



Statutory Inquiries
into Charities:
guidance for charities
and their advisers

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1. Introduction

1.1 This guidance

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

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

Charities must comply with the law. The commission deals 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 its work the commission identifies and investigates apparent misconduct or mismanagement in the administration of charities, and works to resolve issues of concern. In serious cases of abuse and regulatory concern, the commission may open a statutory inquiry. The commission's 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, it will apply the [Risk framework](#), and 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 the commission 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. The 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 the commission normally expects to deal directly with the charity trustees. This is because they have general control and management of the charity's administration 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 is done 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.

1.2 Previous guidance

This guidance supplements the commission's other information about compliance work that can be found on GOV.UK.

1.3 Scope of this guidance

This guidance is for charities into which the commission has 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 [Complain about a charity](#), which states what issues will be considered and the information needed to take them forward.

1.4 Using this guidance

Each section has a topic heading under which there are relevant questions you might raise about how the commission deals with an inquiry. Generally there is a concise summary answer ('The short answer') and then more background ('In more detail').

1.5 Other sources of help and advice

The commission will always seek to discuss matters raised by the inquiry with the trustees. The commission deals with the trustees directly, but the trustees may still seek their own independent professional advice.

1.6 'Must' and 'should': what the commission means

Must and should - what they mean

In this guidance:

- 'must' means something is a legal or regulatory requirement or duty that trustees must comply with
- 'should' means something is good practice that the commission expects trustees to follow and apply to their charity

Following the good practice specified in the commission's guidance will help trustees to run their charity effectively, avoid difficulties and comply with their legal duties. Charities vary in terms of their size and activities. Trustees should consider and decide how best to apply the commission's good practice to their charity's circumstances. The commission expects trustees to be able to explain and justify their approach, particularly if they decide not to follow good practice.

In some cases trustees will be unable to comply with their legal duties if they do not follow the good practice. For example:

Trustees' legal duty	It's vital that trustees
Act in their charity's best interests	Deal with conflicts of interest
Manage their charity's resources responsibly	Implement appropriate financial controls Manage risks
Act with reasonable care and skill	Take appropriate advice when they need to, for example when buying or selling land, or investing (in some cases this is a legal requirement)

Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice.

1.7 Some technical terms used

The following terms are used throughout this document, and should be interpreted as having the specific meaning given below.

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. The commission 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 be used only 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.

Beneficiaries: 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 the 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 the commission requires people to take a particular action. This may be to give particular information or documents, or to attend a meeting with the commission. 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.

Order: in this guidance an order is a legal document the commission makes to authorise or prevent particular actions by the charity trustees or other named individuals. Section 4 considers the powers the commission uses in an inquiry, which will be set out within an order. [Serious legal consequences, section 5.3](#) 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 the commission makes 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, the commission can order that the property be held by or ‘vested’ in the Official Custodian for Charities or another person for safekeeping. For more information - see [The Official Custodian for Charities’ Land Holding Service \(CC13\)](#).

2. This guidance at a glance

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

Section 3 explains where the commission gets the authority to inquire into charities, and the general approach to this work.

Section 4 explains what happens once the commission has opened an inquiry and describes the statutory powers that can be used.

Section 5 sets out the commission's obligations, in line with the principles of best regulatory practice, including to act fairly when an inquiry is undertaken and to observe the rights of trustees and other interested parties. It explains the legal obligations for those who help the commission with the inquiry. It also explains what action you can take if you are dissatisfied with the commission's decisions or the way it has used its powers, and how to complain about the commission's standard of service.

3. The Charity Commission as regulator

3.1 What is meant by regulation?

The short answer

Regulation refers to the commission's duties, functions, responsibilities and legal powers to protect charities, and so to increase its effectiveness and the public's trust and confidence in it. The overall approach to regulating charities and how they are assessed and manage risks is set out in the guidance [The Charity Commission's Risk Framework - Our regulatory approach to protecting the public's interest in charity](#).

In more detail

The commission has been given a statutory role to regulate charities and legal powers to help with this. These powers are set out in the Charities Act.

The commission's 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 these objectives the commission provides a wide range of web based guidance that applies to most charities. There are also online services for updating and changing the information that is held about your charity. When necessary the commission resolves charity governance issues by using legal powers to make schemes or orders where a charity does not have its own powers to do so.

The commission's regulatory role focuses on the charity trustees and their conduct. If something goes wrong in a charity it's expected that the trustees take responsibility for putting things right. In serious cases of abuse the commission 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, the commission's 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 4.1) and resolving the problems that are found. It may involve using the commission's remedial and protective powers when it's appropriate and proportionate to do so. The commission will also monitor progress charities make following its intervention.

The commission's regulatory powers and remit extend to both registered and unregistered charities, including over funds raised for charitable purposes, for example charitable appeals.

3.2 When would the commission be likely to open a statutory inquiry?

The short answer

The commission is 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 the commission can:

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

In more detail

The commission considers opening inquiries in serious cases. The criteria considered when deciding to open an inquiry in any case are set out in the [Risk framework application document](#) at section 7.4.

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. The commission has identified in the [Risk framework application document](#) at section 3.1 what is considered 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 the commission's attention it will consider the seriousness and extent of the risk involved and how the charity is dealing with it. Before an inquiry is opened, a pre-investigation assessment is undertaken, 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 meet the criteria for opening an inquiry, it will then be decided what other action may be needed, if any. It may be decided 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.

The commission will treat each case individually and look at wider considerations than the nature of the concern alone. Other factors may modify the assessment of the risk posed by the problem and the level of priority, attention and resources that it's given. These factors will include whether the risk is ongoing and how much cooperation is received 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 the commission considers the conduct and response of the trustees are set out in the document [Application of the commission's risk framework](#).

The commission's remit does not extend to investigating criminal or taxation matters. Nor is it a prosecuting authority. Such matters will be reported to the appropriate authorities. However, the 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, or the use of abusive tax arrangements, or where concerns about the operation of a charity are being examined by other regulators, the commission will consider whether these indicate misconduct or mismanagement in the administration of the charity and whether they need to protect charity property. This may mean that the commission will consider opening an inquiry at the same time as another agency or regulator.

4. The form an inquiry takes and the legal powers involved

4.1 What happens when the commission opens a statutory inquiry?

The short answer

The commission doesn't have to let trustees know about its concerns or give them a chance to respond or take action, before opening an inquiry. However, it is usual practice for the commission to contact the trustees directly to tell them why it has opened an inquiry and give them an opportunity to discuss the issues. As the people contacted are those listed on the register of charities it's important to let the commission know immediately if those names change at any time.

It's the commission's normal practice to issue a public statement confirming that an inquiry has been opened. This is in accordance with the commission's published policy that it's in the public interest to do so, given its regulatory role and the accountability of charities for their activities. However, there will be times when the commission considers that it's not in the public interest to do so.

The commission is likely to ask for information and documents, and will usually do so using regulatory powers. Also, access will usually be needed to charity records. The commission may use regulatory powers to protect charity beneficiaries and/ or assets. Once an inquiry is complete the commission will usually report publicly on its action and findings by issuing a Statement of Results of Inquiry.

In more detail

A statutory inquiry is a legal power enabling the commission to formally investigate matters of regulatory concern within a charity and to use 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 the commission needs 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
 - put beneficiaries at risk

An inquiry will usually focus on whether charity trustees have carried out their duties and responsibilities as trustees under charity law. An inquiry formalises the commission's engagement with the charity and its trustees and certain legal powers are available to the commission only where an inquiry is open. The commission explains the use of these powers in more detail in sections 4.3 and 4.4. 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's important that trustees and their advisers cooperate with the commission in taking the inquiry forward by answering its 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 the commission 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 the commission case strategy.' The commission will set up the team running the inquiry and will contact the trustees of the charity concerned to explain why an inquiry has been opened and its focus and aims. When the issues justify it, regulatory powers may be used before the charity is told that an inquiry has been opened. The commission reviews its 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 that are already held, or gathering new information from the trustees and other relevant sources, including an inspection of financial books and records. Where the commission conducts interviews a note of the conversation will be retained for its records. Sometimes the commission may record meetings with the trustees, in which case it will provide them with a transcript of the meeting. New evidence is evaluated and assessed as it's collected. The commission 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. The commission will consider using its information gathering powers contained in the Act as explained in section 4.3. These processes will continue throughout the inquiry. The evidence will be used to form the commission's findings and inform its actions.
- 'Consideration and use of regulatory powers.' Whenever possible, the commission aims to work with trustees to resolve issues through guidance, regulatory advice and supervision without using legal powers to intervene. The commission will use its 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 its powers are explained in sections 4.3 and 4.4.
- 'Conclusion of the substantive investigation stage and follow-up.' The commission will usually conclude its substantive investigations when it has:
 - taken the action necessary to resolve the concerns
 - shared its findings and conclusions with the trustees; if the concerns are not substantiated or cannot be verified, it will inform the trustees
 - made clear to the trustees what follow-up action is required to resolve its concerns and by whenThis usually marks the end of the proactive or substantive stage of the investigation.
- 'Publishing statements of results of inquiries.' A statutory inquiry is a matter of public record and the commission's general policy is to publish a statement of results for every statutory inquiry. The commission will usually publish the statement on GOV.UK within three months of concluding its substantive investigation. The statement will highlight the key issues, 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 the commission to publish a Statement of Results of Inquiry. It will not publish a Statement if, in its judgement, it would make regulation less effective and damage public confidence in charities.

Trusteeship is a public office, a position of trust carrying fiduciary responsibilities and duties. The public has a legitimate interest in being assured that those duties are being complied with. The commission therefore publicises its findings by issuing a press release when the report of the [Statement of Results of Inquiry is published](#).

4.2 How long will a statutory inquiry last?

The short answer

It's difficult to predict the length of time an inquiry will take but the commission aims to conclude an inquiry as soon as possible.

In more detail

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

- the nature and complexity of the issues brought to the commission's attention
- how much information needs to be obtained
- the involvement of other agencies
- emergence of new issues in the late stages of the commissions investigations or at the stage where the Statement of Results of Inquiry is being written
- whether the commission needs to adjust its case strategy as new issues arise or new evidence comes in
- 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, the commission's 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.

4.3 What are the commission's information gathering powers?

The short answer (legal requirement)

These powers take the form of an order or direction to obtain information or documents or to require named individuals to meet the commission to answer its questions.

The information will be used in the inquiry and may be used to assess whether the commission needs to use its protective or remedial powers. The commission will ask only for information that is relevant to its functions and the inquiry.

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

In more detail

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

- give the commission 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 the commission 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
- attend at a specific time and place to give evidence or produce such documents; if the commission uses this power you should let it know immediately if you have any difficulty attending at a particular time or place

The commission might also use powers in section 52 of 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's 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.

The commission 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 the commission's usual practice is to always correspond with the trustees under legal direction (or order), although there may be exceptional cases when it's 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 the commission requests or attend a meeting as required. The commission will ask for information only when it is relevant to the issues in the inquiry, and needed to move the inquiry forward.

It's important that the person named in the order or direction replies to the commission promptly with the information. The commission will always make clear the date by which it requires the information.

If the named person is unable to provide the information they should let the commission know as soon as possible, saying why they cannot comply, and not leave it until the deadline has passed. Non-compliance with commission 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 it may be referred to in the Statement of Results of Inquiry.

Section 48 of the Act gives the commission 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 of the Act. You can view them online at www.opsi.gov.uk - the Charities Act 2011 is listed alphabetically under the relevant year.

4.4 Temporary protective powers - what are these and when can these be used?

The short answer (legal requirement)

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

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

It's important that you tell the commission about anything during the course of the inquiry (whether it asks you or not) that may impact on whether it discharges an order or keeps it in place.

Anyone named in an order under the commission's temporary protective powers must comply with that order. Non-compliance will have [serious legal consequences](#).

In more detail

Temporary protective powers are used to protect a charity while the commission continues investigating. These 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. The commission aims to avoid disrupting legitimate charitable work as much as it can, and will, where possible, continue to work with the trustees to help them protect their charity, beneficiaries or assets.

To use these powers the commission 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 them to act to protect the property of the charity (see section 4.1). It is likely that the commission 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 would be different from when exercising a power that has a more permanent effect.

The commission is not required to inform a charity before it uses temporary protective powers. However, unless it would prejudice the inquiry or not be in the interests of the charity, it will explain to trustees the reason for using its powers when it issues the order, or as soon as possible afterwards. The commission will always tell trustees about their rights of appeal (see section 5.3).

Under section 78 the Act the commission must regularly review the use of its temporary protective powers to make sure there are still grounds for keeping them in place. Under its current policy, reviews will usually occur every two months and the commission reports their outcome to the trustees and anyone else to whom the order applies. The commission will also undertake a review whenever it receives significant new information that may affect whether it keeps 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 the commission considers 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 the commission's consent
- preventing people repaying any type of debt they have to a charity without the commission's consent
- restricting the transactions a charity can enter into or the nature or amounts of payments that can be made, without the commission's consent, in the administration of the charity

- appointing an interim manager to manage the affairs of the charity alongside or instead of the trustees
- 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

The commission's powers are set out in section 76 and 83 of the Act. You can view them online at www.opsi.gov.uk - the Charities Act 2011 is listed alphabetically under the relevant year.

4.5 Permanent protective powers - what are these and when can these be used?

The short answer (legal requirement)

Permanent protective powers are the remedial powers that enable the commission 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 the commission's permanent protective powers must comply with that order. Non-compliance with its order has [serious legal consequences](#).

In more detail

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

Before the commission uses permanent protective powers it will make sure that these are necessary and proportionate, and it will generally give the trustees an opportunity to comment on what it intends to do. In some cases the trustees have a legal right to make representations before the commission acts.

To use the following powers the commission must be satisfied that there is or has been misconduct or mismanagement in the administration of the charity and it's necessary or desirable to act to protect the property of the charity (see section 4.1).

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've been removed from that office or employment and use their membership to seek reinstatement, and
- establishing a scheme for the administration of the charity. The guidance [Changing your charity's governing document \(CC36\)](#) sets out the commission's scheme-making procedures in [part 4](#)

Two further protective powers that the commission may use can have permanent effect, enabling it 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 4.1).

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 - the Charities Act 2011 is listed alphabetically under the relevant year.

4.6 Other powers the commission might use with an inquiry - what are these and when can these be used?

The short answer (legal requirement)

The commission may also use other powers to remove or appoint trustees during an inquiry. These are used in specific circumstances where the commission doesn't need to establish misconduct or mismanagement or to act for the protection of charity property.

In more detail

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

- it 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
 - 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
- it 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 the commission considers it necessary for the proper administration of the charity
 - where the commission considers it necessary to appoint trustees alongside existing trustees, where the existing trustees cannot be found, do not act, or are outside England and Wales

The commission may also use its 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 - the Charities Act 2011 is listed alphabetically under the relevant year.

5. Your rights and legal obligations

5.1 What is the commission's commitment to you if your charity is under inquiry?

The short answer

By the nature of the work the commission does, its decisions will not always be popular but it will follow the relevant legal procedures, work to high standards and clearly explain the reasons for its actions.

The commission undertakes to meet certain standards in the way it handles correspondence and enquiries from you. These standards are available online, [Service First](#), and [complaints procedure](#) which tells you how to complain about the service you have received.

In more detail

In an inquiry the commission's 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 it uses 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 its 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 5.4 sets out what you can do if you feel unfairly treated.

5.2 Will the information I provide be kept confidential?

The short answer

During an inquiry the commission requests and collects information for its statutory purposes in connection with that inquiry.

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

The most common form of disclosure will be where it publishes a Statement of Results of Inquiry.

In more detail

The commission asks only for information that is necessary and appropriate to the concerns it is investigating. Therefore, when information is requested it expects this to be provided regardless of the sensitivity of its content. However, the commission does undertake to treat and handle that information appropriately and with care.

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

As a public authority the commission is subject to the Freedom of Information Act 2000 and so information held by it has the potential for disclosure upon request under that legislation. However, where appropriate, it may seek to withhold information received 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 the commission 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 commission must comply with its requirements.

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

- you have consented to their release
- the commission is legally obliged to disclose them
- the commission regards disclosure as necessary so that it can properly carry out its statutory functions

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

The commission 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 has a legitimate interest in being assured those duties are being complied with.

5.3 What are trustees, employees, officers, agents or other interested parties obliged by law to do or to provide to the commission?

The short answer (legal requirement)

Charity trustees, employees, officers, agents or any other interested parties the commission needs to engage with should cooperate with its inquiry. Obstruction of its 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 it uses its legal powers to request information.

When the commission issues 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.

In more detail

Where the commission uses its temporary or permanent protective powers, in some circumstances non-compliance may amount to a criminal offence or contempt of court.

In any inquiry it will have to ask for information so that it 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 the commission asks for
- make yourself available for interview at an agreed time and place
- answer the commission's questions fully and honestly

Anyone providing information to the commission (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
- wilfully alter, suppress, conceal or destroy any document that the commission may require

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

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

5.4 What can I do if I'm unhappy about the way I've been treated by the commission or disagree with decisions or actions that the commission has taken?

The short answer

If you're dissatisfied with the way the commission has treated you, you can use its complaints procedure.

If you disagree with a legal decision it has made you can ask the commission to look at the decision again through its decision review process. You may also be able to make an appeal to the Tribunal.

If the commission uses its powers during an inquiry, it will always tell you how you can challenge what it has done.

In more detail

If you are dissatisfied about the way the commission has dealt with you during an inquiry, you can complain about the standard of service you have received. Please see the information [How do I complain about the commission's standards of service?](#)

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

Alternatively, you may be able to challenge a decision in the First-tier Tribunal (Charity) if you're 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 the commission to take further action or rectify its decision. If you wish to appeal against the commission 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 need to tell the commission 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're 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.