



Draft guidance

Official warnings to charities and trustees

The Charities (Protection and Social Investment) Act 2016 ('the 2016 Act') gives the Charity Commission a new power to issue official warnings. The commission can issue an official warning when it considers there has been a breach of trust or duty or other misconduct or mismanagement in a charity. The 2016 Act adds a new section 75A to the Charities Act 2011 ('the Charities Act'), which sets out the rules governing this power.

By issuing a warning the commission aims to:

- warn that a specified breach, misconduct or mismanagement was unacceptable
- ensure that the trustees know how to and take action to rectify it where appropriate
- ensure that trustees take appropriate steps to avoid a repeat of a breach, misconduct or mismanagement in future

In most cases the sanction of an official warning should be a sufficient and proportionate outcome in itself. It's a power that many other regulators have. It provides a reasonable and proportionate way of dealing with some types of breach of duty, misconduct or mismanagement.

When the commission can issue an official warning

The commission can only issue an official warning when it considers there has been a breach of trust or duty or other misconduct or mismanagement in a charity.

'Breach of trust or duty' includes acting inconsistently with:

- the trustees' duties (including the 6 key duties in [The essential trustee](#))
- the charity's governing document
- any other legal duty that applies to the charity or its trustees

'Mismanagement' includes any act (or failure to act) that may result in:

- charitable resources being lost or misused
- a charity's reputation being harmed
- beneficiaries being put at risk

'Misconduct' includes any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful or improper.

Who the commission can issue an official warning to

The commission can issue an official warning to:

- a charity trustee or trustee for a charity, where it considers that they have committed a breach of trust or duty or other misconduct or mismanagement
- a charity, in connection with which the commission considers a breach of trust or duty or other misconduct or mismanagement has been committed

'Charity trustees' are the people responsible for governing a charity and directing how it's managed and run. 'Trustee for a charity' includes any other trustees (such as holding trustees) who hold property for a charity or for charitable purposes.

How the commission will use this power

This power will supplement the commission's existing powers to deal with breach of duty, misconduct or mismanagement. It will enable the commission to act in a targeted and more proportionate way. The commission may use this power as a sanction in its own right or as a means of securing compliance with legal or regulatory requirements. Before the 2016 Act the commission had fewer options, including:

- regulatory advice and guidance including in the form of an action plan
- litigation to recover funds lost to or repayable to the charity
- the stronger temporary or permanent protective powers it uses in more serious cases, including where swift action is needed to protect charity assets or beneficiaries; the commission must open a statutory inquiry before it can use most of these powers

Sometimes the commission needs to take stronger action than giving regulatory advice, but pursuing litigation in the courts or using some of its more invasive powers under a statutory inquiry might be disproportionate. An official warning may be a more appropriate alternative. However, the commission may also issue a warning in conjunction with other powers (including in some cases within a statutory inquiry). This could include where trustees have already failed to act on regulatory advice.

The commission is unlikely to issue an official warning for a minor technical breach or minor misconduct or mismanagement where the loss or risk to the charity, or to public trust and confidence in the charity, is minimal.

The commission will decide whether to issue an official warning based on its [assessment of the risks](#) in the circumstances. Factors the commission will take into account include:

- the level of financial loss to the charity
- the likelihood of recovering any funds lost to the charity
- the risk of harm to beneficiaries
- whether the misconduct or mismanagement was an isolated or repeated incident

- whether it was an honest mistake or involved reckless, negligent or dishonest behaviour by trustees or senior officers
- the likelihood of it happening again
- the level of risk to trust and confidence in the charity or in charities more widely

Examples of where the commission might issue warnings include:

- unauthorised benefits to trustees where the amounts involved are small and other sanctions may not be proportionate
- poor decision making (eg where the trustees should have considered advice) where the financial loss to the charity is too small for stronger sanctions to be proportionate
- repeated or persistent failure to comply with statutory accounting and reporting requirements, including non-submission and late submission of documents; the commission may automatically issue warnings to charities in these circumstances
- repeated breaches of a charity's governing document that cause governance problems, for example failing to follow the correct procedures for appointing trustees

Official warnings are different from statutory directions which the commission can only issue after it has opened a statutory inquiry. There are only specific circumstances in which the commission can direct trustees to take (or refrain from) particular action.

The commission must specify in the notice of the warning any actions it considers should be taken (or may itself take) to rectify the breach of duty, misconduct or mismanagement.

The trustees remain responsible for directing and governing the charity, complying with the law and the governing document and making decisions in the charity's best interests. The commission can't substitute its judgement for that of the trustees. It may, as part of its regulatory remit, ask the trustees to explain and justify their decisions.

Find out more: [It's your decision: charity trustees and decision making \(CC27\)](#)

Notice of official warnings and the period for representations

Before issuing a warning, the commission must first give notice of its intention to issue to the charity and each charity trustee or trustee for the charity. The commission will send notices by email where possible, following its normal practice. (If this is not possible the commission will send the notice by post to the recipient's last known address).

The notice must specify:

- the power by which it is given (stating that it's an official warning under s.75A(1) of the Charities Act)
- the grounds for the warning (including what misconduct or mismanagement has been committed)
- any action that the commission considers the charity should take, or the commission intends to take, to rectify the misconduct or mismanagement

- whether, and how, the commission intends to publish the warning
- a notice period within which the recipient(s) of the warning may make representations to the commission about the content of the proposed warning

The commission will normally give 14 days' notice of an official warning. There may be exceptional cases where the warning relates to a time specific activity and a shorter notice period is necessary. For example, the commission may need to issue a warning before a charity signs a contract or trustees take a key decision at a meeting due to take place imminently. There may also be some exceptional cases where the circumstances mean a longer notice period is appropriate.

Where it gives less than 14 days' notice, the commission will explain why it considers this necessary, and ensure it allows sufficient opportunity for representations. But the commission will not allow a delay that exposes a charity to significant harm or loss.

Making representations about an official warning

Someone who receives notice of an official warning can make representations to the commission about the content of the proposed warning, for example:

- that the grounds of the notice are factually inaccurate
- about the action the commission considers should be taken or has specified that it will take to deal with the misconduct or mismanagement

Representations will normally need to be made in writing.

Responding to representations

The commission must consider any representations it receives during the notice period. It would take this as an opportunity to look again at the circumstances and whether there is any new information that would cause it to reconsider the warning. The commission will consider whether it is still legitimate and justifiable within the facts and circumstances of the case to proceed with the warning. Any representation received within the specified time limit will be considered before issuing the warning. The commission will not normally consider any representations it receives after the specified deadline.

After considering the representations, the commission may decide, without further notice:

- to issue the warning
- to issue a modified warning
- not to proceed with issuing the warning

Once the commission has considered representations, it won't normally conduct a further review of the content of an official warning under its decision review process.

Varying or withdrawing an official warning

The commission can vary or withdraw an official warning it has issued. The commission could use this power where the circumstances have changed and the commission considers it would be in the charity's interest or the public interest to do so. The commission will not automatically withdraw a warning just because the specified misconduct or mismanagement has been remedied.

In the same way as for the original warning, the commission must give notice of the variation of a warning, and consider any further representations. It does not need to give notice before it withdraws a warning.

Publication of official warnings

The commission can publish an official warning, or the variation or withdrawal of an official warning.

The commission will apply the same principles and considerations as for [publishing reports of statutory inquiries and regulatory case reports](#). This is based on public interest considerations in the issues and outcome and whether there are lessons that other charities can learn from. The commission will usually publish an official warning unless it would:

- be detrimental to a particular individual or group of individuals, for example a risk to someone's personal safety
- contravene or prejudice requirements for confidentiality or commercial sensitivity, or risk national security
- cause severe prejudice to the charity and/or its beneficiaries
- contravene the commission's duty to use its resources in the most efficient, effective and economic way
- not be in the public interest for any other reason

If a charity or trustees receive notice of an official warning which they consider should not be published for any of these reasons, they should inform the commission of their concerns. The commission will take this into account when deciding whether to publish the warning. Potential adverse publicity or embarrassment will not be sufficient reason in itself to suppress publication.

The commission will publish official warnings on its website alongside other published [reports, decisions, alerts and statements](#). The commission will also highlight current official warnings on a charity's register entry in the same way as it usually flags open statutory inquiries and reports of completed inquiries and regulatory cases.

Published official warnings will remain on the commission's website for up to 2 years after they are first published (unless the commission withdraws the warning before then). After this time, warnings will then be archived and any flag on charities' register entries will be removed.

Possible steps after an official warning

The commission expects charities and trustees to take official warnings seriously. They should deal with a breach, misconduct or mismanagement identified in an official warning. The commission should not usually need to take further regulatory action following an official warning.

The commission may ask charities or trustees to confirm or demonstrate that they have taken appropriate action in response to a warning.

In most cases, publication of the warning should be a sufficient sanction in itself and no further regulatory action should be needed. There may be a small number of cases where the commission may use a warning within a statutory inquiry if the use of more invasive powers would not be appropriate.

The 2016 Act makes clear that failing to remedy any breach specified in an official warning may be used as evidence of misconduct or mismanagement if the commission intends to use its stronger protective powers under a statutory inquiry.

Disputed official warnings

The commission is committed to making decisions which, taking into account the facts and circumstances of the case, are:

- legally sound
- proportionate
- made with due regard to the principles of best regulatory practice

The normal mechanism for challenging an official warning is to make representations during the notice period before the warning is made. Official warnings are not appealable to the First Tier Tribunal (Charity). Any further (or concurrent) action taken by the commission, such as opening a statutory inquiry, can generally be challenged in the Tribunal.