

Charity law essentials for public sector bodies and funders

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Why is this relevant to you?

- Complex regulatory framework
 - Example: Housing Associations

- Interactions with charities
 - Funding
 - Service delivery
 - Sponsoring a charity
 - Appointing trustees / board members
 - Custodian of charitable funds
 - Corporate trustee
 - Capacity building and support services

- Is your organisation a charity?

- Are you the trustee of a charity?



Session outline



- Background to charity registration in Northern Ireland
- Charity registration and casework – key requirements
- Challenging areas for public bodies / government funders to identify
 - Funds within other bodies
 - Special trusts
 - Independence from government – arms length bodies
- After registration – monitoring and annual reporting
- Call to action: opportunities to work together across the public sector
 - Raising awareness of charity law requirements
 - Information sharing
 - Memoranda of understanding

Background to charity regulation in Northern Ireland

Frances McCandless
Chief Executive



Before the Commission

- Charities self regulating: no registration, limited regulation by statutory authorities
- HMRC (charitable tax status) registration discretionary
- Charity administrative matters dealt with by Department for Social Development (DSD) and the High Court
- Charities and other bodies in Northern Ireland lobbied for the establishment of an independent regulator – like England and Wales and Scotland



After the Commission

- Commission established March 2009
- **Enquiries powers** introduced February 2011
- **Charity registration** introduced December 2013
 - **All** organisations that are charitable **must** apply to register
 - Over 4,200 registered charities to date
- **Full annual accounting and reporting** introduced January 2016
- **Casework powers** - phased introduction



Role of the Commission

Monitor compliance by charities with their legal obligations

Identify and investigate misconduct or mismanagement

Register of charities

Provide consents for charities to make changes to keep their charity effective

Provide guidance on matters relating to charity law and trustee duties

Promoting trust and confidence in charities

Key current powers:

Parts of the legislation currently in force include:

- The Charity Tribunal
- Definition of charity and public benefit
- Registration
- Charity accounting and reporting requirements
- Charity names provision
- Information (inquiry) powers – over 500 concerns since 2011
- Powers to make schemes and act for protection of charities
- Ex-gratia payments
- Power to determine membership
- Cy-près (including failed appeals)
- Powers relating to charitable companies
- Powers of unincorporated charities
- Mergers
- Religious designation

Other powers in the legislation

- Charity land
- Official custodian
- Common investment and deposit funds
- Charitable Incorporated Organisations
- Public charitable collections
- Control of fundraising for charitable institutions



Charity registration and casework – key requirements

Punam McGookin
Head of Charity Services

What is a charity?

- An organisation **must** apply for registration as a charity in Northern Ireland, regardless of its income, size or whether or not it has received charitable tax status from HMRC, if:
 - it has exclusively charitable purposes
 - it is governed by the law of Northern Ireland
 - it is an institution, that is, it is an organisation that is an independent body, the hallmarks of which include having control and direction over its governance and resources.
- **Exclusively charitable purposes** means:
each purpose must fit within one or more of
12 descriptions of purpose and be
for the **public benefit**
Charities Act (Northern Ireland) 2008



The 12 charitable purposes



Education

Relief of those in need

Any other purpose

Animal welfare

Citizenship, Community development

Arts, culture, heritage, science

Religion

Environmental protection or improvement

Prevention or Relief of poverty

Health, saving lives

Amateur sport

Human rights, conflict resolution, reconciliation, promotion religious racial harmony, equality, diversity

Supporting guidance

What is the public benefit requirement?

Benefit: this is the way in which an organisation's purposes provide a benefit and how that benefit can be demonstrated.

Public: the organisation must know who the intended beneficiaries are and how they might benefit.

The nature of the public benefit and the way it may be demonstrated will be different for each purpose and for each organisation.

The public benefit requirement



The Charity Commission for Northern Ireland's statutory guidance on the public benefit requirement

By law, charity trustees must have regard to this guidance

When to apply for registration

At present, organisations are 'called forward' by the Commission and informed of their registration deadline



All charitable organisations must make sure we have their details to let them know when they must apply to register

The screenshot shows the Charity Commission's online application portal. At the top right is the logo for 'The Charity Commission for Northern Ireland'. Below it is the heading 'Registering as a charity in Northern Ireland'. A blue horizontal line separates the heading from the text 'The who, what, where, why, when and how of charity registration in Northern Ireland'. The main content area displays a navigation menu on the left with options like 'Home', 'Your Organisation', 'What you do', 'What you say', 'What you do', 'What you say', 'What you do', 'What you say', 'What you do', 'What you say'. The central part of the screen shows a form titled 'Online application for charity registration' with a progress bar and several sections: 'Your Organisation', 'Your Organisation', 'Your Organisation', 'Your Organisation', 'Your Organisation', 'Your Organisation', 'Your Organisation', 'Your Organisation', 'Your Organisation', 'Your Organisation'. The bottom section of the screenshot shows a 'Welcome to Online application for charity registration' message with instructions for new charities and a list of requirements for registration.

Assessing each application



The Commission will:

- Apply principles of charity law
- Check eligible to register
- Check purposes fall within 12 charitable purposes
- Determine whether organisation's purposes meet the public benefit requirement
- Ensure purposes are exclusively charitable
- Ensure trustees are eligible to act as trustees

May request further information or offer guidance

Process typically takes 3 – 4 months but this depends on the complexity of the case and whether we need further information.

All applications are assessed on a case by case basis

Challenges to the Commission in processing registration



Poor quality of applications

- Not using guidance – poor public benefit statement, wrong trustees identified

Failure to submit / failure to apply

- Over 1000 groups have failed to apply when called forward (17%)
- Others submit incomplete/poor application then refuse to provide further info

Complexity of some cases

- Complex structures
- Precedent setting or case law uncertain

“Unknown unknowns”

- Groups for whom we have no contact details/are not aware of

Volume of cases

- Small team

Casework

The Commission's consent may be required for some actions:

- Authorising certain transactions
- Requests for schemes
- Consents for charitable companies
- Paying Trustees

Authorising transactions

Requesting a scheme

Guidance for charity trustees on requesting a scheme to update charitable purpose or charitable gifts



Making payments to trustees

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



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



Consents for charitable companies

Guidance for directors of charitable companies on obtaining consent to alter objects, disassociate benefit provisions contained in their articles of association and transactions with directors

- Consents for charitable companies
 - Regulated alterations must be approved by the Commission before they can take effect
 - change to the purposes (objects) of the charity
 - change to what happens to its property on winding up
 - change authorising the charity's funds/property to be used to benefit the directors, members, or those connected with them
- Making payments to trustees
 - Unpaid trusteeship distinctive feature of charities
 - Authorisation required – gov doc / Commission / other legislation
- Authorising a transaction
 - Consent required where the trustees don't have the power
 - Consent required to make a payment /transaction which is not in the best interests of the charity but which the trustees feel morally obliged to make (ex gratia payment)

- Schemes (cy-près doctrine)
 - If need to make a change to governing document, don't have power to do so, may require a scheme
 - Doctrine of cy-près – takes account of the 'spirit' of existing purposes
 - **Example:** Where there is a gift to an educational society which no longer exists. Using a scheme, the Commission may direct that the fund is used to further education in another way, for example, in the purchase of prizes or to further research
 - **Example:** a public body holds a number of trust funds which can no longer be used, a scheme may be used to rationalise them and enable them to be applied
- Failed appeals
 - Charitable funds can only be used for the purposes for which they were given
 - Example: a campaign to raise money for a kidney dialysis machine does not raise enough money – you can't just use the funds to help build a maternity ward
 - May need a scheme to reapply the funds

Challenging areas to identify



Complex funds and special trusts



Complex funds or trusts

- Bodies with a large number of separate funds within their main structures
- May need to register each fund in its own right
- History, difficulty obtaining governing documents for individual funds
- Preparation: make sure you know where documents are and gather them
- Consider taking legal advice where there are difficulties / complexities
- May require a scheme to consolidate funds

Special trusts

- You may have special trusts within your structure
- A special trust refers to funds or property held and administered on its own separate trusts by or on behalf of a main charity for any special purposes of that charity. It follows that the objects of a special trust must be narrower than those of the main charity
- A special trust is required to register as a charity
- Drawing attention to be aware of – something we will be looking into in the future

Independence from government – arms length bodies

- An organisation which has – as a purpose – the promotion of the policies of the government of the day, cannot be a charity

- Government can, however:
 - Establish a charity
 - Fund a charity
 - Contract services to a charity

- What is important is that a charity has independence of purpose and is free to work to achieve its purposes as the trustees see fit

- Require careful analysis of purposes in the context of independence – has factored into refusals

Independence from government – arms length bodies

- Unlikely an organisation applying for registration will have a written purpose “to promote government policy” – more likely to be an ‘unwritten’ purpose

- Some of the things we look at:
 - Governing document
 - Management statement and financial memorandum
 - Dissolution clauses

What next – monitoring and reporting requirements

Frances McCandless
Chief Executive



Duties and responsibilities of charity trustees



- Comply with the Charities Act and other legislation
 - Registering as a charity
 - Annual reporting
 - Company law
 - Employment law
 - Safeguarding legislation
 - Data protection

- Act with care and diligence
 - In accordance with governing document
 - Managing risk
 - Effective use of charitable funds and assets
 - Protecting beneficiaries

- Act in the best interests of the charity and not for private gain

Monitoring and compliance guidance - getting it right

Who may not be a Trustee?



Under Section 86 of the Act an individual is disqualified from being a charity trustee if:

- have an unspent conviction for any offence involving dishonesty or deception
- subject to insolvency orders such as a bankruptcy restrictions order or order of sequestration, a debt relief order or a debt relief restrictions order
- entered into an agreement with creditors, for example an individual voluntary arrangement (IVA), and this has not been discharged
- been removed as a charity trustee by the Commission, Charity Commission for England and Wales, Office of the Scottish Charity Regulator, or the Courts
- disqualified from being a company director under the Company Directors Disqualification (NI)

Does not apply to Designated Religious Charities

Commission has power to waive disqualification in some circumstances

Trustee obligations



When charity is registered, additional duties on trustees:

- Notifying Commission if it ceases to exist
- Notifying Commission of changes to details on register eg:
 - Details of trustees
 - Changes to purposes / objects
 - Area of operation
 - Name
- Reporting any serious incidents that occur during the year (guidance to be published)

Section 19 – Fact that a charity is registered should be stated on:

- all notices, advertisements or other documents soliciting money or other property
- all bills of exchange (including cheques)
- all invoices and receipts, etc.

Charity law – accounting and reporting



New law relating to charity accounting and reporting commenced on 1 January 2016

Legislation applies to **all** registered charities and sets out:

- the **form and content** of charity accounts (receipts & payments or accruals accounts)
- the **form and content** of the trustees' annual report
- the **level of external scrutiny** required ie independent examination or audit

Purpose of the legislation is to increase accountability and transparency

Charity law – accounting and reporting



Accounting and reporting guidance public, consultation December 2015 - March 2016

- *Charity reporting and accounting: guidance summary*
- *Charity reporting and accounting: the essentials*
- *Receipts and payments accounts and the trustees' annual report*
- *Accruals accounts and the trustees' annual report*
- *Public benefit requirement guidance – public benefit reporting*

Also consulted on Directions for Independent Examiners

**Publication of consultation response and final guidance
summer 2016**

High level requirements



Income \leq £250,000

- Can elect to prepare Receipts & Payments
- Independent Examination (trustee assured)
- Trustee Annual Report
- Annual Monitoring Return

Income £250,001 to £500,000

- Accruals Accounts (**SORP**)
- Can be Independent Examination (must be qualified – see Act)
- Trustee Annual Report
- Annual Monitoring Return

Over £500,000

- As above but full audit

Group income $>$ £500,000

- As above and must prepare consolidated accounts

What will happen next?



On receipt of the accounts, reports and annual monitoring return the Commission will:

- ✓ Publish the accounts online (*register of charities*)
- ✓ Assess submitted documents
- ✓ Address all zero tolerance issues
- ✓ Potentially visit a charity

We will also publish if the charity fails to submit accounts to the Commission on time

Charity reporting – the register



Cancer Lifeline

Overview

Financials

Documents

People

Operations

Income

£442.2K

Spending

£379.3K

Status

Up-to-date

Charity no. 100002

Company no. 55010

Date registered. 13/12/2013

Public benefits

Cancer Lifeline feels it meets the public benefit requirement because its purposes satisfies both elements of the public benefit requirement. In practice, Cancer Lifelines' purposes provide a range of benefits to a section of the public (ie. those diagnosed with cancer and their family members / carers). The actual benefits in terms of (i) the relief of sickness through the provision of support ... [\[more\]](#)

What your organisation does

At our 'home from home' community base Cancer Lifeline provides a varied programme of support and information services. The unique focus of Cancer Lifeline is that it is managed by local people all of whom are living with cancer. Hence, when people come for support they will have the opportunity to meet and talk to others who have been through the same experience. Services provided ... [\[more\]](#)

The charity's classifications

The advancement of education

Who the charity helps

Carers

Charity reporting – the register

Cancer Lifeline

Overview

Financials

Documents

People

Operations

£442.2K

Income



- Voluntary: £50.8K
- Trading to raise funds: £131.1K
- Investment: £0.0K
- Charitable activities: £0.0K
- Other: £260.3K

£379.3K

Spending



- Generating voluntary income: £0.0K
- Trading to raise funds: £88.7K
- Investment management: £0.0K
- Charitable activities: £288.3K
- Governance: £2.3K
- Other: £0.0K

Assets and liabilities

£226.2K

Total fixed assets

£273.2K

Other assets

£7.3K

Total liabilities

Charity reporting – the register

Cancer Lifeline

Overview Financials **Documents** People Operations

Charity accounts & reports for financial year end 31 March 2015



Independent examiners report
(48KB)



Charity accounts
(250KB)



Trustee annual report
(406KB)

Charitable purposes

Cancer Lifeline is established for the relief of sickness and to advance education about cancer among people in North Belfast, Shankill and Newtownabbey and its environs (hereinafter called the "area of benefit") who are suffering from cancer and their families (hereinafter called "the beneficiaries") from the point of view of

Governing document

Memorandum

Other name

Annual reporting to date



Some registered charities have already reported to the Commission under interim reporting arrangements:

- ✓ all submitted information within their 10 month deadline
- ✓ annual reporting information, including PDF copies of accounts and reports available to view on the *register* of charities
- ✓ accounts submitted under interim reporting arrangements not subject to specific checks relating to the format or review/audit

This will change for accounts submitted under the full accounting and reporting regime when all registered charities must comply with the new requirements

Annual reporting to date – errors to avoid



Some charities had to re-submit annual reporting information for a variety of reasons.

18% of charities had to resubmit accounts and reports due to **inappropriate/sensitive** material included in PDF attachments. For example, inclusion of:

- bank statements
- personal documents
- trustee details form (part of registration for internal use)

Accounts and reports will automatically uploaded to the *register of charities* – essential to check the PDF attachment before an annual monitoring return is submitted

Annual reporting to date – errors to avoid



24% charities had to re-submit '**failed accounts**'. Example reasons for failed accounts include:

- accounts submitted for incorrect financial year
- accounts submitted in draft form
- key information does not match the information provided in annual monitoring return e.g. income and expenditure
- date on accounts different from information held on register


Opportunities to work together effectively across the public sector

Punam McGookin
Head of Charity Services



Raising awareness of charity law requirements



- Unknown unknowns  known knowns
- Registration (or presence on registration list to be called forward) a requirement for funding or affiliation
 - We need your help in driving compliance: DSD have made compliance with charity law a condition of agreements with relevant stakeholders
- Helper groups
- Newsletters, ezines, Twitter

Raising awareness of charity law requirements



Casework, monitoring, accounting and reporting requirements

- Raising a concern
- Raising awareness of obligations
- Providing alerts for key deadlines
- Matters of material significance
- Consider: Would you fund a charity that is in default of its reporting obligations?

Information sharing



- Information on the register of charities
- Joint investigations
 - **Example:** working with internal auditors if they are looking into a charity, experience with NIHE
- Obligation on public bodies under DAO(DFP) 07/11

NOTIFICATION AND LIASION WITH THE CHARITY COMMISSION NI

“Given the statutory remit of the Commission it would be appropriate, where departments or other public sector bodies are investigating organisations which are considered to be charitable bodies, for the Commission to be advised at an early stage.”

Memoranda of Understanding



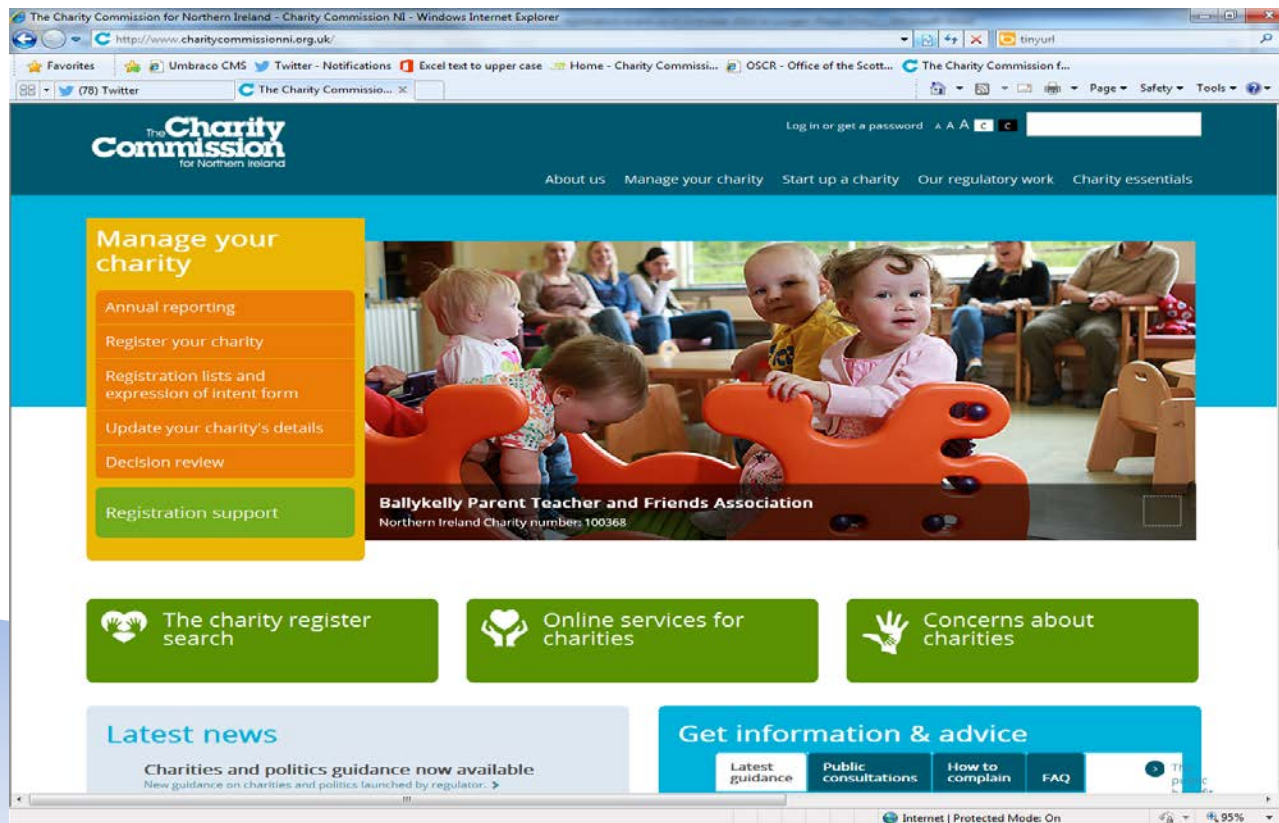
- Information sharing
- Joint investigations
- Policy discussions
- Existing MoUs
 - NIAO (Protocol for co-operation)
 - PSNI
 - HMRC
 - Other charity regulators
 - DSD Corporate Investigations Unit
 - DSD Housing Regulator
 - Land and Property Services
 - Electoral Commission

For more information visit our website

www.charitycommissionni.org.uk

Follow us on twitter

 @CharityCommNI



The screenshot shows the website interface for The Charity Commission for Northern Ireland. At the top, there is a navigation bar with the logo and a search bar. Below this, a main menu includes links for 'About us', 'Manage your charity', 'Start up a charity', 'Our regulatory work', and 'Charity essentials'. A prominent yellow sidebar on the left is titled 'Manage your charity' and contains several menu items: 'Annual reporting', 'Register your charity', 'Registration lists and expression of intent form', 'Update your charity's details', 'Decision review', and 'Registration support'. The main content area features a large photograph of children in a playroom, with a caption for 'Ballykelly Parent Teacher and Friends Association' and its charity number. Below the photo are three green buttons: 'The charity register search', 'Online services for charities', and 'Concerns about charities'. At the bottom, there are two sections: 'Latest news' with a link to 'Charities and politics guidance now available' and 'Get information & advice' with sub-links for 'Latest guidance', 'Public consultations', 'How to complain', and 'FAQ'. The browser's address bar shows the URL 'http://www.charitycommissionni.org.uk/'.

Question and answer session