

Making payments to charity trustees

Guidance for charities that are considering making a payment to a charity trustee or person connected to a trustee



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

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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 *pink 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.

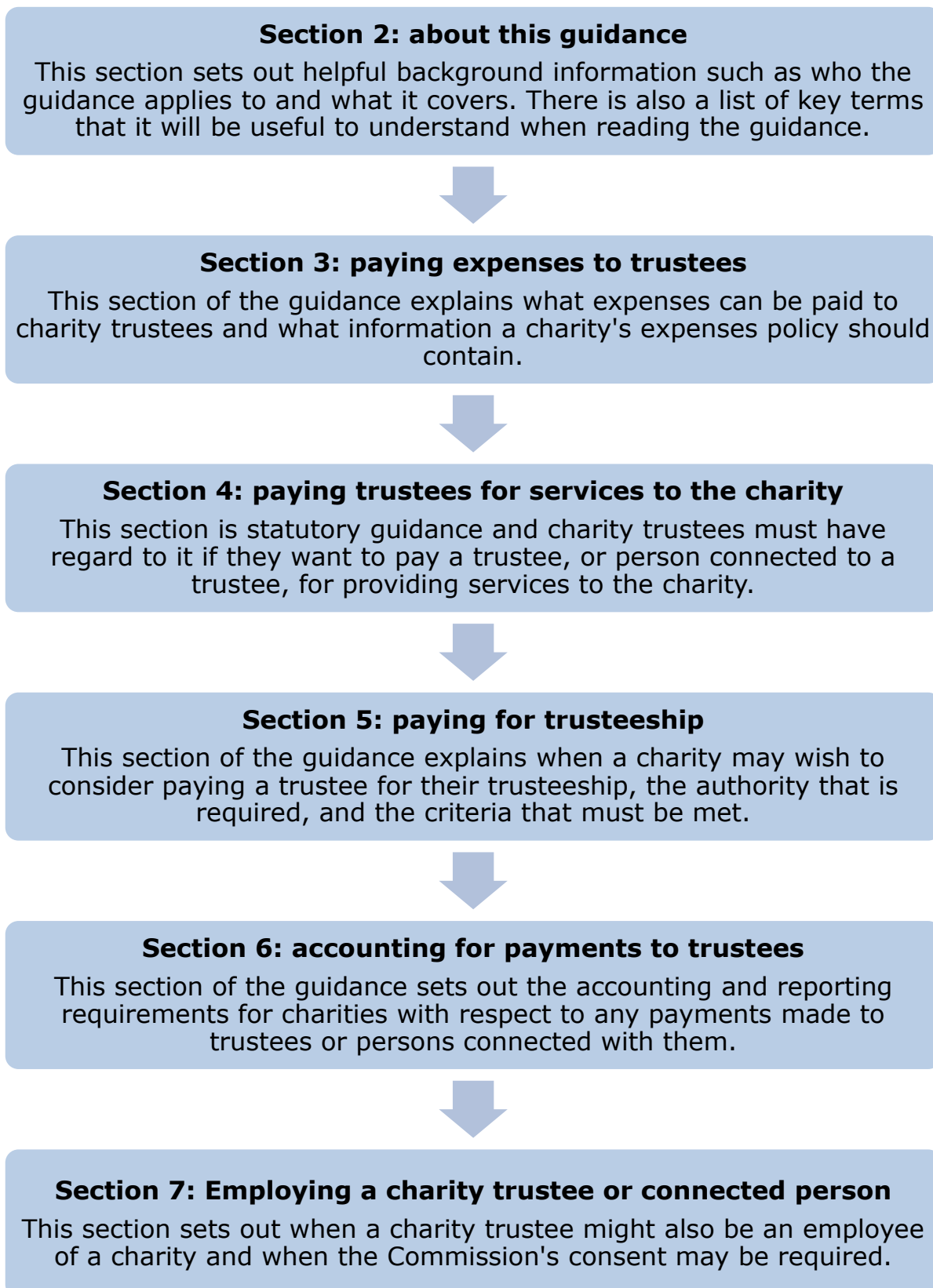
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Structure of the guidance

This flowchart introduces the key sections of the guidance:



Section 1: Overview

The voluntary nature of charity trusteeship is one of the distinctive features of a charity. Research undertaken by the Commission estimates that there could be up to 50,000 individual charity trustees in Northern Ireland, giving their time freely for the benefit of others and not for their own financial reward. This is a key element in promoting public trust and confidence in charities.

There are, however, circumstances when a charity will provide some form of payment to its charity trustees. This will usually be in the form of reimbursing expenses. This is important to help ensure that the position of charity trustee is accessible to people from a range of backgrounds and that no charity trustee is out of pocket as a result of work carried out on behalf of the charity.

Other charity trustees may be paid where they provide services to the charity that are distinct from their role as a charity trustee.

A charity may also seek to remunerate a charity trustee for their trusteeship, however, this is generally only possible in **exceptional** circumstances.

It is important to remember that charity trustees must act in the best interests of the charity and must ensure that their own personal interests do not come into conflict with the interests of the charity.

This guidance is designed to help charities to be informed and confident when identifying whether they can, or should, make a payment to a charity trustee. The law can be complex in this area and, while this guidance is a helpful tool, charities may wish to take their own professional advice.

It is important to note that section 4 of this guidance, relating to paying charity trustees for services provided to the charity, is **statutory guidance**. This means that charity trustees **must** have regard to this section of the guidance when exercising any powers or duties to which the guidance is relevant. This is a legal requirement set out in the Charities Act (Northern Ireland) 2008.

Section 2: About this guidance

What does this guidance cover?

This guidance sets out legal and good practice requirements where a charity is considering making payments to one or more charity trustees. It covers a range of payments that might be made including:

- [Section 3](#): paying expenses to charity trustees
- [Section 4](#): paying charity trustees for services to the charity (statutory guidance)
- [Section 5](#): paying for charity trusteeship
- [Section 6](#): accounting for payments made to charity trustees
- [Section 7](#): employing a charity trustee or connected person.

It signposts to other guidance that may be needed depending on the payment the charity is considering and whether approval is required.

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 can be accessed from [Companies House](#).

Who does this guidance apply to?

This guidance is aimed at **charity trustees**, who may also be known as members of management committees, board members of industrial and provident societies or directors of charitable companies. Additionally, it will be of use to members of the public, charity beneficiaries, funders and other stakeholders who wish to understand the law and best practice regarding payments to charity trustees. If you have a concern about a payment a charity has made you can submit a concern using the online form on the Commission's website [submit a concern about a charity](#).

What will be published?

The Commission considers publication in line with its [Publishing our decisions](#) policy. Where the Commission authorises or refuses to authorise a payment this will usually be in line with another process of the Commission and will follow the process set out in the relevant guidance. For example, if a charitable company requests consent to amend its governing document to allow for directors' benefits, then the outcome of

this decision will usually be published unless there are good reasons not to do so. This is because this decision could affect public trust and confidence in charities. Where they are published, decisions are usually listed within the *Concerns and decisions* page on our website.

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 good 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**.

Key terms

Below are some key terms it will be useful to understand when reading this guidance. They, and others, are listed in a glossary at [appendix 1](#).

Authority within governing document: This will usually be found in a specific paragraph or clause within an organisation's governing document. For example, an organisation may have authority to pay a charity trustee or trustee contained in a 'remuneration clause' within its governing document.

Breach of trust: A breach of trust occurs when a charity trustee fails to carry-out duties imposed on them either by the terms of their governing document, by law or by the Commission. A breach need not be deliberate or dishonest. In all cases the charity trustee is personally responsible to the beneficiaries and is liable for any loss caused to the charity.

Conflict of interest: In this guidance, this term means any situation in which a charity trustee's personal financial interest may, or may appear to, influence or affect the decisions made by the charity trustee for the charity.

Duty of care: This refers to the legal obligation which all charity trustees have to their charity, to exercise a level of care and skill that is reasonable in the circumstances, in the interests of the charity. Under this legal duty charity trustees are expected to use any special knowledge, or experience they have or claim to have including any expertise which they may have gained through their professional or business experience.

Fiduciary duty: A fiduciary duty is an obligation of trust or confidence owed by a person or organisation to act in the best interests of another. Examples of fiduciary duties of charity trustees include a duty of confidentiality, a duty to ensure conflicts of interest are managed appropriately and a duty not to profit from their position.

Section 3: Paying expenses to charity trustees

The law entitles charity trustees to claim legitimate out-of-pocket expenses. These are refunds made by a charity of reasonable payments which a charity trustee has made personally in order to carry out their duties. Many charities do pay their charity trustees for out-of-pocket expenses and, when undertaken with the correct checks in place, this is a proper use of the charity's funds. However, some smaller charities may decide that they are unable to afford to pay out-of-pocket expenses. It is important that, where this is the case, charity trustees are informed and the policy is applied consistently.

Expenses do not include payments for services provided to the charity, payment for trusteeship, or compensation for any loss of earnings whilst carrying out trustee duties. Information on these types of payments can be found in [section 5](#) and [section 6](#) of this guidance.

Paying reasonable expenses is important in ensuring that no individual is out of pocket as a result of their involvement with the charity and may help to encourage people to get involved who, if expenses were not paid, would not be able to afford to.

It is important to note that, so long as the charity only pays the charity trustee for the actual cost or expense, the payment is not taxable. Additionally, where a charity trustee is in receipt of benefits, the payment of legitimate expenses does not affect entitlement to those benefits.

All charities should have a written policy in place setting out:

- What is classed as an expense
- The process for claiming expenses
- The process for approving expenses.

3.1 What expenses are likely to be legitimate?

It will only be legitimate to pay expenses where the expense is as a result of the charity trustee carrying out business for the charity and the charity trustee has been left out of pocket. A charity should set out its own policy in relation to the payment of expenses. Examples of expenses that are likely to be legitimate include, but are not limited to:

- Reasonable travel to and from meetings or events on charity trustee business, for example, the cost of bus fares or mileage
- Reasonable refunds of the cost of meals paid for while on charity trustee business

- Reasonable overnight accommodation and subsistence while attending charity trustee business away from home
- Reasonable cost of childcare, or care of other dependants, while attending charity trustee meetings
- Refunds of relevant postage or telephone costs
- Reimbursing the cost of translating documents or making documents accessible where the individual would not otherwise be able to understand and participate in charity trustee business
- Reimbursing the cost of training materials or publications relevant to the individual's charity trusteeship
- Payment to facilitate reasonable adjustments for a charity trustee with a disability, for example, specialist transport or equipment.

If a charity is in any doubt as to what might qualify as a legitimate expense then it may be necessary to seek advice from its own professional advisers.

A charity can make arrangements to pay reasonable out of pocket expenses in advance, however, where any advance payment is over and above the actual cost of the expenses, the charity trustee must pay the difference back to the charity.

3.2 What expenses are not likely to be legitimate?

Expenses will not be legitimate if they are excessive, unreasonable, or not linked to official charity trustee business. A false expenses claim will never be legitimate. Examples of expenses that are not likely to be legitimate include, but are not limited to:

- Hotel accommodation, travel costs or subsistence for spouses or partners when a charity trustee is travelling on business
- Payment of private telephone bills for business unrelated to the charity
- Payment of private medical insurance, as this is a benefit rather than an out of pocket expense
- Any payments that are excessive or unreasonable, for example:
 - Paying mileage above the levels approved by HMRC
 - Very expensive accommodation or restaurant costs
- Expenses that are already met by another body, for example, where the charity trustee is a representative of a local council.

3.3 What should a charity do in order to pay expenses to charity trustees?

If a charity intends to pay reasonable out of pocket expenses then it must first check that this is not prohibited in its governing document. It is

unlikely that this will be the case but, if so, the governing document would need to be amended before any expenses could be paid.

The charity should ensure it has a written expenses policy in place setting out, at a minimum:

- Who is entitled to claim expenses
- What expenses can be paid
- When expenses can be paid
- The timeframe within which claims can be submitted
- Any rates or limits on payments, for example, subsistence allowances or mileage rates
- What documentation is required, for example, receipts or bills
- Any insurance requirements, for example, motor insurance if using a car for charity trustee business
- What forms or templates should be used to submit claims
- The levels of authority at which expenses can be authorised
- Who is responsible for processing claims
- The method of payment that will be used, for example, cheque or BACS (cash payments are not good practice)
- What records must be kept
- How frequently the policy will be reviewed.

In addition to having a policy in place, the charity should ensure that this is shared with, and clearly understood by, all the charity trustees of the charity.

3.4 Accounting for charity trustee expenses

Refer to [Section 6](#) of this guidance for information on accounting for, and reporting on, expenses payments made to charity trustees.

3.5 What are the consequences if a charity or charity trustee gets it wrong?

The Commission has seen examples of organisations where the payment of expenses has grown to include things which may be viewed by others as unnecessary and even excessive, for example, the provision of unnecessary and unexplained luxuries for charity trustees. Even where such expenses have been authorised correctly, and in line with the charity's constitution and expenses policy, the collective impact may be to create a perception that is damaging to the charity's reputation.

When investigating concerns of this nature, the Commission will look into the organisation's annual accounts, to identify what payments have been made, whether the correct checks and balances are in place, and whether they are being used. The Commission will then take any necessary action,

in proportion to the issue identified, to protect the charity's assets and beneficiaries.

Illegitimate, false or unreasonable expenses payments will be treated very seriously by the Commission. Any misuse of charity assets for private benefit can damage public confidence in a charity, can affect the charity's ability to operate for the public benefit, and is likely to amount to mismanagement or misconduct. Charity trustees may be liable to repay the charity for any excessive or false charity trustee or trustee expense claims.

3.6 Case study

Case study 1: A charity had an expenses policy which set out that all expenses claims had to be authorised by a minimum of two charity trustees and that claimants could not authorise their own expenses or any expense where they had benefited. Members of the management committee breached the policy by signing expenses claims where they had materially benefitted and not seeking authorisation from a minimum of two charity trustees who were independent of the claim. The charity was given regulatory advice by the Commission which was followed up to ensure compliance.

Section 4: Paying charity trustees for services to the charity

It is important to note that this section of the guidance is **statutory guidance**. This means that charity trustees **must** have regard to it when exercising any powers or duties to which the guidance is relevant. This is a legal requirement set out in the Charities Act.

The Charities Act specifically permits charity trustees, and **persons connected** to them, to be paid for services that they provide to a charity over and above normal charity trustee duties. This includes for goods supplied in connection with the provisions of services. This permission is set out in section 88 of the Charities Act. There are, however, certain conditions that must be met.

This section of the guidance sets out examples of the types of services that charity trustees can be paid for and explains what the conditions are that must be met. Charity trustees must take this guidance into account before they enter into any agreement to pay a charity trustee or connected person for services. This power does not apply to the payment of out-of-pocket expenses, the payment of a charity trustee for their services as a charity trustee, or employing a charity trustee or connected person under a contract of employment.

For the purposes of paying for services, the definition of people who are connected to the charity trustee is contained in section 89 of the Charities Act. Generally, these are close family members or businesses connected with the charity trustee. The legislation lists the following individuals or organisations as being connected to a charity trustee:

- a) A child, parent, grandchild, grandparent or sibling of the trustee
- b) The spouse or civil partner of the trustee or of any person falling within paragraph (a)
- c) Any person carrying on business in partnership with the trustee, or with any person falling within paragraphs (a) or (b) above
- d) Any institution which is controlled:
 - i. by the trustee or by any person falling within paragraphs (a), (b) or (c) above, or
 - ii. by two or more people falling within sub-paragraph (i) when taken together
- e) A body corporate in which
 - i. the trustee or any person falling within paragraphs (1) to (c) has a substantial interest, or
 - ii. two or more people falling with sub-paragraph (i), when taken together, have a substantial interest.

The power set out in the Charities Act is additional to any other form of **authority within the charity's governing document** or set out in other legislation. For example, a charity may have a power within its governing document that allows for payment to charity trustees for providing certain services. If the power in the charity's governing document is more restrictive, for example, it only allows payment for professional services and not for other services, then the charity could use the power set out in section 88 to make other payments, provided there is no prohibition in the governing document. If the power in the charity's governing document is less restrictive, then the charity can rely on this without reference to section 88. Section 88 can also be used to authorise payments for services where there is no power in the charity's governing document.

4.1 What is meant by services to a charity?

If permitted, examples of services that a charity trustee or connected person may be paid for delivering could include, but are not limited to:

- Delivery of a lecture
- Conducting a piece of research work
- Using a charity trustee's firm for a building job or maintenance contract
- Occasional use of a trustee's premises or facilities
- A trustee's decorating service providing and fitting curtains at a charity's premises
- Providing specialist services, for example, estate agents, land agents, management and design consultants, computer consultancy, builders, electricians, translators and graphic designers.

In order to make any payment, it is best practice to have a robust conflicts of interest policy in place in order to manage any potential or actual conflict of interest. This is particularly the case where a charity trustee's personal or business interests are likely to profit. There are links to further information on conflicts of interest in the [useful links](#) section of this guidance.

Payment for services, in this context, includes payment for goods that are supplied in connection with the provision of services.

The power to pay charity trustees or connected persons for the provision of services cannot be used to allow payment for auditing or independent examination services, as a charity trustee cannot legally act as an auditor for their own charity.

4.2 When would a charity not be able to pay charity trustees for services provided to the charity?

A charity will not be able to use the power set out in section 88 of the Charities Act if:

- They cannot meet the conditions for making the payment
- It is prohibited under other legislation, for example, housing legislation which prohibits charity trustees from providing services to the organisation.
- It is explicitly prohibited by the governing document of the charity

4.3 What conditions must be met before deciding to pay a charity trustee for services?

The decision to pay a charity trustee or connected person for services provided to the charity must be made only by those charity trustees who will not benefit. This means that those charity trustees affected by the decision must remove themselves from any discussions and decisions relating to the services. The remaining charity trustees must be content that the service is required by the charity, that it is in the best interests of the charity for the service to be provided by the charity trustee or connected person, and they must comply with all of the conditions set out in sections 88 and 89 of the Charities Act. These are:

- there must be a written agreement between the charity and the charity trustee or connected person setting out the amount or maximum amount to be paid
- the amount must be reasonable in the circumstances for the provision of the services
- the charity trustees must be satisfied, before entering into the agreement, that it is in the best interests of the charity for the services to be provided by the charity trustee or connected person for the amount set out in the written agreement
- the total number of charity trustees receiving payment, or connected to someone receiving payment, must be in a minority
- there must be nothing in the governing document of the charity that prohibits the payment
- the charity trustees must exercise the 'duty of care' set out in section 1(1) of the Trustee Act (Northern Ireland) 2001 when making the decision
- the charity trustee concerned must not take part in any decisions about the making of the agreement, the acceptability of the service provided, or setting the price.

Additionally, before entering into an agreement, the charity trustees must have regard to this guidance and be able to show that they have taken it into account when making the decision. Further information on these conditions is set out below.

4.3.1 Written agreement

There must be a separate written agreement between the charity and the charity trustee or connected person. It is not sufficient for the agreement to be documented in meeting minutes. This should be established in advance of any payment being made and must remain in force until any obligations under the agreement have been met in full. The agreement can be amended by a majority decision of the charity trustees who do not stand to gain from the payment. The agreement must, at a minimum, set out:

- an accurate description of the services to be provided
- the name of any charity trustee or connected person who will be paid for providing the services
- details of the amount or maximum amount that will be paid for the services over the duration of the agreement.

It is good practice for the agreement to include:

- A statement that any charity trustee must remove themselves from any discussions or decisions relating to the terms, conditions or continuation of the agreement. This will not prevent the charity trustee from providing information which the charity may need when making a decision.
- A statement that the charity trustee concerned will not vote on any of these matters and will not be counted when determining if a quorum exists at a meeting to discuss the agreement.

The level of detail required will generally depend on the nature of the service being provided, the level of payment proposed, and the duration of the agreement. If the agreement is likely to continue for some time, or if the nature of the agreement is complex, then the charity should consider seeking professional advice.

The agreement must be signed by someone authorised by the charity trustees to do so. This could be one or more of the charity trustees who do not stand to benefit under the agreement, or someone who is not a charity trustee but has a sound knowledge of the matter. The agreement must also be signed by the charity trustee or connected person who is to be paid.

4.3.2 Amount of payment must be reasonable

The charity trustees must be satisfied that the amount of payment proposed for the services is reasonable in the circumstances. In deciding whether the amount of payment is reasonable they should consider the following:

- whether the charity can afford the payment
- the value of the services to the charity

- the quality of the service that will be provided and the reliability of the supplier
- any previous payments made by the charity for the same or similar services
- whether the amount is comparable to that paid by other organisations in similar circumstances.

It is good practice for a charity to have a policy on procurement and purchasing and, where this is the case, the charity would need to ensure that it complies with that policy. This may require obtaining quotes from other suppliers or conducting a full tendering exercise, depending on the amounts involved. The higher the amount, the greater the requirement for charity trustees to show that they have properly tested the market in order to obtain value for money and to ensure that the payment is reasonable.

4.3.3 The arrangement is in the best interests of the charity

The charity trustees must be satisfied that the arrangement is in the best interests of the charity. This means that they must have weighed up the advantages and disadvantages of the arrangement, as well as any alternatives, and be able to show that:

- the service is required by the charity
- there is a clear advantage in using a charity trustee or connected person to provide the service having considered factors including, but not limited to
 - value for money
 - speed of delivery
 - quality of the service
 - knowledge of the charity
- the arrangement will not have an adverse impact on the charity, for example, by damaging its reputation amongst stakeholders or overly limiting the capacity of a charity trustee to be involved in decision making
- the conflict of interest can be managed effectively.

Where this is no clear advantage to the charity in using a charity trustee or connected person to provide services, and there are other providers, then another provider should be used. This is because the arrangement would not be in the best interests of the charity due to the need to manage the conflict of interest and reputational risk to the charity.

4.3.4 The total number of charity trustees receiving payment for services, or connected to those receiving payment, must be a minority of the body of trustees

To use section 88 of the Charities Act to authorise a payment, the total number of charity trustees receiving any kind of payment out of the charity's funds, or connected to someone receiving payment, must be in a

minority. This is to ensure that the charity can continue to make decisions and manage the conflict of interest. This means that, if the charity has only two charity trustees, this power cannot be used as there could never be a minority of charity trustees receiving payment. In this case, the charity would either need to approach the Commission to approve a payment, or appoint additional charity trustees.

4.3.5 The charity's governing document must not forbid the payment

If the charity's governing document forbids the payment of charity trustees for services provided to the charity, then the prohibition would need to be removed. Contact the Commission if this is the case.

4.3.6 The duty of care set out in the Trustee Act

The Trustee Act (Northern Ireland) 2001 sets out the **duty of care** to be exercised by trustees and is specifically referenced in section 89 of the Charities Act as applying to charity trustees seeking to make a payment using section 88. The duty requires charity trustees to exercise such care and skill as is reasonable in the circumstances and, in particular, to use their knowledge and experience to inform their actions.

This duty applies in addition to the fundamental duty of charity trustees to act in the best interests of the charity and its beneficiaries and to comply with the terms of the governing document.

4.3.7 Not participating in decisions relating to the payment

Any charity trustee who stands to benefit must not influence the charity trustees' decisions relating to that benefit. This is essential to the effective management of any actual or potential conflict of interest. Therefore, a charity trustee who could benefit through being paid for providing services, or through a connection to someone who is providing services, must withdraw from any relevant discussions and must not vote on the decision.

If a charity decides to pay a charity trustee or connected person for services the written agreement drawn up by the charity should include a statement that the affected charity trustees cannot participate in any decisions relating to the payment. This can help to demonstrate to those who fund or use the charity that proper steps are being taken to manage the conflict of interest.

4.4 Accounting for payments for services

Refer to [Section 6](#) of this guidance for information on accounting for, and reporting on, payments made to charity trustees or connected persons for services provided to the charity.

4.5 What are the consequences where payments are made that do not meet the necessary conditions?

If a charity cannot meet the conditions attached to section 88 of the Charities Act then it cannot use that power to authorise payment to a charity trustee or connected person. Where a charity makes a payment that is not authorised then this may be a breach of trust and the charity trustee may be personally liable to repay any monies. Additionally, any misuse of charity assets could amount to mismanagement or misconduct in the administration of the charity and may result in the Commission opening an inquiry into the charity. If a charity wants to pay a charity trustee or connected person for services, and cannot meet the necessary conditions, the Commission may be able to approve the payment. However, consent must be sought prior to the payment being made.

4.6 Case studies

Case study 1: A charity had four board members – its charity trustees - and its governing document set out that the quorum for decision making was four. One of the charity trustees, whose profession was directly linked to the purposes of the charity, had been providing services and goods to the charity at a beneficial rate. The charity's governing document allowed for the remuneration of a charity trustee for the provision of professional services, but the charity trustee receiving payment should have been excluded from voting on a decision that was likely to benefit him. By excluding him, the charity was unable to reach a quorate decision. The Commission provided regulatory guidance to the charity following which the charity trustee resigned from his position, more charity trustees were recruited, and a proper contract was agreed between the individual and the charity. The charity sought legal advice and a quorate board decision was minuted which found the arrangement to be competitive and good value for the charity to advance its purposes.

Case study 2: Another charity was housed in the same premises as a business which was owned and managed by one of the charity's trustees. The purposes of the charity and the commercial business interests of the charity trustee overlapped. The charity's governing document allowed for the provision of services by charity trustees. However, the charity trustee was on occasion unable, and at other times unwilling, to be excluded from the charity's decision making that benefited him directly. Following the Commission's intervention, the charity trustee resigned.

Section 5: Paying for charity trusteeship

It is a distinctive feature of charities that those who have control and management of the administration of a charity, that is the charity trustees, volunteer their time freely and without an expectation of payment in return. This is key in enhancing public trust and confidence in charities, so that donors, beneficiaries and other stakeholders can be sure that the charity's assets are used to advance its charitable purposes only, and not for the private benefit of those in a position of responsibility.

In this position of responsibility, charity trustees must act in the best interests of the charity, and not for their own personal interests. Introducing payment for trusteeship introduces a conflict between these interests and is a breach of a charity trustee's **fiduciary duty**. Therefore, any charity seeking to pay a charity trustee must have authority in advance of any payment being made. There is no power in charity law for charity trustees to be paid therefore the authority must come either from the charity's governing document or from the Commission. Even with authority, to justify any payment, a charity must be able to demonstrate that the payment would be in the best interests of the charity and that the conflict of interest can be managed.

Before seeking to make a payment to a charity trustee, it is essential that a charity weighs up the risks, for example, that charity trustee remuneration could have a negative impact on the charity's reputation amongst donors or beneficiaries, or that this use of the charity's funds could impact on its ability to deliver its purposes.

The Commission recognises that, while the move away from unpaid trusteeship is a significant step that should not be taken lightly, there will be cases where remuneration of a charity trustee will be in the best interests of a charity. This section of the guidance will assist charity trustees by setting out the circumstances in which a charity might be able to justify paying a charity trustee for their trusteeship and also the situations where payment is unlikely to be justified. It provides a number of case studies to illustrate these positions. Additionally, it sets out the steps a charity should follow if it wishes to pay a charity trustee.

5.1 What do we mean by payment for trusteeship?

This refers to paying an individual in return for serving as a charity trustee and carrying out the day to day activities associated with the role. Activities associated with the role of a charity trustee include, but are not limited to:

- preparing for and attending charity trustee meetings
- setting the strategic direction of the charity
- reviewing the charity's governing document

- managing the charity's senior staff member, if applicable
- reviewing the charity's annual accounts and reports
- obtaining and acting on the advice of the charity's professional advisers where necessary
- attending events or meetings to advance the charity purposes with stakeholders
- any other activities relating to the general control and direction of the charity.

Payment may be in the form of money or it may refer to other benefits, for example, use of the charity's property or payment in kind. In some cases, payment may take the form of a periodic or annual allowance, while in other cases it will be a one-off payment.

Payment may also be referred to as remuneration. Where a charity has a clause in its governing document that allows it to pay a charity trustee, this will typically be called a remuneration clause.

Paying a charity trustee for their trusteeship is different from paying them for out of pocket expenses or for providing a specific service to a charity that is separate from their normal trustee duties. Information on these types of payments can be found in [section 4](#) and [section 5](#) of the guidance.

5.2 Why might a charity wish to pay its charity trustees?

There are a number of reasons why a charity might wish to introduce payment for a charity trustee or trustees. Examples include:

- A large charity, with complex operations, wants to offer payment to its chairperson for a period of one year during which time the charity is undergoing a significant restructuring. The charity anticipates that the chairperson will be required to spend considerably more time on their role as charity trustee and will suffer from a loss of other earnings as a result.
- A charity operating within a complex legal and regulatory environment seeks to introduce payment for a post in order to attract applicants with the skills and experience needed for the role, and to compensate for a significant time commitment. It has previously tried to recruit on an unpaid basis and has been unable to do so resulting in a risk to the effective governance of the charity.

Introducing payment for charity trustees should not, however, be seen as a straightforward tool to overcome difficulties in recruitment.

There are many methods that charities can use to recruit charity trustees, including targeted advertising, online publicity or the use of recruitment agencies. Additionally, in many cases, simply paying legitimate and reasonable expenses may be all that is needed to reassure potential

recruits that they won't be out of pocket by taking on the role of charity trustee. Where possible, charities should ensure they can offer reasonable upfront expenses for the cost of transport, meals, childcare and accommodation when on charity business. It is important that no-one fears they will be out of pocket by becoming a charity trustee. Further, charity trustee meetings should ideally be held at times that are most convenient to all, and at readily accessible venues.

5.3 Seeking authority for payment for trusteeship

A charity will only be able to pay an individual for trusteeship if it has:

- the power to do so in its governing document (for example, in a remuneration clause) or express authority from the Commission and
- it is not prohibited under other legislation relevant to the charity.

Even with authority, charity trustees have a **duty of care** to ensure that any payment can be justified in accordance with the principles set out in [section 5.4](#) of this guidance. For example, a charity that has a remuneration clause in its governing document cannot use that power to pay excessive amounts to a charity trustee or to make payments that are not in the best interests of the charity. Additionally, the charity must ensure it manages the conflict of interest. This will be monitored by the Commission through annual reporting. This may also be raised at the point at which an organisation applies for charity registration. The Commission may need to confirm that the organisation in question has a policy in place to manage any conflict of interest.

If there is provision within the governing document, and where there is no requirement within the remuneration clause for the Commission to consent to the payment, the charity trustees can make the payment without our involvement. If, however, the charity trustees are in any doubt about whether the payment is reasonable and in the best interests of the charity, they should consider obtaining express consent from the Commission as a matter of good practice. This will ensure the payment is appropriately authorised. Through annual reporting, the Commission will monitor payments made to charity trustees and may contact charities to obtain details of how the payment was justified.

The charity must meet any conditions attached to the use of the power, for example, seeking the consent of the Commission, or only allowing a minority of charity trustees to be paid. Where the Commission's consent is required as a condition of using the remuneration clause we will consider any application on the same basis as if the charity did not have the remuneration clause.

If a charity does not have the power to pay for trusteeship set out in its governing document it must seek authority from the Commission before making any payment.

Depending on the circumstances and structure of the charity, it can do one of two things:

1. Apply for an order to authorise a payment(s) for trusteeship
2. Apply to amend its governing document to include a charity trustee remuneration clause by:
 - regulated alteration if it is a charitable company
 - scheme if it is not a charitable company.

It is important to note that, even where a charity has the power of amendment within its governing document, it cannot use that power to introduce a remuneration clause. This would need the explicit authorisation of the Commission in advance as, otherwise, our view is that it would be an unauthorised breach of a charity trustee's fiduciary duty.

In reaching a decision about whether to make a payment to a charity trustee, or when determining details of a payment, any charity trustee with a potential or real conflict of interest must be excluded.

5.3.1 Seeking an order to authorise payment

A charity can apply to the Commission to authorise a transaction, or payment, which it does not have the power to make but which it feels is in the best interests of the charity. This may include a payment to an individual for trusteeship. The Commission will assess the application and has the power to authorise the payment by making an order under section 46 of the Charities Act.

This will usually provide for a one-off authority to pay a named charity trustee for a specified period of time.

If there is an express prohibition against charity trustee benefit in the governing document this would have to be removed by amending the governing document.

The Commission has produced guidance on [Authorising transactions](#) which sets out the application process that should be followed. Applications are made using an online form.

5.3.2 Seeking authority to insert a remuneration clause in a governing document

Where a charity wishes to introduce remuneration for a post rather than for a named individual it will usually require authority of the Commission to insert a remuneration clause in its governing document.

A charitable company must apply to the Commission for consent if it wishes to alter any provision in its articles of association which would result

in a charity director, member or connected person benefiting. This includes where it is proposed to pay a director for their trusteeship. This is a **regulated alteration** and may be authorised by the Commission under section 96 of the Charities Act.

The Commission has produced guidance on [Consents for charitable companies](#) which sets out the application process that should be followed. Applications are made using an online form.

A non-company charity can apply to the Commission for a scheme to alter its governing document to insert a remuneration clause.

The Commission has produced guidance on [Requesting a scheme](#) which sets out the application process that should be followed. Applications are made using an online form.

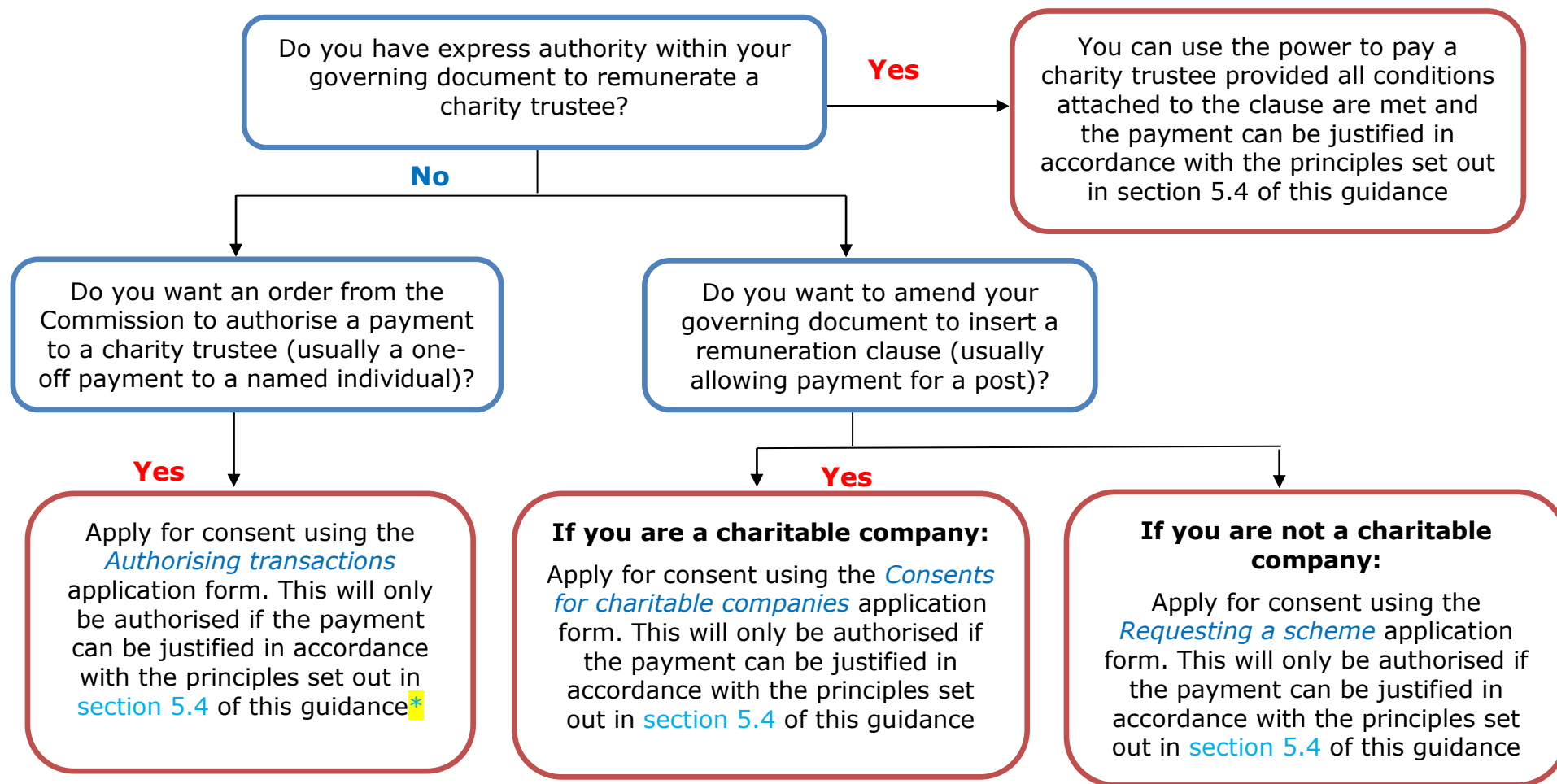
On a case by case basis, where we agree to the amendment of the charity's governing document, we may make this subject to conditions which could include, but are not limited to:

- use of the power remaining subject to the Commission's consent
- only a specific post holder can be paid
- the level of payments must not exceed a set amount
- a remuneration committee, independent of the charity trustees, must set levels of payment
- a limit on the number of charity trustees who can benefit.

If there is an express prohibition against charity trustees benefiting in the governing document this would have to be removed by amending the governing document.

5.3.3 Flowchart

The following flowchart may assist you in identifying the process you need to follow:



* This will only be authorised if the payment can be justified and is not expressly prohibited by the charity's governing document or by any other legislation relevant to the charity (e.g. company law).

5.4 In what circumstances might payment for trusteeship be justified?

Payment for trusteeship can only be justified where it is in the best interests of the charity, provides a clear and significant advantage over all other reasonable options, and the advantage outweighs any private benefit to the recipient or disadvantage to the charity.

It is likely that a charity would only be able to demonstrate this in exceptional circumstances where, without payment, the charity will not be as effective or will not be able to advance its charitable purposes. For example, if a charity is operating in a very complex field, where charity trustees are required to exercise a higher degree of responsibility and supervision than might reasonably be expected of a charity trustee, the charity may find that it is unable to recruit a chairperson with the time to dedicate to the role, or necessary skills, experience and competence, without offering some payment.

When applying to the Commission for consent, or when using an existing authority to make a payment, it will be up to the charity to demonstrate that:

- the payment is in the best interests of the charity
- other options have been considered, for example, spreading duties among other charity trustees or increasing the number of unpaid charity trustees
- the payment is reasonable and affordable
- the payment will not have a negative impact on the charity's ability to carry out its purposes, for example, by taking a disproportionate amount of funds away from supporting service delivery
- the benefits of the payment outweigh any risks identified
- there is a system to review pay levels, value for money, performance and stopping payment if performance is unsatisfactory or the payment is no longer necessary
- there is a conflicts of interest policy in place to enable the inherent conflict to be managed whilst enabling the conflicted charity trustee(s) to maintain an effective role in the charity.

Additionally, depending on the circumstances of the charity, it may need to consider:

- taking independent professional advice
- engaging, or working with, an independent body to carry out a governance or payment review
- consulting with key stakeholders such as funders, other regulators, beneficiaries, and other volunteers or staff
- benchmarking proposed payments against other, comparable organisations.

The Commission will consider every case on its own merits to identify whether the charity can justify making the payment. If it cannot, authority will be refused or, where the charity has authority and has used that authority improperly, the charity trustee may be liable to refund the payment(s).

It is important to note that payment may be justified at a point in time but, if the circumstances of the charity were to change, for example, it suffered a significant loss in income, payment may cease to be justified.

The checklist on the following page is designed to help charity trustees, who are considering a payment to a charity trustee, to identify whether the payment can be justified. If the charity does decide to apply for authority then this checklist will assist in submitting an application. It may also be necessary to provide evidence, for example, copies of legal advice, an independent report or an advertisement demonstrating recruitment methods.

Depending on whether payment is sought for a particular individual(s) or post(s) the case will need to be made on the basis of the qualities and duties of the individuals or the requirements and duties of the post.

5.4.1 Criteria: can you justify paying for trusteeship?

	Yes	No	Details / evidence
<p>Essential</p> <p>You must be satisfied that payment for trusteeship is in the best interests of the charity and presents a significant and clear advantage over other options. Additionally there must be a policy in place to manage the conflict of interest. The questions below will help you to identify whether this is the case.</p>			
Are specialist skills / competencies / experiences necessary in a charity trustee(s) to enable the charity to be effective and / or advance its purposes?			
Have you been unable to recruit charity trustees with the necessary skills / competence / experience on an unpaid basis? Can you provide evidence of this?			
Have the charity trustees considered recruiting additional trustees to spread responsibilities more? If not, is there a good reason?			
Does the charity's complexity of operation result in an unusually high burden of trusteeship e.g. does it work in a highly regulated environment where charity trustees are involved in complex negotiations with outside agencies or regulators?			
Is the charity trustee required to exercise a higher degree of responsibility and supervision in a complex field of activity than might reasonably be expected?			
Do you have a robust conflicts of interest policy in place to manage the conflict and enable the charity trustee to be effective?			
Have you considered the risks, for example, to the reputation of the charity or to its ability to attract other unpaid volunteers, and do you have processes in place to manage them?			
Can the charity afford to make the payment, in relation to its income and financial position, without impacting on the ability of the charity to carry out its purposes?			

Have you considered whether the private benefit to the charity trustee could outweigh the public benefit flowing from the charity's purposes?			
Do you have a system to review pay levels, value for money, performance and stopping payment if performance is unsatisfactory or payment is no longer justified?			
Have you identified the correct process to use to seek authorisation to make a payment depending on whether you want to make a one-off payment to a named charity trustee or want to introduce remuneration for one or more posts?			
<p>Good practice</p> <p>Payment for trusteeship is not a decision to be made lightly and the following may help your charity to reach its decision. In some circumstances, good practice recommendations may be essential if the charity is to receive authority to pay a charity trustee or trustees.</p>			
Have you taken professional advice, for example, regarding tax, pension liabilities and benefits, or engaged an independent body to carry out a governance or payment review?			
Have you undertaken any consultation with key stakeholders, for example, funders, other regulators, staff, volunteers and beneficiaries?			
Has proposed payment been benchmarked against payments made by other comparable organisations and is it reasonable for the work to be carried out?			

5.5 In what circumstances is payment for trusteeship unlikely to be justified?

It is unlikely that payment for trusteeship could be justified where:

- The charity cannot demonstrate that the payment is in the best interests of the charity because, for example:
 - The proposed level of payment makes up a significant proportion of the charity's financial resources and, as such, is likely to have a negative impact on the charity's ability to carry out its charitable purposes or

- The charity has not considered the risks associated with the proposal and does not have any means of managing them.
- The charity cannot demonstrate that it has considered other options such as attempting to recruit charity trustees on an unpaid basis.
- The charity has been managed effectively without previous need to pay and there has been change in circumstances.
- The roles and responsibilities of the charity trustee to be paid do not appear to be more complex, onerous or time consuming than might reasonably be expected of a charity trustee.
- There is no conflict of interest policy or the charity cannot demonstrate how the conflict will be managed. This may be more difficult to demonstrate where the charity is seeking to pay more than a minority of charity trustees.
- The decision was made improperly, for example, the charity trustee who is to be paid appears to have influenced decision-making regarding the proposal or it was not agreed at a properly quorate meeting where only unconflicted charity trustees took part in discussions.
- The charity cannot demonstrate that the proposed payment is set at a level which is reasonable for the role to be carried out.
- The charity has no process in place for reviewing pay and performance.
- The payment appears to be more than incidental to the purposes of the charity.

Additionally, it may be more difficult for a charity to justify payment for trusteeship where its governing document expressly forbids benefits to charity trustees.

5.6 Case studies

Case study 1: A large charity which works in the field of international development undergoes considerable expansion and is required to operate within a complex regulatory environment. The charity seeks to recruit a new chairperson with a time commitment of a minimum of 60 days each year. Following extensive advertising, the charity is unable to recruit someone with the skills and experience required. Feedback from potential candidates demonstrates reluctance to undertake the commitment on an unpaid basis. The charity seeks authority from the Commission to offer payment for the role of chairperson. The charity makes the case that it has tried alternative options and that the payment is in the best interests of charity, and provides evidence that it has consulted with stakeholders who are in support of the plan. Additionally, it notes that it has benchmarked the proposed payment against those made by other organisations working in a similar field, and has conducted a feasibility study to demonstrate that the payment will not have an adverse impact on the charity's ability to advance its purposes. Finally, the charity provides a comprehensive conflicts of interest policy that highlights how the conflict will be managed.

The Commission is likely to agree to the proposed payment in this scenario. Payments will be monitored through annual reporting.

Case study 2: A charity established to advance education seeks approval to pay all charity trustees for their participation in charity trustee meetings. The charity states that the level of payment is small in proportion to the charity's annual income and therefore will not have a negative impact on its ability to advance its purposes. The charity's rationale for the payment is that the role of charity trustee has evolved to include additional responsibilities and that there does not appear to be a bank of volunteers with the necessary skills to serve as charity trustees which may pose difficulties in future recruitment. The charity does not provide evidence that it has tried alternatives to paying charity trustees and does not demonstrate that the role of charity trustee in this charity is particularly onerous. No consultation has been undertaken with stakeholders and the conflicts of interest policy provided by the charity is not comprehensive. The Commission is likely to refuse the proposed payment in this scenario.

Case study 3: A charity established to rehabilitate offenders applies to the Commission to authorise payment to the chairperson of the charity over a period of three years. The charity argues that, due to restructuring in a period of transition, the role of the chairperson is particularly onerous and complex resulting in a significant time commitment by the current chairperson. The charity does not demonstrate that any other options have been considered, for example, spreading the responsibility that has fallen to the chairperson, and does not provide evidence that it has had any difficulty in recruiting a chairperson on an unpaid basis. The Commission is likely to refuse the proposed payment in this scenario.

5.7 Accounting for trustee remuneration

Refer to [Section 6](#) of this guidance for information on accounting for, and reporting on, trustee remuneration.

5.8 What are the consequences where payments are made that are unauthorised or not justified?

Without the necessary authority, any charity trustee payment is a breach of trust which may leave the charity trustees personally liable to repay all or part of any payment made. Additionally, unauthorised payments may be evidence of misconduct or mismanagement in the administration of the charity and could lead to the opening of a statutory inquiry into the charity and the risk of significant reputational damage to the charity. Charity trustee payments must only be incidental to the charitable purposes of a charity and, if a charity appears to be becoming a vehicle for charity trustee payment, we will use our powers to protect its assets. In an extreme case, charitable status could be placed in jeopardy.

Section 6: Accounting for payments to charity trustees

All charities must keep proper accounting records with respect to the affairs of the charity. This includes records and details of any payments made to charity trustees, **connected persons** or **related parties** to include:

- payment for charity trustee expenses
- payment for services provided to the charity
- payment for trusteeship
- any other payments.

The term **related parties** is used in the **Charities SORP** and combines the requirements of charity law, company law and Financial Reporting Standards. The term is used to identify those persons or entities that are closely connected to the reporting charity or its charity trustees.

As the written agreement setting out the conditions for the payment forms part of the charity's accounting records it must be retained for at least 3 years in the case of a charitable company (6 years is recommended best practice) and 6 years in the case of a non-company charity.

6.1 Disclosure of trustee payments in charity accounts

The disclosure of certain transactions is important for stewardship purposes to provide assurance that the charity is operating for the public benefit and that its charity trustees are acting in the interests of the charity and not for private benefit.

All registered charities must complete an annual monitoring return and submit this form to the Commission on an annual basis. As part of this form a charity must provide details of any payments and transactions set out above. For more information on the annual monitoring return see [section 6.2](#) of this guidance.

6.1.1 Accruals accounts

If a charity prepares its accounts on an **accruals** basis under the **Charities SORP** accounting framework, the charity must disclose transactions involving charity trustee and staff remuneration, **related parties** and certain ex-gratia payments as notes to the accounts. Any payments made to an auditor or independent examiner must also be disclosed.

For more information on charity accounting and reporting please refer to the [Annual Reporting](#) section of the Commission's website.

For specific guidance and more information on how to apply the Charities SORP to charity accounts and the full disclosures required please refer to www.charitiessorp.org

6.1.2 Receipts and payments accounts

If a charity prepares its accounts on a **receipts and payments** basis, there is no requirement to disclose specific transactions as a note to the accounts. It is, however, recommended as best practice, and to enhance transparency, that details of payments to charity trustees and connected persons are included in the charity's accounts. This can help protect charity trustees from accusations that they are benefiting in some hidden way.

For guidance on how to prepare receipts and payments accounts please refer to the [Annual Reporting](#) section of the Commission's website.

6.1.3 Disclosure of charity trustees' expenses

All charities preparing accounts under Charities SORP must disclose either that no charity trustee expenses have been incurred, or that one or more of the charity trustees has claimed expenses. If expenses have been incurred, charities must also disclose:

- the total amount of charity trustee expenses
- the nature of the various expenses
- the number of charity trustees involved.

We recommend that all charities follow this approach to accounting for expenses, even those not formally required to follow the SORP requirements, as this reflects good practice.

6.1.4 Disclosure of charity trustee remuneration and benefits

Charities that prepare accounts under the Charities SORP must disclose in the notes to their accounts that either:

- none of the charity trustees have been paid any remuneration or received any other benefits from an employment with their charity or a related entity or
- one or more of the charity trustees has been paid remuneration or has received other benefits from an employment with their charity or a related entity.

The SORP expands on company law disclosure requirements and requires that details for each individual charity trustee who received remuneration or other benefits in the financial year is disclosed as a note to the

accounts. In particular, the SORP requires that the following information must be provided:

- the legal authority under which the payment was made (for example a provision in the governing document of the charity, an Order of the Court, or the charity regulator for the jurisdiction(s) of registration)
- the name of the remunerated charity trustee
- details of why the remuneration or other employment benefits were paid
- the amount of remuneration paid
- the amount of any pension contributions paid by the charity for the reporting period
- the amount of any other benefit, for example any termination benefits, private health cover or the provision of a vehicle.

If a charity trustee receives remuneration or other benefits from their employment with the charity in addition to their trusteeship, the note may distinguish between remuneration and benefits received as a charity trustee, if any, from that received for other services or other employment with the charity.

Charities that prepare accounts on a receipts and payments basis are not required to disclose details of transactions in notes to the accounts. However, we recommend that all charities follow this approach to the disclosure of charity trustee remuneration and benefits, as this reflects good practice.

Additionally, depending on the income of your organisation, the Commission may require this detail on the submission of your accounts through the annual monitoring return.

6.1.5 Disclosure of related party transactions

Transactions with **related parties** must be disclosed in the charity accounts if the charity prepares its accounts in accordance with the SORP. Related parties include a charity's trustees, their close family members, and those entities which they control or in which they have a significant interest.

Charities that prepare accounts on a receipts and payments basis are not required to make these disclosures in notes to the accounts but will be asked about payments and transactions with related parties in the annual monitoring return for registered charities.

A decision by a charity to enter into any transaction must be made in the charity's own interests and for the benefit of its beneficiaries. The disclosure of **related party transactions** is an important element of transparency in financial reporting because:

- related parties may enter into transactions that unrelated parties would not
- transactions between related parties may not be made at the same amounts or on the same terms as those between unrelated parties
- the existence of the relationship may be sufficient to affect the transactions of the charity with other parties.

Anyone reading the accounts should be able to assess whether the relationship between the charity and the other party or parties to a transaction may have been influenced by interests other than those of the charity. All transactions between a charity and a related party must be disclosed unless they fall within the exemptions to disclosure list set out in the Charities SORP.

Transactions with related parties must be disclosed irrespective of whether or not they are undertaken on an arm's length basis. If there have been no related party transactions in the reporting period that requires disclosure, this fact must be stated.

All charities that have one or more related party transactions must disclose:

- the name(s) of the transacting related party or parties
- the description of a relationship between the parties
- a description of the transaction(s)
- the amounts involved
- outstanding balances with related parties at the reporting date and any provisions for doubtful debts
- the terms and conditions, including any security and the nature of the consideration to be provided in settlement
- details of any guarantees given or received
- any amounts written off from such balances during the reporting period
- whether the transaction was at open market value
- any other elements of the transactions which are necessary for the understanding of the accounts.

The reporting charity must not state that related party transactions were made at open market value, or on terms equivalent to those that prevail in arm's length transactions, unless this can be substantiated.

The required disclosure may be given in total, for similar transactions and types of related party, except where disclosure of an individual transaction or connected transactions:

- is necessary for an understanding of the impact of the transactions on the accounts of the charity
- is a legal requirement in the jurisdiction of the charity's registration.

6.2 Annual monitoring return: Disclosure of payments and transactions with charity trustees

Regardless of whether a charity is required to disclose details of payments to, and transactions with, charity trustees and connected persons in the charity accounts, registered charities are obliged to provide details as part of the annual monitoring return submitted to the Commission. At present, all registered charities with an income over £10,000 must provide details of payments to, and transactions with, charity trustees and connected persons in the annual monitoring return. The information required is set out below.

Payments:

- how many charity trustees and/or connected persons were paid a fee or salary by the charity or related body
- the total amount paid
- details of what payments were for:
 - payment for services acting as charity trustee
 - payment in settlement of out of pocket expenses
 - payment for professional services provided to charity
 - payment for any other work done for the charity
 - payment for any other reason
- details of the largest amount owed to the charity by a charity trustee or connected person at any time during the accounting period
- confirmation that the governing document does not prohibit payment.

Transactions:

- details of any sale or disposal of property to charity trustees or connected persons
- details of any purchase of property by the charity or related body from charity trustees or connected persons
- details of whether the property was advertised and sold on the open market
- details of any land and buildings occupied by the charity and owned by charity trustees and or related parties
- use of any charity assets by charity trustees or related parties.

For further information refer to the Commission's [ARR05 Annual monitoring return guidance](#).

Section 7: Employing a charity trustee or connected person

This section of the guidance sets out information for charities that are considering employing a charity trustee or a person connected to them. A charity trustee, or a person connected to them, may become an employee of their charity in a variety of circumstances.

If a charity does not have express authority within its governing document to employ a charity trustee then the employment must be approved by the Commission. A governing document cannot be amended to include this authority without the Commission's consent. The same applies to the employment of a person connected to a charity trustee where there is financial interdependence between the individual and the charity trustee. If there is no financial interdependence then approval is not required but any potential conflict of interest must still be managed.

A charity trustee, or person connected to them, may be in a strong position to provide the necessary skills and experience required for a job but, because charities rely on the confidence of the public and must comply with the law on trustee benefits, they must be open and transparent about the process and decision-making leading to the employment.

A decision to employ a current or former charity trustee, or person connected to them, must be justifiable and made without favouritism or improper influence. This means that they must not gain an 'inside track' or have any unfair advantage as a result of their position. Potential conflicts of interest, including those involving a person connected to a charity trustee, must be managed properly and openly.

7.1 When must the Commission's approval be obtained for a charity trustee to be employed?

The Commission's approval is not needed if there is already a suitable express power within the charity's governing document. Otherwise, the Commission's approval will be needed if:

- the person takes up the employment while still a charity trustee
- the job offer is made while the person is a charity trustee, even though they later resign as a charity trustee
- the person resigned as a charity trustee before the formal job offer was made and took no part in the open recruitment process, but played a major part in the charity trustees' decision to create or retain the post, or in devising the recruitment process.

Without authority, there may be liability for the individual to repay earnings to the charity or for the charity trustees who authorised the

appointment to reimburse the charity. This could arise in the event of a legal challenge from a third party or as the result of a Commission inquiry.

7.1.1 What if it is a person connected to a charity trustee who is to be employed?

Where an individual who is connected to a charity trustee, for example a spouse or child, is to be recruited as a paid employee of the charity then the Commission's approval may be required. Specifically, unless there is authority within the charity's governing document, the Commission's approval must be obtained if there is financial interdependence between the charity trustee and the person who is to be employed by the charity. If charity trustees are in any doubt about the need for authority they should seek advice.

In all cases, to manage the potential conflict of interest, a charity trustee who is connected to any person being employed must declare an interest, and it must be clearly recorded in the minutes of any relevant meeting and any register of interests the charity keeps.

7.2 What should a charity do in order to seek approval?

A charity that wishes to apply for consent to employ a charity trustee, or person connected to them, will need to refer to other guidance produced by the Commission, for example, *Consents for charitable companies* if they are a charitable company, *Authorising transactions* if they are applying for one off approval, or *Requesting a scheme* if they are not a charitable company and wish to amend their governing document.

In applying for approval, the charity will need to be able to show that the post is genuinely required to assist the charity achieve its purposes, and has not been created or tailored to meet the needs of the charity trustee or person connected to them. The charity will be required to provide evidence that:

- it has a need for the work to be carried out or the role to be filled
- the individual selected for employment has the appropriate knowledge and skills for the job
- payment is reasonable in relation to the work being carried out
- any risks have been considered and will be managed
- the decision is in the best interests of the charity
- where appropriate, recruitment for the job has been subject to an open and transparent selection process
- where appropriate, stakeholders have been consulted
- if the person is to continue as a charity trustee, why this is necessary, and what arrangements are in place for managing any conflict of interest and assessing performance

- the charity trustee who is to be employed is required to leave the room when decisions are being made on salary, benefits and performance and does not take part in any relevant votes.

The Commission does not authorise payments retrospectively. If a charity employs an individual who is also a charity trustee, and does not have authority to do so, this may be a breach of trust.

7.3 Can an employee of a charity become a charity trustee?

If an employee becomes a charity trustee, their employment usually occurs before their trusteeship and so is not a benefit arising from the trusteeship. Therefore, there is no liability to repay any earnings received before the start of the trusteeship.

It is important, however, that there are clear procedures for managing any potential conflict of interest. The employee who becomes a charity trustee must take no part in collective discussion or voting on the contractual terms and conditions of the employed post, or in any review of performance relating to it. This includes any decision on whether it is in the charity's interests to continue with the post. The employed charity trustee's withdrawal from relevant meetings should be clearly minuted.

Additionally, the charity trustees must be clear why it is not sufficient for the relevant employee simply to attend their meetings, in a non-voting capacity, to contribute to discussion.

Without an express authority, having a charity employee as a charity trustee could be liable to legal challenge. It is important that charity trustees do not agree to any payment or benefits which might be regarded as excessive in relation to the employment and which might cause concerns about unacceptable levels of private benefit within the charity.

The Commission does not generally need to approve annual increases in salary or benefits for a charity trustee-employee provided they constitute a reasonable incremental progression within an established and transparent employee pay structure. Otherwise, the Commission's approval may be required and we recommend charities contact us if this is the case.

Some examples of where it might be appropriate for an employee to also be a charity trustee are set out below. It is important to note that these are examples only and every scenario will be considered by the Commission on a case-by-case basis.

Example 1: Governance models for some churches allow or require the priest, pastor or vicar to be a charity trustee. It can be important for those in such a pivotal role within these charities to be involved in their strategic oversight and leadership. Provided this is permitted in the charity's

governing document and the potential conflicts of interest are properly declared and managed, this arrangement can be beneficial to the charity.

Example 2: A large educational establishment's governing document allows for one lecturer, an employee of the charity, to sit on the charity's board of trustees. This is to ensure that the perspective of the lecturing staff is represented in the strategic oversight and leadership of the charity. The individual's pay as an employee is in line with the overall pay structure for the charity and there are clear procedures for the management of conflicts of interest and the conflict is properly managed and declared in line with these procedures.

Appendix 1: Glossary

Term	Definition
Accounting and reporting by Charities: Statement of Recommended Practice (SORP)	This means Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102) issued by the Charity Commission for England and Wales and the Office of the Scottish Charity Regulator on 16 July 2014, also known as the Charities SORP. It provides a comprehensive framework that enables charities to adopt a consistent interpretation of UK financial reporting standards (FRS) as well as account for those transactions that arise when undertaking charitable activities. The Charities SORP applies to all general charities that prepare accounts on an accruals basis.
Accruals	Refers to accounts prepared on a 'true and fair' basis in accordance with accounting standards and the methods and principles of the applicable Statement of Recommended Practice (SORP). In contrast to receipts and payments accounts, where income and expenditure is accounted for only when the money is received or paid out, accruals accounts record the income of a particular activity when there is entitlement or probability about income, and expenses, when the liability is incurred. This is not necessarily the same date on which money is received or paid out. Accruals accounts prepared in accordance with the Charities SORP must contain a balance sheet showing the charity's financial position at the end of the year, a statement of financial activities (SoFA), a cashflow statement (if applicable) and explanatory notes to the accounts. The SoFA should show all incoming resources, and resources expended during the year (and for company charities only, an income and expenditure account, except where the SoFA incorporates the income and expenditure account).
Authority within governing document	This will usually be found in a specific paragraph or clause within an organisation's governing document. For example, an organisation may have authority to pay a trustee contained in a 'remuneration clause' within its governing document.
Breach of Trust	A breach of trust occurs when a charity trustee fails to carry-out duties imposed on them either by the terms of their governing document, by law or by the Commission. A breach

Term	Definition
	need not be deliberate or dishonest. In all cases the charity trustee is personally responsible to the beneficiaries and is liable for any loss caused to the charity.
Charitable company	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.
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.</p> <p>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.

Term	Definition
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
Conflict of interest	In this guidance, this term means any situation in which a charity trustee’s personal financial interest may, or may appear to, influence or affect the decisions made by the trustee for the charity.
Connected person	This is an individual or an organisation that is associated with, or has a relationship with, a charity trustee or the charity itself where that relationship could give rise to an actual or perceived conflict of interest. It is the charity trustees’ responsibility to determine whether an individual or organisation is a connected person. The term “connected person” is defined in section 89(5) of the Charities Act (NI) 2008. If this is the case, attention will be drawn to this in the relevant Commission guidance.
Duty of care	This refers to the legal obligation which all charity trustees have to their charity, to exercise a level of care and skill that is reasonable in the circumstances, in the interests of the charity. Under this legal duty charity trustees are expected to use any special knowledge, or experience they have or claim to have including any expertise which they may have gained through their professional or business experience.
Expenses	There are reimbursements by the charity of costs a trustee has had to meet personally, or which have been met on their behalf, in order to carry out charity trustee duties. In some cases, these expenses may be paid in advance. A refund of properly incurred expenses is not a trust payment, nor does it count as any kind of personal benefit.
Fiduciary duty	A fiduciary duty is an obligation of trust or confidence owed by a person or organisation to act in the best interests of another. Examples of fiduciary duties of charity trustees include a duty of confidentiality, a duty to ensure conflicts of interest are managed appropriately and a duty not to profit from their position.
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.

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Receipts and payments	This is a form of accounting that consists of a summary of all monies received and paid via the bank and in cash by the charity during its financial year, along with a statement of balances. Company law requirements mean that a charitable company cannot prepare its accounts on a receipts and payments basis.
Regulated alteration	A regulated alteration is any amendment of the company's articles to add, remove or alter a statement of the company's objects, any alteration of any provision of its articles which direct the application of property of the company on its dissolution, or any alteration of any provision of its articles where the alteration would provide authorisation for any benefit to be obtained by charity directors or members of the company or people connected to them.
Related parties	Related parties are those parties with whom the charity has a relationship that might inhibit it from objectively pursuing its own separate interests. This will include charity trustees, those connected with a charity trustee by, for example, a close family relationship, and any other party that can exert significant influence over the operations of the charity.
Related party transactions	Related party transactions are the transfer of resources, services or obligations between related parties, regardless of whether a price is charged.
Statutory guidance	Statutory guidance is guidance to which charity trustees must have regard when exercising any powers or duties to which the guidance is relevant. This is a legal requirement set out in the Charities Act.
W3C Standards	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.

Useful links

Charity Commission for Northern Ireland guidance

Authorising transactions

Accounting and reporting – suite of guidance

Consents for charitable companies

Requesting a scheme

Running your charity

Legislation

Trustee Act (Northern Ireland) 2001

Charities Act (Northern Ireland) 2008

Other useful guidance

Northern Ireland Audit Office good practice guidance on conflicts of interest

Charity Commission for England and Wales Conflicts of Interest guidance

www.charitiessorp.org

Volunteering while on benefits

Useful contacts

Charity Commission for
England and Wales
(CCEW)

PO Box 211
Bootle
L20 7VX

Telephone: 0300 066 9197

Website:

www.gov.uk/government/organisations/charity-commission

Charity Tribunal

Charity Tribunal
Tribunals Hearing Centre
2nd Floor, Royal Courts of Justice
Chichester Street, Belfast
BT1 3JF

Telephone: 0300 200 7812

Email: tribunalsunit@courtsni.gov.uk

Companies House

Companies House
2nd Floor
The Linenhall
32-28 Linenhall Street
Belfast
BT2 8BG

Telephone: 0303 1234 500

Website:

www.gov.uk/government/organisations/companies-house

Department for
Communities

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB

Telephone: 028 9082 9000

Website: www.communities-ni.gov.uk

HM Revenue and
Customs (HMRC)

HM Revenue & Customs
Charities, Savings and International 2
HM Revenue and Customs
BX9 1BU
United Kingdom

Telephone: 0300 123 1073

Website: www.hmrc.gov.uk/charities

Office of the Scottish
Charity Regulator
(OSCR)

OSCR
2nd Floor
Quadrant House
Dundee

Telephone: 01382 220446

Website: www.oscr.org.uk

The Fundraising
Regulator

2nd floor
CAN Mezzanine Building
49-51 East Road, London
N1 6AH

Telephone: 0300 999 3407

Website: www.fundraisingregulator.org.uk

Charities Regulatory
Authority (CRA) Ireland

Charities Regulator
3 George's Dock
IFSC
Dublin 1
D01 X5X0

Telephone: +353 (0)1 633 1500

Website: www.charitiesregulatoryauthority.ie

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

Any information you give us will be held securely and in accordance with the rules on data protection. Your personal details will be treated as private and confidential and safeguarded, and will not be disclosed to anyone not connected to the Charity Commission for Northern Ireland unless you have agreed to its release, or in certain circumstances where:

- we are legally obliged to do so
- it is necessary for the proper discharge of our statutory functions
- it is necessary to disclose this information in compliance with our function as regulator of charities where it is in the public interest to do so.

We will ensure that any disclosure made for this purpose is proportionate, considers your right to privacy and is dealt with fairly and lawfully in accordance with the Data Protection Principles of the Data Protection Act.

The Data Protection Act 1998 regulates the use of “personal data”, which is essentially any information, whether kept in computer or paper files, about identifiable individuals. As a “data controller” under the Act, the Charity Commission for Northern Ireland must comply with its requirements.

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 this relates to your consultation or application. 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:

**Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ**

www.charitycommissionni.org.uk

**Email: admin@charitycommissionni.org.uk
Tel: 028 3832 0220
Fax: 028 3832 5943
Textphone: 028 3834 7639**

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