



CHARITY COMMISSION  
FOR ENGLAND AND WALES

GUIDANCE

# Complaints about charities

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NOVEMBER 2012  
New format April 2017

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# 1. Introduction

## 1.1 This guidance

Charities are independent organisations run by trustees; they play an important part in our society and many of us are involved with them, as trustees, volunteers, through using their services or as donors. Occasionally people have cause to complain about charities and look to the Charity Commission as the regulator for charities in England and Wales to take up their complaints.

This guidance looks at when the Commission will, and when it will not, take up the concerns reported to it about charities.

## 1.2 The Charity Commission's role

The Commission is the independent regulator of charities. Its job as regulator is to ensure that charities are accountable, well run and meet their legal obligations. Its work means that the public can be confident about giving their support to charities and beneficiaries can have confidence about the services they receive.

The Commission's regulatory work with charities is done by providing guidance and other best practice information, using its legal powers to make schemes and orders for charity administration in particular cases and intervening in matters where there is serious risk of significant harm to, or abuse of, charities, their beneficiaries or assets.

Not all complaints will fall into this serious risk category and consequently the Commission will not always become involved in every problem or dispute that arises or is brought to its attention.

The Commission does not act as a complaints service looking at all complaints on behalf of complainants. It assesses and identifies if there is a regulatory issue or concern that requires its involvement. The Commission may refuse to take up an issue if it judges it not to be in the public interest to use its resources investigating or resolving it.

Section 2 looks at when the Commission will or will not become involved and what action you should take where you have a complaint about a charity.

The Commission does not regulate charities based in and operating in Scotland or Northern Ireland, where different legislation applies.

## 1.3 Scope of this guidance

This guidance is about complaints that you may have about charities; it does not include complaints that you have about the Commission's level of service or against decisions it has made. Where you have a complaint about the Commission and its service or, as someone involved in a charity, you want the Commission to review a decision on a particular issue, please see **Complain about a charity**.

## 1.4 Using this guidance

Each section has a topic heading under which the Commission has asked relevant questions that you might raise about how it deals with complaints about charities. Generally it gives a concise summary answer ('The short answer') and then gives more background ('In more detail').

A list of terms can be found at section 5 towards the end of this guidance.

## 1.5 Other sources of help and advice

The Commission's work involving complaints focuses on providing the right information for charities and getting them to use all resources at their disposal to resolve problems themselves. It encourages trustees to make use of the expertise of relevant organisations to help them run their charities as effectively as possible. They can seek help on issues raised by complainants from organisations other than the Commission.

## 1.6 'Must' and 'should': what the Commission means

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 this guidance will help you to run your charity effectively, avoid difficulties and comply with your **legal trustee duties**. Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity's circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow good practice in this guidance.

In some cases you will be unable to comply with your legal duties if you don't follow the good practice. For example:

| Your legal duty                             | It's vital that you   |
|---|---|
| Act in your charity's best interests        | Deal with conflicts of interest   |
| Manage your charity's resources responsibly | Implement appropriate financial controls<br>Manage risks  |
| Act with reasonable care and skill          | Take appropriate advice when you 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.

## 2. Complaints: what you need to do and what the Commission needs to know about

### 2.1 What do I do if I have a complaint about a charity?

#### The short answer

In most cases you should speak to the charity about your concern before you make any approach to the Commission. You may want to raise an issue that the Commission would not wish to take up so it will be right for you to approach the trustees direct.

Some concerns may be very serious and it might not be appropriate to speak to the trustees first, for instance, criminal activity in a charity should be reported immediately to the police and to the Commission without informing the charity first.

You do not need to tell the Commission about issues that you have discussed with a charity and about which you have had a satisfactory response.

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#### In more detail

The trustees of a charity are responsible for the running of their charity and it is fair and appropriate that you raise your concern with them first. It gives the trustees the opportunity to explain misunderstandings or to put things right if something has gone wrong.

Issues that should be taken up with the trustees include:

- policies for running the charity or decisions taken by the trustees that are within their powers and within charity law
- instances of poor service from a charity
- employment issues, for example, unfair dismissal
- contractual disputes
- internal charity disputes where there are properly appointed trustees (see the guidance **Conflicts in a charity: statement of approach**)

Therefore, in practical terms the Commission will not take forward complaints:

- where you disagree with decisions made by the trustees and those decisions have been properly made within the law and the provisions of the charity's governing document
- to resolve internal disagreements over a charity's policy or strategy because those involved are responsible for settling the issues themselves
- about incidents of poor service from a charity where there is no general risk to its services, its clients or its resources
- where the complaint arises from a charity dispute and there are properly appointed trustees whose responsibility it is to deal with the issues reported
- where the issue reported does not pose a serious risk to the charity, its assets or beneficiaries
- where the issue is being dealt with by, or is the responsibility of, another statutory or supervisory body

- where there is a disagreement about the terms or delivery of a contract
- where legal proceedings are being taken by another party against a charity, including those for the collection of debts (except in a few very rare cases where the Attorney General has specifically asked the Commission to do so)

If your complaint is about a dispute within a charity please use the guidance **Conflicts in a charity: statement of approach**.

The Commission's involvement in looking at complaints is limited to issues that pose a serious risk of significant harm to a charity's beneficiaries, assets, services or reputation. Section 2.2 explains what serious or significant issues are and what the Commission does about them.

## 2.2 What are serious issues and what will the Commission do about them?

### The short answer

The Commission has identified the types of issues it considers as serious and that may pose a significant risk to a charity's beneficiaries, assets, services or reputation in the guidance **Risk framework: Charity Commission**. The framework also sets out any factors the Commission needs to consider when assessing how serious the risks are and whether it is appropriate for action to be taken.

Depending on circumstances the Commission may decide not to take further action. If it does not take action it will tell you why and keep a record of your report.

The Commission will inform you if it takes up a serious concern but it will not give you details of how it handles its casework. It will notify you of the outcome when it has finished its case. Sometimes it can take a while before you hear from the Commission.

### In more detail

The issues the Commission considers to be serious or significant and unacceptable for any charity, its trustees, employees or agents to be engaged in are set out in the following list. The issues are not listed in any order of priority:

- significant financial loss to the charity
- serious harm to beneficiaries and, in particular, vulnerable beneficiaries
- misuse of a charity for terrorist purposes (including links with or support for terrorism, financial or otherwise, connections to proscribed organisations, misuse of a charity to foster 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
- 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 abuses that otherwise impact significantly on public trust and confidence in the charity and charities generally

Where there are allegations of criminal activity or concerns about taxation those issues will be investigated by the appropriate authorities, ie the police or HMRC. The Commission's role in such matters is restricted to considering whether there has been misconduct or mismanagement in the administration of the charity in allowing illegal activity or taxation irregularities to occur. There may also be a need for it to act to protect charity property. Section 2.4 looks at reporting criminal matters to the Commission and to other authorities such as the police.

It is important to provide evidence to support your concern; this is explained in section 2.3. If there is no evidence to support a complaint or allegation the Commission may not take any further action.

The Commission will not act on unsubstantiated allegations, rumour or opinion - to do this and, as a result, disrupt the charity's work would be unfair to that charity, its activities and its users and beneficiaries.

## 2.3 How do I report an issue to the Commission?

### The short answer

The Commission has a specific **online form** for reporting serious issues. The form allows it to consider the issues more quickly than by other means. Even where you phone or write to report concerns the Commission will ask you to fill in the online form. When completing the form, make sure you have all the information you need to hand so it can be sent to the Commission all together.

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### In more detail

You should provide the Commission with information to help it to assess your complaint effectively and decide if there is an issue to take up. When using the form to report issues please tell the Commission:

- the name of the charity and its registration number if known
- a summary of the issue, setting out the facts clearly, this might include:
  - who is involved and their position in the charity
  - whether the person or people involved is/are still involved with the charity
  - the effect that this matter has had on the charity and/or its beneficiaries
  - action taken by the charity because of what has happened
  - whether there has been any publicity or legal action surrounding the issue
  - your connection (if any) to the charity
  - any other evidence which supports your concerns

Also, please attach:

- copies of documentary evidence in support of your concerns
- any documentary evidence showing your attempts to get the charity to address your concerns
- copies of any previous correspondence you have with any other public body about these matters

The Commission takes all reports of concerns about charities seriously and you should be aware that it is a criminal offence knowingly or recklessly to supply it with information which is false or misleading.

Only tell the Commission about the matter once. It will not reconsider complaints that it has already dealt with unless circumstances have changed materially or significant new information has become available.

## 2.4 Do I need to report serious issues to anyone else?

### The short answer

Yes, in some circumstances. Where you suspect there is fraud, other crime or you believe there is terrorist activity in connection with the charity.

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### In more detail

As well as informing the Commission you should:

- inform the police if you believe there is criminal activity within a charity; if you have already informed the police before notifying the Commission please provide it with the crime reference number, the police officer and police station dealing with your complaint
- report suspected fraud connected to a charity using the **Action Fraud online reporting service** or call 0300 123 2040
- if you have information about possible terrorist activity connected to a charity it should be reported to the Anti-terrorist Hotline on 0800 789 321

## 2.5 Will a charity be told who is making a complaint?

### The short answer

The Commission respects confidences as far as it is able and gives proper consideration to your rights under data protection, freedom of information and human rights legislation. However, there may be certain instances where your identity will be disclosed or may become apparent.

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### In more detail

When reporting your concern, please say whether:

- the Commission may tell the charity that you are the complainant

and

- put your complaint and any evidence supplied by you directly to the charity

It is not normally Commission policy to send a copy of the complaints form (or any other papers which may identify you) to the charity unless you have given your consent. However, the charity is entitled to know the nature of allegations being made against it. Also, any person has a right to be told the nature of the evidence upon which a complaint about them is based. While it will take every step to try to ensure that your identity is not revealed without your consent, it may be the nature of the allegations or evidence it holds that indicates their source.

The Commission may also be obliged to reveal information under freedom of information legislation unless an exemption applies and it is right that it is exercised.

In cases where the Commission uses its statutory powers to undertake an inquiry it usually publishes a statement of results of inquiry on its conclusion. Information from inquiries may also be used in court proceedings. Documents and information gathered for the purposes of an inquiry will be treated in confidence, until the Commission publishes the statement of results of inquiry (although even then some information will continue to be exempt from disclosure) or unless they are required under a Court Order during legal proceedings.

Some whistleblowers have statutory rights and protections under the Public Interest Disclosure Act 1998 and those who audit or independently examine charities' accounts have rights and obligations of disclosure to the Commission in certain circumstances. These rights and obligations are explained in Section 3 and 4.

## 3. Making a complaint under the Public Interest Disclosure Act 1998 (PIDA) also known as 'whistleblowing'

### 3.1 What does this Act do?

#### The short answer

PIDA protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they report wrongdoing.

It protects most workers in the public, private and voluntary sectors, but does not apply to genuinely self-employed professionals (other than in the NHS), voluntary workers (including charity trustees and charity volunteers), police officers or the intelligence services. Someone who is employed by a charity would be able to use the provisions of PIDA.

This section provides an overview of the disclosure procedures from the Act where they might apply to charity employees. If you want to make a disclosure you may wish to seek independent legal advice.

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#### In more detail

PIDA protects workers in a number of ways, for example:

- if an employee is dismissed because he or she has made a protected disclosure (see section 3.4) that will be treated as unfair dismissal
- workers are given a right not to be subjected to any 'detriment' by their employers on the ground that they have made a protected disclosure
- workers are able to present a complaint to an employment tribunal if they suffer detriment as a result of making a protected disclosure

PIDA aims to increase the accountability of organisations in the public, private and voluntary sectors through the introduction of protection for workers who blow the whistle on wrongdoing within or concerning an organisation, Charities (as part of the voluntary sector) are within the jurisdiction of the Act.

## 3.2 What does this have to do with the Commission?

### The short answer

In the Commission's role as regulator for charities in England and Wales it works to ensure that charity trustees comply with their legal obligations in controlling and managing the administration of their charities. The Commission is a 'prescribed person' under PIDA allowing it to accept disclosures from charity workers. Those making disclosures to the Commission should take care to make them in the way specified by PIDA.

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### In more detail

Workers who are aware of wrongdoing within a charity or a non-charitable body (where this involves the administration of charities or charitable funds) can disclose information to the Commission about the administration of charities and funds given, or held, for charitable purposes. They must raise their concerns in accordance with the PIDA provisions.

For a disclosure to be protected by PIDA (see section 3.4) it must relate to matters that 'qualify' for protection under that Act (see section 3.3).

Disclosures made to the Commission about the charity will be considered as part of its complaints procedure.

## 3.3 What is a 'qualifying' disclosure?

### The short answer

A qualifying disclosure is one which provides information on specific matters outlined by PIDA, which the person disclosing them reasonably believes to be true.

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### In more detail

The disclosure must relate to:

- a criminal offence
- the breach of a legal obligation
- a miscarriage of justice
- a danger to the health and safety of any individual
- damage to the environment
- deliberate concealment of information tending to show any of the above 5 matters

In order to make a qualifying disclosure the worker must have a reasonable belief that the information being provided tends to show that one or more of the events bulleted above is happening now, has happened in the past or is likely to happen in the future.

Certain conditions must apply to ensure the disclosure is 'protected'. These are set out in the next section.

### 3.4 What is a 'protected' disclosure?

#### The short answer

This is a qualifying disclosure made by the worker, subject to particular conditions, to ensure that it is protected by PIDA.

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#### In more detail

A qualifying disclosure to the Commission will be a 'protected' disclosure provided the worker:

- makes the disclosure in good faith
- reasonably believes that the relevant failure relates to the proper administration of charities and funds given, or held, for charitable purposes

and

- reasonably believes that the information disclosed, and any allegation contained in it, are substantially true

Workers can report directly to the Commission when they have concerns that fall within the above descriptions. It is important to note that where a worker is victimised for making a disclosure to the Commission, any claim they may have under the PIDA is against his or her employer and not against the Commission.

### 3.5 Is there any other information about PIDA?

#### The short answer

Yes, information is available from the government services website GOV.UK and also from the charity Public Concern at Work.

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#### In more detail

Public Concern at Work provides free confidential advice to workers who have concerns about wrong-doing in the workplace. They have a whistleblowing advice line on 020 7404 6609. Their **online guidance for PIDA** can be found on their website.

The GOV.UK website provides information about employment and problems at work, including how to 'blow the whistle' on malpractice or wrongdoing. See the guidance on **protection for whistleblowers**.

### 3.6 If I want to make a PIDA report to the Commission about a charity, who do I contact?

You should use the **online form** and make it clear that your complaint is being made under the PIDA whistleblowing regulations.

## 4. Reports from auditors and independent examiners

### 4.1 Why is this included in this guidance?

The short answer (legal requirement)

Auditors and independent examiners of charity accounts of non-company and company charities have legal duties to report certain issues to the Commission.

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#### In more detail

The Charities Act 2011 imposes a statutory duty on independent examiners or auditors of non-company and company charities to tell the Commission about any matters that they identify which are of 'material significance' to the exercise of its powers under:

- section 46 of the Charities Act 2011 to institute inquiries

or

- section 76 of the Charities Act 2011 to act for the protection of charities

### 4.2 What are matters of material significance?

The short answer

These are likely to be matters concerned with serious criminal or unlawful activity or serious incidents that could affect a charity, its assets, beneficiaries or reputation.

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#### In more detail

The auditor's or independent examiner's duty to report matters of material significance will arise primarily where they identify:

- suspected or actual non-compliance with the law and regulations

or

- significant breaches of trust or duties placed upon charity trustees under charity law

Matters considered to be of material significance by the Commission include those:

- suggesting dishonesty or fraud involving a significant loss of, or major risk to, charitable funds or assets
- showing failure of internal controls, including failure in charity governance, that resulted, or may result, in a significant loss or misappropriation of charitable funds, or charitable funds being, or having been, put at major risk
- leading to the knowledge or suspicion that the charity or charitable funds have been used for money laundering or such funds are the proceeds of serious organised crime or that the charity is a conduit for criminal activity
- leading to the belief or suspicion that the charity, its trustees, employees or assets have been involved in, or used to support, terrorism or a proscribed organisation within or outside the UK

- with evidence suggesting that the way in which the charity carries out its work relating to the care and welfare of beneficiaries, those beneficiaries have been or were put at significant risk of abuse or mistreatment
- where there is significant or recurring breach or breaches of legislative requirements or of the charity's trusts
- where there is a deliberate or significant breach of an order or direction made by a charity regulator under statutory powers including suspending a charity trustee, prohibiting a particular transaction or activity or granting consent on particular terms that involve significant charitable assets or liabilities
- where an auditor's statement to the trustees, on the auditor ceasing to hold office, contains issues that should be reported to the trustees

### 4.3 Is other guidance available for auditors or examiners?

#### The short answer

Yes, guidance is available for both auditors and examiners to help them decide whether they should report something to the Commission under their legal obligation to do so or in the public interest.

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#### In more detail

Auditors should perform their work in accordance with 'International Standards' on 'Auditing' (ISAs) as adopted by the Financial Reporting Council (FRC) and with regard to the Practice Note 11: The Audit of Charities. Specific guidance is provided within this 'Practice Note' on the factors to be considered in applying the reporting duty or in making a report in the public interest. This guidance has been prepared in consultation with the Commission. Copies can be obtained via the **FRC website**.

Independent examiners should refer to the directions and guidance notes contained in the guidance **Independent Examination of Charity Accounts: Examiners' Guide (CC32)**.

## 5. List of technical terms used in this guidance

**Charity trustees:** are the people who serve on the governing body of the charity and are responsible for the general control and management of the administration of a charity. They can be known by other titles such as trustees, directors, board members, governors or committee members.

**Dispute:** in the context of this guidance a dispute is a disagreement within a charity that results in differing opinions, a struggle for control and even a breakdown in the effective day-to-day management of the charity.

**Governing document:** is a legal document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, scheme of the Commission or other formal document.

**Independent examination:** is a form of external scrutiny of a charity's accounts, less in depth than a formal financial audit.

**Inquiry:** when used in the context of this guidance this means a formal inquiry opened under section 46 of the Charities Act 2011. This enables the Commission to look into the conduct of a charity's affairs and, if necessary, to use its powers to protect charity property.

**Proscribed organisation:** are organisations named in law as being involved in or linked to terrorist activity. It is a criminal offence to be a member of, or invite support for, a proscribed organisation.