

Charity Commission consults on new trustee disqualification and warning powers

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The Charity Commission recently announced two consultations, the first on its new powers to disqualify individuals from acting as trustees or being in senior management positions at charities and the second on its new power to issue official warnings to charities.

The new power to disqualify individuals from acting as trustees is contained in the Charities (Protection and Social Investment) Act 2016 and the Commission's draft guidance sets that the Commission will only be able to make a disqualification order when it is satisfied that each of the following tests is met:

- The person is unfit to be a trustee
- The order is desirable in the public interests to protect public trust and confidence in charities; and
- At least one of the six conditions specified in the legislation applies

The six tests which are contained within the legislation include situations in which a person has been cautioned for an offence against a charity in a situation in which a conviction would have brought automatic disqualification, or if a person has been convicted of an offence in another country which would have brought automatic disqualification if committed in England and Wales.

There are other tests which are more subjective, for example; *'other conduct, whether or not in relation to a charity that is, or is likely to be, damaging to public trust and confidence in a charity or charities'*. While the guidance does give some examples of what might constitute such conduct, it is clear that the Commission has wide powers in this area, including deciding whether the disqualification will be for the maximum of 15 years, or a shorter period.

The Commission is also consulting on its new power to issue official warnings to charities. The Commission can issue an official warning where it considers there has been a breach of duty or other misconduct or mismanagement but where the issue is not so serious that it merits the opening of a statutory inquiry or other enforcement action.

Charities which are to be issued official warnings will be given 14 days' notice of the warning being published and the chance to make representations to the Commission, which the Commission must consider before taking a final decision on whether to issue the warning.

Warnings which are issued will be noted on the register of charities and cannot be appealed to the Charity Tribunal.

It is clear from both pieces of draft guidance that there are a number of issues where clarity is needed from the Commission regarding its new powers. Withers' charities team has two representatives on the current Charity Law Association Working Party which is responding to both consultations on behalf of the CLA and those concerns will be raised with the Commission.

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