



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

## **GUIDANCE**

# Statutory inquiries into charities: guidance for charities

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# Contents

1. Introduction
2. This guidance at a glance
3. The Commission as regulator
4. The form an inquiry takes and the legal powers involved
5. Your rights and legal obligations

## 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 its Regulatory and [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 of regulatory concern in greater detail. It will investigate and establish the facts of the case so that the Commission can determine the extent of any misconduct or mismanagement; the extent of the risk to the charity, its work, property, or beneficiaries; and decide what action is needed to resolve the concerns.

An inquiry should not in itself be seen as a determination by the regulator of wrong-doing in a charity. The exception to this is those cases where wrong-doing is clear at the point of opening the inquiry and, for example, the Commission has exercised temporary and protective or other remedial powers at the same time, where it must be satisfied that it has sufficient evidence to act.

If the allegations made or causes for concern 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 upholding 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 you and your co-trustees understand the inquiry process and your rights and legal obligations in relation to it. The guidance may also be useful for a charity's advisers, employees, officers or agents, as 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 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 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 you and your co-trustees, but you may still seek your own independent professional advice.

## 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 the Commission's guidance will help you to run your charity effectively, avoid difficulties and comply with your legal duties. Charities vary in terms of their size and activities. Consider and decide how best to apply the Commission's 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 some cases you will be unable to comply with your legal duties if you don't follow the good practice. For example:

<b>Your legal duty</b>	<b>It's vital that you</b>
Act in your charity's best interests	Deal with conflicts of interest
Manage your charity's resources responsibly	Implement appropriate financial controls 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.

## 1.7 Technical terms used in the guidance

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

**Statutory inquiry:** the Charities Act 2011 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 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 and the changes made to it as a result of the Charities (Protection and Social Investment) Act 2016.

**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. Failure to comply in full and within the deadline with any direction of the Commission can be taken as evidence of misconduct or mismanagement in the administration of the charity. There are also serious legal consequences which might be enforced. Failure to comply can also result in the Commission taking further regulatory action and may be referred to in the statement of results of inquiry.

**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. Failure to

comply in full and within the deadline with any order of the Commission can be taken as evidence of misconduct or mismanagement in the administration of the charity. There are also serious legal consequences which might be enforced. Failure to comply can also result in the Commission taking further regulatory action and may be referred to in the statement of results of inquiry.

**Proscribed organisation:** this is an organisation which the Home Secretary believes to be concerned in terrorism as defined by the [Terrorism Act 2000](#). It's 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's 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's 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 section 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're 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 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 Commission's overall approach to regulating charities and how it assesses and manages risk is set out in its Regulatory and [Risk framework](#).

#### **In more detail**

The Commission has been given a statutory role to regulate charities and legal powers to do so. These powers are set out in the 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
- 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, you and your co-trustees must take responsibility for putting things right. In serious cases of abuse the Commission may investigate and open an inquiry. When a charity's property, reputation, beneficiaries or work have been harmed, or are at serious risk of abuse, the Commission's investigations work aims to prevent further abuse and put charities back on a proper footing for the future. This will involve opening a statutory inquiry to identify and investigate any misconduct or mismanagement in the administration of charities (see section 4.1) and resolving the problems that are found. It may also involve using the Commission's remedial and protective powers when appropriate and proportionate to do so. The Commission may also then monitor progress made 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 concerns and their surrounding circumstances are serious and where there are indications of misconduct or mismanagement
- there is a need to use regulatory powers
- there is a need to provide public assurance and otherwise safeguard public trust and confidence in the charity or charities more generally

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 property (including, reputation), beneficiaries or work
- decide what, if any, action needs to be taken to resolve the concerns and ensure this takes place

## In more detail

Inquiries deal with serious regulatory concerns. The Commission's approach to opening an inquiry and the factors which are considered when deciding to open an inquiry are set out in its Operational Guidance for staff [OG117 B1](#).

Before opening an inquiry, the Commission will have assessed the seriousness of the regulatory issues against its Regulatory and Risk framework and the severity of the circumstances connected with each of these issues.

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.

An inquiry will usually be opened because:

- there are indications of misconduct or mismanagement
- there is:
  - a significant breach of trust or non-compliance with charity law
  - significant risk to charity property, beneficiaries or the charity's work
  - a need to use the Commission's regulatory powers which are only available if an inquiry has been opened
  - a need to collect evidence
- an inquiry is a more effective way of doing so or there is a need to provide public assurance or otherwise safeguard public trust and confidence

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, if any, may be needed. It may be decided that the concerns cannot be substantiated, or are unfounded 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 and prevent it happening again in the future.

Each case is looked at on its own facts and merits - the decision is likely to be affected by the capacity, conduct and response of the trustees to the issues. Even if the trustees are co-operating with the Commission, an inquiry may still be opened. Considerations include:

- the extent of any evidence to suggest the trustees have been careless or reckless
- whether there has been deliberate or wilful wrong doing
- whether the trustees may have only partially responded
- the level of cooperation or action taken is not as expected
- the charity's response may not have provided the necessary reassurance or satisfied the Commission

These modifying factors and how the Commission considers the conduct and response of the trustees are set out in the [Risk framework](#).

The Commission's remit does not extend to investigating criminal or taxation matters. Nor is it a prosecuting authority. These issues will be reported to the police, HMRC or other appropriate authorities. The Commission's regulatory concern is to ensure that trustees discharge their legal duties 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 a charity's operations are being examined by other regulators, the Commission will consider whether these indicate misconduct or mismanagement and if it needs to protect charity property. This may mean

that the Commission will decide to open 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 does not have to let trustees know about its concerns or give them a chance to respond or take action, before opening an inquiry. However, where opening an inquiry is an escalation of the Commission's engagement with the charity, the trustees should already know about the regulatory concerns and may have provided their initial response.

Once an inquiry has been opened, the Commission will contact the trustees to inform them and to give them an opportunity to respond and discuss the issues. The people contacted are those listed on the register of charities - the charity is responsible for keeping these contact details up to date, so it's important to let the Commission know immediately if 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. Access to charity records will normally be required. The Commission may also use regulatory powers to protect charity beneficiaries and/or assets. Once an inquiry is complete, unless exceptional circumstances apply, the Commission will report publicly on its findings by issuing a statement of results of inquiry, which will be published on its website.

#### **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, if any, of misconduct or mismanagement in the administration of the charity; 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 any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk. An inquiry will usually focus on whether charity trustees have carried out their duties and responsibilities 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, you may wish to consider seeking your own legal or professional advice and can do so at any time during the inquiry.

It's important that you and the charity's advisers cooperate with the Commission throughout the inquiry, by answering its queries honestly, in full and within the timescales specified.

Information requests will usually be one or more of the following:



- asking for your responses to the allegations or complaints made to the Commission
- questions requiring factual answers to help the Commission better understand the issues and what has happened
- requiring an explanation and evidence from you and your co-trustees to show you've complied with your policies, procedures or legal duties as trustees - this may include requests to provide specific charity documents, eg receipts, meeting minutes, annual accounts, or copies of charity policies

Where it's in doubt, it's for you as trustees to show that you've complied with your duties, rather than for the Commission to prove that you have not. So, if you fail to co-operate, don't provide the information requested, or provide limited, partial or inadequate responses, then the Commission may have to conclude that you have not discharged your legal duties and/or use it as evidence of your collective failure, incapacity or unwillingness to do so.

Failure to comply in full and within the deadline with any Commission direction or order can be taken as evidence of misconduct or mismanagement in the administration of the charity. Failure to comply can also result in the Commission taking further regulatory action against the charity and/or you and your co-trustees. Failure to comply with directions or orders also has serious legal consequences and you could be in contempt of court. It's also a criminal offence under section 60 of the act, for anyone to knowingly or recklessly provide false or misleading information to the Commission.

It's important to tell the Commission at this stage if your first language is not English and if interpreters are required for meetings, or, if for any other reasons you or your co-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, allocate a lead investigator and contact the trustees of the charity concerned to explain why an inquiry has been opened, stating 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 whether any of the causes for concern are: substantiated and to what extent; not supported 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. However 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 address 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 when

This 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 3 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 this 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
- make regulation less effective and damage public confidence in charities
- mean that public interest in not publishing outweighs the public interest in publishing

Trusteeship is a public office, a position of trust carrying responsibilities and legal 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. The Commission aims to conclude an inquiry as soon as possible, but much depends on the level of cooperation and timeliness of information provided to the Commission.

## **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
- the emergence of new issues in the late stages of the Commission's 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

Your full cooperation 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 9 months, and the final stage, which is to publish the statement of results of inquiry, within 3 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 for information only when it's relevant to its functions, duties and objectives 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 of the act allows the Commission, among other things, to direct a person within a specific timeframe 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 may 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 correspond with you and your co-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's relevant to its functions, duties, objectives 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 in as much detail as possible. 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 full and within the deadline with any order or direction of the Commission can be taken as evidence of misconduct or mismanagement in the administration of the charity. This can also be used as grounds for taking further regulatory action and 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](http://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 2 years.

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 you and your co-trustees to help you protect your charity, beneficiaries or assets.

In order 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's necessary or

desirable for it to act to protect the property of the charity (see section 4.1). When these conditions are met and the Commission is also satisfied that a particular person:

- has been responsible for the misconduct or mismanagement
- knew about it and failed to take any reasonable steps to oppose it or
- contributed to it or facilitated it

the Commission can take into account that person's conduct in relation to any other charity or their conduct more generally if it appears to be damaging to public trust and confidence in charities.

The Commission is most likely to use these powers where it needs to act in a short timescale or for a limited time only; the amount and strength of evidence being relied upon would therefore be different from the exercise of a permanent power.

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 you about your rights of appeal (see section 5.3).

Under section 78 of the act, the Commission must regularly review the use of its temporary protective powers to ensure grounds remain for keeping them in place. Under its current policy, reviews will usually occur every 6 months and the Commission will report the outcome to you, your co-trustees and anyone else to whom the order applies. The Commission will also undertake a review if it receives 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 or disqualifying 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 (sometimes referred to as a freezing order as it can be used to freeze a bank account)
- 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
- 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
- directing a person not to take specified action that would be misconduct or mismanagement
- issue a warning to a trustee or charity for a breach of trust or duty or other misconduct or mismanagement

The Commission's temporary protective powers are set out in section 76, 83, and part 6 of the act. You can view them online at [www.opsi.gov.uk](http://www.opsi.gov.uk) - the Charities Act 2011 and the Charities (Protection and Social Investment) Act 2016 are 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 or actions to problems identified by an inquiry. These powers and the limits for their use are set out in the following section.

Anyone named in an order under the Commission's permanent protective powers must comply with that order. Non-compliance with the order can be taken as evidence of misconduct or mismanagement and 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 appropriate and proportionate, and it will generally give you and your co-trustees an opportunity to comment on what it intends to do. In some cases you have a legal right to make representations before the Commission acts.

In order 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 misconduct or mismanagement; or knew about it and failed to take any reasonable steps to oppose it; or who has contributed to or facilitated it
- 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
- 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 section 4

Other 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 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's necessary or desirable to protect the property of the charity (see section 4.1).

Additionally, in certain limited circumstances the Commission can direct a charity to be wound up.

These powers are set out in sections 11, 76, 83, 84 and section 7 of the act. You can view them online at [www.opsi.gov.uk](http://www.opsi.gov.uk) - the Charities Act 2011 and Charities (Protection and Social Investment) Act 2016 are listed alphabetically under the relevant year.

## **4.6 Other powers the Commission might use within an inquiry - what are these and when can they 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 5 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
- an individual is disqualified from being a trustee
- 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 additional trustees alongside existing ones, where the existing trustees cannot be found, do not act, or are outside England and Wales

The Commission may also use its powers to:

- direct a person in possession or control of charity property to apply it in a specific way where he or she is unwilling or unable to apply it for its proper purpose
- disqualify an individual from acting as a trustee where specified conditions are met; this would have the impact of also disqualifying that person from a senior management position in charities where applicable

These powers are set out in sections 80, 85 and chapter 4 sections 5 and 10 of the act. You can view them online at [www.opsi.gov.uk](http://www.opsi.gov.uk) - the Charities Act 2011 and Charities (Protection and Social Investment) Act 2016 are 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 explain clearly the reasons for its actions.

#### 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 to a 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
- 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 named in a statement of results of inquiry, to comment on its factual accuracy before it's published
- 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? How do we use personal data?

#### The short answer

Information requested and collected for the purposes of an inquiry will primarily be used in connection with the inquiry although it may also be used to fulfil the Commission's wider statutory functions.

The Commission will hold all information securely, but in certain circumstances the Commission may share, disclose or publish sensitive or confidential information, most commonly where it publishes a statement of results of inquiry.

You can find more information about how the Commission uses data, when we further disclose information, and how we fulfil our obligations under the General Data Protection Regulation and the Data Protection Act 2018 in our [Privacy Notice](#)



## In more detail

In order to carry out an inquiry, the Commission will collect and process sensitive and confidential information including personal data and special categories of personal data. Information requested and collected for the purposes of an inquiry will primarily be used in connection with the inquiry although it may also be used to fulfil the Commission's wider statutory functions.

The Commission asks only for information that is necessary and appropriate to the concerns it's investigating. Therefore, when information is requested it expects this to be provided regardless of the sensitivity of its content.

The Commission will always treat and handle information securely and in accordance with the law. However, the Commission cannot provide an absolute guarantee not to share, disclose or publish confidential or sensitive information

By way of example, the Commission may have to use information provided to further investigate its regulatory concerns, for example by showing a potential witness a document, or informing a charity of concerns raised. The Commission may also need to disclose information as a result of a court order or legal requirement, or where it needs to act in the public interest 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.

Furthermore, as a public authority, the Commission is subject to the Freedom of Information Act 2000, the Environmental Information Regulations and similar statutory and common law obligations. This means that information held by the Commission may need to be disclosed to members of the public on request.

Where appropriate, the Commission may seek to withhold information received during a statutory inquiry on the basis it is exempt from disclosure. However, you must remember that the position of trustee is a matter of public record and carries responsibilities and legal duties, and that the public has a legitimate interest in being assured those duties are being complied with. If the information you provide to the Commission is particularly sensitive or confidential, or if you feel a particular exemption applies, you should tell the Commission and explain why this is so.

You can find more information about how the Commission uses data, when we further disclose information, and how we fulfil our obligations under the General Data Protection Regulation and the Data Protection Act 2018 in our [Privacy Notice](#).

## 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 should cooperate with the Commission's inquiry as requested. 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. It's your responsibility to show that you've complied with the Commission's requests: rather than for the Commission to prove you have not. So, if partial, inadequate or no responses at all are received, the Commission may have to conclude that you haven't discharged your legal duties and/or use it as evidence of your collective failure, incapacity or unwillingness to do so. 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, you or anyone else named within it, must carry out its requirements. Failure to do so can be taken as evidence of misconduct or mismanagement in the administration of a charity and can result in the Commission taking further regulatory action. Failure to comply can also have serious legal consequences, as set out in the following section.

### **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 the course of any inquiry the Commission will have to ask for information so that it can assess allegations or concerns, or seek clarification. When requested by order or direction, you must:

- provide any documents or information the Commission asks for within the deadline
- make yourself available for interview at an agreed time and place
- answer the Commission's questions fully, honestly and within the deadline

Anyone providing information to the Commission (not only as a response to an order or direction) should be aware that it is an offence under the s60 of 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 2 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 these.

### **In more detail**

If you're 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 our [complaints procedure](#). If you consider decisions the Commission has made to use powers under the act, including the decision to open an inquiry, to be wrong, you can ask it to review them by using our [online form](#) or sending an email to the Commission's charity tribunal team at [Litigationandreviewteam@charitycommission.gsi.gov.uk](mailto:Litigationandreviewteam@charitycommission.gsi.gov.uk)

If the Commission agrees to conduct a review, someone who did not make the original decision will look at your application and any additional information and evidence you send in and consider whether the original decision should be maintained or changed. We ask that any application for a

decision review be made as soon as possible, and in any event within 3 months of the date on which the notice of our decision was sent to you.

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 decisions made by the Commission and to overturn them or adjust them

To start a case in the Tribunal, a 'Notice of Appeal' must be sent to the Tribunal within 42 days of the date on which the notice of our decision was sent to you, which will normally be the date of this document. Weekends and bank holidays are included in the 42 days. If you miss this deadline, you will need to ask the Tribunal for an extension of time and this may not be granted.

If you wish to challenge our decision in the Tribunal, you may find it helpful to visit the Tribunal's [website](#) for more information about time limits, the form of the Notice of Appeal and how to start a case.

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