



**COMMUNITY
INTEREST
COMPANIES**

**Office of the Regulator of
Community Interest Companies**

**How to appeal against decisions
made by the Regulator**

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Contents

How to appeal against a decision made by the Regulator	3
Introduction	3
What grounds are there for making an appeal?	3
Which decisions can be appealed?	3
What is the process for appealing a decision made by the Regulator?.....	6
Is there a time limit for beginning the Appeal Process?	6
What detail should be in my notice of appeal?	6
What is the Role of the Regulator when an appeal is lodged?.....	7
What is the role of the Appeal Officer?	7
Where should I send my appeal?	8

How to appeal against a decision made by the Regulator

Introduction

The legislation relating to community interest companies provides for a process of statutory appeals against certain types of decision, which the Regulator may take.

What grounds are there for making an appeal?

The appeal framework is set out in the Companies (Audit, Investigation and Community Enterprise) Act 2004 (the Act) and the Community Interest Company Regulations 2005 (the Regulations). Section 28 of the Act provides for the appointment of the Appeal Officer for Community Interest Companies (“the Appeal Officer”) and describes the Appeal Officer’s jurisdiction and Part 11 of the Regulations sets out the procedural framework for appeals to the Appeal Officer.

Appeals may be brought on the grounds that in making a decision the Regulator has made a material error of law or fact. Where an appeal is made to the Appeal Officer, the Appeal Officer must dismiss it, allow it, or remit the case to the Regulator for reconsideration in accordance with any rulings of law or findings of fact which the Appeal Officer has made.

The Appeal Officer is a statutory office holder appointed by the Secretary of State for Business Innovation and Skills. The Appeal Officer is independent both from the Government and from the Regulator.

Which decisions can be appealed?

The Appeal Officer only has jurisdiction in relation to those decisions in respect of which legislation specifically states that there is a right of appeal to the Appeal Officer.

The Table below sets out an exhaustive list of the types of decision against which an appeal can currently be made to the Appeal Officer. All the decisions listed below are decisions, which may or must be taken by the Regulator.

Type of decision	Who may appeal?	Source ¹
Decision that a company is not eligible to be formed as a CIC	Any subscriber to the company's memorandum	Act, s. 36(10)
Decision that a company is not eligible to become a CIC	The company	Act, s. 38A(5)
Order appointing a director of a CIC (but not an order removing a director of a CIC, which is appealable to the High Court / Court of Session)	The company	Act, s. 45(13)
Order appointing a manager in respect of a CIC's property and affairs	The company	Act, s. 47(14)
Various orders relating to property held by, on trust for, or on behalf of a CIC	The company and any person to whom the order is directed	Act, s. 48(12)
Orders restricting the transactions which a CIC can enter into / the nature or amount of payments it can make	The company	Act, s. 48(13)

¹ "Act" refers to the Companies (Audit, Investigations and Community Enterprise) Act 2004; "Regs" refer to the Community Interest Company Regulations 2005.

Type of decision	Who may appeal?	Source ¹
Order transferring specified shares in a CIC to specified persons	The company and any person from whom shares are transferred	Act, s. 49(5)
Order extinguishing specified members' interests in a CIC or appointing new members in place of such members	The company and any person whose interest is extinguished	Act, s. 49(6)
Decision that a company is not eligible to cease being a CIC (prior to becoming a charity / Scottish charity)	The company	Act, s. 55A(4)
Decision not to approve change to statement of CIC's objects in its memorandum	The company	Regs, reg 15(8)
Directions relating to distribution of CIC's assets on a solvent winding up	Any member or director of the company	Regs, reg 23 (11)

What is the process for appealing a decision made by the Regulator?

The process to be followed in appeals to the Appeal Officer is set out in Part 11 of the regulations, the contents of which are summarised below. It should be noted that, subject to the Regulations, the Appeal Officer is given fairly wide discretion as to the details of procedure to be followed in each case.

Is there a time limit for beginning the Appeal Process?

Appeals to the Appeal Officer are begun by sending a notice of appeal to the Regulator.

The notice of appeal must generally be sent so that it is received within two months of the date upon which the appellant was given reasons for the disputed order or decision.

However, if the appeal relates to a direction on the distribution of residual assets in the winding up of a CIC under regulation 23 of the Regulations, the notice of appeal must be received within three weeks of the date on which notice of the disputed direction was given.

Any appeal, which is not made within the relevant deadline, will be dismissed unless the Appeal Officer is satisfied that there are exceptional circumstances to justify its being made late.

What detail should be in my notice of appeal?

There is no standard form for appeals. The notice of appeal must:

- State the name and address of the appellant;
- State an address for service in Great Britain;
- Specify as precisely as the appellant is able the date, or dates, on which the appellant was given reasons by the Regulator for the disputed order or decision, or include a statement that no such reasons were given;
- Contain a statement of the grounds for the appeal;
- Contain details of the disputed order, decision, or direction;
- Contain a succinct presentation of the arguments supporting each of the grounds of appeal;
- Contain a schedule listing all the documents annexed to the notice of appeal; and
- Be signed and dated by the appellant, or on its behalf by a duly authorised officer, or legal representative.

A copy of the disputed order, or decision, must be annexed to the notice of appeal, together with a copy of any reasons, which the Regulator has given for the disputed order or decision. As far as practicable, appellants should also annex to their notice of appeal a copy of every document on which they are relying.

What is the Role of the Regulator when an appeal is lodged?

The Regulator will send an acknowledgement of the receipt of the notice of appeal to the appellant.

The Regulator must send the notice of appeal, endorsed with the date of receipt, to the Appeal Officer. Where it is an appeal against the Regulator's direction on the distribution of residual assets in the winding up of a CIC, the Regulator must forward with the notice of appeal:

A statement of the date upon which notice of the disputed direction, or decision, was given to the community interest company in accordance with regulation 23(8); or

A statement that no such notice was given.

The Regulator may make a written response to the notice of appeal. If he does so, the response must be received by the Appeal Officer within two weeks of the date on which the Regulator received the notice of appeal, unless the Appeal Officer allows a longer time.

What is the role of the Appeal Officer?

The Appeal Officer may allow the appellant or the Regulator further opportunities to make written or oral representations and may specify when and how such representations are to be made.

The Appeal Officer may follow such practice and procedure as she thinks fit, having regard to the just, expeditious and economical conduct of appeals. In determining appeals, the Appeal Officer must have regard to all matters that appear to him to be relevant.

The Appeal Officer may at any stage dismiss appeals, which she considers unfounded, which do not comply with the requirements of the Regulations as regards notices of appeal, or if she considers that the appellant is not entitled to bring the appeal.

Appeals may also be discontinued by being dismissed at the request of the appellant.

The Appeal Officer must give reasons for any decision to dismiss an appeal, allow an appeal or remit a case to the Regulator. Such reasons must be given to the appellant and the Regulator, and the Appeal Officer must make such arrangements for their publication, as she considers appropriate.

Where should I send my appeal?

Please forward your notice of appeal to the following address:

The Manager
Office of the Regulator Community Interest Companies
2nd floor
Companies House
Crown Way
Cardiff CF14 3UZ

E-mail: cicregulator@companieshouse.gov.uk

This short guide is not a statement of law.

The Office of the Regulator of Community Interest Companies does not offer legal advice on particular cases, or on the legal risks associated with particular proposed actions.



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