

Authorising transactions

Guidance for charity trustees on getting
authorisation for certain types of transaction



Authorising transactions

This guidance provides the information trustees will need if they want to apply to the Charity Commission for Northern Ireland to make a transaction which they do not have the power or legal obligation to make; and the transaction is either:

1. In the best interest of the charity; or
2. Where it is not in the best interest of the charity, but is something the trustees feel a moral obligation to do.

Please check our website www.charitycommissionni.org.uk to make sure you're using the latest version of the application form and guidance.

Our vision

The Commission's vision is 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"

Our values

The Commission aspires to be respected and valued in the execution of its functions and will ensure that in the performance of our role as the Charity Regulator for Northern Ireland we will be:

Independent: we will maintain independence in our decision making, acting without fear or favour, in the public interest.

Accountable: we will be proactive in accounting to all our stakeholders, which will include involving others on a continuous and appropriate basis and taking responsibility for our decisions.

Proportionate: our actions, procedures and culture will be proportionate to the burden of regulation on charities of different sizes, to the degree of risk involved and to the potential impact within the resources available to us.

Impartial: we will exercise our powers and discretion in a way which is non-partisan and even-handed.

Transparent: we will communicate with and listen to our stakeholders and will be clear about our actions, intentions and expectations.

Consistent: we will act consistently in our decision making.

Equality and accessibility

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

We intend to make all of our guidance available to all stakeholders. We will aim to meet all accessibility needs and offer other languages and formats for this guidance, for example Braille or audio or meet any other requirements needed in line with the Commission's Equality Scheme.

If you have any accessibility requirements please contact us.



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Introduction

Key information

What does this guidance cover?

This guidance provides information for charities on making a transaction which they cannot make without the Commission's authorisation.

Some of the subjects covered are complex.

You may need this guidance for a number of reasons:

1. As trustees of a charity that wishes to make a transaction or payment which is **in the best interests of your charity**, but which you do not have the power to make;
2. As trustees of a charity that wishes to make a transaction or payment which, while **not in the best interests of your charity**, you feel a moral obligation to make.

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 the guidance does not replace advice from a charity's own professional advisers.

Charities may also be subject to other legislation or regulation. For example, charitable companies also have to be mindful of the requirements of company law. More information on this can be accessed from Companies House <http://www.companieshouse.gov.uk/>

Who does this guidance apply to?

This guidance is aimed at charity [trustees](#), members of management committees, directors of charitable companies, or someone acting on behalf of a charity (e.g. solicitor, accountant, agent or adviser). It applies to all types of charity, whether they are companies, trusts or associations.

What is our approach to decision making?

The Commission adopts a risk based approach when making any decisions. This means that we look at a range of factors when assessing

information provided to us and in identifying any further information we might require. These factors may include:

- the size of the charity;
- the profile of the charity;
- public interest in the organisation;
- whether the transaction is to a [connected person](#);
- whether the case is likely to set a precedent;
- value of the transaction.

What are legal requirements and best practice?

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

Where can you find definitions of key terms?

You will find definitions of key terms in the glossary towards the end of this guidance. If you are viewing the guidance online, you can click on a word and you will be brought straight to the definition in the glossary.

The Charities Act (Northern Ireland) 2008

References in this guidance document to "the Act" are to the Charities Act (Northern Ireland) 2008.

How do you use this guidance?

This guidance is divided into two sections which set out and explain the different mechanisms for the action you wish to take.

You will know which section is relevant to you by answering the following questions.

1. Is the transaction explicitly in the best interests of the charity?

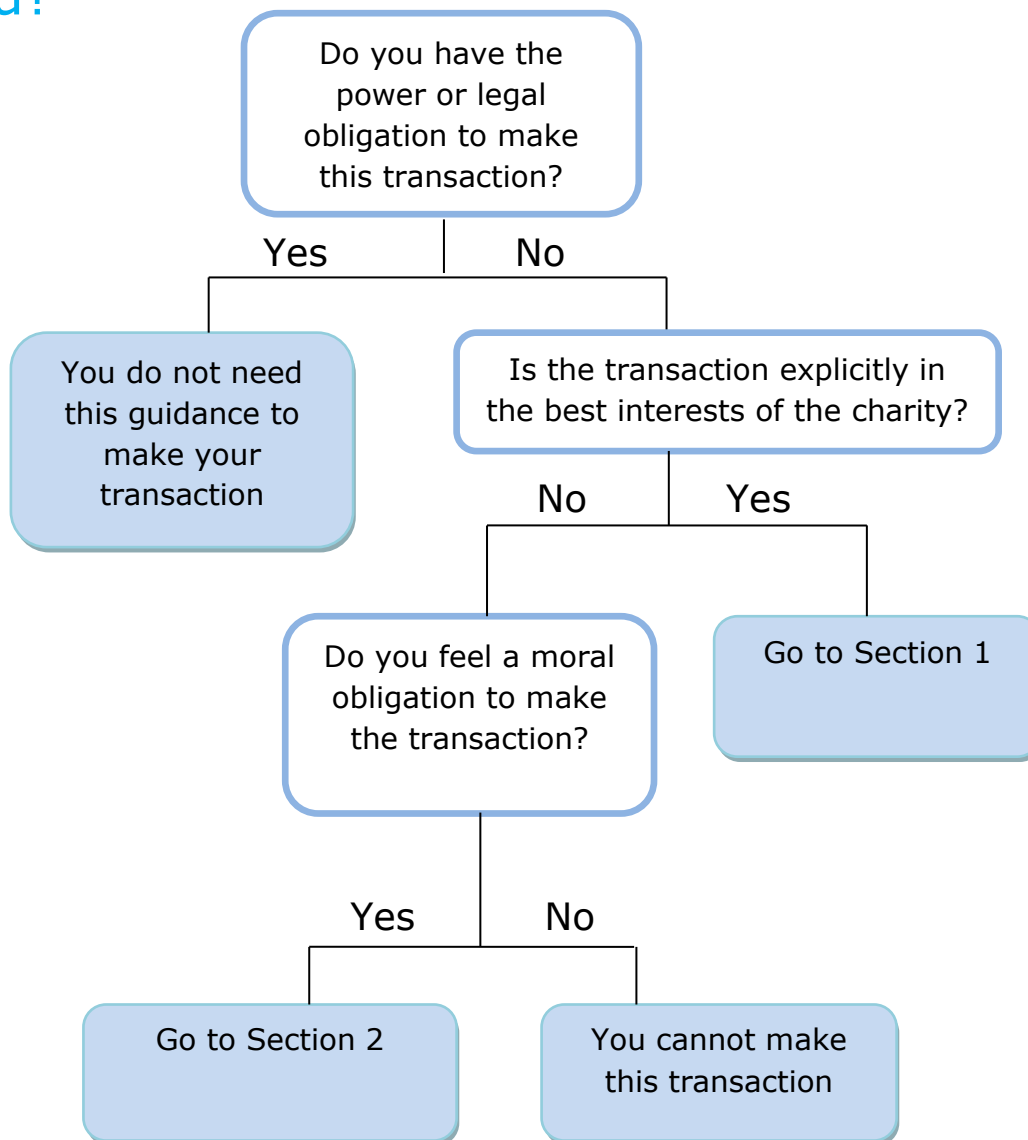
Yes: go to Section 1

2. Do you feel a moral obligation to make a transaction which otherwise may not be in the best interests of the charity?

Yes: go to Section 2

Alternatively, you can use the following chart to assist you to find the section relevant to your specific needs.

Which section of this guidance is relevant to you?



Section 1: Trustees consider the transaction to be in the best interests of the charity

1.1 What power can we use to authorise this transaction?

If you apply to the Commission to authorise a [transaction](#) which you have no power or legal obligation to make, but which you feel is in the best interests of the charity, we will assess it under section 46 of the Act. This section of the Act gives us the power to authorise a transaction by making an [Order](#).

1.2 What sorts of transaction might be authorised?

Examples of proposed transactions which may be in the best interests of the charity include:

- Making a [payment](#) as a gift to a long-serving employee on his or her retirement;
- Making a payment to an employee, beyond that which they are contractually entitled to.

Each of these might be in the best interests of a charity by confirming it as a good employer and making it easier to retain current employees/volunteers and attract skilled and experienced

employees / volunteers in the future.

1.3 How do you apply for authorisation?

Trustees must apply for authorisation using the authorising transactions form. You must provide evidence to support the proposed action. This may vary depending on the transaction proposed.

Trustees must certify:

- That your charity owns the money or property involved;
- That you have no power or legal obligation to make the transaction;
- That you have the agreement of any other persons involved, for example someone to whom you want to make a payment;
- The value of the proposed transaction;
- The annual income of the charity; and
- Whether the transaction is between the charity and a trustee or other [connected person](#).

You must also provide a copy of your [governing document](#) and a written statement from the trustees explaining why the

transaction is in the best interests of the charity.

If you do not include all relevant information we will contact you, but this will slow the decision making process down.

1.4 What process do we follow?

We will consider all of the information you provide before deciding whether or not to authorise the proposed transaction.

We may need additional information depending on the type of transaction. If so, we will contact you and request this.

We will consider whether:

- The proposed payment or transaction is proportionate to the income of the charity;
- The trustees are satisfied that the transaction is in the best interests of the charity.

We will not make a judgment about what is or is not in the best interests of the charity. It is the trustees who must decide what is in the best interests of the charity.

We must, however, be satisfied, based on the information provided that the trustees are content the transaction is in the best interests of the charity.

1.5 What happens if we authorise the transaction?

If we decide to authorise the transaction, we do so by making an Order using section 46 of the Act. This Order will give you permission to go ahead and make the transaction.

We will send you an original signed and sealed Order. This must be stored securely as evidence that the transaction was carried out with our authority.

We will publish a copy of the Order on our website.

1.6 What happens if we do not authorise the transaction?

We may refuse to authorise a transaction if, for example:

- The trustees have the power or have a legal obligation to make the transaction without the need of an Order;
- The value of the proposed transaction is not in proportion to the income of the charity;
- The trustees have not given adequate evidence to show that they believe the transaction is in the best interests of the charity; or
- There is a clause in the charity's governing document

that expressly forbids the transaction.

We will write to the trustees and explain our reasons for not authorising the transaction. We may signpost to another process or piece of guidance.

If you are unhappy with our decision, you can apply to us to review the decision internally, or you can apply to the Charity Tribunal for a review.

1.7 How long does the process take?

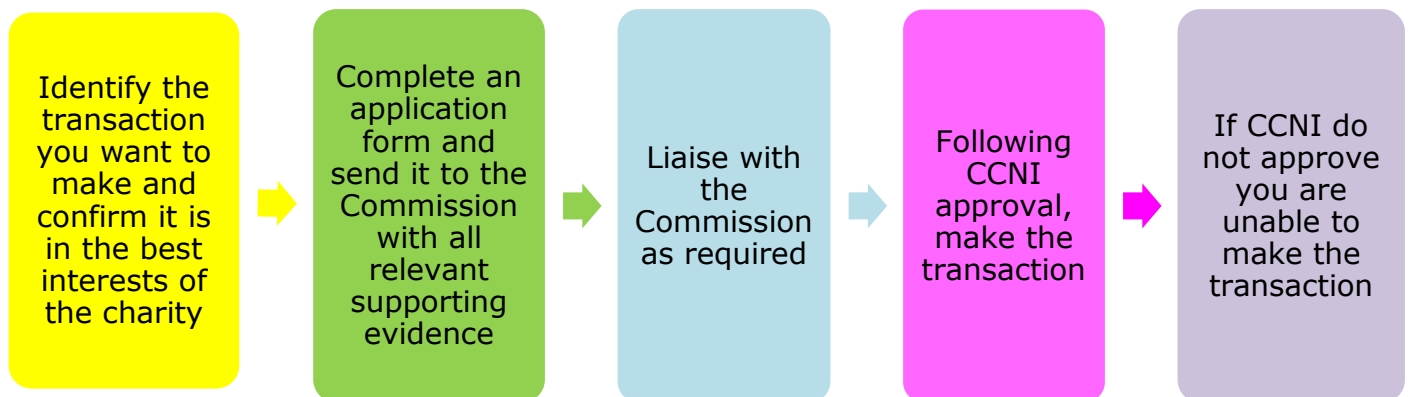
The length of time this process will take depends on a number of factors including:

- Whether we need to contact you for further information; and
- The complexity of the application.

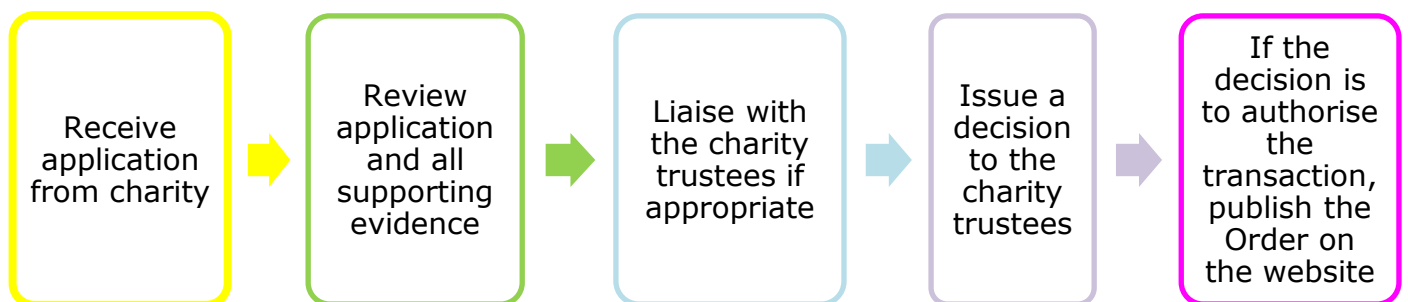
We aim to complete the process within three months and will let you know if there are likely to be any delays.

The charts following may help to illustrate the process for you.

What is the process you should follow?



What process does the Commission follow?



Section 2: Trustees feel a moral obligation to make a transaction

2.1 What power can we use to authorise this?

You can apply to the Commission to authorise a transaction which:

- you have no power or legal obligation to make,
- is not in the best interests of the charity; but
- you feel a [moral obligation](#) to make.

We will assess it under section 47 of the Act. This section of the Act gives us the power to authorise a transaction by making an Order.

A payment authorised under section 47 of the Act is known as an "[ex gratia payment](#)". Ex gratia is Latin for 'out of goodwill.'

2.2 What sorts of transaction might be authorised?

Ex gratia payments are usually, though not always, connected with Wills. For example, where a charity is gifted money or property in a Will, but the charity's trustees feel a moral obligation to waive their legal right to this gift.

Moral obligation

Trustees must feel a strong moral obligation to make an ex gratia payment. The charity's beneficiaries will be disadvantaged by the trustees' decision as the money will no longer be available for the charity's purposes.

A moral obligation is a sense of being required to do something resulting from considerations of right and wrong.

Other examples include:

- Where a charity receives a larger gift than a person who has made a Will intends because of an oversight on their part. If some other person or persons is deprived of money or property which the person who made the Will intended them to receive, the charity trustees may conclude that they are morally obliged to make an ex gratia payment to that person out of the charity's entitlement;

- Where a grandparent leaves a sum of money to each of their grandchildren in their Will, and the rest to charity, the charity trustees may feel a moral obligation to make an ex gratia payment to another grandchild born just before the death of the grandparent and not yet included in the Will. It is reasonable to assume that the grandparent would have chosen to include a sum to be left to their newest grandchild and have amended their Will accordingly.

In the case of Wills, a person making a Will has a right to leave their property as they choose; the fact that relatives are disappointed not to receive the money is not in itself a reason for trustees to feel any moral obligation towards the relatives.

Examples of an ex gratia payment not connected to a Will include:

- Where a person has made a gift to a charity in the mistaken belief that their circumstances allowed for the making of a gift of that size at the time. If it later became clear that the donor had, as a consequence of their generosity, reduced themselves to poverty, the charity trustees might feel morally obliged to make an ex gratia payment by returning all or part of the donor's gift.
- Where a charity wants to make a payment to its staff which they are not contractually or legally obliged but it feels a moral obligation to.

2.3 How do you apply for authorisation?

Trustees must apply for authorisation using the authorising transactions form. You must provide evidence to support the proposed action. This may vary depending on the circumstances.

You must provide a copy of your governing document, an agreed valuation of any relevant property, and a written statement from the trustees explaining their moral obligation.

You must certify that:

- the charity owns the money or property involved;
- they have no power or legal obligation to make the transaction;
- they have a moral obligation to make the transaction;
- they can justify the amount of payment which they believe discharges their obligation;
- it is not explicitly in the interests of the charity to make or waive the payment.

If a charity is applying on behalf of itself and another charity or charities, the application must be

accompanied by a written statement from the trustees of each charity.

Evidence you may need to provide

You may need to provide evidence to support your application which, depending on the circumstances, is not limited to but may include one or more of the following:

- A copy of the [Will](#), any [codicils](#) and [grant of probate](#);
- A copy of any unexecuted Will or codicils;
- Any relevant court orders;
- A copy of any relevant paperwork concerning the deceased's last wishes including written statements from those who knew the deceased's mind;
- Any evidence to suggest that the Will of the deceased does not reflect their real intentions and that they had no opportunity to change the Will;
- Where the deceased wished the payment to be made under certain conditions, details of how the proposed recipient of the ex gratia payment intends to fulfil these;
- Evidence to show why the deceased was prevented from giving effect to their real intention;
- A written statement from a donor as to their impoverished

state as a result of a charitable donation.

- Evidence of need to make this payment.

If you do not include all relevant information we will contact you, but this will slow down the decision making process.

2.4 Who can apply for an ex gratia payment?

An application must be submitted by the trustees of the charity legally entitled to the funds or property in question. The trustees may, however, instruct a solicitor to apply on their behalf. We cannot accept an application from the person who would benefit from the ex gratia payment, or from the executors of a Will who are not themselves the charity trustees.

2.5 When should you not use this process?

There are a number of circumstances where it may not be possible to authorise an ex gratia payment, or where it may not be necessary:

- There are provisions in section 30 of the Housing (NI) Order 1992 which may in certain circumstances prevent [registered social landlords](#) from making an ex gratia payment;

- Under the Companies Act 2006 a charitable company which is closing or transferring may make payments to employees;
- Liquidators have the same powers under the Insolvency (NI) Order 1989;
- Trustees are not able to make an ex gratia payment which is prohibited by statute (for example, in cases where the trusts of the charity are contained in an Act of Parliament which prohibits the disposal of the assets of the charity).

2.6 What process does the Commission follow?

We will consider all of the information you provide before deciding whether or not to authorise the proposed transaction.

We may need additional information depending on the type of transaction. If so, we will contact you and request this.

We will consider whether:

- The proposed payment or transaction is proportionate to the income of the charity;
- The trustees are satisfied that they have a moral obligation to make the transaction.

We will not make a judgment about what trustees are morally

obliged to do. It is the trustees who must decide what their obligations are. We must, however, be satisfied, based on the information provided that the trustees do feel a real moral obligation.

Where we conclude that an ex gratia payment should be authorised, we refer our findings to the [Office of the Attorney General](#) for approval. The Attorney General supervises and directs the Commission's power to authorise an ex-gratia payment.

2.7 What happens if we authorise the transaction?

We authorise the transaction by making an Order using section 47 of the Act. This Order will give you permission to go ahead and make the transaction.

We will send you an original signed and sealed Order. This must be stored securely as evidence that the transaction was carried out with our authority.

We will publish a copy of the Order on our website.

2.8 What happens if we do not authorise the transaction?

We may refuse to authorise a transaction if, for example:

- The trustees have the power or have a legal obligation to make the transaction without the need of an Order; or
- The trustees have not given evidence to show that they feel morally obliged to make the transaction.

We will write to the trustees and explain our reasons for not authorising the transaction. We may signpost to another process or piece of guidance.

If you are unhappy with our decision, it can only be looked at again by you making a fresh application to the Office of the Attorney General in Northern Ireland.

2.9 How long does the process take?

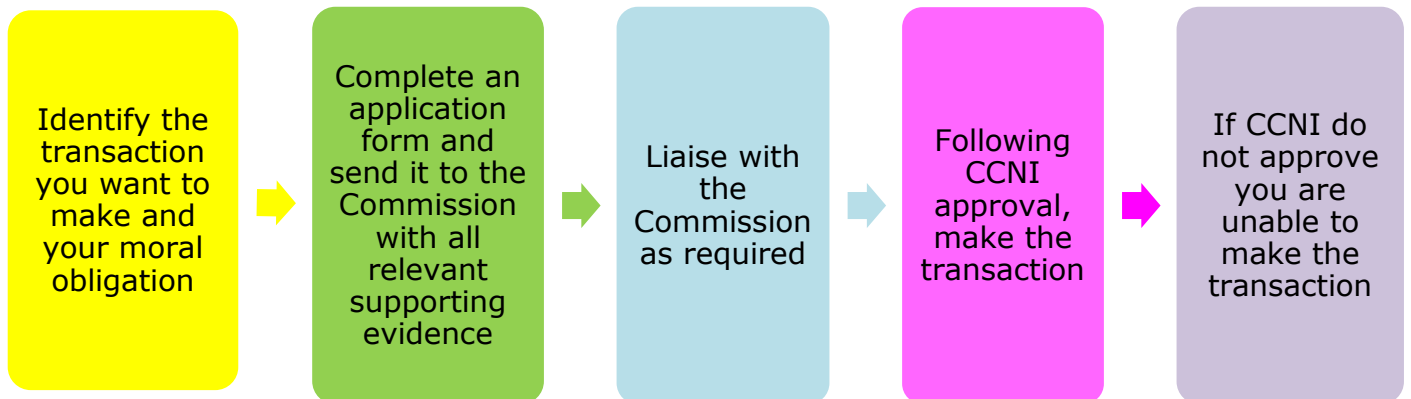
The length of time this process will take depends on a number of factors including:

- Whether we need to contact you for further information;
- The length of time a case is with the Attorney General; and
- The complexity of the application.

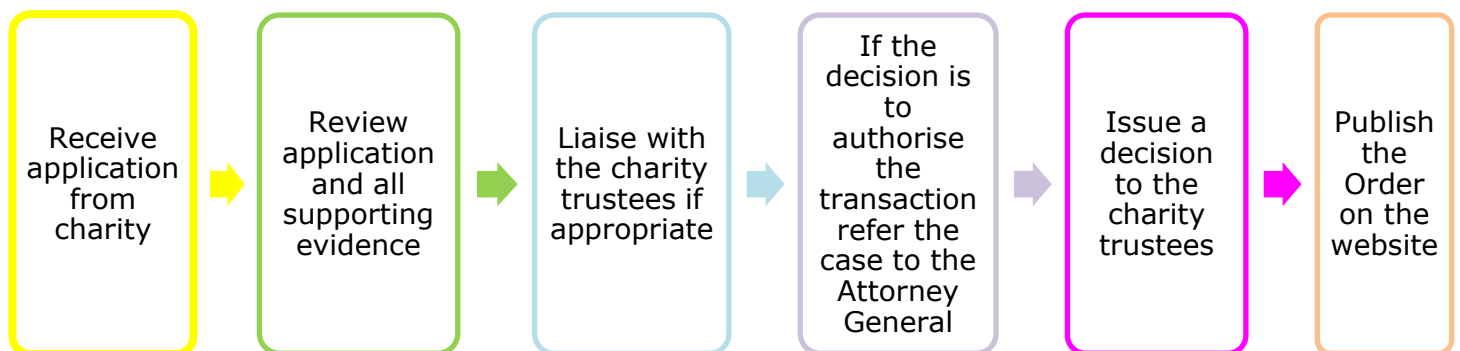
We aim to complete the process within three months and will let you know if there are likely to be any delays.

The charts following may help to illustrate the process for you.

What is the process you should follow?



What process does the Commission follow?



Glossary	Definition
Codicil	A codicil is a document that supplements, rather than replaces, a previously executed Will.
Connected persons	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 the Charities Act (NI) 2008 in particular circumstances. If this is the case, attention will be drawn to this in the relevant Commission guidance.
Decision review	Many of our decisions can be challenged through our decision review procedure, or through application to the Charity Tribunal. If you disagree with one of our decisions, we would like to reconsider it ourselves in the first instance. Our review procedure offers a genuine opportunity for our decisions to be looked at afresh.
Ex gratia payment	A proposed payment is an ex gratia payment where the charity trustees: <ul style="list-style-type: none"> • believe that they are under a moral obligation to make the payment; • are under no legal obligation to do so; • have no power under the governing document of the charity which they could properly exercise to make the payment; and • cannot justify the payment as being expedient in the interests of the charity within the meaning of section 46 of the Act.
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.
Grant of probate	When someone dies a legal process has to be followed, in order to administer a Deceased Person's estate. That process is known as probate, and will

Glossary	Definition
	<p>typically be undertaken by the named Executor in a Will or the next of kin (known as the administrator) if the person died intestate.</p> <p>During the process the named executor in a Will or the next of kin goes to the Court and proves that the Will is valid and enforceable. The Court issues a certificate known as Grant of Probate. This is a legal document which once issued confers power unto the named executor in the Will or the next of kin to administer the estate.</p>
Moral obligation	<p>A moral obligation is a sense of being required to do something resulting from considerations of right and wrong.</p>
Order	<p>An order is a legal document which can authorise trustees to carry out an act which otherwise they have no power to do or to do something which is in the interest of the charity. They can also be used to protect charities and their property. Serious legal consequences may arise if charity trustees do not comply with an Order.</p>
Payment	<p>A payment covers any transfer of funds from a charity to a third party including all of the following:</p> <ul style="list-style-type: none"> • the waiver of rights to money or property to which the charity is legally entitled but which it may not yet have received. • a payment of money out of the charity's existing funds; • a transfer of some existing charity property.
Registered Social Landlord	<p>Registered Social Landlord (RSL) is the term for not-for-profit providers of social housing. The vast majority are known as housing associations, and have objects which include the provision, improvement, or management of low-rent/low-cost housing for those on low incomes or in housing need. Others take the form of local housing companies, housing trusts, and co-operatives, fulfilling their</p>

Glossary	Definition
	<p>objects by renting, sub-market selling, construction or rehabilitation. They may also undertake management or advisory services.</p> <p>By no means all RSLs are charitable, but the main feature in common is that they are all run as businesses, but do not trade for profit. Any surplus is ploughed back into the organisation to maintain existing homes and provide new ones.</p>
Testator / testatrix	A testator (male), or testatrix (female), is a person who has made a Will.
Transaction	For the purposes of this guidance, a transaction is any activity or dealing that involves the transfer of money or property.
Trustees	Trustee means a charity trustee. Charity trustees are the people who are responsible for the general control of the management of the administration of the charity. In the charity's governing document they may be collectively called trustees, the board, managing trustees, the management committee, governors or directors, or they may be referred to by some other title.
Will	A Will is the legal instrument that permits a person, the testator, to make decisions on how his estate will be managed and distributed after his death.

Freedom of information and data protection

Data Protection

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

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

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

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

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

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

For further information, you may wish to read the Commission's [Privacy notice](#) which details what to expect when the Commission collects and processes personal information, including your rights in relation to that processing if we hold your information.

Freedom of Information

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

Useful links

Office of the Attorney General for Northern Ireland

www.attorneygeneralni.gov.uk/

Will to Give, Northern Ireland

www.willtogive.org/

If you are unhappy 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.

Where we have made an Order using section 47 of the Act, this can only be reviewed by the Attorney General.

If you are unhappy with our service

The Charity Commission for Northern Ireland is committed to delivering a quality service at all times. However, we know that sometimes things can go wrong. If you are unhappy about any aspect of our service we would like to hear from you, and have a procedure that you can use. You will find further information on these processes on our website.

Contact details

For more information on all of our work please see the Charity Commission website: www.charitycommissionni.org.uk

Our preferred method of contact is email: admin@charitycommissionni.org.uk

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