636

Website: [www.navca.org.uk](http://www.navca.org.uk)

### **Small Charities Coalition**

The Small Charities Coalition exists to help small charities to access the skills, experience and resources they need to achieve their aims.

Small Charities Coalition  
24 Stephenson Way  
London NW12DP

Tel: 0207 391 4812

Website: <http://www.smallcharities.org.uk/>

### **Wales Council for Voluntary Action (WCVA)**

WCVA represents the interests of, and campaigns for, voluntary organisations, volunteers and communities in Wales. It provides a comprehensive range of information, consultancy, funding and management and training services. Charities can use the WCVA website to find their nearest County Voluntary Council (CVC).

Wales Council for Voluntary Action  
Baltic House  
Mount Stuart Square  
Cardiff Bay  
Cardiff CF10 5FH

Tel: 029 2043 1700

Helpline: 0870 607 1666

Website: [www.wcva.org.uk](http://www.wcva.org.uk)

### **Northern Ireland – The Charity Commission for Northern Ireland**

Charity Commission for Northern Ireland  
257 Lough Road  
Lurgan  
Craigavon  
BT66 6NQ

Tel: 028 3832 0220

Website: [www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk)

### **Scotland – Office of the Scottish Charity Regulator (OSCR)**

OSCR  
2nd Floor  
Quadrant House  
9 Riverside Drive  
Dundee DD1 4NY

Tel: 01382 220446

Website: [www.oscr.org.uk](http://www.oscr.org.uk)



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