

The Regulatory Role of the Charity Commission

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About Moira Protani

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The Regulatory Role of the Charity Commission

- A heavily regulated environment
- Compliance with the general laws
- Compliance with other regulatory bodies, eg, CQC, Department for Education; Higher Education Funding Council
- Plus the Charity Commission
- An overview of trustee duties contrasted with the Commission's priorities and how the Commission regulates charities

The Regulatory Role of the Charity Commission

- Do:
- Observe your governing document, safeguard the charity's assets and avoid conflicts of interest; the buck stops with the trustees
- Further your charitable objects and avoid mission drift
- Practice good governance
- Exercise oversight of expenditure and safeguard against fraud
- Ensure that trustees are eligible to serve
- Declare conflicts of interest

The Regulatory Role of the Charity Commission

- Grounds for disqualification of trustees
- Unspent conviction for offence involving dishonesty or deception
- Currently declared bankrupt (or subject to bankruptcy restrictions or an interim order or has an IVA with creditors)
- If disqualified from being a company director
- Previously removed as a trustee by the Charity Commission or the High Court for misconduct or mismanagement

The Regulatory Role of the Charity Commission

- Do:
- Check if a trustee (or candidate to be a trustee) has been removed from office
- Review your governing document regularly – is it fit for purpose? If not, change it and get consents if needed
- Manage conflicts of interest and obtain authorisation to pay money to a trustee

The Regulatory Role of the Charity Commission

- The friendship and enabling role of the Charity Commission
- To get consent to change your objects
- To authorise self-dealing with a trustee
- To consult their extensive guidance for trustees
- Publication Scheme
 - The Essential Trustee; Campaigning and Political Activity; Managing Finances; Reporting and Accounting; Appointing Service Users to the board; Buying and Selling Property; Managing Conflicts of Interest; Changing the Governing Document; Incorporating your Charity

The Regulatory Role of the Charity Commission

- Reporting requirements
- Annual report and accounts
- Annual return for every CIO
- Annual return for other charities but not if income <£10,000
- Serious incident reporting
 - Timing of report can be important
 - Is it a serious incident? Does it damage your reputation or has there been a significant financial loss?
 - Don't be on the back foot but try to repair the damage first

The Regulatory Role of the Charity Commission

- The heavy hand of regulation
- Has someone blown the whistle? Trustee, staff, funder?
- Bad publicity? Press or media coverage?
- Correspondence with the Charity Commission
- The Statutory Inquiry
- When and how does it happen?

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- Late filing of the annual report and accounts
- 2 or more years in a five year period if last known income was >£150,000
- No excuses are acceptable to the Charity Commission
- Collective responsibility of the trustees
- Commission exercises statutory powers to obtain bank statements; issues directions to trustees to file accounts within a specified period
- Example: The Blunderbus Theatre Company

The Regulatory Role of the Charity Commission

- A risk-based approach to regulation
- Three specific policies on areas of high risk
- Regulatory cases are assessed in First Contact applying the Commission's risk framework, eg, the level of risk and whether a statutory inquiry or something else should be opened.
- Correspondence and questions usually leading to closure of the investigation
- The Commission liaises with other regulators

The Regulatory Role of the Charity Commission

- Three specific policies
- Fraud, financial crime and financial abuse
 - Low or high level
 - If low, advice and guidance given
 - If high, eg, fraud or abuse of Gift Aid scheme, liaison with the police and HMRC and removal of trustees or other officers
 - Appropriate and proportionate action by the Commission
 - Will consider whether, and if so what, action to take to protect charity's funds
 - The Commission will be influenced by the attitude of the trustees
 - The Spiritualist Association of Great Britain

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- A policy on safeguarding of vulnerable beneficiaries
- The Commission works with other agencies, eg, CQC and the local authority
- Examination of governance to determine how beneficiaries were put at risk
- Were enhanced DBS checks undertaken? Was there a safeguarding policy and was it implemented properly?

The Regulatory Role of the Charity Commission

- Commission guidance
 - Safeguarding Children and Young People
 - Reporting Serious Incidents
 - The Essential Trustee
 - Setting up a Charity
 - Finding New Trustees

The Regulatory Role of the Charity Commission

- Policy on Abuse of Charities for Terrorist Purposes
- If allegations are made, the Commission will deal with them as a priority
- The Commission expects strong governance by the trustees, including good financial management and careful arrangements with partner organisations
- No evidence of significant links between terrorists and charities