

## Changes to automatic disqualification for trustees

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**CATEGORY:**

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The Charities (Protection and Social Investment) Act 2016 enacted provisions which expand automatic disqualification for trustees to a wider category of offences, and extends their application to *'senior managers'*, but which were not brought into force in 2017.

The Charity Commission has now announced that these new automatic disqualification and disqualification of senior management rules will come into force on 1 August 2018 and has published guidance on how [charities](#) and [individuals](#) should prepare.

The current rules automatically disqualify trustees for reasons that are *'mainly bankruptcy related, and also include unspent convictions for crimes involving dishonesty or deception'*. From 1 August 2018 these rules will also apply to *'senior managers'* in charities.

The updated rules will also expand the reasons for disqualification to include where trustees or senior managers have previously been removed as an officer, agent or employee (only for trustees under the old rules) by the Charity Commission or High Court due to misconduct or mismanagement; are subject to notification requirements under sexual offences legislation, commonly referred to as being on the sex offenders register; have been found to be in contempt of court for making, or causing to be made, a false statement (to which limited exceptions will apply) or guilty by the High Court of disobeying a Commission order; are a designated person under particular anti-terrorist legislation; or have unspent convictions for committing, attempting, aiding or abetting:

- (i) particular terrorism related offences;
- (ii) particular money laundering offences;
- (iii) particular bribery offences;
- (iv) particular offences under the Charities Act for disobeying a Charity Commission order or direction; or
- (v) offences for misconduct in public office, perjury, and perverting the course of justice.

The updated rules apply in respect of both charity trustees and senior managers, identified by function as a Chief Executive (or equivalent) or Chief Finance Officer (or equivalent) within the charity. There can be several senior managers in a charity, or none (where, for example, only the trustees carry out these roles).

The Charity Commission has published a helpful diagram for charities to identify restricted positions by in its guidance. A Chief Executive's role may or may not include that of a Finance Director.

### **How should charities prepare for the new rules?**

Charities should consider now whether or not any of their trustees or senior managers will be subject to these automatic disqualification rules, even if they are only acting on an interim basis. Failure to comply, allowing a disqualified person to act, will be a reportable serious incident and an offence. The Charity Commission will also has the power to order a trustee or senior manager to *'repay any expenses, benefits, remuneration or the value of benefits in kind received from the charity during the time when [they] were acting while disqualified'*. For this reason the Charity Commission recommends that all charities request their current trustees and senior managers sign up to date declarations before 1 August 2018.

Charities should note from the guidance published to date that:

- It will be important for charities to update their recruitment policies and any new joiner declarations to ensure reasons for disqualification can be identified in advance. The *'details of the recruitment process that led to'* the individual's appointment will be required for any waiver application;
- For existing senior managers charities should review employment contracts or consultancy agreements to ensure they are protected against any reasons for disqualification arising;
- The Charity Commission notes that charities should have systems in place for identifying trustees who have been disqualified after they have been appointed and *'can make use of official registers'*; such as the Individual Insolvency Register and Companies House register of disqualified directors to do so;
- Those trustees or senior managers currently serving who have previously been removed from a charity by the Charity Commission in another capacity may be caught by the rules and should consider their position;
- From 1 August a trustee disqualified under the rules will not be able to step into the role of Chief Executive in order to continue exercising control over a charity – disqualification from one will lead to disqualification from the other.

The Charity Commission leaves it to each charity to decide at what point in their recruitment process they obtain a declaration, or at what *'reasonable intervals'* individuals should be asked to 'refresh' their declarations once they have requested a new declaration before 1 August 2018.

#### **How should our charity approach the possible disqualification of a serving individual?**


It will be possible for charities to seek waivers from disqualification, either generally from all charities, for a class of charities or specifically from a particular charity or charities. The Charity Commission will decide each waiver application on the basis of what is in the best interests of the charity or charities in respect of which the application is made and, more generally, the risk of damage to public trust and confidence in a charity or charities. An application for a general waiver will, it seems, be more difficult to sustain. A decision by the Charity Commission not to grant a waiver will be capable of appeal to the Charity Tribunal.


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