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Charity proceedings

A guide for charity trustees



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About this guidance

The Charity Commission for Northern Ireland is responsible for registering, regulating, and reporting on the charity sector in Northern Ireland.

Our vision:

Well run and trusted charities making a difference in peoples' lives.

Our purpose:

Enabling charities to do things right through proportionate regulation, best practice, and advice.

This guidance explains what charity trustees need to know when taking or defending legal action, and when the Charity Commission for Northern Ireland ('the Commission') needs to be involved.

What are charity proceedings?

Charity proceedings are legal proceedings that relate to the internal or domestic affairs of a charity. For example:

- Some administrative schemes under section 31(10) of the Charities Act (Northern Ireland) 2008 ("the 2008 Act"). The Commission will not make an administrative scheme where it considers it to be more appropriate for it to be decided by the Court
- whether a charity's AGM has been properly conducted
- whether a charity's trustees have been properly appointed
- the removal of a charity trustee from office
- action for breach of a charity trustee's duty
- challenging a charity trustee's decision about how to run the charity
- internal disputes about the control or misuse of a charity's property or resources.

They can **only** be taken with the permission of the Commission or the Court.

What matters are not charity proceedings?

Matters concerning the charity's relations with third parties will usually **not** constitute charity proceedings, for example:

- breach of contract
- debt actions

- employment disputes
- claims for rent arrears
- defamation
- property rights,
- determining the existence of a charitable trust

Who can bring charity proceedings?

Charity proceedings may be taken by:

- the charity
- any of the 'charity trustees' (the people who have the general control and management of the administration of a charity)
- any 'person interested in the charity'
- the Attorney General, or the Commission acting in line with section 53 of the 2008 Act.

What matters should charity trustees consider prior to commencing or defending legal proceedings?

Charity trustees have a duty to act in the best interest of the charity by protecting its assets and utilising its funds in furtherance of its objectives.

Therefore, when making a decision to take or defend legal action, the charity trustees should:

- obtain and consider legal advice
- ascertain whether legal action can be avoided by dispute resolution including negotiation or mediation
- consider the prospects of success or failure and the potential economic impact on the charity
- consider whether legal action is proportionate in the circumstances
- consider whether it is necessary to contact the Commission for consent to engage in charity proceedings.

Regardless of the outcome, legal action can have a negative impact on a charity's reputation as well as costing it time and money.

Charity trustees **may** be personally liable to cover the charity's legal costs if:

- they are unable to demonstrate that all the relevant options were considered prior to making the decision to take or defend legal proceedings

- the court considers that the costs have not been properly and reasonably incurred
- in the case of unincorporated charities, the charity does not have enough funds to meet the legal costs.

What role has the Commission in charity proceedings?

The Commission has a regulatory role in deciding whether to authorise the taking of charity proceedings. As charitable funds must be spent on furthering charitable purposes, it would not be appropriate for the Commission to authorise proceedings without a reasonable prospect of success. The Commission will not authorise charities to pursue actions that are not in the charity's best interests, or which can be dealt with by the Commission using its powers (for example, by making an order), or resolved by other means such as mediation.

How to apply for the Commission's consent.

Submit your request for consent in writing to:
casework@charitycommissionni.org.uk

The request must include documentary evidence clearly demonstrating how the proposed action is in the charity's best interests and include details of the likelihood of success. The supporting documentation can include:

- a copy of any statement of claim or defence
- legal opinion on merits and prospects of success
- an estimation of what proceedings are likely to cost
- the value of charitable assets involved (where applicable)
- details of the charity's financial position
- assessment of benefits and risks associated with proceeding (including to the reputation of the charity)
- the prospects of dispute resolution through negotiation and/or mediation.

All documentation supplied to the Charity Commission will be treated as confidential and processed in accordance with the Data Protection Act 2018.

What happens next?

When we receive an application the Commission will take into account the following matters:

- Does the person wanting to take proceedings have a legitimate interest in the internal affairs of the charity?
- Do the proceedings amount to charity proceedings?
- Has the matter in dispute been brought in good faith?
- Are there alternative ways to resolve the issues? If so, have they been explored?
- Can the underlying problem be resolved by the Commission exercising its own powers?
- Does the proposed action raise issues of substance which should be addressed through the Court?
- Is it in the interests of the charity for the case to go to Court?
- What are the proposed costs of the litigation?
- What value do the charity assets involved have?
- What is the risk of reputational damage to the charity?
- Would a decision to grant or refuse an order authorising the proceedings interfere with rights protected by the Human Rights Act 1998?

The Commission will notify the Attorney General (AG) where it is considering an application to authorise charity proceedings and forward all necessary and appropriate documentation to the AG.

The reason we do this is because the AG represents the public interest in the administration of charities and may wish to be a party to the charity proceedings. Whether or not the AG is a party, the AG has the power to apply to the court to pause charity proceedings which are considered not in the interests of the charity. The AG has a duty, where appropriate, to intervene in order to protect charities and to offer advice and assistance to the Court.

If you disagree with our decision

If you disagree with the Commission's decision, there is no right of appeal to the Charity Tribunal. However, if the Commission refuses an application to authorise charity proceedings, the party bringing the proceedings can apply to the High Court for leave to issue proceedings.

Freedom of information and data protection

The Charity Commission for Northern Ireland is responsible for registering, regulating and reporting on the charity sector in Northern Ireland. As part of its work the Commission is lawfully required to collect and process personal data. 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 and in compliance with the Data Protection Act 2018](#). You may want to read the Commission's [Privacy notice](#) which explains what we do with personal data and your rights in relation to that processing.

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.

For further information:

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