COMMUNITY INTEREST COMPANIES

Office of the Regulator of Community Interest Companies

Complaints about community interest companies

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Does your complaint fall within the Regulator's remit?

Complaints that the Regulator will normally take up are ones where there is a potential breach in the Community Interest Company Regulations 2005, and where this represents a balanced response to the issue(s) that fall within the Regulator's responsibility.

How to make your complaint

If you want to make a complaint which meets the above criteria, please complete our CIC Complaints Pro-Forma form via the link below:

Complaints procedure - Office of the Regulator of Community Interest Companies - GOV.UK (www.gov.uk)

Once completed, please send to cicconcerns@companieshouse.gov.uk

Please be aware that it may take us some time to examine the information you have provided before we provide you with a response.

As a reminder, we look to complainants to show good reason, backed by evidence, for their concerns. Except where it is clearly inappropriate to do so, we would expect complainants to have tried first to resolve their concerns with the community interest company in question before involving the Regulator. Where an issue cannot be resolved with the community interest company, or its officers, and it concerns legal interests, we would advise the complainant that they may need to consider taking legal action.

The Regulator's policy regarding the launch of a formal investigation

The Regulator's powers of investigation are intended to enable him to gather information to establish whether his other supervisory powers should be exercised. The Regulator has discretion to decide whether to launch a formal investigation in any particular case.

Launching a formal investigation is itself a serious step. Generally, a formal investigation will only be launched where the Regulator considers that there is a genuine and serious concern that circumstances may exist which would justify the use of his other supervisory

powers and considers that it is necessary to investigate in order to maintain confidence in community interest companies. In addition, the Regulator will also only investigate where this is a proportionate response. It is expected, therefore, that the Regulator's power to investigate will only be used on rare occasions in extreme circumstances.As with the exercise of all of the Regulator's functions, the Regulator follows an approach to investigations which is based on good regulatory practice, having regard to the likely impact on those who may be affected and the desirability of using his resources in the most efficient and economic way.

You will appreciate that for an investigation process to be effective and not to risk unwarranted damage to the reputation of the CIC in question, it is essential to maintain confidentiality at all stages. This includes the decision-making process and use of our investigation powers. That said, there may be circumstances when such information could already be in the public domain, for example, where an investigation leads to court proceedings and information is disclosed in open court.

It is not, generally, the Regulator's policy to confirm or deny the existence of an investigation to the complainant, or any other third party, or to publish or tell the complainant about the outcome. Nor is it the Regulator's policy, for the same reasons, to confirm or deny whether he is pursuing a complaint against a CIC.

The Regulator's policy means that we may not correspond with you about any action we take regarding the concerns you have raised that are considered by the Regulator to be within his remit, although we may need to correspond with you to clarify certain details provided before a decision is made.

The Regulator's policy regarding disclosure of the complaint to third parties

The Regulator will respect confidences as far as he is able, with due regard to your rights to privacy under data protection and human rights legislation. It is not, for instance, our policy to send a copy of the complainant's letter (or any other papers which may identify you) to the CIC unless you have given your consent. While we will take every step to try to ensure that your identity is not revealed without your consent, in some cases the nature of the allegations or evidence may give an indication as to their source. Also, in certain circumstances, there may be an obligation to reveal information under freedom of information legislation.

Complaints the Regulator may consider pursuing under formal investigation powers

Circumstances might include:

- Serious mismanagement of the company by putting significant assets, or funds, at risk, such as a breach in asset lock regulations.
- A pattern of conduct involving deliberately misleading or deceiving customers or creditors.
- Serious breach of directors' duties to the company or its creditors.

Please note that our considerations do not prevent you from considering whether there are civil remedies available to you and taking the appropriate action.

Complaints the Regulator is not likely to pursue

Where the Regulator considers that the issues raised, though of potential interest, do not give rise to a genuine and serious concern that circumstances may exist which would justify the use of his other supervisory powers; although informal action may be considered. For example, raising the matter with the CIC itself.

Where the complaint is mainly about the standard of service that a CIC has provided in an individual case and does not raise wider issues. Important though such complaints may be, the Regulator has no 'Ombudsman' powers to adjudicate on them. You may wish to consider raising such matters with the appropriate bodies, such as the police, Action Fraud, your Local Authority Trading Standards Office or the Citizens Advice Bureau.

Complaints about activities which it is perfectly legitimate for the CIC to be pursuing, for example, policies pursued, or actions taken, by the directors within the law and the provisions of the CIC's constitution. Such decisions are for directors to take (and justify), and they often have very wide freedom to do so. The Regulator does not have discretion to overrule a particular decision by the directors, validly taken within their powers, on the grounds that others take a different view. Deciding policy is a key part of directors' freedoms and responsibilities, and may include:

- Deciding how community facilities (such as a school, community centre or playing field) are used.

- Deciding applications for (or removals from) membership where the proper procedures have been complied with.

- Deciding how to consult users, user groups or supporter groups about decisions and policies.

- Resolving differences of opinion over spiritual or doctrinal matters within religious or other belief-based CICs.

- The terms and conditions of occupancy or use of CIC land, and (provided that legal and constitutional requirements are met) its disposal.

Where the complaint concerns contractual obligations or property rights, which are properly matters between the CIC and a third party. You should contact the CIC about these issues in the first place. Where an issue cannot be resolved with the directors, and concerns your legal interests and rights, you may need to consider taking legal advice, for example:

- Employment issues or claims of unfair dismissal.

- Disputes between CICs and people which have entered into contracts with the CIC, including landlord-and-tenant disputes.

- Complaints about matters which are not for the Regulator because they fall outside his remit, or, where other agencies are better placed to deal with the concern, for example:

- When criminal activities are suspected – for example the police (although this may raise wider issues).

- Where the issue is the concern of a specialist regulator - for example, the National Care Standards Commission for care issues.

- Where the issue is connected with a planning application or development control.

If you suspect that a CIC has been affected by a crime, you should report the matter to the police and in relation to taxation issues to HM Revenue and Customs. Please inform us too, so that we can consider whether there are any wider/other issues that we should investigate.

We cannot assist in legal proceedings taken by another party against a CIC, including those for the collection of debts.

We will not normally reconsider complaints that we have already dealt with unless circumstances have changed materially or significant new evidence has become available.

Referral of wider issues

Where the Regulator considers that wider issues are raised he may refer the case to The Insolvency Service, except for CICs registered and carrying on business only in Northern Ireland which are referred to the Insolvency Service in Belfast.

Information about the work of The Insolvency Service and the sort of cases it investigates is given in Annex B.

Where the CIC about which you are complaining is subject to formal insolvency proceedings (administrative receivership, administration or creditors voluntary liquidation) you may, separately, wish to consider bringing your complaint to the attention of the responsible Insolvency Practitioner(s). Information about the insolvent company and the insolvency office holder can be obtained from the Registrar of Companies.

The stages of the Regulator's consideration of a complaint

Outlined below are the stages of the Regulator's consideration of a complaint about a CIC and the tests that must be applied:

Stage 1 - is it within the Regulator's remit?

The Regulator will:

acknowledge receipt of your complaint, or concerns; and

consider the information provided.

It may be necessary to seek some further clarification before the Regulator can decide whether he can, or should, consider your complaint. All complaints are evaluated objectively in order to decide whether there is an issue for us to take up.

Some matters may not be within the Regulator's remit. If the Regulator considers the complaint is not within his remit he will reject the complaint and explain the reason(s) why.

Stage 2 – responding to the complainant.

The Regulator will inform the complainant that:

their concerns are noted;

he may need to contact the complainant again, for example, to clarify some information provided; and

the Regulator's policy regarding complaints about the activities of a CIC is as follows:

"It is not generally the Regulator's policy to confirm or deny the existence of an investigation to the complainant, or any other third party, or to publish or tell the complainant about the outcome. Nor is it the Regulator's policy to confirm or deny whether he is pursuing a complaint against a CIC".

This means that we may not correspond with you about any action we take regarding the concerns you have raised that are considered by the Regulator to be within his remit, although we may need to correspond with you to clarify certain details provided before a decision is made.

Stage 3 – is a formal investigation appropriate?

In deciding whether to launch a formal investigation, the Regulator considers:

the information he has about the particular situation and decides whether it gives rise to a genuine and serious concern that circumstances may exist which would justify the use of his other supervisory powers. Unless it does, the Regulator will generally not launch a formal investigation;

whether it is necessary to investigate in order to maintain confidence in CICs generally; and

whether the use of formal investigation powers would be a proportionate response .

As with the exercise of all of the Regulator's functions, the Regulator follows an approach which is based on good regulatory practice, having regard to the likely impact on those who may be affected and the desirability of using his resources in the most efficient and economic way.

Stage 4 – an investigation is launched, or not launched.

If the Regulator considers the concerns raised would not justify a formal investigation, other informal action may be considered, such as:

monitoring the situation; or

seeking certain assurances from the CIC.

If a formal investigation is launched the Regulator will consider what information is needed and from whom. The Regulator's office may itself carry out the investigation, or the Regulator may appoint an external person to investigate the affairs of a CIC on his behalf.

Stage 5 – the evaluation of the information gathered under a formal investigation

The Regulator will evaluate the information to decide whether there is sufficient justification for the use of his supervisory powers, for example, by appointing and removing directors.

It is expected that the Regulator's formal power to investigate and other supervisory powers will only be used on rare occasions.

Annex A - Section 41 of the CAICE Act 2004

(The Companies (Audit Investigations and Community Enterprise) Act 2004)

41 Conditions for exercise of supervisory powers

(1) In deciding whether and how to exercise the powers conferred by sections 42 to 51 the Regulator must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in community interest companies.

(2) No power conferred on the Regulator by-

(a) Section 45 (appointment of director),

(b) section 46 (removal of director),

(c) section 47 (appointment of manager), or

(d) section 48 (property),

is exercisable in relation to a community interest company unless the company default condition is satisfied in relation to the power and the company.

(3) The company default condition is satisfied in relation to a power and a company if it appears to the Regulator necessary to exercise the power in relation to the company because:

there has been misconduct or mismanagement in the administration of the company;

there is a need to protect the company's property or to secure the proper application of that property;

the company is not satisfying the community interest test; or

if the company has community interest objects, the company is not carrying on any activities in pursuit of those objects.

(4) The power conferred on the Regulator by section 49 (transfer of shares etc.) is not exercisable in relation to a community interest company unless it appears to the Regulator that the company is an excluded company.

Annex B - Information about the work of The Insolvency Service and the NI Insolvency Service

(The Insolvency Service & the Northern Ireland Insolvency Service)

If the complaint against a CIC is that the way it is conducting its business amounts to something more serious, for instance the CIC's business amounts to a fraud on its creditors or customers, the Regulator may, as stated on page 3, refer the matter to The Insolvency Service for it to consider whether there should be an investigation under the Companies Act. The Insolvency Service operates under the statutory regime as set out in Part 32 of the Companies Act 2006. Information about its work is given on its website at https://www.gov.uk/government/publications/the-insolvency-service-company-investigations-what-we-do. Whilst it is also open to a complainant to make a complaint direct to The Insolvency Service, it would be preferable if all complaints about CICs were passed to the Regulator who can use his discretion whether they should be passed to Insolvency Service.

The Insolvency Service deals with complaints in confidence and if it investigates, the vast majority of investigations are carried out under powers which preclude the reports of the investigations being published. The reports may, however, be disclosed to a wide range of Prosecutors and Regulators for further action and The Insolvency Service itself may petition the Court for the winding-up of the CIC or for the disqualification of its directors. If an investigation results in Court proceedings, information about the investigation will then enter the public domain.

Where the Regulator considers that wider issues are raised he may refer the case to The Insolvency, except for CICs registered and carrying on business only in Northern Ireland which are referred to the Insolvency Service in Belfast. The relevant contact details are below:

Companies registered in England, Wales or Scotland

Intelligence Hub Investigations and Enforcement Services

The Insolvency Service

3rd Floor, Cannon House

18 Priory Queensway

Birmingham B4 6FD

Companies registered in Northern Ireland

Insolvency Service

Fermanagh House

Ormeau Avenue

Belfast

BT2 6NJ

Telephone: 0300 678 0015

Email: Intelligence.live@insolvency.gsi.gov.uk

Website: https://www.gov.uk/government/publications/the-insolvency-service-company-investigations-what-we-do

Telephone: 028 902 51441

Email: insolvency@detini.gov.uk

Website: www.detini.gov.uk

The Regulator's supervisory powers

Sections 41 to 51 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 provide supervisory powers for the Regulator to intervene in the affairs of a community interest company (CIC) (for example by appointing or removing directors).

These powers are designed to be used where the Regulator considers that a CIC's activities are giving serious cause for concern and action will be needed to maintain confidence in CICs generally.

The main intervention powers can only be used where the "company default condition" set out in section 41(3) is satisfied (see Annex A).

The Regulator's power to investigate the activities of a community interest company

Section 42 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 ("the Act") allows the Regulator to investigate the affairs of any CIC, and Schedule 7 provides the necessary investigation powers. These powers are similar to the powers given to the Secretary of State by the Companies Acts, which are used by The Insolvency Service.

The power of investigation enables the Regulator to examine the affairs of the CIC in relation to its CIC status; they do not replace the Companies Act 2006, investigation powers. Accordingly, CICs can be investigated in the same way as other companies as well as being investigated by the Regulator.

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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