

The Charity Commission's new regulatory powers two years on

The Charities (Protection and Social Investment) Act 2016 conferred new powers on the Charity Commission.



Emma Knuckey
Consultant
T: 020 7551 7790
e.knuckey@bwbllp.com

Emma has been advising on charity law since qualifying as a solicitor in 2002. Before joining BWB, Emma worked at the Government Legal Department (formerly the Treasury Solicitor's Department) and also spent seven years as an in-house lawyer at the Charity Commission.



Megan Read
Solicitor
T: 020 7551 7835
m.read@bwbllp.com

Megan advises charities, social enterprises and educational institutions on a variety of commercial, charity law and education law matters including formation and registration, constitutional and regulatory compliance, academy conversions and transfers and general charity and company law.

Emma Knuckey and Megan Read look at the use of those powers since their introduction

The Charities (Protection and Social Investment) Act 2016 ('the Act') introduced a range of new regulatory powers for the Charity Commission, including:

- a new power to issue an 'official warning' to charities or charity trustees;
- a new power to disqualify a person from serving as a charity trustee or senior manager of a charity;
- the ability to remove a disqualified trustee from office;
- additional powers to direct that charity property is used in a certain way, without opening a formal statutory inquiry;
- additional powers once the Charity Commission has opened an inquiry.

Some in the sector were concerned that the legislation did not contain sufficient safeguards, particularly the official warning and discretionary disqualification powers. We do not yet know exactly how often the new powers have been exercised, but at the time of writing details of three official warnings and four discretionary disqualification cases have been published.

Official warnings

The new power to issue – and publish – an official warning to charities or charity trustees where the commission believes there has been misconduct or mismanagement, or a breach of trust or duty, came into effect on 1 November 2016. The three warnings published by the commission to date are:

- **The National Hereditary Breast Cancer Helpline**
This was the first use of the power, so attracted a lot of media interest. The commission's concerns were around unauthorised payments to the founder, who was chair of trustees, and an informal loan agreement to one of the trustees; improper delegation of the administration and management of the charity; failure to keep proper minutes and other records of decision making and failure to properly implement and manage financial controls.

The commission had previously issued an action plan to the charity about these issues, which had not been adequately complied with.

- **Gurdwara Guru Nanak Parkash (Coventry)**

The trustees of this Sikh Temple were issued with an official warning for failure to manage the charity effectively. This included the failure of the trustees to work together and implement decisions in the best interests of the charity; failure of the trustees to manage charity property responsibly; failing to take adequate steps to prevent the circulation of views or material that could be seen to be inappropriately political or extremist in nature on its premises; and exposing members of the charity and its trustees to an undue risk of harm from repeated disruption on charity premises that had required police presence on a regular basis.

The commission had provided regulatory advice and guidance to the charity, which had not been followed, before the warning was issued.

- **The Islamic Trust (Maidenhead)**

The commission issued an official warning in respect of the trustees' failure to submit the charity's annual report and annual return. The charity had repeatedly failed to file annual accounting information so had previously been the subject of a statutory inquiry.

It is notable that in all three cases, the commission had previously engaged with the charity in some way, but as the problems had then continued, the commission had decided to issue and publish the official warning as the next step.

Powers to disqualify and remove trustees

The Act introduced a new discretionary power, in force from 1 October 2016, for the commission to disqualify a person from being a charity trustee of any charity, or of specific charities or types of charity. The person is also disqualified from being a senior manager in a charity (or the specified charities). The Act also introduced a power for the commission to remove a charity trustee if they have been disqualified from acting as a trustee, closing a loophole in the existing legislation.

Here are three examples of where the commission has used its new discretionary power to disqualify:

■ **Anatolia People's Cultural Centre**

The commission was informed by the police that this charity's premises had been searched as part of a counter terrorism investigation. A trustee was arrested on suspicion of terrorism offences and the charity's premises were closed by a court order. The commission opened a statutory inquiry and investigated concerns about the trustees' management of the charity, including that the trustees had failed to file accounting information for five consecutive financial years. The charity's premises had been used to display inappropriate images of individuals associated with extremist activities and the trustees were found to have failed to prevent the display of these images.

The commission's investigation found that the charity did not have a bank account, despite the fact that the charity was receiving donations and paying rent and utilities in cash. This, coupled with the trustees' failure to take any steps or actions to challenge the closure order or to recover any of the property that was held at the premises, and their failure to challenge negative media reporting about the charity, led to a finding of misconduct and/or mismanagement by the trustees.

The Charity Commission suspended the trustee charged by the police and later removed her from office, meaning that she was subject to automatic disqualification as a trustee for life. The commission used its new discretionary power to disqualify the five other trustees for a period of 10 years and also removed them as trustees of the charity under its separate new power to remove a disqualified trustee.

<https://www.gov.uk/government/publications/charity-inquiry-anatolia-peoples-cultural-centre/anatolia-peoples-cultural-centre>

■ **Peacetrail**

In this case the commission used its new power to disqualify the CEO of the charity from being a trustee or holding a management position in a charity for four and a half years.

<https://www.gov.uk/government/publications/charity-inquiry-peacetrail/charity-inquiry-peacetrail>

'To date, it seems that concerns that the commission's new powers would be over-used have not yet come to fruition, and that the exercise of new powers has been restricted to some of the most serious cases, or where charity trustees have not complied with previous regulatory advice or guidance'

■ **Deen Team**

This charity was subject to a statutory inquiry, which found serious failings, including poor financial management and mismanagement in the charity's administration. The trustees had failed in their legal duties, including by failure to keep sufficient accounting records or to submit accounts and annual returns and failure to comply with the governing document regarding trustee meetings and accounting records. The commission disqualified one of the trustees from being a charity trustee for four years and removed her as trustee of the charity.

The other trustees were not disqualified. Factors that distinguished the disqualified trustee from the other trustees were: she had been a trustee for the longest period; had been in post when the commission had provided regulatory advice and guidance to the charity, which was not followed; had failed to cooperate with the commission; had a payment of £2,000 of charity funds made to her with no evidence that it had been used for charitable purposes; and had been a trustee when the charity's premises was assigned to a separate company, resulting in a loss to the charity.

<https://www.gov.uk/government/news/individual-disqualified-as-trustee-for-4-years-after-failure-to-evidence-how-charity-funds-were-used>

<https://www.gov.uk/government/publications/deen-team-inquiry-report>

To date, it seems that concerns that the commission's new powers would be over-used have not yet come to fruition, and that the exercise of new powers has been restricted to some of the most serious cases, or where charity trustees have not complied with previous regulatory advice or guidance.