

Waiving disqualification

Guidance on the process for applying for a waiver of a disqualification from acting as a charity 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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If you have any accessibility requirements please contact us.

Online or in print

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

We have produced a glossary that provides further information, definitions and descriptions of some key terms. The words in **bold green type** indicate words that are found in the glossary towards the end of this document. If you are reading the document online you can click on the word and it will link you to the definition in the glossary. The words in *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 3: Charity trustee disqualification

- This section of the guidance explains what the conditions are that would disqualify an individual from being a charity trustee and what the consequences are for an individual who acts as a trustee while disqualified.



Section 4: Process for applying for a waiver

- This section of the guidance sets out the process by which individuals can apply to have a disqualification from being a charity trustee waived. It explains what information will be required by the Commission and documentary evidence that may be needed.



Section 5: Possible outcomes of applying for a waiver

- This section of the guidance sets out the possible outcomes that may result from an individual applying to have a disqualification waived. It contains detailed information on what the Commission will consider and assess in reaching a decision and delivering an outcome.



Appendix 1: Checklist for applicants

- This checklist asks a series of questions which may help individuals in preparing for an application to have a disqualification from being a charity trustee waived.

Section 1: Overview

Under the Charities Act (Northern Ireland) 2008 there are certain conditions that disqualify an individual from being the trustee of a charity. Where an individual who is already a charity trustee becomes disqualified they must step down from their position. Any individual who is disqualified under the legislation must not apply for a position as a charity trustee.

There is provision for an individual who is disqualified to apply for a waiver of disqualification which can be granted at the discretion of the Charity Commission for Northern Ireland (the Commission). This may enable that individual to take up a position as trustee at a charity.

This guidance is for individuals who are disqualified from being a charity trustee and wish to apply for a waiver of the disqualification. It sets out the charity law requirements, the reasons why an individual may be disqualified, and the consequences for an individual who acts as a trustee while disqualified.

The guidance also provides detailed information for individuals on what will need to be provided in support of an application to the Commission to waive a disqualification, and on the process the Commission will follow in assessing that information.

The Commission, as the independent regulator of charities in Northern Ireland, is tasked with promoting public trust and confidence in charities and ensuring that charities meet their obligations under charity law. This guidance is an important tool in helping to achieve that. It also provides a list of helpful contacts for more information.

Section 2: About this guidance

What does this guidance cover?

This guidance covers the conditions that would result in an individual being disqualified from being a **charity trustee** under the Charities Act (Northern Ireland) 2008 and the process the individual can use to apply for a waiver of disqualification, allowing them to act as a charity trustee.

The guidance also covers the information the Commission will assess in deciding whether an application for a waiver should be granted and, if so, whether conditions should be attached to the waiver.

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

[Section 3](#): charity trustee disqualification

[Section 4](#): process for applying to have a disqualification waived

[Section 5](#): possible outcomes of applying for a waiver of disqualification.

There is a checklist for waiver applicants that may help to identify information and documentation you will need to support your application, and two flowcharts which set out the steps the Commission will follow in considering whether to grant the waiver.

What does this guidance not cover?

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

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

Additionally, there may be other legislation that disqualifies individuals from being charity trustees. Where this is the case, you should contact the regulatory body associated with the legislation.

Will the Commission publish the outcome of an application for a waiver?

The Commission has considered the publication of the outcome of applications for a waiver of disqualification in line with its [Publishing our decisions](#) policy:

Disqualification where the individual has previously been removed from the position of trustee

Waiver refused or granted: We will usually publish both where we grant and where we refuse to grant a waiver. The decision will be listed on the *Decisions of the Commission* page on our website. Where the waiver is granted, the register of removed trustees will be updated.

Disqualification as a result of any reason other than previous removal as a trustee

Waiver refused: We will not usually publish where a request for a waiver of disqualification is refused.

Waiver granted: We will usually publish where a request for a waiver of disqualification is granted. The decision will be listed on the *Decisions of the Commission* page on our website.

Who does this guidance apply to?

This guidance is aimed at **charity trustees**, who may also be known as members of management committees or directors of charitable companies.

Additionally, it will be of use to members of the public who may be considering applying to become a charity trustee, and for charities that are seeking to ensure they have processes in place to ensure the eligibility of their current and prospective trustees.

What are legal requirements and best practice?

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

Charity legislation

References in this document to 'the Charities Act' are to the **Charities Act (Northern Ireland) 2008** as amended by the **Charities Act (Northern Ireland) 2013**.

Section 3: Charity trustee disqualification

There are a range of reasons why an individual would be disqualified from being a charity trustee. The criteria for disqualification are set out in **section 86** of the Charities Act.

3.1 What are the criteria for disqualification?

An individual is disqualified from being a charity trustee if:

- They have a conviction for any offence involving **dishonesty or deception** and this is not a **spent conviction**
- They are subject to **insolvency orders** such as a **bankruptcy restrictions order** or order of **sequestration**, a debt relief order or a debt relief restrictions order
- They have entered into an agreement with creditors, for example an individual voluntary arrangement (IVA), and this has not been **discharged**
- They have been removed as a charity trustee by the Commission, the Charity Commission for England and Wales (CCEW), the Office of the Scottish Charity Regulator (OSCR), or the Courts, on the grounds of misconduct or mismanagement
- They are disqualified from being a company director under the Company Directors Disqualification (NI) Order 2002 or the Company Directors Disqualification Act 1986.

Some of these criteria have time limits attached to them. For example, bankruptcy normally lasts for one year, after which time the individual is discharged. Once discharged, the individual will no longer be disqualified from being a charity trustee.

3.2 Are there any exceptions to the disqualification criteria?

If an individual meets any of the criteria in section 3.1 of this guidance, they are automatically disqualified from being the trustee of a charity. There are, however, a number of exceptions to this:

- Where an individual is disqualified by reason of an insolvency order or **insolvency arrangement** and from which they have not been discharged, they are permitted to act as director of a **charitable company**, provided leave is granted by the High Court under Article 15 of the Company Directors Disqualification (Northern Ireland) Order 2002 or section 11 of the Company Directors Disqualification Act 1986 to act as director of a charitable company.

- Where an individual is subject to a disqualification order or disqualification undertaking under either the Company Directors Disqualification (NI) Order 2002 or the Company Directors Disqualification Act 1986, they are permitted to act as director of a charitable company, provided leave has been granted by the High Court under company director disqualification law for them to do so.
- Where the Commission has waived an individual's disqualification.

3.3 What does this mean for individuals who are disqualified?

It is an offence to act as a charity trustee while disqualified. An individual who meets the criteria for disqualification must not take up a position as trustee at a charity. Similarly, if an existing charity trustee becomes disqualified, they must step down from their position.

If an individual unlawfully acts as a charity trustee whilst disqualified, they may be liable to imprisonment, a fine or both. This offence is set out in **section 87** of the Charities Act. Additionally, the Commission may order the individual to repay any remuneration or expenses received from the charity during the time when they were acting while disqualified.

3.4 What does this mean for charities?

It is good practice for charities to check to ensure that prospective trustees are not disqualified. Additionally, if a charity discovers that a current trustee is disqualified then it should take steps to remove that individual from the position of trustee. There are a number of things charities can do to ensure trustees are eligible:

- Check the [register of removed trustees](#) on the Commission's website
- Check the [register of removed trustees](#) on CCEW's website
- Ask prospective trustees to sign a declaration that they are eligible to be a trustee
- Have a policy in place regarding trustee eligibility and communicate this regularly to trustees
- Consider obtaining Disclosure and Barring Services (DBS) certificates for trustees where the charity works with vulnerable people.

If a charity does not take steps to ensure its trustees are eligible then it may open itself to a number of risks including to its resources, governance and reputation.

Section 4: Process for applying to have a disqualification waived

This section of the guidance sets out the process for applying to the Commission for a waiver of a disqualification from being a charity trustee. An individual can apply for a waiver to be a trustee:

- of a specific charity
- of a particular class of charities, for example, those promoting a particular amateur sport or working with individuals with a disability
- generally, of any charity where they meet the conditions of trusteeship.

4.1 Who can apply to the Commission to waive a disqualification?

Only the individual who is disqualified can apply to have the disqualification waived. An application cannot be made by another person, organisation or charity although their views may be sought on whether they support the waiver application.

An individual may not apply for a waiver if any of the following apply:

- The individual is seeking a waiver for a particular charity which, in its governing document, forbids them from being a trustee. For example, if the governing document of a charity sets out that a person who is an undischarged bankrupt shall cease to be a trustee, then the Commission cannot grant a waiver for a person who is so disqualified to be a trustee of that charity.
- The individual is disqualified under legislation other than the Charities Act. For example, if an individual is disqualified under safeguarding legislation from being a trustee of a charity that works with children, they cannot apply to the Commission to waive that disqualification.
- The individual is disqualified under company law and, unless leave has been granted, is seeking a waiver to be a director of a charitable company.
- The reason for disqualification has lapsed, for example, a **spent conviction**, or a bankruptcy has become discharged – in this case, a waiver of disqualification is not necessary as the disqualification no longer applies.

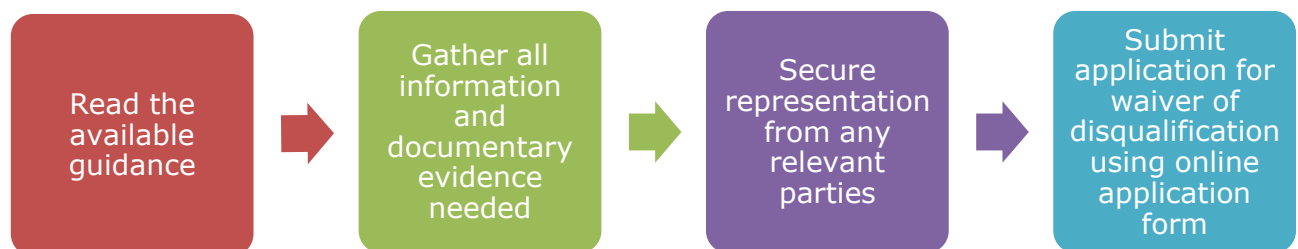
4.2 When can an application for a waiver be submitted?

An application for a waiver of a disqualification can be submitted at any time once a disqualification has commenced.

It is likely that the length of time since a disqualification has commenced will be taken into consideration by the Commission when assessing the risk associated with an application.

If you submit an application for a waiver and your request is refused you will not be eligible to submit another application until at least six months have passed.

4.3 What is the process for applying for a waiver of a disqualification?



Submit your application to the Commission in writing. It is important that you provide all relevant information to support your application. If this is not the case, the Commission may need to request further information, which could delay the process, or alternatively, relevant information may not be considered.

Your application should contain the following information:

- Contact details for the individual submitting the application
- Whether the waiver is sought in relation to a particular charity, a particular class of charity, or charities generally
- The reason for the disqualification
- The length of time since the disqualification commenced
- Where there has been a conviction, the length of sentence passed by the Court
- Where the waiver is for a particular charity:
 - contact details for the charity
 - the views of the existing trustees of the charity
 - the nature of the charity, for example, a charity established to provide housing for homeless people or for the rehabilitation of offenders

- details of the charity's property and whether the individual is likely to have custody of charitable funds or property
- An explanation of why it is in the interests of the charity, or charities generally, for the individual's disqualification to be waived, for example, specific qualities, skills or services that only the individual concerned can bring to the charity, and only in the capacity of trustee
- Evidence of good conduct since the disqualification commenced and reasons to suggest there is no risk of history repeating itself
- Whether leave has been granted under any other legislation, for example, under the Company Directors Disqualification Act 1986.
- Whether the individual has ever been associated with any charity that has been the subject of an enquiry by the Commission
- Where an individual is applying for a waiver in respect of a particular class of charities or a general waiver and that individual was removed from a charity:
 - contact details of the charity
 - the views of the trustees of the charity from which the individual was removed of any dealings with the individual since their removal
- Confirmation that the individual is not disqualified under any other legislation.

4.4 What documentation needs to be submitted?

You may need to submit supporting documentation with your application. The following documentation is required:

- Governing document of any particular charity for which you are requesting a waiver to be a trustee (if it is not already registered with the Commission)
- Proof of leave to act as a director as granted by the Courts (if disqualified under company law)
- A Disclosure and Barring Service (DBS) certificate (if applying for a general waiver this is compulsory, in other circumstances it may also be required)
- Evidence of the views of charity trustees supporting your application (if applying for a waiver to act as trustee of a specific charity).

There is a checklist at [Appendix 1](#) that will help you to prepare your application and gather necessary information in advance.

Section 5: Assessment process and possible outcomes

This section of the guidance explains how the Commission reaches a decision on an application for a waiver of disqualification from being a charity trustee.

It is in all cases up to the Commission to decide whether a waiver should be granted. In most cases, the Commission's starting point will be that a trustee who is disqualified should normally remain disqualified until the disqualifying conditions, for example an undischarged bankruptcy or unspent conviction, no longer apply. The onus will be on the applicant to make the case for a waiver as being in the best interests of the charity and / or the charity sector generally.

In cases of disqualification because of removal, and where five years or more have passed since the removal, the Commission must waive the disqualification on application unless there are good reasons not to do so.

5.1 What will the Commission do with the information provided?

The Commission will consider all the information you provide in order to reach a decision that is fair, proportionate and consistent. Every application is likely to have specific factors unique to the applicant and will be considered on its own merits. Therefore, we may need to request that you provide further information and we may approach other parties, such as charities included in the application, to verify details. This will help us to determine:

- Whether the benefits of granting the waiver outweigh any risks
- Whether to grant the waiver would be in the best interest of the charity sector and / or any particular charity for which the waiver is sought
- Whether there is support or opposition for the individual's application from relevant parties
- Whether there is any risk of harm to the charity sector or to a particular charity or class of charities
- Whether a waiver is actually necessary for the individual to act in a capacity to benefit the charity, for example, could they be a volunteer or adviser instead
- Whether there are any special or extenuating circumstances, for example:

- The background to the original disqualification, for example whether the original disqualification was because of malicious or criminal intent or recklessness or rather, was a result of matters largely beyond the control of the individual
- There is evidence to suggest repeat behaviour, or a risk of repeat behaviour, since the disqualification
- There is evidence of the person's unsuitability to be a trustee.

5.2 What are the possible outcomes?

The Commission will then take one or more of the following outcomes:

- Grant a general waiver
- Grant a specific waiver (for a particular charity or class of charities)
- Attach conditions to a waiver
- Refuse to grant a waiver.

There is further information on each of these actions below.

All decisions will be issued to you in writing and we aim to issue a decision within three months of receiving all necessary information.

Where a waiver is granted, it is important to note that the waiver is for the current disqualification only and, should the individual subsequently meet conditions for disqualification, they will again be disqualified from acting as a charity trustee.

5.2.1 Granting a general waiver

The Commission may grant a waiver that allows the individual to be a trustee of any charity, provided they are eligible under the charity's governing document. In order to grant such a waiver, we will have to be confident that the risk in doing so is outweighed by the benefit to the charity sector generally. It is likely that this is a threshold that will be more difficult to demonstrate than if a waiver is sought for a specific charity.

5.2.2 Granting a specific waiver

The Commission may grant a waiver that allows the individual to be a trustee of a particular charity, or class of charities. This type of waiver would not extend to allow the individual to be a trustee of any charity. In order to grant this type of waiver, it is likely that the Commission will have taken the views of other trustees on board and found that the benefit to

the specific charity, or class of charities, outweighed the risk of granting the waiver.

5.2.3 Attaching conditions to a waiver

The Commission may decide to grant a waiver, but attach certain conditions to it. Conditions may include:

- The individual is not permitted to be a trustee of a class of charities, or charities working with particular individuals, for example, children
- The individual is prohibited from taking up a position as chairperson or treasurer
- The individual is not allowed to be a cheque signatory or to handle the charity's funds or assets
- The individual may not have any of the charity's property vested in them.

A further condition of a waiver, imposed by the legislation, may be that an individual's disqualification is waived to allow them to act as a trustee of a charity that is not a company, but they are prevented from being a director of a charitable company.

5.2.4 Refusing to grant a waiver

The Commission may refuse to grant a waiver to an individual. This may be because the conditions that led to the disqualification are still in place, and there are no extenuating circumstances. A refusal may also be given where the Commission considers the risk to the sector to outweigh the potential benefit of the individual being a trustee. A waiver may also be refused where there is legislation other than charity law that disqualifies the individual, for example, safeguarding legislation.

Where an application is refused, the individual remains disqualified until the conditions of the disqualification no longer apply or they make a subsequent successful application.

5.3 What if I disagree with the Commission's decision?

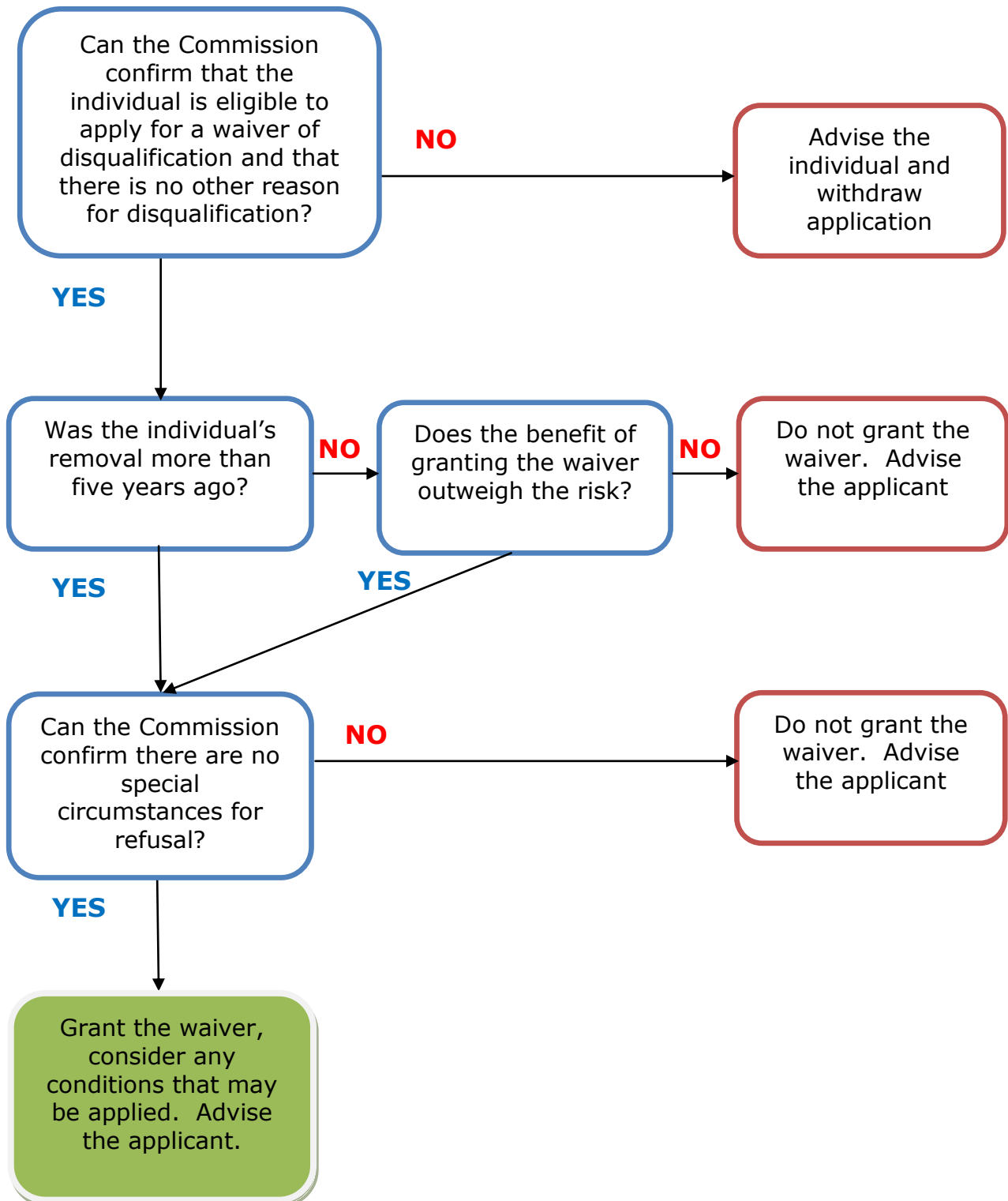
If you are either the individual concerned, or an affected person, and you disagree with the Commission's decision then you may ask the Commission to review its decision. You may also appeal the decision to the Charity Tribunal. For further information, see the *Challenging a decision of the Commission* guidance.

5.4 Flowcharts

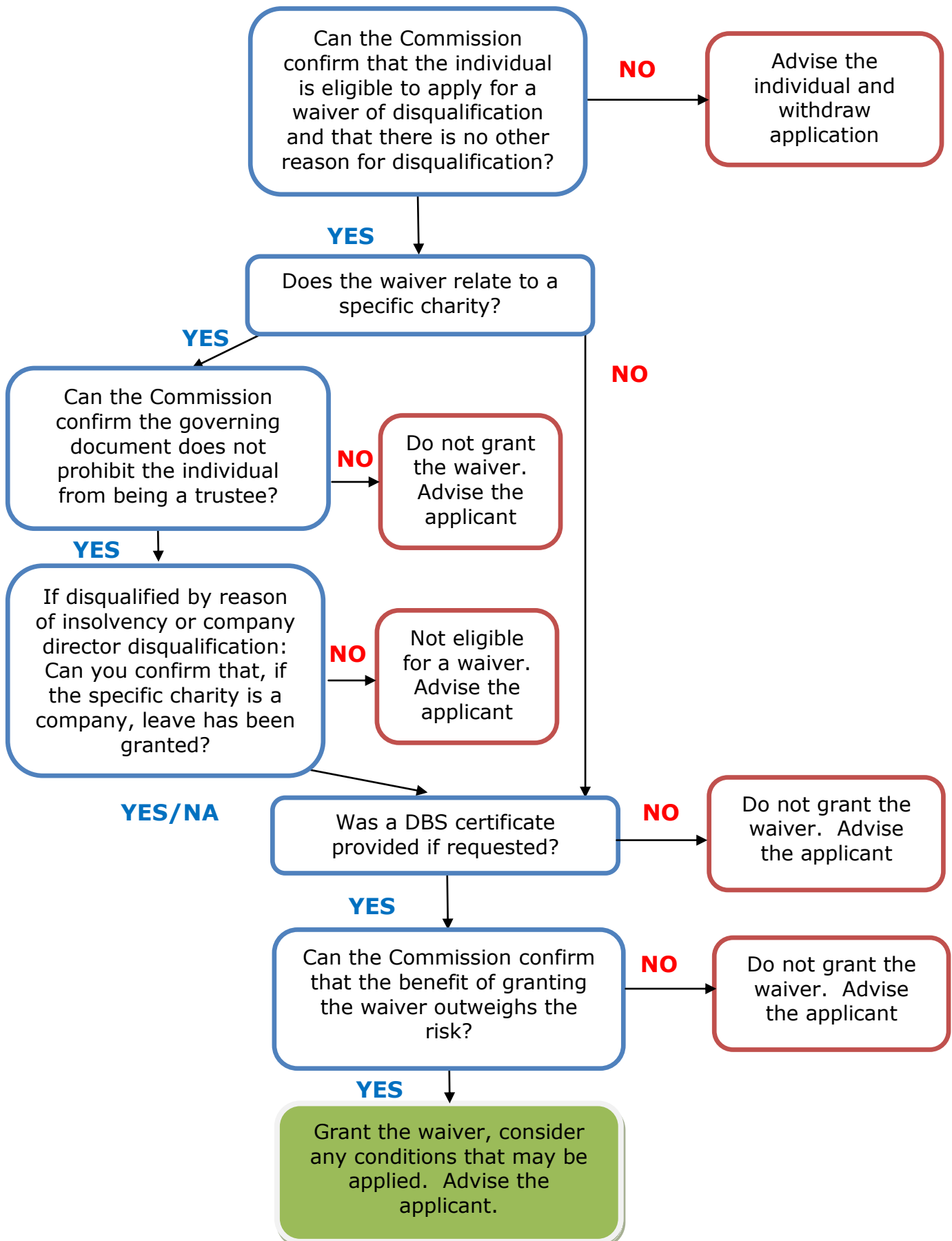
The following flowcharts may help you to understand the process the Commission will take in considering your application and reaching a decision. There are two flowcharts:

- Decision making process where disqualification is as a result of removal
- Decision making process where disqualification is as a result of any other reason.

Flowchart: Disqualification as a result of removal



Flowchart: Disqualification for any other reason



Appendix 1: Checklist for applicants

The following checklist may help you to prepare for your application to have a disqualification waived. Some of the information will not apply to your individual circumstances. The text in italics is for guidance purposes only.

	Yes	No	N/A	Help note
Are you eligible to apply for a waiver of disqualification?				<ul style="list-style-type: none"> <i>You are the individual disqualified</i> <i>If you are applying for a waiver for a specific charity, the charity's governing document does not prohibit your trusteeship</i> <i>You are not disqualified under other legislation, for example, safeguarding legislation</i> <i>If you are disqualified under company law and wish to be a director of a charitable company, leave has been granted</i>
If you are applying for a waiver for a specific charity, do you have relevant details for the charity?				<ul style="list-style-type: none"> <i>This should include their address, telephone number, an email contact, and charity registration number (if applicable)</i> <i>This should also include the nature of the charity (for example, rehabilitation of offenders or sports club) and details of the charity's property</i>
If you are applying for a waiver for a specific charity, do you have the charity's governing document?				<ul style="list-style-type: none"> <i>This is needed if you are applying for a waiver for a specific charity and the charity is not yet registered with the Commission</i>
If you are applying for a waiver for a specific charity, do you have evidence of the views of the trustees of any charity concerned?				<ul style="list-style-type: none"> <i>If you are applying for a waiver to be a trustee of a particular charity you will need representations from the trustees of that charity</i>
Do you have evidence of any leave or discharge granted under company law?				<ul style="list-style-type: none"> <i>This may be needed if you are disqualified as a result of removal under company law and where you wish to be a trustee of a charitable company, for example, leave may be granted under the Company Directors Disqualification Act 1986</i>
Do you have a Disclosure and Barring Service (DBS) Certificate dated within the previous three months?				<ul style="list-style-type: none"> <i>This will be needed if you are applying for a general waiver or for a waiver to be a trustee of a charity that works with children or vulnerable adults</i>
Do you have details and evidence relating to the disqualification including the				<ul style="list-style-type: none"> <i>This information is compulsory and it is important that it is accurate. Documentary evidence may be required.</i>

reason, the length of time since it commenced and, if a conviction was involved, the length of sentence passed?				
Can you provide an explanation as to why it is in the interests of the charity, or charities generally, for the disqualification to be waived?				<ul style="list-style-type: none"> <i>This may include specific qualities, skills or services that only you can bring to the charity or the charity sector and only in the capacity of trustee?</i>
Can you provide evidence of good conduct since the disqualification?				<ul style="list-style-type: none"> <i>Provide any detail you can to support why the events leading to your disqualification are unlikely to reoccur.</i>
Can you confirm whether you have been associated with any charity that, to your knowledge, has been the subject of an enquiry by the Commission and provide details?				<ul style="list-style-type: none"> <i>Provide detail, particularly on the extent of your role and involvement.</i>

Appendix 2: Glossary

Term	Definition
Charitable company	This is a charity which is formed and registered under the Companies Act 2006, or any companies that were already established under previous legislation. Charitable companies are registered with Companies House. It will usually have memorandum and articles of association as its governing document and it has its own legal identity. It must be established for exclusively charitable objects.
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 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>
Charities Act (Northern Ireland) 2013	<p>The Charities Act (Northern Ireland) 2013 is a much shorter Act and was primarily brought in to amend the definition of a charity in the Charities Act (Northern Ireland) 2008.</p> <p>The full content of the 2013 Act can be found at www.legislation.gov.uk</p>
Charity directors	In the context of a charitable company, charity trustees are referred to as directors.
Charity trustees	<p>These are the people who are legally responsible for the control and management of the administration of a charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors or they may be referred to by some other title.</p> <p>Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:</p> <ul style="list-style-type: none"> • has been convicted of an offence involving deception or dishonesty, unless the conviction is a spent conviction

Term	Definition
	<p>under the Rehabilitation of Offenders (NI) Order 1978</p> <ul style="list-style-type: none"> • is an undischarged bankrupt or has made an arrangement with creditors • has previously been removed as a trustee by the Commission or by the Courts • is subject to disqualification under company legislation.
Company law	Throughout this guidance, references to “company law” are to the Company Act 2006. The full content of the 2006 Act can be found at www.legislation.gov.uk
Discharged	To do all that which is required to perform a duty or fulfill a responsibility.
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.
Insolvency Arrangement	A composition, arrangement or trust deed entered into between the applicant and their creditors.
Insolvency order	<p>For the purpose of this guidance this refers to the following:</p> <ul style="list-style-type: none"> • A bankruptcy order • A bankruptcy restrictions order • A sequestration order • A debt relief order • A debt relief restrictions order.
Offence involving deception	<p>The Theft Act (NI) 1969 created six imprisonable crimes involving deception namely:</p> <ol style="list-style-type: none"> to obtaining property by deception, obtaining a money transfer by deception, obtaining pecuniary advantage by deception, procuring the execution of a valuable security by deception, obtaining services by deception, and evasion of liability by deception,

Term	Definition
	<p>These offences were repealed by the Fraud Act 2006 which came into force on 15 January 2007. However offences committed before 15 January 2007 as still prosecuted under the Theft Act (NI) 1969. From January 2007 offences involving deception fall into three categories:</p> <ul style="list-style-type: none"> i. fraud by false representation, ii. fraud by failing to disclose information, and iii. fraud by abuse of position.
Offence involving Dishonesty	<p>In general to commit an offence involving dishonesty is to do something which you realise is dishonest, according to the standards of reasonable and honest people.</p>
Section 86	<p>86 (1) Subject to the following provisions of this section, a person (D) shall be disqualified for being a charity trustee or trustee for a charity if—</p> <ul style="list-style-type: none"> (a) D has been convicted of any offence involving dishonesty or deception; (b) D has been adjudged bankrupt or sequestration of D's estate has been awarded and (in either case) D has not been discharged; (c) D has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it; (d) D has been removed from the office of charity trustee or trustee for a charity by an order made— <ul style="list-style-type: none"> (i) by the Commission under section 33(2)(i), or (ii) by the Court, on the grounds of any misconduct or mismanagement in the administration of the charity for which D was responsible or to which D was privy, or which D by conduct contributed to or facilitated; (e) D has been removed from the office of charity trustee or trustee of a charity by an order made— <ul style="list-style-type: none"> (i) by the Charity Commission for England and Wales under section 18(2)(i) of the Charities Act 1993 (c. 10), or (ii) by the Charity Commissioners for England and Wales under that provision (as in force before the commencement of section 6 of the Charities Act 2006 (c. 50)), under section 20(1A)(i) of the Charities Act 1960 (c. 58) or under section 20(1)(i) of that Act (as in force before the commencement of section 8 of the

Term	Definition
	<p>Charities Act 1992 (c. 41), or (iii) by Her Majesty's High Court of Justice in England; on the grounds of any misconduct or mismanagement in the administration of the charity for which D was responsible or to which D was privy, or which D by conduct contributed to or facilitated;</p> <p>(f) D has been removed, under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) or under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;</p> <p>(g) D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) or the Company Directors Disqualification Act 1986 (c. 46).</p> <p>(2) In subsection (1)—</p> <p>(a) paragraph (a) applies whether the conviction occurred before or after the commencement of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (NI 27);</p> <p>(b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the commencement of that subsection;</p> <p>(c) paragraph (c) applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of that subsection; and</p> <p>(d) paragraphs (d) to (g) apply in relation to orders made and removals effected before or after the commencement of that subsection.</p> <p>(3) Where (apart from this subsection) D is disqualified under subsection (1)(b) for being a charity trustee or trustee for any charity which is a company, D shall not be so disqualified if leave has been granted under Article 15 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) or section 11 of the Company Directors Disqualification Act 1986 (c. 46) (undischarged bankrupts) for D to act as director of the charity; and similarly D shall not be disqualified under subsection (1)(g) for being a charity trustee or trustee for such a charity if—</p> <p>(a) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company</p>

Term	Definition
	<p>Directors Disqualification (Northern Ireland) Order 2002, leave for the purpose of Article 3(1)(a) or 4(1)(a) of that Order has been granted for D to act as director of the charity,</p> <p>(b) in the case where D is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986, leave for the purpose of section 1(1)(a) or 1A(1)(a) of that Act has been granted for D to act as a director of the charity.</p> <p>(4) The Commission may, on the application by D, waive D's disqualification either generally or in relation to a particular charity or a particular class of charities; but no such waiver may be granted in relation to any charity which is a company if—</p> <p>(a) D is for the time being prohibited, by virtue of—</p> <ul style="list-style-type: none"> (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002, or (ii) Article 15(1), 16(2) or 17 of that Order (undischarged bankrupts; failure to pay under administration order, etc.), <p>from acting as director of the charity; and</p> <p>(b) leave has not been granted for D to act as director of any other company.</p> <p>(5) If—</p> <ul style="list-style-type: none"> (a) D is disqualified under subsection (1)(d), (e) or (f) and makes an application under subsection (4) five years or more after the date on which D's disqualification took effect, and (b) the Commission is not prevented from granting the application by virtue of paragraphs (a) and (b) of subsection (4), <p>the Commission must grant the application unless satisfied that, by reason of any special circumstances, it should be refused.</p> <p>(6) Any waiver under subsection (4) shall be notified in writing to D.</p> <p>(7) For the purposes of this section the Commission shall keep, in such manner as it thinks fit, a register of all persons who have been removed from office as mentioned in</p>

Term	Definition
	<p>subsection (1)(d) either— (a) by an order of the Commission, or (b) by an order of the Court; and, where any person is so removed from office by an order of the Court, the Court shall notify the Commission of the removal.</p> <p>(8) The entries in the register kept under subsection (7) shall be available for public inspection in legible form at all reasonable times.</p>
Section 87	<p>87 (1) Subject to subsection (2), any person who acts as a charity trustee or trustee for a charity while disqualified for being such a trustee by virtue of section 86 is guilty of an offence and liable— (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.</p> <p>(2) Subsection (1) shall not apply where— (a) the charity concerned is a company; and (b) the disqualified person is disqualified by virtue only of paragraph (b) or (g) of section 86(1).</p> <p>(3) Any acts done as charity trustee or trustee for a charity by a person disqualified for being such a trustee by virtue of section 86 shall not be invalid by reason only of that disqualification.</p> <p>(4) Where the Commission is satisfied that any person— (a) has acted as charity trustee or trustee for a charity while disqualified for being such a trustee by virtue of section 86, and (b) has, while so acting, received from the charity any sums by way of remuneration or expenses, or any benefit in kind, in connection with acting as charity trustee or trustee for the charity, the Commission may by order direct that person to repay to the charity the whole or part of any such sums, or (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by the Commission) of any such benefit.</p>

Term	Definition
	(5) Subsection (4) does not apply to any sums received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified for being a charity trustee or trustee for the charity.
Sequestration	Where property has been removed, seized or confiscated from the possession of the owner for the benefit of creditors or the state, usually by means of an order of the court. In Scotland this term is more commonly used when in bankruptcy proceedings as a means of taking the bankrupt's estate.
Spent Conviction	A conviction that, after a specified number of years, known as the rehabilitation period and set out in the Rehabilitation of Offenders Act 1974, , may, for all intents and purposes, be treated as if it never existed.
Undischarged bankrupt	This is someone who has been declared bankrupt, and is not yet discharged from bankruptcy.

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 0200 7812

Email: tribunalsunit@courtsni.gov.uk

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 of Health

Safeguarding Vulnerable
Groups / Disclosure and
Barring Service

Information Office
C5.20
Castle Buildings
Stormont
Belfast
BT4 3SQ

Telephone: 028 9052 0500

Website: www.health-ni.gov.uk

HM Revenue and Customs
(HMRC)

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

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
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