

Councillors' Guide

A guide to a
councillor's role as
charity trustee



October 2012

The Charity Commission for Northern Ireland is the new regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Social Development (DSD).

The Charity Commission aims to:

- develop a regulatory framework in which the public have confidence and in which charities can grow and flourish, clear in the knowledge of their rights and responsibilities;

And

- manage the organisation as a statutory non-departmental public body following the full implementation of the Charities Act (Northern Ireland) 2008.

Further information on our work is available from our website:

www.charitycommissionni.org.uk

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About the Charity Commission for Northern Ireland

The Charity Commission is the new independent regulator of Northern Ireland charities, as created by the Charities Act (NI) 2008. The Commission is a non-departmental public body and is sponsored by the Department for Social Development (DSD).

Our vision is for a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission's effective delivery of its regulatory and advisory role. The Commission has a range of regulatory powers which facilitate delivery of this statutory remit and vision, the most important of which are detailed below.

Current regulatory and advisory powers

In February 2011 the Charity Commission gained regulatory powers, including investigating charities when a risk exists to its assets, beneficiaries or reputation. At present, the powers extend to those organisations that have been granted charitable tax status by Her Majesty's Revenue & Customs (HMRC). These organisations number over 6,500 and the list, termed the "deemed list" is published on the Commission website.

This allowed us to identify and investigate apparent charity misconduct and mismanagement for the first time. These powers do not yet apply to all charities as the registration of local charities has not yet begun.

The Commission's other important regulatory powers include:

- providing advice and guidance to charity trustees when an application for that advice is made;
- requiring a charity to change its name if it is offensive or misleading;
- giving specific directions to protect a charity such as to suspend or remove a trustee;
- authorising special payment, for example, facilitating the payment of creditors when a charity is wound up.

Charity registration and charitable status

The production of a publically accessible register of charities features heavily as a means by which to reinforce public trust and confidence in charities. A necessary legislative amendment to the Charities Act (NI) 2008 is being progressed through the Assembly at present. This will allow us to begin the registration of Northern Ireland's estimated 7,000-10,000 charities, due to begin from late in 2013.

The production of the register of charities will allow the Commission to definitively designate organisations as charitable in law, a new development in Northern Ireland. All charities are required under the Charities Act (NI) 2008 to register with the Commission, including for example, charities promoting religion, preventing or relieving poverty or advancing animal welfare.

What does this mean for local councillors in Northern Ireland?

In civic life there will be much contact between councillors and local charities on a grassroots level. Therefore, it is important that individual councillors understand the current and future roles and functions of the Charity Commission.

Additionally, a corporate body such as a local council can be a charity trustee, but importantly so can an individual councillor. Councillors, as respected community figures, are often asked to act as trustees, or to sit on charity boards, often managing charitable assets in doing so. While it is perfectly appropriate and common for councillors to occupy such roles, it should be understood that trusteeship or a board position comes with specific legal responsibilities and considerations.

However problems can sometimes arise for councils and individual councillors when occupying these positions and managing charitable assets for a number of reasons, for example:

- councils, used to exercising wide discretion in managing their own assets, may not have fully recognised and complied with the restrictions on the use of the charitable assets;
- conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity;
- assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.

Issues for consideration and recommendations for councillors are explored thematically below.

Managing charitable trusts

Consideration should be given to the following general principles:

- Where a local council is a charity trustee, it is the corporate body, acting in accordance with its usual procedures, which is the "trustee". While ongoing management may be delegated to officers, responsibility for decision-making and oversight ultimately rests with the councillors as a body.
- The purposes of the charity must be clearly understood. Many problems can stem from a lack of clarity regarding these terms or indeed a failure to recognise that a charity exists in the first place. If there is any doubt about the objects of a charity or how they should be interpreted, appropriate advice should be sought, for example from legal advisors or from the Charity Commission.
- The management of the charity should be kept separate from the business of the council, as far as possible. A sub-committee of councillors may be tasked with managing the affairs of the charity, depending on the size and circumstances of the council. However responsibility will continue to rest with the entire council.
- Equally the finances of the charity should be kept separate from those of the council. The council may top up the finances of the trust but no funds should pass from the trust into the council's own accounts – although the council may, depending on the circumstances, recover administration costs.
- Councils should be transparent in their administration of the charity. This includes making accounting statements publicly available if requested to do so. After the Charity Commission registers charities, they will all be required to submit their accounts and an annual report to the Commission. Producing a publicly accessible charity annual report and accounts is recommended best practice at present.
- The Council should take legal advice if any issues arise with the administration of a charitable trust, or approach the Charity Commission if specific consent is required to take certain actions.

Managing potential conflicts of interest

There is a fiduciary duty placed on every charity trustee requiring them to act selflessly in furthering the interests of the charity, even if they are there as the 'representative' of another body. Councillors as charity trustees must not place themselves in a position where there is a conflict between duty to the charity and a personal or council interest.

For example, if there is a contractual relationship between a charity and a local council, a councillor who is also a trustee of that charity is placed in a position of conflict between duty to the charity and loyalty to the local council, whenever the trustees discuss matters relating to that contractual relationship. Both the charity and the local council have an interest in securing the terms most favourable to themselves.

It may be possible to deal with such a conflict of interest by requiring the conflicted individual to withdraw from discussion of (and, of course, to refrain from voting upon) the matter that gives rise to the conflict.

On the other hand, in the case of a substantial and recurring conflict of interest, it may be necessary in the interests of the charity for the individual in question to stand down altogether in favour of someone not subject to a conflict. Where a trustee benefits personally as a result of a conflict of interest, he or she may not be allowed to retain that benefit in the absence of express authorisation in the charity's governing document or from the Commission.

Maintaining charitable independence

Charities cannot exist for a political purpose, including furthering the interests of a political party or securing or opposing a change in the law, policy or decisions of government. In the political arena, a charity must assert its independence and ensure that any involvement it has with political parties or individual politicians is balanced. A councillor acting as a trustee must not use the charity as a vehicle for the expression of their political views.

Furthermore, charitable assets should always sit independently from the council and the purposes or assets of the charity should not be diluted or merged into that of the council.

Ten tips for councillors in their roles as charity trustees

1. Ensure that any charitable assets, for which the council is the trustee, are clearly identified.
2. Make sure that you are clear about the objects of the charity set out in its governing document. These dictate how any such asset may be used, in accordance with charity law.
3. Make sure that any charitable assets, for which the council is the trustee, are managed independently in accordance with their charitable purpose and any restrictions in the governing document.
4. Recognise that charity trustees have a duty to be prudent and to act solely in the best interests of the charity.
5. Ensure there is a clear line of responsibility for the management of all charities for which the local authority is the trustee.

6. Ensure there are clear guidelines for officers and councillors about roles, responsibilities and decision making in the administration of charities.
7. Ensure you have a clear process for identifying and managing any conflicts of interest that arise when the council is the trustee of a charity.
8. Actively manage any charity for which the council is the trustee. For example by keeping records up to date and keeping a watching brief on charity regulation.
9. Periodically review whether it continues to be in the best interests of the charity for the council to remain as trustee.
10. Follow Charity Commission guidance (and obtain appropriate advice) if you are a councillor who is involved in a charity and would like further information.

For further information on any aspect of our work, please see the Charity Commission website www.charitycommissionni.org.uk

You can also read our [Guidance on Campaigning and Political Activities](http://www.charitycommissionni.org.uk/Charity_requirements_guidance/Your_charitys_activities/Campaigning/Guidance_on_campaigning_and_political_activities.aspx) on our website

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