

Getting it right

Guidance to assist charities in complying with their legal obligations and explain how the Charity Commission for Northern Ireland identifies and addresses non-compliance



The Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Communities.

Our vision

To deliver in partnership with other key stakeholders in the charitable sector “a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission’s effective delivery of its regulatory role.”

Further information about our aims and activities is available on our website www.charitycommissionni.org.uk

Equality

The Charity Commission for Northern Ireland is committed to equality and diversity in all that we do.

Accessibility

The Commission’s website has been designed to **W3C standards** of accessibility and includes a number of features to enhance accessibility for a wide range of individuals. These include colour contrast and resize options. Materials may be made available in alternative formats on request. If you have any accessibility requirements please contact us.

Online or in print

If you are viewing this document online, you will be able to navigate your way around by clicking on links either within the contents page or text.

We have produced a glossary that provides further information, definitions and descriptions of some key terms. The words in **bold green type** indicate words that are found in the glossary towards the end of this document. If you are reading the document online you can click on the word and it will link you to the definition in the glossary. The words in *blue italics* indicate other guidance or databases.

Please check our website www.charitycommissionni.org.uk to make sure you’re using the latest versions of forms and guidance.

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Section 1: Overview

A dynamic and well governed charities sector, in which the public has confidence, requires charity trustees to know and comply with their legal obligations and with best practice requirements. Charities fulfil a vital role in society and the role of a charity trustee brings great responsibility. The intention of this guidance is to support charity trustees in understanding their responsibilities.

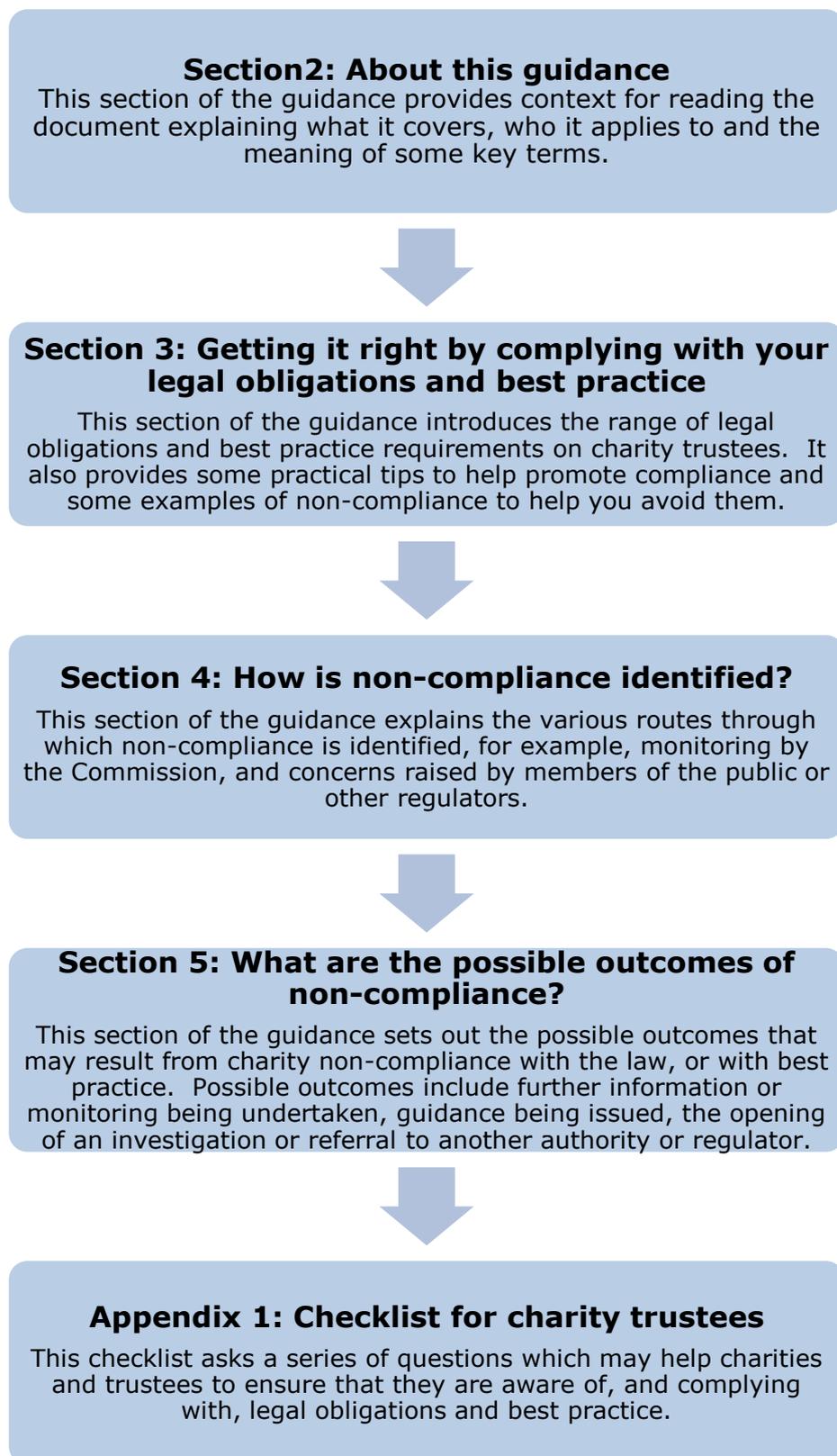
Importantly, the law protects charity trustees where they comply with their legal duties. There are consequences for charities and their charity trustees, however, where charity trustees act negligently or knowingly fail to comply with their legal obligations or best practice requirements. Together with the range of guidance and thematic reports produced by the Charity Commission for Northern Ireland (the Commission) this guidance is a key resource in helping to support charity trustees to comply with their legal obligations. It does this by setting out information on the range of legal obligations and best practice requirements to which charity trustees are subject.

The Commission has objectives including to promote compliance by charity trustees with their legal obligations and to promote public confidence in charities. This guidance, therefore, also provides information on how the Commission monitors and identifies non-compliance and the consequences for charity trustees where non-compliance is identified.

The guidance includes a range of examples to illustrate information provided. It is important to note that these examples are not exhaustive and that charities may wish to seek professional advice if they are uncertain regarding their obligations.

Structure of the guidance

This flowchart introduces the key sections of the guidance:



Section 2: About this guidance

What does this guidance cover?

This guidance covers information on the range of legal obligations and best practice requirements to which charity trustees are subject. It also provides information on how the Commission monitors and identifies non-compliance and explains the range of consequences for charity trustees.

The main part of the guidance is set out in three sections:

Section 3: Getting it right by complying with your legal obligations and best practice

Section 4: How is non-compliance identified?

Section 5: What are the possible outcomes of non-compliance?

There is also a checklist at [appendix 1](#) which sets out some questions that charity trustees may wish to consider at regular charity trustee meetings to help ensure they are complying with their legal requirements and with best practice.

What does this guidance not cover?

You should not rely on this guidance to provide a full description of legal matters affecting your charity and it does not replace advice from a charity's own professional advisers.

Charity trustees of charitable companies - also known as **directors** - have to be mindful of the requirements of **company law**. More information on this can be accessed from [Companies House](#).

Additionally, a charity may be regulated by other bodies and in accordance with other legislation and best practice. Where this is the case, you should contact the relevant regulatory body if you have any specific queries about that legislation.

Who does this guidance apply to?

This guidance is aimed at charity trustees, who may also be known as members of management committees or directors of charitable companies. Additionally, it will be of use to anyone who has a concern regarding charity compliance.

What will be published?

The Commission has considered the publication of the outcome of charity monitoring in line with its *Publishing our decisions* policy.

Where a charity is in default of its accounting and reporting requirements this will be shown on the *register of charities*.

We may also choose to publish other information on a case by case basis, for example, where the results of a compliance case generates useful learning for the sector or by highlighting trends in a thematic report.

What are legal requirements and best practice?

In this guidance, where we use the word 'must' we are referring to a specific legal or regulatory requirement. We use the word 'should' for what we regard as best practice, but where there is no specific legal requirement. Charity trustees should follow the good practice guidance unless there is good reason not to do so.

Charity legislation

References in this document to 'the Charities Act' are to the **Charities Act (Northern Ireland) 2008**

References to 'the accounting and reporting regulations' are to the Charities (Accounts and Reports) Regulations (Northern Ireland) 2015.

Key terms

The following are some key terms that it will be useful to understand when reading this guidance. They, and other terms, are also listed in a glossary at [appendix 2](#).

Breach of trust: Any abuse of power, or failure (whether or not it is deliberate, dishonest, or negligent) to carry out the general and fiduciary duties of a trustee. For charity trustees these duties may be found in the provisions of a charity's governing document, legislation, regulations and orders of the Court or the Commission.

Direction: This is a legal document issued by the Commission which requires particular action(s) to be taken to ensure the proper administration of a charity. Serious legal consequences may arise if charity trustees do not comply with a Direction.

Order: An order is a legal document which can authorise charity trustees to carry out an act which otherwise they have no power to do, or to do something which is in the interest of the charity. They can also be used to protect charities and their property. Serious legal consequences may arise if charity trustees do not comply with an Order.

Regulated activity: There are certain activities with children and adults at risk of harm that are regulated. These are set out in guidance provided by the Department of Health which can be accessed from the following website: <https://www.health-ni.gov.uk/topics/social-services>. Some examples are included in the glossary to this guidance.

Section 3: Getting it right by complying with your legal and best practice obligations

A dynamic and well governed charities sector, in which the public has confidence, requires charity trustees that understand and comply with their legal and best practice obligations.

This section of the guidance sets out the range of broad legal obligations that charity trustees must meet and suggests where to identify best practice that should be followed. It also provides examples of real and potential non-compliance that the Commission has identified.

Charity trustees are not expected to be legal experts, however, they are expected to take reasonable steps to find out about legal requirements that may impact on them, whether through accessing available guidance or seeking independent advice.

3.1 What legal obligations must a charity comply with?

There is a range of broad legal obligations on charity trustees. For example, charity trustees must ensure that the charity complies with its governing document, with the requirements of charity law, and with any other legislation that applies to the charity. Further, the charity must not engage in any criminal or illegal activity.

3.1.1 Complying with the charity's governing document

A charity must comply with its **governing document**. A governing document is a legal document that represents the rule book for a charity's governance and operations. It will usually contain information about:

- What the charity is set up to achieve (its **purposes** or **objects**)
- How the charity goes about achieving its purposes (its powers)
- Who is involved in the strategic oversight of the charity (individual **charity trustees** or a corporate trustee)
- What must happen if changes are required to the governing document (amendment provisions)
- What must happen if the charity wishes to wind up (dissolution clause)
- Administrative provisions such as:
 - governance arrangements for the charity
 - internal arrangements for meetings, voting and finance

- membership of the charity
- the appointment, retirement or removal of charity trustees
- if and how charity trustees can benefit from the charity.

If a charity does not comply with its governing document then it risks being in **breach of trust**. Charity trustees could find themselves personally liable for a breach of trust and required to make good any resulting loss to the charity. Additionally, a serious or repeated breach of trust may lead to an investigation being opened into the charity and remedial or protective action being taken by the Commission.

Examples of breach of trust include:

- A charity acting without a quorum of charity trustees, for example, having two charity trustees when its governing document sets out a requirement for a minimum of five charity trustees.
- A charity's trustees furthering their own interests rather than those of the charity's beneficiaries by arranging a direct **private benefit** to themselves.
- A charity making a payment to a charity trustee, for their trusteeship, when this is not permitted in the governing document.
- A charity's trustees endorsing a political party or a party candidate on behalf of the charity, or using the charity, or its name, for a political purpose.
- A charity's trustees spending charitable assets on advancing purposes other than those set out in the governing document of the charity.
- Failure to ensure that the charity remains solvent.
- Failure to apply due consideration to the appropriate use of charity funds when investing and borrowing.

3.1.2 Complying with charity law

All charities in Northern Ireland must comply with the requirements of charity law, with some requirements specific only to charities that are already registered with the Commission. General requirements include:

- Applying to register as a charity in Northern Ireland.
- Complying with an **order, direction** or regulatory guidance issued by the Commission.
- Keeping proper financial records and accounts (in line with charity law requirements).
- Ensuring that charity trustees are eligible to act and are not disqualified.

- Seeking the Commission's consent to make changes to a governing document where appropriate (see the Commission's guidance on [Consents for charitable companies, Requesting a scheme](#) and [New powers for unincorporated charities](#)).
- Seeking the Commission's consent to authorise a transaction where the charity does not have the express power in its governing document to do so or which it would not otherwise be legally possible for the charity to undertake.

Section 25 of the Charities Act sets out circumstances in which it is a criminal offence to knowingly or recklessly supply false or misleading information to the Commission. Charity trustees must therefore ensure that they are open and transparent with the Commission otherwise they may be liable to a fine and / or imprisonment.

Section 17 (3) of the Act sets out a duty on the charity trustees of a registered charity to keep information on the register of charities up to date and accurate. Charities must notify the Commission of any change to their charity, such as, their charity contact details, trustee names following an AGM or other charity information. Charity trustees can use the [Online services](#) facility to view and amend most of the details the Commission holds on their charity.

Additionally, a registered charity is required to:

- Notify the Commission if it ceases to exist.
- Notify the Commission of any changes in its trusts for example, merging with another charity.
- Prepare annual accounts and a trustees' annual report (in line with charity law requirements).
- Appoint an independent examiner or auditor to carry out a review of the charity accounts and trustees' annual report (in line with charity law requirements).
- Complete an annual monitoring return form, and submit the charity's accounts, trustees' annual report and independent examiners or **audit report** to the Commission on an annual basis.
- Display its registered charity number on official publications (in line with charity law requirements).

There is a range of guidance available to assist charity trustees in understanding and meeting their legal obligations. Guidance can be downloaded from the Commission's website.

3.1.3 Complying with other laws and regulation

Charity trustees must ensure that the charity complies with all relevant legislation and regulation, not just charity law.

There are some laws that will apply to all charities, for example, equality legislation. There are also laws that will apply to some charities and not to others depending on the nature and circumstances of the charity. For example:

- Charitable companies are required to file annual returns and other forms with [Companies House](#) and meet the requirements of **company law** in running the company
- Charitable industrial and provident societies (IPSs) must meet the requirements of IPS legislation in Northern Ireland.
- Charitable trusts must meet the requirements of trust legislation
- Charitable housing associations are also regulated by the Department for Communities and have a range of legal obligations associated with the provision of housing
- Charities that employ staff are subject to employment legislation
- Charities that work with children or adults at risk of harm must meet their requirements under safeguarding legislation. Further information and signposting is available on our [website](#).
- Charities that own buildings or vehicles may require certain insurance policies
- Charities undertaking activities such as providing legal, financial or other professional services may be subject to other regulations
- Charities providing medical or care services may be subject to other regulations, for example, through the [Regulation and Quality Improvement Authority \(RQIA\)](#)
- Charities that undertake fundraising are expected to adhere to the [Code of Fundraising Practice](#).
- Charities that process personal data must adhere to current [data protection](#) legislation and corresponding regulations
- Charities that work in other jurisdictions may be subject to different legal and regulatory systems.

We would emphasise that this is **not an exhaustive list**. It is the responsibility of charity trustees to know their legal obligations and seek advice if necessary.

The Commission regulates on charity law, however, if we identify an issue with a charity in the context of other legislation or regulation, we will refer the matter to the relevant regulator or authority. If the matter involves any funding the charity has received then the matter may also be brought to the attention of the funder. The matter may also indicate broader governance issues with the charity which may result in the charity being subject to further monitoring.

3.1.4 Criminality and illegal activity

A charity must comply with the law in general and not engage in any form of criminal or illegal activity. This includes fraud, money-laundering or engaging in, encouraging or condoning terrorist activities.

3.1.5 Financial Action Task Force on Money Laundering (FATF)

Charity trustees are responsible for the prevention and detection of fraud within their charity. Understanding where a charity may be vulnerable to fraud must be an integral part of any charity's risk management approach and charity trustees must be satisfied that they have controls in place to manage these risks. The *Fraud Advisory Panel* has published a range of resources aimed at fraud prevention.

FATF has developed a series of recommendations that are recognised as the international standard for combating money laundering, the financing of terrorism, and proliferation of weapons of mass destruction. The Recommendations, available at www.fatf-gafi.org, help to increase transparency and enable countries to successfully take action against illicit use of their financial system.

Visit the Commission's [website](#) for more information about our work in this area to identify any risks, common trends and potential solutions regarding money laundering or the abuse of charity property in Northern Ireland. Please do not hesitate to contact us if you would be interested in learning more.

3.2 What about compliance with best practice?

In the range of guidance available on our website the Commission sets out things that charity trustees should do as a matter of best practice. We expect charity trustees to meet best practice unless there is a good reason not to do so.

When we talk about best practice we mean following set practices that are widely accepted as being prudent and efficient. Best practice is usually aimed at areas where common mistakes have been identified and is promoted to help avoid the charity, its assets or its beneficiaries being put at risk by inadvertently not complying with the law or the charity's governing document. If a charity does not follow best practice, without good reason, this may constitute misconduct or mismanagement.

If you are uncertain about what constitutes best practice, you can refer to the range of guidance documents published by the Commission, a list of which is available on the website in the 'Charity Essentials' section, or to resources such as the [Code of Good Governance](#) for voluntary organisations in Northern Ireland.

Examples of important best practice requirements include, but are not limited to:

- [Having a minimum of three charity trustees](#): this is not a legal requirement but is recommended to help avoid a deadlock situation in decision making which can lead to conflict and governance issues
- [Policies and procedures](#): a well governed charity should have relevant policies and procedures in place and ensure all charity trustees, staff and anyone working on the charity's behalf, complies with them. These will cover a wide range of areas and issues for example;
 - health and safety
 - conflicts of interest
 - internal financial controls
 - financial reporting
 - trustee expenses and payments
 - fundraising
 - safeguarding
- [Regularly reviewing governance](#): the governance structures of a charity, including its governing document, should regularly be reviewed to ensure they are adequate and up to date.
- [Serious incident reporting](#): where any **serious incidents** occur during the year these should be reported to the Commission.

3.2.1 Cyber security

Many charities hold personal or sensitive information about their beneficiaries, donors, volunteers and employees as well as other stakeholders. It is important that this information is kept securely. Where a

charity is operating online, for example, hosting a website that gathers data or transferring information via email, then the information that they hold may be at risk from a cyber-attack. The government has produced guidance to assist organisations, including charities, to consider whether they are managing their cyber risks and to protect themselves against common cyber attacks. Further information is available at the following links:

- [Cyber Essentials Scheme](#): a government-backed scheme to assist organisations in protecting themselves
- Cyber-security [Small charity guide](#)
- [ActionFraud](#): the UK's national fraud and cyber crime reporting centre.

3.2.2 Charity reserves

All charity trustees have an obligation to manage their charity in the best interests of the charity and its beneficiaries. This involves managing the charity's income, running costs, future plans and potential risks. As part of this process charity trustees should, if appropriate, hold reserves to help manage any short term fall in income.

Developing a reserves policy will help the charity trustees to identify what level of reserves their charity needs. It will also enable charity trustees to explain to funders, donors, beneficiaries and the public why it holds a particular level of reserves and help ensure a better managed charity. For further information see our [Developing a reserves policy, guidance for charity trustees](#).

3.3 Charity accounting and reporting

It is a legal requirement for registered charities to report annually to the Commission. This is essential to keep the [register of charities](#) up to date, promote the transparency and accountability of the charitable sector, and to allow us to monitor and regulate charities in Northern Ireland effectively. At annual reporting, a charity **must**:

1. complete and submit an online annual monitoring return
2. submit the charity's annual accounts
3. submit the charity's trustees' annual report
4. submit an independent examiner's or **audit report**.

The Commission has produced a suite of guidance on the accounting and reporting requirements for registered charities. The guidance is available on our website: www.charitycommissionni.org.uk

3.3.1 How will the Commission use information gathered through annual reporting?

We will use the information we gather to regulate charities in Northern Ireland and to meet the objectives of our monitoring programme. These objectives have been consulted on and agreed with the charity sector. They are as follows:

1. Check for compliance with charity law
2. Discover where there is misconduct, mismanagement and inappropriate use of charitable property and funds
3. Encourage good practice
4. Provide information about the charity sector
5. Provide information on each charity
6. Provide an up-to-date *register of charities* in Northern Ireland.

Check for compliance with charity law

Through annual reporting by registered charities we will identify and alert those charities that are not complying with the Charities Act. We aim to be proportionate and constructive in promoting compliance, particularly in the first few years of the programme.

A charity that does not comply with its legal obligations and does not submit its accounts and reports to the Commission will be marked on the register as 'in default'.

It is important to note that the Commission cannot fully scrutinise every set out accounts and reports received. We will check for zero tolerance issues and scrutinise a percentage of documents received.

Discover where there is misconduct, mismanagement and inappropriate use of charitable property and funds

The information we gather may alert us to potential problems early on so that we can work with charity trustees to put things right. Where there are serious issues identified, we will deal with them appropriately.

Encourage good practice

The questions we ask in the annual monitoring return will encourage good practice in two ways. Firstly, through acting as a prompt to remind charity

trustees of their duties and secondly, by identifying common problematic areas where we can develop best practice guidance and advice.

Provide information about and for the charity sector

Obtaining key information about charities will help us make informed decisions when carrying out our regulatory and monitoring activities, and the statistics we hold on the sector may impact on legislation and future policy development. We will also use the information we obtain from our monitoring activities to identify trends, for example common areas of non-compliance or concern, and direct our resources to providing guidance in this area to help the sector.

Provide information on each charity

The information gathered on each charity will be used both to improve our internal efficiency as a regulator and to ensure that interested parties can easily obtain relevant and reliable information on a charity's financial position and performance, deployment of resources, organisational structure, policies, priorities, activities and achievements.

Charity accounts and trustee annual reports will be published to the register of charities providing an important source of information to members of the public, charity funders and other stakeholders.

Provide an up-to-date register of charities

By updating the information held on the register of charities we endeavour to ensure that it is current and relevant, and continues to be a valuable source of information for members of the public, charity beneficiaries and other stakeholders.

For further information on what to expect when the Commission collects and processes personal information see our [Privacy notice](#).

3.4 Practical tips to promote compliance

Charity trustees can adopt a few practical measures to help ensure compliance with their legal obligations and promote best practice:

1. Include compliance as a standing item on charity trustee meeting agendas
2. Review governance arrangements on an annual basis using a tool such as the [Code of Good Governance – Governance Health Check](#)
3. Download and read guidance produced by the Commission

4. Seek advice from a helper group or umbrella body
5. If you face a specific challenge or unfamiliar situation, consider seeking professional advice, for example, from an accountant with expertise in charity requirements or a legal adviser
6. Use the checklist at [appendix 1](#) of this guidance as a tool to promote compliance.

3.5 Examples of non-compliance

Some examples of non-compliance by charities include:

Example 1

An organisation is called forward to apply to register as a charity with the Commission. The organisation appeared on the list of deemed charities having previously registered with HMRC (Her Majesty's Revenue and Customs) for charitable tax purposes. The organisation fails to apply and indicates that it has no intention of doing so. This is in breach of the Charities Act and the organisation will be marked as failed to apply on our published [combined list](#), we will notify HMRC if appropriate and consider the use of our regulatory powers.

Note: Under charity law an organisation must apply to register as a charity if it is an institution that is governed by the law of Northern Ireland and it has exclusively charitable purposes. Further information is available via the [Registration support](#) page on our website.

Example 2

A charity applies to register with the Commission and checks are undertaken on the charity's trustees. The checks identify that a charity trustee is disqualified due to an outstanding bankruptcy order. The charity did not carry out checks before appointing charity trustees. It is a criminal offence to act as a charity trustee while disqualified and the charity trustee is required to step down.

Note: As a matter of good practice, it is recommended that appropriate general checks are conducted **in all cases** when appointing charity trustees. An individual must ensure that they do not act as a charity trustee while disqualified. A person is guilty of a criminal offence if they act as a charity trustee while being disqualified. The consequences of being convicted of this criminal offence include imprisonment and/or a fine.

Charities can make use of official registers, which can assist them in identifying disqualified individuals. These include:

- For a Northern Ireland Bankruptcy search: the Gazette www.thegazette.co.uk or Court Service NI
- The register of disqualified directors maintained by Companies House. Searches of the register can be made on the Companies House website and the link to the register is <http://wck2.companieshouse.gov.uk//dirsec>
- Searching the *Debt Relief Orders register* and *IVA register*
- The Individual Insolvency Register in England and Wales www.insolvency.gov.uk
- Register of Insolvencies in Scotland – AIB Register of Insolvencies search <https://roi.aib.gov.uk/ROI/>
- Searching the Commission’s *Register of removed trustees*
- Searching the Charity Commission for England and Wales *Register of removed trustees*.

Additionally, charities may wish to consider a basic AccessNI check to ensure individual charity trustees do not have unspent convictions involving dishonesty and deception.

3.6 Charities working with children and adults at risk of harm

Charity trustees are required to put in place safeguarding policies and procedures which seek to ensure that:

- inappropriate persons do not gain access to children or adults at risk
- staff and volunteers are adequately trained and supported to implement safeguarding policies and procedures
- Safeguarding practices are properly monitored and reviewed.

Working with children

Charity trustees, volunteers and employees **engaged in regulated activity** with children and/or adults at risk of harm should be the subject of an *AccessNI ‘enhanced’ check and barred list check*.

The charity trustees of a children’s charity, (where some staff or volunteers are normally engaged in regulated activity with children) are eligible for an AccessNI enhanced check, but **without** a barred list check.

Working with adults at risk of harm

Charity trustees, volunteers or employees engaged in regulated activity with adults at risk of harm should be the subject of an 'enhanced' check and barred list check.

The charity trustees of a charity where some staff or volunteers are normally engaged in regulated activity with adults, are also eligible for an AccessNI enhanced check, but **without** a barred list check.

The Protection of Freedoms Act 2012 identifies the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time.

In certain circumstances, trustees, volunteers and employees working within the pre-2012 definition of regulated activity may also be eligible to an enhanced check but **without** a check of the barred lists. For example:

1. Volunteers and employees within a charity frequently provide advice and guidance to adults, the purpose of which is to help them live independently or support their capacity to do so (for example signposting to other public services, interpretation services or advice and support regarding benefit claims).
2. Volunteers and employees within a charity frequently provide a service or activity that is specifically for people who have particular needs because of their age or who have any form of disability (for example catering, social events or group outings).

AccessNI in partnership with other UK disclosure services has developed a [decision tree](#) to help guide organisations in deciding if they need to obtain a criminal records check as part of a recruitment process. Further information on basic and enhanced checks may be found via [NIDirect](#).

Trustee declaration form

It is good practice for charities to require new charity trustees to sign a declaration that they are willing to act as a charity trustee, understand the purposes of the charity, and that they are eligible to be a charity trustee. A template [Trustee declaration form](#) is available to download from the Commission's website. Charities must notify the Commission immediately of any change to charity details published on the register of charities, for example, trustee names following an Annual general meeting (AGM).

Example 3

A registered charity does not submit its annual monitoring return and accounts to the Commission within ten months of the end of its first full financial period following its registration.

Note: All registered charities must meet their legal obligation to report to the Commission on an annual basis following each complete financial period after registration. Not submitting annual monitoring returns to the Commission is a criminal offence under Section 71 of the Charities Act. A consequence of being convicted of this criminal offence is that each of the charity trustees may be prosecuted through the Magistrates' Court and liable to a personal fine of up to £2500, with further daily charges of up to £250 for additional compliance delays. This serious non-compliance by charity trustees is viewed by the Commission as mismanagement which could lead to a statutory investigation being opened.

Example 4

A charity runs a shop where it advertises that all money raised will go towards achieving its purposes to relieve poverty overseas, however, monitoring identified that some money is retained to support the achievement of its purposes in Northern Ireland. The charity is required to revise the advertising in its shop.

Note: A charity must be honest in advertising and reporting on how its income is spent. If it is not, consequences may include referral to the [Fundraising Regulator](#), regulatory guidance being issued to the charity, an order or direction being made, or further investigations being undertaken.

Example 5

A charity works with children and adults at risk of harm but does not have any relevant policies in place and has not carried out safeguarding checks on employees or volunteers who will be working directly with beneficiaries in a **regulated activity**.

Note: It is essential for any organisation that works with vulnerable beneficiaries to have appropriate policies in place to safeguard those beneficiaries and, where a charity has any queries, it is the responsibility of the charity trustees to seek advice. A person is guilty of a criminal offence if they seek to engage, offer to engage or engage in regulated activity from which they are barred. If convicted of this offence an

individual may be punished by a term of imprisonment and/or a fine. Information on minimum agreed standards and guidance for good practice in working with children and young people and adults at risk of harm is available to download from the Commission's [website](#).

Example 6

Two charity trustees of a charity receive payment for their trusteeship. This payment is not permitted in the governing document of the charity and the charity did not seek consent from the Commission to make the payment.

Note: If the power to remunerate charity trustees is not contained within your governing document you must seek consent from the Commission to make the payment. Charity [trustee payments](#) will be monitored to ensure they are in the best interests of the charity and meet the requirements of charity law. If a concern of this nature is brought to the Commission's attention, regulatory guidance may be issued or a statutory inquiry opened. If payments are made inappropriately then restitution proceedings may be issued personally against charity trustees.

3.6 If things go wrong

The Commission offers guidance and support to help charities operate as effectively as possible and to prevent problems arising. If a problem does arise it is in the best interests of the charity and its charity trustees to act quickly and seek advice, whether from the Commission, or from another external body.

In the event of a serious incident occurring, the Commission's regulatory role is to ensure that charity trustees manage the incident responsibly and comply with their legal duties. In this way the charity trustees can take steps to limit the immediate impact of the incident and prevent it from happening again. Charity trustees should report serious incidents to the Commission immediately, not waiting until they submit their annual return to notify us. Commission guidance on [Serious incident reporting](#) acts as a step-by-step guide for trustees, highlighting what constitutes a serious incident, as well as when and how to report the incident to the Commission.

Section 4: How is non-compliance identified?

Where a charity's trustees do not comply with their legal obligations, there are a number of ways that this can be identified, whether through monitoring undertaken by the Commission, or by another party. For example:

- Annual routine and proactive monitoring by the Commission
- Through other processes and programmes operated by the Commission, for example, compulsory charity registration
- Externally generated concerns, for example, from charities, members of the public, statutory agencies, other regulators or funders.

There is further information below on how non-compliance by charities is identified.

4.1 Monitoring by the Commission

Routine and proactive annual monitoring by the Commission is a key tool in identifying non-compliance and enables the Commission to help put things right or, in the most serious of cases, detect and stop harm or abuse within charities.

All registered charities are required to submit an annual monitoring return to the Commission, along with their accounts and reports. Registered charities will be sent a reminder of the date of their annual filing deadline and will have plenty of time to gather financial information to prepare the annual return and the charity accounts and reports. Charities that do not submit their annual return or accounts will be treated as non-compliant and this will be marked clearly on the online register of charities. The Commission considers this type of non-compliance to be a serious issue and will make it clearly visible to the public through the [register of charities](#).

Annual monitoring returns provided by registered charities enables the Commission to identify whether charity trustees are complying with their legal and best practice obligations. For example, monitoring will identify:

- Whether the charity has prepared their accounts in accordance with the accounting and reporting regulations, for example, whether the

accounts are prepared in the correct format and include a trustees' annual report

- Whether they have had an audit or independent examination carried out on the accounts in accordance with charity law and submitted the audit or independent examiner's report as part of annual reporting
- Whether a charity's activities have been in pursuit of its charitable purposes for the public benefit
- Whether a charity's trustees are acting in accordance with the charity's governing document
- Whether the charity's trustees are acting in accordance with the law
- Whether charity trustee transactions have been carried out appropriately and in the best interest of the charity
- Whether all **serious incidents** have been appropriately managed and reported. The Commission has produced guidance on *serious incident reporting* to help charity trustees to understand the type of incidents which are regarded as serious and how to report them.
- Inconsistencies or risk indicators with the accounts or financial records of the charity.

The Commission will also undertake to visit charities. Visits provide an opportunity for the Commission to engage directly with charities and gain a better understanding of their roles and practices. They are also an opportunity for charities to ask questions and seek clarification from the Commission. When we visit a charity we are likely to carry out a books and records check which will involve scrutinising the charity's financial and other records and accessing governance policies and practices. We will liaise with charities in advance of a visit to discuss the process and identify what information may be required.

The Commission may also monitor charities that have been given guidance following the conclusion of an inquiry to ensure that charity trustees are complying with the guidance. Additionally, previously identified instances of non-compliance may be considered during annual monitoring processes.

Regulatory monitoring and supervision is carried out in a proportionate way and targeted where intervention is most needed to protect and ensure public trust and confidence in the sector. The Commission regularly reviews risks in the context of changes to the environment in which charities are operating and developments that may impact on the sector.

4.2 Other processes within the Commission

Through the course of other work the Commission may identify non-compliance by charity trustees. The Commission operates a range of programmes including:

- Compulsory *charity registration*
- Casework, for example, *consents for charitable companies, schemes* and *authorising transactions*
- Registering relevant *charity mergers*
- *Investigations*.

Through these programmes the Commission receives and processes a large amount of information on charities that may evidence or indicate non-compliance. Where this is the case, the matter is referred to the Monitoring and Compliance team within the Commission.

4.3 Externally generated concerns

Concerns regarding non-compliance by charity trustees may also be received from external parties such as:

- Members of the public
- Charity beneficiaries
- A volunteer or employee within the charity
- A funding body or grant maker
- Another statutory agency or regulator
- An auditor or independent examiner.

If you have evidence of, or suspect, non-compliance by a charity you can submit your concern using the Commission's online *concerns form*.

4.3.1 Matters of material significance

Any person appointed as an independent examiner or auditor for a charity has a legal duty to report matters of material significance to the Commission, identified in the normal course of their work. See our guidance on *Matters of material significance* for further information.

Section 5: What are the possible outcomes of non-compliance?

Where a charity does not comply with its legal obligations or with best practice, this may put the charity at risk, whether in terms of its finances, its reputation or potential harm to its beneficiaries. The Commission will take action where non-compliance is identified in order to help put things right or ensure that no further risk is posed to the charity. This action can take a variety of forms:

- Conducting a charity visit
- Issuing self-regulatory or regulatory guidance
- Conducting an investigation
- Referring the organisation to another authority or regulator
- Notifying the public through the register of charities.

Before we take this action, a first step will usually be to approach the charity for further information or clarification. This will help the Commission to identify the appropriate next steps.

5.1 Charity visit

Where non-compliance is suspected or identified the Commission may visit the charity. We may do this to collect and verify information relevant to the regulatory concern and establish the risk to the charity. This may include scrutinising the charity's financial and other records and accessing governance policies and practices.

5.2 Self-regulatory and regulatory guidance

Depending on the seriousness of the non-compliance, and the approach of the charity trustees, the Commission may identify that the issue can be resolved through the provision of guidance.

Self-regulatory guidance will usually be offered where the issue is a matter of best practice, the risk to the charity is limited, or where the charity has worked with the Commission to resolve the concern. This is guidance that the charity is expected to implement itself.

Regulatory guidance will be given where the Commission considers there is a greater risk to the charity that requires corrective action to be taken, and where its seriousness means we will monitor and follow up to ensure

compliance. Regulatory guidance will usually include a timeframe for implementation.

The Commission has taken a proactive approach to assessing the type and nature of the risks affecting charities and the wider charitable sector by using information and knowledge from a variety of sources including other government regulators and law enforcement agencies.

The Commission will regularly review these risks in the context of our understanding of charities and the sector. These risks may change over the coming years particularly as we expand our registration, monitoring, casework and investigatory work, and review the information we receive.

5.3 Referral for investigation

In some circumstances, non-compliance will indicate serious risks or concerns with the charity, and the matter will be passed to the Commission's enquiries team for investigation. This may result in the opening of a statutory inquiry, allowing the Commission to use its most stringent powers under the Charities Act, for example:

- Suspending or removing a charity trustee
- Restricting the transactions of a charity
- Appointing additional charity trustees
- Appointing an interim manager.

For more information on how the Commission investigates charities refer to our website www.charitycommissionni.org.uk

5.4 Referral to other agencies

Some issues of non-compliance that are identified may relate to legislation other than the Charities Act. To ensure that the matter is dealt with, the Commission may refer the concern to another authority or regulator, for example, the Police Service of Northern Ireland, a government department, or the Equality Commission for Northern Ireland.

5.5 Notify the public through the register of charities

The Commission may update the *register of charities* to notify the public, funders and other interested stakeholders of charity non-compliance. For example, where a registered charity does not submit its annual monitoring return and accounts by its deadline, the charity will be marked as 'In default' on its entry on the online register.

Appendix 1: Compliance checklist for charities

The checklist **is not an exhaustive list** of necessary or recommended practices but may assist you to identify potential issues and manage your charity’s approach to compliance. The checklist may be a helpful tool at trustee meetings.

Question to consider	Yes	No	Progress / notes
Do we know the rules in our charity’s governing document and keep them regularly under review?			
Do we have and maintain a list of legislation that impacts on our charity?			
Do we regularly review our charity’s activities and area of operation to identify legal obligations and best practice?			
Do we regularly review our charity’s policies and procedures to ensure they are up to date and fit for purpose?			
Do we place legal compliance as a standing item on meetings of the charity’s trustees?			
Do we ensure all new charity trustees receive an induction and are subject to trustee checks?			
Have we read relevant guidance produced by the Commission? Refer to the charity essentials page on the Commission’s website for a full list of guidance.			
Do we seek advice from a professional or umbrella body where necessary?			
Have we read and do we comply with the Code of Good Governance?			
Do we keep good records of charity trustee meetings to show how you have exercised governance over the charity?			
Do we keep good accounting and other records?			

Appendix 2: Glossary

Term	Definition
Audit report	<p>An audit report is required to contain a clear expression of professional opinion on the financial statements taken as a whole. To form an opinion on the financial statements the auditor concludes as to whether:</p> <ul style="list-style-type: none"> • sufficient appropriate audit evidence has been obtained uncorrected misstatements are material, individually or in aggregate • the financial statements are prepared, in all material respects, in accordance with the requirements of the relevant financial reporting framework, including the requirements of applicable law. <p>An auditor in preparing their report is required to comply with all International Auditing Standards (UK and Ireland) and Ethical standards. The opinion on accruals accounts will state whether the accounts give a 'true and fair' view of the financial affairs of the organisation. A 'true and fair' view cannot be given on receipts and payments accounts and the auditor's opinion will state whether the statement of accounts properly present the receipts and payments and its statement of assets and liabilities.</p>
Breach of trust	<p>Any abuse of power, or failure (whether or not it is deliberate, dishonest, or negligent) to carry out the specific, general and fiduciary duties of a trustee. For charity trustees these duties may be found in the provisions of a charity's governing document, legislation regulations and orders of the Court or the Commission.</p>
Charitable company	<p>This is a charity which is formed and registered under the Companies Act 2006 or a charity which was already established under previous companies legislation. It is registered with Companies House. Its governing document is its articles of association and it has its own legal identity. It must be established for exclusively charitable purposes.</p>

Term	Definition
Charities Act (Northern Ireland) 2008	<p>The Charities Act (Northern Ireland) 2008 is the main piece of legislation establishing the Charity Commission for Northern Ireland and setting out its functions and powers.</p> <p>References to 'the Charities Act' are to the Charities Act (Northern Ireland) 2008, as amended. The full content of the 2008 Charities Act can be found at www.legislation.gov.uk</p> <p>Not all of the sections of the Charities Act are in force yet. Details of the sections that are in force are available on the Commission's website www.charitycommissionni.org.uk</p>
Charity directors	Charity directors are also known as charity trustees.
Charity trustees	<p>These are the people who are legally responsible for the control and management of the administration of a charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors or they may be referred to by some other title.</p> <p>Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:</p> <ul style="list-style-type: none"> • has been convicted of an offence involving deception or dishonesty, unless the conviction is a spent conviction under the Rehabilitation of Offenders (NI) Order 1978 • is an undischarged bankrupt or has made an arrangement with creditors • has previously been removed as a trustee by the Commission or by the Courts • is subject to disqualification under company legislation.
Company law	Throughout this guidance, references to "company law" are to the Company Act 2006. The full content of the 2006 Act can be found at www.legislation.gov.uk
Direction	This is a legal document issued by the Commission which requires particular action(s) to be taken to ensure the proper administration of a charity. Serious legal consequences may arise if charity trustees do not comply with a Direction.
Governing document	A charity's governing document is any document which sets 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, conveyance, Will, Royal Charter, scheme of the Commission or other formal document.
Objects	This term is sometimes used to describe and identify the purpose for which the charity has been set up. They do not say what the

Term	Definition
	<p>organisation will do on a daily basis. Sometimes the word purpose is used instead.</p> <p>A charity's purposes must be exclusively charitable. They are usually set out in a clause or paragraph of the charity's governing document. If the purposes allow the organisation to do something which the law does not recognise as charitable the organisation is not a charity and could not be registered with us.</p>
Order	<p>An order is a legal document which can authorise trustees to carry out an act which otherwise they have no power to do or to do something which is in the interest of the charity. They can also be used to protect charities and their property. Serious legal consequences may arise if charity trustees do not comply with an Order.</p>
Private benefit	<p>There is private benefit where an individual or an organisation gains from their involvement with a charity. In some cases it may be proper for such a benefit to arise; in some cases not.</p> <p>Charities can provide private benefit so long as the benefit is incidental, ie it directly contributes towards achieving the charity's purposes and/or is a necessary result or by-product of carrying out those purposes.</p> <p>An example of a private benefit would be where there is an increase in profits to local businesses as a result of charitable regeneration projects which is a necessary by-product of those projects being carried out.</p>
Purposes	<p>The purposes of a charity will usually be defined by what its governing document says that it is set up to do.</p> <p>According to the Charities Act, all the organisation's purposes must:</p> <ul style="list-style-type: none"> • fall under one or more of the list of 12 descriptions of charitable purposes in the Charities Act <p style="text-align: center;">and</p> <ul style="list-style-type: none"> • be for the public benefit.
Regulated activity	<p>There are certain activities with children and vulnerable adults that are regulated. These are set out in guidance provided by the Department of Health which can be accessed from the following website: www.health-ni.gov.uk/. Examples of regulated activity defined in Schedule 2 to the Safeguarding Vulnerable Groups Order (as amended by the Protection of Freedoms Act 2012) include regular unsupervised access to children in relation to:</p> <ul style="list-style-type: none"> • Teaching, training, instructing, caring for or supervising children, frequently (eg teachers, football coaches, welfare officers)

Term	Definition
	<ul style="list-style-type: none"> • Providing advice or guidance on well-being for children, frequently (eg careers advisors, Childline advisors); • Driving a vehicle for children, frequently (eg minibus driver); or • Providing healthcare by a healthcare professional or personal care including washing or dressing (once or more than once). <p>Regular means carried out by the same person frequently (at least once a week or 4 times per month).</p> <p>You may also be in regulated activity if you work or volunteer in certain places, including:</p> <ul style="list-style-type: none"> • schools • childcare premises (for example nurseries, playgroups) • children’s homes • children’s hospitals • children’s detention centres. <p>For more information see the Factual Note on Regulated Activity with Children.</p> <p>The Protection of Freedoms Act 2012 identifies the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time. Regulated activity with adults includes:</p> <ul style="list-style-type: none"> • providing health care by a healthcare professional or under the direction or supervision of a healthcare professional; • providing personal care; • providing social work; • assistance with general household matters to an adult because of their age, illness, or disability (that is managing a person’s cash); • assistance in the conduct of a person’s own affairs; or • Transporting an adult because of their age illness or disability, from their place of residence to a place where they will receive healthcare, personal care or social care, or between such place. <p>For more information see the Factual Note on Regulated Activity with adults.</p> <p>Family or personal arrangements, such as looking after a friend’s children for the day, are not regulated activity. Other activities or situations which are not defined as regulated activity include:</p> <ul style="list-style-type: none"> • work with 16 and 17 year olds in a workplace • work at mixed age sports and leisure facilities • work with children or vulnerable adults by chance (for example if an adult brings their child to an aerobics class) • work at a college for adults

Term	Definition
	<ul style="list-style-type: none"> • visiting a friend or relative in a children’s home or residential care or nursing home • work in a shop or leisure facility where children or vulnerable adults might be customers (for example ice cream vans, fairgrounds, holiday camps) • visiting from overseas with a group - working or caring only for that group activity carried out by someone under 16.
Serious Incident Reporting	<p>Serious incidents are mainly concerned with criminal or unlawful activity, or very serious incidents about a charity that may affect its funds, property, beneficiaries or reputation. Charity trustees should report serious incidents to the Commission immediately, not waiting until they submit their annual return to notify us. Some incidents may not actually be criminal, but may suggest risk of potential criminal activity or other risks which, if they became reality, would cause serious harm to the charity. If you have any doubt about whether an incident is serious, report it to us anyway.</p>
W3C Standards	<p>W3C accessibility standards consist of a set of guidelines for making content accessible especially to those web users who have a disability. This standard is recognised internationally.</p>

Useful contacts

Charity Commission for England and Wales (CCEW)	Telephone: 0300 066 9197 Website: www.gov.uk/government/organisations/charity-commission
Companies House	Telephone: 0303 1234 500 Website: www.gov.uk/government/organisations/companies-house
Department for Communities	Telephone: 028 9082 9424 Website: www.communities-ni.gov.uk
Department for the Economy	Telephone: 028 9052 9900 Website: www.economy-ni.gov.uk
Department of Health	Telephone: 028 9052 0500 Website: www.health-ni.gov.uk
Equality Commission for Northern Ireland	Telephone: 028 90 500 600 Website: www.equalityni.org
HM Revenue and Customs (HMRC)	Telephone: 0300 123 1073 Website: www.hmrc.gov.uk/charities
Information Commissioner's Office	Telephone: 030 123 1113 Website: https://ico.org.uk/
Northern Ireland Council for Voluntary Action (NICVA)	Telephone: 028 9087 7777 Website: www.nicva.org
Office of the Scottish Charity Regulator (OSCR)	Telephone: 01382 220446 Website: www.oscr.org.uk
Volunteer Now	Telephone: 028 9023 2020 Website: www.volunteernow.co.uk

Useful links and guidance

Charity essentials - view all guidance produced by the Charity Commission for Northern Ireland

Suite of guidance on registering as a charity in Northern Ireland

Suite of guidance on charity accounting and reporting

PBR1 Public benefit requirement guidance

CCNI EG58 Matters of material significance: a guide for auditors and independent examiners

CCNI EG059 Serious incident reporting - a guide for charity trustees

CCNI EG061 Fundraising for charities: A guide for charity trustees and the public

CCNI EG063 Developing a reserves policy guidance

CCNI EG071 Using and understanding the register of charities

CCNI EG046 Making payments to trustees

CCNI EG043 Equality guidance for charities

Code of Good Governance

Northern Ireland Audit Office – Conflicts of Interest: A good practice guide

The Charities SORP

Charity Commission for England and Wales guidance on:

- *Internal financial controls for charities*
- *Charities and investment matters*
- *Trustees, trading and tax*
- *Conflicts of interest*

Cyber Essentials Scheme

ActionFraud

Financial Action Task Force on Money Laundering

If you disagree with our decision

If you disagree with one of our decisions, we would like to reconsider it ourselves in the first instance. Our decision review procedure offers a genuine opportunity for our decisions to be looked at afresh. If you ask us to review a decision, where possible we will refer the matter to someone who did not make the original decision. You can also seek a review from the Charity Tribunal.

If you are dissatisfied with our service

The Commission is committed to delivering a quality service at all times. However, we know that sometimes things can go wrong. If you are dissatisfied with the service you have received, we would like to hear from you, and have a procedure that you can use. You will find further information on these processes in our guidance, *Making a complaint about our services*, which is on our website www.charitycommissionni.org.uk

Freedom of information and data protection

Data Protection

The Charity Commission for Northern Ireland is responsible for registering, regulating and reporting on the charity sector in Northern Ireland. As the charity regulator, we are lawfully required to collect and process personal data in order to achieve our statutory objectives, functions and general duties.

Any personal data you give us will be held securely and in accordance with data protection rules and principles. Your personal details will be treated as private and confidential, and will only be retained for as long as is necessary in line with our [retention policy](#). The information will be safeguarded and will not be disclosed to anyone not connected to the Commission unless:

- you have agreed to its release,
- the Commission is legally bound to disclose the information
- the Commission regards disclosure as necessary in order to properly carry out its statutory functions

The Commission may also disclose information or personal data to other relevant public authorities where it is lawful to do so and where, for the purposes of national security, law enforcement, or other issues of overriding public interest, such disclosure is necessary.

We will ensure that any disclosure made for this purpose is lawful, fair, considers your right to privacy and is made only to serve the Commission's statutory objectives as a regulator.

When you provide the Commission with information used to carry out its functions, you are obliged to comply with section 25 of the *Charities Act (Northern Ireland) 2008* which means that it is an offence to provide information which is false or misleading. In respect of your personal data we expect any data which you give us to be truthful, accurate and up-to-date.

For further information, you may wish to read the Commission's [Privacy notice](#) which details what to expect when the Commission collects and

processes personal information, including your rights in relation to that processing if we hold your information.

Freedom of Information

The Freedom of Information Act 2000 gives members of the public the right to know about and request information that we hold. This includes information received from third parties. If information is requested under the Freedom of Information Act we will release it, unless there are relevant exemptions. We may choose to consult with you first. If you think that information you are providing may be exempt from release if requested, please let us know.

Further information on our activities is available from:

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