
CC2- Charities and the Charity Commission

(Version July 2002)

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What is this publication about?

1. This publication briefly explains the role of the Charity Commission and the services we provide to charity trustees. More detailed information about different aspects of our work can be obtained from any of our four offices whose addresses appear on page 13, or you can telephone our Contact Centre on 0870 333 0123. This publication applies to charities in England and Wales only, since our functions do not extend to Scotland or Northern Ireland.

Who are “charity trustees”?

2. The people responsible under the charity’s governing document for controlling and managing the charity, regardless of what they are called, are the trustees of the charity. For example, if a charity is an unincorporated association the members of the executive or management committee or, in some cases, the members of the charity’s council, are the charity trustees. If it is a charitable company, the directors (or members of its management committee) are charity trustees. The charity trustees are personally accountable for the proper management of the charity and its assets, and are required to act prudently at all times in the best interests of the charity and its beneficiaries. Our guidance **Responsibilities of Charity Trustees (CC3)** explains further.

3. A charity’s governing document is any document which sets out the purposes of the charity and how it is to be administered. It may be a trust deed, constitution, memorandum and

What does the Charity Commission do?

articles of association, conveyance, will, Royal Charter, Scheme of the Commissioners or other formal document.

4. Our aim is to maintain public confidence in the integrity of charity. We do this by encouraging the development of better methods of administration, giving advice to trustees and correcting abuses of charities. Up to five Commissioners are appointed by the Home Secretary. They are answerable to the Courts for their legal decisions and their interpretation of charity law, and to the Home Secretary and Parliament for the effective performance of the Commission as the statutory organisation that regulates charities. There have to be at least three Commissioners, two of whom must be qualified lawyers. Our powers and functions are set out in the Charities Act 1993.

What are the limits of the Charity Commission's role?

5. We do not have power to administer charities and may not normally interfere with the trustees' exercise of their discretion. This means that we cannot change decisions properly made by the trustees. However, if we find as a result of opening an inquiry into the affairs of a charity that there has been misconduct or mismanagement, we may intervene to protect the property of the charity. We have no power to make grants to charitable organisations and cannot make donations to charities.

How can the Charity Commission help?

The public Register of Charities

6. We maintain a public Register of Charities which can be examined via our website: www.charitycommission.gov.uk or at any one of our three offices. The Register contains key particulars of all registered charities. Most

charity details are now kept on a computerised database and examination is available via a computer terminal. Copies of extracts from the Register, and of governing documents and accounts can be purchased for a small fee. Annual reports of charities are available in the same way. Our guidance **The Register of Charities: Information and services available (CC45)** gives full details.

Registration

7. All charities in England and Wales which are not specifically exempt or excepted from registration are required to register with us.

8. **Exempt charities** are charities that Parliament has specifically decided do not need to be supervised by the Charity Commission, typically because other arrangements already exist to supervise and regulate them. Examples include universities, many maintained schools, and many national museums and galleries.

9. An **excepted charity** is a charity which is excepted from the duty to register either by Regulations made by Ministers or by an Order made by the Commissioners. A charity is also excepted from registration if it has neither:

- any permanent endowment; nor
- the use or occupation of any land (including buildings); nor
- an annual income from all sources of more than £1,000.

10. No charity is required to be registered if it is a registered place of worship.

11. Before an organisation applies to be registered, its promoters or trustees should read our guidance **Registering as a Charity (CC21)**, which gives guidance about setting up a charity in England and Wales. Once you are satisfied that registration of your organisation is appropriate, you will need to read our registration information pack - **Application to Register a Charity**. We will ask for two copies of your governing document that has been incorporated, executed or adopted (as appropriate), and completion of an application form and other documents as appropriate. If we are satisfied from the information supplied that your organisation is considered charitable, we will enter the details of your organisation on to the Register of Charities. We will then send you a letter advising you of the registration number that your charity has been allocated.

12. Registration means that while the organisation remains on the Register it will be legally presumed to be a charity and must be accepted as a charity by other bodies such as the Inland Revenue. Although registration does not necessarily indicate approval of the management of the charity, it does mean that it is subject to supervision by us and that information about it, including its governing document and accounts, is open to examination by the public, both through our offices and on our Internet site.

13. To facilitate the setting up of charities and to simplify the process of registration, we have produced a set of draft model governing documents, covering the three main forms taken by charities. These are:

- **Model Memorandum and Articles of Association for a Charitable Company (GD1);**

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- **Model Declaration of Trust for a Charitable Trust (GD2); and**
 - **Model Constitution for a Charitable Unincorporated Association (GD3).**

14. These are available on our website or copies are available on request in the same way as our other publications (see page 15). There are also various standard governing documents drawn up for particular categories of charities and approved by us. There is no obligation to use these models but using one of them (where appropriate) will simplify the registration process and generally result in the charity being registered more quickly.

15. Once a charity is registered, the trustees must tell us of any change to the charity's registered details. They are required to submit their annual accounts to us and may be asked periodically to complete a return or supply additional information.

Advice

16. One of the ways in which we promote the effective use of charitable resources is by providing charity trustees with information and advice.

17. Advice is therefore a major part of our work. Our staff try to be as helpful and constructive as possible in the advice they give to trustees. Charities and would-be charities are encouraged to approach us for advice on new ideas or proposals in any matter concerning their charity.

18. In some cases, where there is doubt about whether they would, by taking a particular course of action, be acting properly as a trustee, charity trustees can ask us in writing for formal

legal advice. Provided we have been given all the relevant information, and our advice has been followed, trustees are legally protected.

Giving the trustees authority to do certain things

19. Trustees may wish to do something which would be of benefit to their charity but which they do not have the power to do under the existing trusts of the charity. If this does not involve an alteration to the purposes of their charity, and is not something which is expressly prohibited by the trusts of the charity or by an Act of Parliament (in which case a Scheme may be needed - see paragraph 22), we may be able to authorise the trustees to do what they want by Order. This is a quicker and more simple procedure than a Scheme. In particular, we can appoint new trustees (see paragraph 20), authorise the expenditure of permanent endowment (see paragraph 28), or sanction the compromise of a legal dispute in which the charity is involved.

Appointing new trustees

20. Most charity governing documents specify how new trustees should be appointed. If trustees have difficulty in applying the rules in their governing document, they should seek our advice. We may be able to help by making an Order to appoint new trustees or to discharge existing trustees. If there are no properly appointed trustees we can appoint trustees without the need for an application from the charity.

Alteration to charity trusts

21. From time to time the trusts of a charity as set out in its governing document may need to be changed because:

- they need modification to enable the charity to operate effectively;
- they are ambiguous or incomplete;
- they are out of date;
- the purposes of the charity need to be changed to meet present day circumstances; or
- modification is needed to appoint new trustees or provide new arrangements for them to carry out their business.

22. The governing document of most modern charities allows the trustees to make these changes themselves (often subject to our approval), but in some cases (particularly older charities) it does not. In these cases, unless the charity is a small one (see paragraph 24), any change has to be made by us. Changes to the purposes of a charity have in law to be as near as practicable to the original purposes, consistent with the effective use of the charity's property. If we agree to any change to the purposes of a charity, a Scheme will be made to amend the charity's governing document.

23. For further information, please read our guidance **Amending Charities' Governing Documents: Orders & Schemes (CC36)**.

[Small charities](#)

24. Charities (other than exempt charities and charitable companies) with an annual income of £5,000 or less in their last financial year, and which do not own land subject to a restriction that it must be used for the purpose of the charity, may resolve:

- to modify the purposes of the charity so as to bring them up-to-date but keeping them as similar to the original purposes of the charity as reasonably practicable; or
- to alter the trusts of the charity in other respects; or
- to transfer the charity's property to one or more other charities with similar purposes.

25. Charities (other than exempt charities and charitable companies) with an annual income of £1,000 or less in their last financial year, and having no land, may also resolve to spend their charity's capital as well as its income, thus eventually ending the charity when all the funds have been spent.

26. There are special rules about the procedures for these resolutions which are set out in our guidance **Small Charities: Transfer of Property, Alteration of Trusts, Expenditure of Capital (CC44)**.

Sales, leases and mortgages of charity land

27. We authorise land transactions for charities which are not able to comply with the procedures set out in the Charities Act 1993. Trustees who are considering such a transaction should read our guidance **Disposing of Charity Land (CC28)** which gives more detailed advice on sales, leases, mortgages and other land transactions.

Spending permanent endowment

28. Permanent endowment is property which cannot be spent for the purposes of the charity: only the income arising from it may be used. However, in certain cases, we may authorise

trustees to spend part of the permanent endowment of a charity for purposes such as repairing, improving or extending buildings belonging to the charity. The proposals for such expenditure must be financially justified and be in the interests of the charity. The trustees must agree to the money spent being replaced out of the future income of the charity. Further information can be found in our guidance **Expenditure and Replacement of Permanent Endowment (CC38)**.

Ex gratia payments by charities

29. An ex gratia payment is a payment which the trustees feel they have a strong moral obligation to make but which:

- they are not legally obliged to make;
- are not authorised by the charity's governing document to make; and
- cannot justify as being in the interests of the charity.

30. Trustees who wish to make a voluntary payment in those circumstances must apply to us for permission to do so. Further information is available in our guidance **Ex Gratia Payments by Charities (CC7)**.

Supervision of charities

31. We are responsible for supervising the charitable sector to ensure that trustees comply with the law. The Charities Act 1993 requires registered charities with either income or expenditure in the relevant financial year in excess of £10,000, to make an annual return to us and to send us their accounts and a report of their activities each year. The form and content of the annual return, and of these accounts and reports are specified in regulations.

Monitoring the charitable sector

32. We respond to complaints about individual charities whether from members of the public, charity trustees or the media. We will also monitor the returns which larger registered charities will be required to complete under the provisions of the Charities Act 1993. Monitoring is intended to identify areas where trustees may be running into difficulty and where advice or help from us would prevent trouble or put the charity back on a proper footing. On occasions, it may be necessary to investigate cases where maladministration, abuse or fraud is suspected.

Inquiries and protection of charity property

33. If we decide that there are grounds for concern about the affairs of a charity we may open an inquiry. When this happens, the trustees of the charity will be sent a leaflet which explains how the inquiry will be conducted and details their rights and obligations. The priority is to put the charity back on a proper footing. If we find that there has been misconduct or mismanagement, we have power to intervene to protect charity property. Where necessary, trustees may be removed, new ones appointed and restitution of funds sought.

34. Our guidance **Complaints about Charities (CC47)** explains how we deal with complaints about charities.

The Official Custodian for Charities

35. The Official Custodian for Charities is a member of the Commission's staff who can hold land on behalf of trustees. He has no powers of management over the property and can only act on the trustees' instructions.

36. Our guidance **The Official Custodian for Charities' Land Holding Service (CC13)** gives more information.

Publications

37. We produce a range of publications which provide information about charity law, the duties of charity trustees and the various ways in which we can help trustees. These are listed in our booklet **CC1** and include booklets, leaflets and audio-cassettes. Some are available in Braille, almost all are available in Welsh. We also produce a series of summary guidance booklets which are available in Urdu, Bengali, Gujarati, Chinese, Arabic, Somali, Kurdish and Vietnamese. Almost all of our publications are free and may be viewed at and printed from our website: www.charitycommission.gov.uk. For details of how to order them, please see page 15.

38. We aim to make our publications as useful and easy to read as possible. If you have any suggestions about how this guidance may be improved, please write to the Head of Publications at our Taunton office.

Complaints

39. We aim to provide our customers with a high standard of service. If you are not satisfied with the service we have given, or think that we have made a mistake, please contact the person you have been dealing with at our office, and they will do their best to put things right.

40. If you are still dissatisfied, you can speak to the Customer Service Manager at the office that dealt with your enquiry. You will find details of how to contact them at paragraph 42 below.

41. The Commission has set procedures for dealing with:

- complaints regarding our standards of service; and
- requests for reviews of our decisions.

*How do I contact the
Charity Commission?*

*Charity Commission
Offices*

42. You can find full details of our complaints and review procedure on our website at www.charitycommission.gov.uk - alternatively you can obtain them from any of our offices by phoning our Contact Centre on 0870 333 0123.

43. We will deal with your enquiry promptly.

44. We have four offices which serve four broad geographical areas. Information and publications can be obtained from any one of these offices but when corresponding or enquiring about a particular charity you should contact the appropriate office.

London

Harmsworth House
13-15 Bouverie Street
London EC4Y 8DP Fax: 020 7674 2300

Liverpool

2nd Floor
20 Kings Parade
Queens Dock
Liverpool L3 4DQ Fax: 0151 703 1555

Newport

8th Floor
Clarence House
Clarence Place
Newport
South Wales NP19 7AA Fax: 01633 225549

Taunton

Woodfield House
Tangier
Taunton
Somerset TA1 4BL Fax: 01823 345003

All these offices can be contacted through our Contact Centre on 0870 333 0123.

Charities in Scotland

45. Any member of the public who is concerned at any aspect of misconduct or mismanagement in the administration of Scottish charities or charities registered in England and Wales and operating in Scotland should contact:

Office of the Scottish Charity Regulator
1st Floor, Argyll House

Marketgait Tel: 01382 220 446
Dundee Fax: 01382 220 314
DD1 1QP Email: info@oscr.org.uk

Charities in Northern Ireland

46. Any member of the public wishing to obtain information on charities in Northern Ireland should contact:

Charities Branch
Department for Social Development
The Voluntary and Community Unit
Level 3, Lighthouse Building

1 Cromac Place
Gasworks Business Park
Ormeau Road Tel: 02890 829 414
Belfast Fax: 02890 829 431
BT7 2JB Email: vcu@dsdni.gov.uk

Significant changes from the previous version of this guidance

The most significant changes to this guidance compared to the previous (October 2001) version are to reflect our new policy on using our Order-making powers to make certain amendments to charities' governing documents (paragraphs 19-22), and that our model governing documents are now available on our website.

Other minor and consequential amendments have also been made to keep the text up to date.

Further Reference

For further information you may find it useful to refer to the following Charity Commission publications:

- CC3 Responsibilities of Charity Trustees
- CC3(a) Responsibilities of Charity Trustees: A Summary
- CC7 Ex Gratia Payments by Charities
- CC13 The Official Custodian for Charities' Land Holding Service
- CC21 Registering as a Charity
- CC25 Resolving Charity Disputes: Our Role
- CC28 Disposing of Charity Land
- CC33 Acquiring Land
- CC36 Amending Charities' Governing Documents: Orders and Schemes
- CC38 Expenditure and Replacement of Permanent Endowment
- CC44 Small Charities: Transfer of Property, Alteration of Trusts, Expenditure of Capital
- CC45 The Register of Charities: Information and services available
- CC47 Complaints about Charities
- CC60 The Hallmarks of an Effective Charity
- CC61 Charity Accounts: The framework

Mae'r rhan fwyaf o'n cyhoeddiadau ar gael yn Gymraeg. Am wybodaeth ar y cyhoeddiadau sydd ar gael ffoniwch ein canolfan cyswllt ar 0870 333 0123.

For a complete list of all our publications and audio-cassettes, please ask for:

- CC1 Charity Commission Publications

To obtain copies of any of the above publications you can either:

- view and print from our website:
www.charitycommission.gov.uk;
- order during office hours (08:30 - 18:00 weekdays) by telephoning us on **0870 333 0123**; or
- write to the Distribution Officer at **PO Box 392, Newton Aycliffe, DL5 6YG**.