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| Investigations Work-Using Permanent Protective Powers |
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| OG117-9 |
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# OG117-9 Investigations Work - Using Permanent Protective Powers

# Policy Statement/Overview

It remains the case officer's responsibility to explain how the grounds for using this power have been met and why it is an appropriate action in the context of the case and the principles of best regulatory practice (eg the reasons for wanting particular information from particular people, or reasons for discounting particular information or people and why this power is appropriate). This explanation will provide evidential analysis, setting out facts that are relied upon and those that have been discounted in reaching the decision to use the power.

## Summary of the guidance

### Casework Guidance

**30 August 2019**

# Using Permanent Protective Powers

## 1. Introduction

The powers highlighted within this guidance are those where the Commission recognises that a greater degree of intervention is required to ensure the wellbeing of beneficiaries or the proper administration of charity assets.

The powers represent permanent changes for the charity concerned which are achieved by means of removal of trustees, appointment of new trustees or the making of a scheme by which the charity can be administered. The powers are used in response to a higher level of risk to beneficiaries or assets.

**KEYPOINT**: Although the Act states 'misconduct or mismanagement', when setting out the Commission's findings, we should normally use the phrase 'misconduct and/ or mismanagement' so as not to tie us to one or both.

### 1.1 Using wider conduct to decide on appropriate powers

Where misconduct and/ or mismanagement has been established by a particular person in a charity we can (under s.76A(2) of the 2011 Act). also take into account the wider conduct of an individual:

* who was responsible for;
* who knew of or failed to take reasonable steps to oppose; or
* whose conduct contributed to

the misconduct and/ or mismanagement when deciding whether or how to exercise any of the temporary powers under s.76 of the 2011 Act.

The wider conduct that we can take into account of any such individual is:

* that person's conduct in relation to any other charity; or
* their conduct more generally if it appears to be damaging, or likely to be damaging to public trust and confidence in charities. This could be damaging to charities generally, particular charities or classes of charity.

## 2. Charities Act 2011 s.76(3)(b) - Appointment of additional trustees

### 2.1 Using this power

Previously, to use a protective power under s.76(3) of the Charities Act 2011, the Commission had to be satisfied that there had been misconduct and/ or mismanagement in the administration of the charity, **or** that it was necessary/ desirable to act to protect the charity's property/ secure a proper application of the property.

Now, as a result of [s.2.2 of the Charities (Protection and Social Investment) Act 2016](http://www.legislation.gov.uk/ukpga/2016/4/section/2), failure to comply with a Commission Order or Direction, or failure to remedy any breach specified in a warning under s.75A may in itself be regarded as misconduct and/ or mismanagement and so allow the Commission to use these s.76(3) powers. In effect, this means that the gateway to s.76(3) is now enlarged.

**What this power allows us to do**

Orders under this section of the Act allow for the appointment of additional charity trustees as considered necessary for the proper administration of the charity.

**Initial considerations**

Existing trustees will be of sufficient number but we consider additional trustees should be appointed to add further experience or expertise in order to remedy non compliance or problems in the charity. Where we want to appoint additional trustees because the trustee body is inquorate or there are no trustees left for reasons stated within the Act, we would normally use section 80(2).

Where misconduct and/ or mismanagement by a particular person in relation to a charity has been established, we can [consider that persons conduct](http://ogs.charitycommission.gov.uk/g117a009.aspx#tab3#heading_toc_uW_9) more widely when deciding whether to use the power to appoint additional charity trustees.

Consideration should be given to the period for which the appointment is to subsist, ie until the next AGM, for a number of months, or a life appointment. The appointment will need to be appropriate in the circumstances of the case. Consideration will also be given to any qualifications or criteria required for trustees of the particular charity in the provisions of the charity’s governing document.

**IMPORTANT NOTE**: The impact of human rights issues and the use of our powers are considered at section 3 of [OG117-1](http://ogs.charitycommission.gov.uk/g117a001.aspx). Where caseworkers have uncertainties or concerns about engagement of human rights or the proportionality of our action legal advice must be taken.

Another consideration is equality and diversity. When communicating with charities caseworkers should offer to translate documents into another language, another format, e.g. Braille or Audio or to meet any other requirements needed.

**Using section 76(3)(b) in the course of a statutory inquiry**

The candidates for trusteeship must be fully informed about the circumstances of the charity and the background to their appointment so that they can make an informed decision of whether they wish to become a trustee of the charity in question. A copy of the governing document should be provided and any other relevant documents such as accounts. They should also be informed about trusteeship in general and the responsibilities attached to it. Publications [CC3](https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3) and [CC21](https://www.gov.uk/guidance/how-to-set-up-a-charity-cc21a) can help with this process.

The suitability of the additional trustees will normally need to be assessed by interview. Arrangements for this process will be determined by case circumstances and location of the trustees. The Head of Unit and/or Senior Investigator should be involved in this process.

If you are appointing any trustees to a charity where vulnerable beneficiaries are involved you must carry out disclosure and barring service checks and follow procedures in [OG 510-2](http://ogs.charitycommission.gov.uk/g510a002.aspx). You must ensure the file contains a record of what steps you have taken in selecting or agreeing which individuals should be appointed.

### 2.2 Decision points and Authorised Officer powers

The Order must be signed and authorised by a PB4 or above (having taken legal advice unless agreed by a PB5 Deputy Head). Whoever signs the Order must ensure that its content properly represents what has been authorised.

### 2.3 Key Issues

* An Order cannot be made under this section unless:
* a Statutory Inquiry has been opened under section 46 of the Charities Act; and
* one of the statutory grounds in section 76(1) applies;
* use of the Order is an appropriate and proportionate response to the circumstances which have led us to believe that the statutory grounds applies;
* Under section 86 a copy of the Order and a Statement of Reasons (SoR) for making the Order must be sent to the charity (if a corporate body) or to each of the other charity trustees as soon as practical after making the Order.
* In most cases "as soon as practical means" means at the time the Order is made. However, section 86(5) allows that where the sending of the Order and SoR would prejudice the statutory inquiry or not be in the interests of the charity we can delay this process. The Order and the SoR must be sent once these factors cease to apply.
* Legal advice should be taken where we have doubts as to whether the Order or SoR should be sent.
* Once the Order is made we may be asked to review our action in making that Order. Any review on our part will be limited by the provisions of section 337(4) to cases where the Order has been made by mistake, under a misrepresentation or otherwise than in accordance with the Act – see OG117-10 section 4. The time limit for such a review is within 12 months of the making of the Order.
* An appeal can be made against the Order to the Tribunal. The appeal can be brought by the any charity trustee, the charity itself where it is a corporate body or any other person affected by the Order. The persons appointed have 42 days from the date on which we sent notice of the decision. Other persons have 42 days from the date on which we the Order was published. In both cases weekends and bank holidays are included in the 42 days.

### 2.4 Notice requirements

The attached table gives notice requirements for all section 76 Orders before and after publication.

The criteria for decisions to give notice and publicity for Schemes and Orders made under section 76 of the Charities Act 2011 can be found in section B8 of OG 500 Schemes and section B6 of OG 501 Orders.

**Exempt text**

### 2.5 Standard format for Orders

Order under section 76(3)(b) of Charities Act

**End of exempt text**

## 3. Charities Act 2011 s.79(4) - Removal of a charity trustee, trustee, officer, agent or employee

### 3.1 What this power allows us to do

This power allows us in an inquiry to remove from office any charity trustee or trustee (whether corporate or individual), as well as those working on behalf of the charity who meet the definition of being an officer, agent or employee of the charity.

**The power:**

* can be used to remove a trustee even if they have ceased to be a trustee (by, for example, resigning from their position or as a result of removal by the charity), before we make the Order, provided we have issued the statutory notice under s.82 before the Order is made on resignation (see section 3.6).
* has the effect of disqualifying the person under s.178(1)D which means they are disqualified from acting as a trustee, or holding a senior management position, of this or any other charity (unless they apply for and are granted a waiver)
* enables us to use the power in s.83(4) to terminate the membership of an individual we have removed who is also a member of the charity (please see OG117-7 for more information on using s.83(4) to remove a member)
* is subject to notice requirements before the power can be exercised
* is subject to appeal to the Tribunal

### 3.2 Policy intention behind this power

This power enables us to protect a charity by removing someone within it (charity trustee, trustee, officer, employee or agent) where this is justified by the seriousness of the risk they pose to the charity. It allows us to do this of our own motion (in other words, without application being made to exercise this power). As a consequence, the person is also disqualified from acting as a trustee of, and from holding a senior management position with, the charity concerned and any other charity.

Section 4 of the Charities Act 2016 revises section 79 of the Charities Act 2011. The main change to this power is that s.79(5) now enables us to remove the person from office or employment providing we have served the statutory notice under s.82 (see section 3.6) of our intention to remove them, even though the person may have resigned or has otherwise ceased to be a trustee, charity trustee, officer or agent, or be employed by the charity. This is important as otherwise they would not be automatically disqualified from acting as a trustee of this or other charities.

This guidance has been updated to reflect the provisions of this revised power and the changes to our procedures. The most significant changes are:

* What the power allows us to do (section 3.1)
* Removal of trustee or employee after resignation (section 3.5 last bullet)
* Notice requirements before we make the Order – Notice must be issued to the individual being removed and the other charity trustees on the same day (section 3.6 3rd bullet)

## 3.3 Key conditions for using this power

The key legal conditions that must be satisfied before we can use the power are:

* it can only be exercised after a s.46 inquiry has been opened
* it is exercisable only if we are satisfied that:
* there has been misconduct and/ or mismanagement in the administration of the charity see OG 117-4

**and**

* it is necessary or desirable to protect the property of the charity or to secure the proper application of charity property. This can include property due to come to the charity

**and**

* the person has **either**:
* been responsible for the misconduct and/ or mismanagement, or
* knew of the misconduct and/ or mismanagement and failed to take any reasonable step to oppose it or
* whose conduct contributed to or facilitated it
* If we are satisfied that all of the conditions above have been met, then (under s.76A(2) of the 2011 Act) we can take into account that person’s conduct in relation to:
* any other charity or
* their conduct more generally if it appears to be damaging to public trust and confidence in charities generally or particular charities or classes of charity

When considering the case for using this power, in association (if necessary) with any other protective power that can be used if the conditions at s.76(1)(a) of the 2011 Act are met.

### 3.4 What we need to consider when using this power

If all of the conditions set out in section 3.3 have been met, we must consider the principles of best regulatory practice when using this power - in particular if it is proportionate or whether it is appropriate to use other protective powers.

Orders made under this power have a direct impact on individuals. Our action in making the order must be proportionate to the risk involved, to the misconduct and/ or mismanagement presented and the potential for damage or actual further loss to charity property.

This means we need to consider factors such as:

* how significant or serious was the misconduct and/ or mismanagement? What was the nature of the misconduct or mismanagement; was it a one off or has it taken place over a long period of time?
* how significant or serious is the risk to charity property?

We do not use this power lightly and the case for removal must be clearly made and noted on file along with the legal advice that has been obtained.

We must also consider the impact of human rights issues and equality and diversity issues. The impact of human rights issues and the use of our powers are considered at section 3 of OG 117-1.

### 3.5 Key considerations when we use this power

### Exempt text: Legal Advice

Given the severity of the impact of this power on an individual, investigating officers must obtain written legal advice before removal takes place, which should cover

* the sufficiency of the evidence that the statutory grounds are satisfied;
* any concerns about the proportionality of the proposal;
* any concerns about human rights and equality issues.

Legal advice on these matters can be obtained by sending a copy of the draft statement of reasons and decision log to the advising lawyer

**End of exempt text**

* Where a suspension has been put in place, the case officer may use those grounds to support a case for removal if appropriate, and may need to develop or amend those grounds based on new or additional evidence.
* We can remove an individual under this section whether or not an Order has been made under section 76(3) (b) to appoint additional trustees.
* We can remove trustees even if the charity is left with no active trustees, although this is not ideal, and careful consideration should be given to the proportionality of this course of action. It is made easier if there is an interim manager in place with full powers to administer and manage the charity. If there is no interim manager in place the investigating officer needs to take immediate and concurrent steps to identify and vest the property of the charity in the Official Custodian, if the charity is not a corporate body.

**Exempt text**

Legal advice is that s.154 of the Companies Act 2006, which requires at least one director, does not prevent us exercising this power. If we are removing all the directors we should give notice to Companies House. Notice should be given through the relevant SPOC.

**End of exempt text**

* Section 79(5) provides that we can proceed to remove an individual from office if we have given notice under s.82 of our intention to make an Order and they then cease to hold office or employment after that notice has been given.This means that an individual cannot avoid removal because, for example:
* they resign
* their term of office ends under the provisions of the governing document or
* the charity removes them from office under its own procedures.
* Investigating officers should check whether the individual being removed is also a member of the charity and, if so, must consider whether we should make a further Order under s.83(4) to terminate the individual’s membership and prohibit them from resuming membership of the charity without our consent. If we receive an application for consent to resume membership 5 years or more after we make the Order under s.83(4) we must grant the application unless we are satisfied that, because of any special circumstances, we should refuse it.

### 3.6 Notice requirements before we make the Order

There are three different notices to be considered and sent before an order is made.

1. Notice under s.82(1)

The first is where we intend to remove an individual we are required to give prior notice under section 82(1) of the Charities Act to each of the charity trustees before the Order is made, unless they cannot be found or have no known address in the United Kingdom.

The purpose of the notice under section 82(1) is to ensure the other trustees are made aware of the intention for an Order to be made so that, for example, where necessary they can put appropriate arrangements in place such as transfer of responsibilities or appointment of additional trustees to ensure that the trustee body is quorate. In order for us to use this power it is vital that notice is properly served on all the other trustees.

It will usually be sufficient to send the notice without enclosing the statement of reasons.

To ensure that the notice is properly served it should be sent by post or hand delivered if it is an address in the UK. In addition to sending by post or hand delivering the notice, it can also be sent by email if we have valid email addresses. The case officer should check that the address they are using for a trustee is the most up-to-date one.

If the case officer is in any doubt about whether someone is still a trustee they should err on the side of caution and give notice to all those they believe to be a trustee unless they cannot be found. If there are doubts about who the trustees are, the case officer should take legal advice.

There is no statutory requirement to invite representations from them.

This notice must be served so that even if the individual we intend to remove resigns, we can still proceed to make the Order.

2. Notice under s.89(5)

The second type of notice is under section 89(5) which is to the individual being removed. It must be given where the individual does not consent to our action to remove them, which is likely to be the case in all inquiry cases. We must give them at least one month’s prior notice of the intended removal and invite representations within a specified time, which will normally be the full month period starting from the date when we send our letter giving notice of our intention to remove.

Our normal practice is to send the individual a copy of the draft Statement of Reasons with the notice of intention to remove them.

The requirement to send notice does not apply if the person cannot be found or has no known address in the United Kingdom.

Notice is usually issued to the individual being removed and the other charity trustees on the same day. This is really important to ensure that if the individual resigns, the notice to the other trustees has already been issued, so we can proceed with the process of removal.

If the case officer considers that there is a particular reason why notices to the individual being removed and the other charity trustees should not be sent on the same day they should seek legal advice.

Notice should be sent by post or hand delivered if it is an address in the UK and can additionally be sent by email where we hold a current email address. The case officer should check that the address they are using for the individual is the most up-to-date one.

3. Notice under s.89(1)

The third type of notice is under section 89(1). This requires prior public notice to be given unless the commission is satisfied that for any reason compliance with the requirement is unnecessary. The criteria for considering public notice are set out in section B8 of OG 500 Schemes and section B6 of OG 501 Orders. If public notice is not given, we must record in writing the decision and the reasons for the decision.

Any public notice must invite representations to be made on the proposals within a time limit, which must be specified in the notice and which will usually be one month.

The case officer must arrange for public notice to be given – this will be done by notice on our website. As well as giving notice on our website, the case officer should also consider whether we should require a notice to be put on the charity’s website and/ or whether notices should be displayed on the charity’s premises or in its local area of operation to draw the matter to the attention of beneficiaries, funders etc. Legal advice may be needed where there is doubt about what will be reasonable.

### 3.7 Considering representations

Representations from individuals will usually be made in writing although in appropriate circumstances it may be possible for representations to be given orally if for some reason, for example a disability, the individual in question is unable to make representations in writing.

**IMPORTANT NOTE**: Legal advice must be taken if representations are made.

Any representations we receive within the specified time limit must be considered before we make the Order to remove

We will normally consider any representations in line with the decision review process for representations made in response to a draft Order as set out in OG 736-1.

### 3.8 After we make the Order

* The Order to the individual must be sent to the individual, accompanied by the Statement of Reasons and a letter confirming that removal has taken place and setting out the individual's rights to appeal.
* Under section 86 a copy of the Order and a Statement of Reasons (SoR) for making the Order must be sent to the charity (if a corporate body) or to each of the charity trustees as soon as practicable after making the Order. This letter/notice should advise them to take steps to secure any property owned by the charity, revoke any bank mandates or spending authorisations and other records and ensure any partners the charity works with know that any authorisation the person has is no longer valid.
* In most cases "as soon as practicable means" means at the time the Order is made. However, section 86(5) allows that where the sending of the Order and SoR would prejudice the statutory inquiry or not be in the interests of the charity we can delay this process. The Order and the SoR must be sent once these factors cease to apply.

**IMPORTANT NOTE:** Legal advice must be taken where we have doubts as to whether the Order or SoR should be sent.

* It is important that the Order is served in accordance with section 339 of the Charities Act because of the criminal sanctions on acting as a trustee whilst disqualified under section 183 of the Act. This means that if the order is being served on a person (i.e. not a body corporate) it can be delivered to that person by post or hand delivered at that person’s last known address in the United Kingdom. Where an order is served on a body corporate, this can be done by delivering it by hand or sending it by post to the registered or principal office of the body in the United Kingdom or, if it has no such office in the United Kingdom, to any place in the United Kingdom where it carried on business or conducts activities (as the case may be).

In limited circumstances we may discharge the order within 12 months after the order is made, if we are satisfied that the order was made by mistake or on misrepresentation or otherwise than in accordance with the Act. We may also vary or revoke the order. An appeal can be made against the order to the First-tier Tribunal (Charity). The appeal can be brought by any charity trustee, the charity itself where it is a corporate body, the individual concerned or any other person affected by the order. The person removed must appeal within 42 days of the date on which the notice of our decision was sent, other persons have 42 days from the date on which we sent notice of our decision. In each case the 42 days includes weekends and bank holidays.

**Other Action**

* The case officer should consider what action needs to be taken to secure property held by or in the name of the individual, particularly if the charity is unincorporated. We may need to concurrently use powers to vest property held in the name of the person(s) removed or direct them to surrender and hand over all charity documents and property they hold.
* Consideration should also be given to whether any other directions or orders are needed in order to regularise the running of the charity or protection of its property.

**IMPORTANT NOTE**: The details of a removed trustee must be entered on the public [Register of Removed Trustees](https://www.gov.uk/guidance/charity-trustee-disqualification) and the case officer must inform HMRC of this.

Where an individual has been suspended from more than one charity and is subsequently removed as trustee of one of them, we do not need to discharge the remaining suspension Orders. That is because the individual in question cannot act as trustee of any charity without committing an offence. The suspension Order will be superseded by the removal order once it is made. We should, however, write to the other charities to inform them that the individual concerned has been removed and is not eligible to act as a charity trustee.

### 3.9 Decision points and Authorised Officer powers

* There are two key stages and decisions 1) deciding to issue the notice of intention to remove and 2) deciding to make the Order, taking into account any representations that may have been made.
* The decision proposing removal must be made at PB4 level or above, (having taken legal advice unless agreed by a PB5 Deputy Head) and authorised by a PB5 Deputy Head or above.
* Any referral for decision will normally include a draft Statement of Reasons.
* The decision log will normally explain and set out why the grounds for using this power have been met and why it is a proportionate action in the context of the case. This explanation will provide evidential analysis, setting out facts that are relied upon in reaching the decision to use the power.
* Use of this power allows for representations to be made following notice to remove but before the Order is made. In cases where no representations are received, the decision maker on making notice of intention to remove can proceed to decide whether to make the order.
* Where representations are received, the decision review process normally takes effect and the decision review team must be notified. Any representations received will provide an opportunity to look again at the circumstances for making the Order and whether there is any new information that would cause us to reconsider making the Order. The person(s) carrying out the decision review will decide whether or not the Order should be made.
* Whoever signs the order must ensure that its content properly represents what has been authorised.

**Exempt text**

After making a removal order, the investigating officer must pass the name of the person to Intelligence for inclusion in the Intelligence database.

If the reason for the removal relates to fraud, then Intelligence will make a CIFAS information referral.

We should also notify HMRC and Companies House (and any other agencies with which we have an MoU and have agreed to inform them of disqualified/removed trustees), of new disqualified/removed trustees.

The investigating officer must also place the SoR on the charity’s key document file. This will ensure that it is available for consideration in the event of an application for a waiver.

**End of exempt text**

### 3.10 Notice requirements

The attached table gives notice requirements for all s76 Orders before and after publication.

The criteria for decisions to give notice and publicity for Schemes and Orders made under section 76 of the Charities Act can be found in section B8 of OG 500 Schemes and section B6 of OG 501 Orders.

**Exempt text**

### 3.11 Standard format for Orders and model paragraphs

Order under section 79(4) of Charities Act

Standard text for intention to remove letter (person being removed)

Standard text for intention to remove letter under section 82(1)(other trustees)

Standard text final notification of removal (removed person)

Standard text notification of final removal to other trustees under section 86

**End of exempt text**

## 4. Charities Act 2011 s.79(2)(b) - Establish a Scheme for the administration of a charity

### 4.1 Using this power

**What this power allows us to do**

Powers under this section of the Act allow for a Scheme to be made for the administration of the charity where there has been misconduct or mismanagement and it is necessary to act to protect the property of the charity.

**Initial considerations**

Use of this power is not possible unless a statutory inquiry under section 46 of the Charities Act has been opened and that both limbs under section 76(1) are met.

This will be a permanent change to the charity often resulting in the application of all its funds or assets followed by its dissolution. Given that it is made on the Commission's own motion and not on application of the charity trustees persuasive grounds will need to be shown for this type of intervention. Written legal advice must be taken and recorded on file including the strength of the evidence that the grounds are made, the proportionality of the action and human rights issues.

The impact of human rights issues and the use of our powers are considered at section 3 of OG117-1.

Another consideration is equality and diversity. When communicating with charities caseworkers should offer to translate documents into another language, another format, e.g. Braille or Audio or to meet any other requirements needed.

**Using section 79(2)(b) in the course of a statutory inquiry**

In practice this power will be used for trusts and unincorporated associations, although we would consider this action where a company held funds as a trustee, for example, where funds collected by bogus fundraisers are held in a company bank account. If it is intended to use this power for a charitable company, legal advice must be taken on the ability to do so.

### 4.2 Decision points and Authorised Officer powers

The Scheme must be signed by a PB4 or above, (having taken legal advice unless agreed by a PB5 Deputy Head) and authorised by a PB5 or above. Whoever signs the Order must ensure that its content properly represents what has been authorised.

Use of this power allows for representations to be made following notice that we intend to make a Scheme. Any representations received will provide an opportunity to look again at the circumstances for making the scheme and whether there is any new information that would cause us to reconsider making the Scheme or make alterations to its provisions.

### 4.3 Key issues

* When drafting the scheme, the case officer should be aware that the following penal notice applies only if there is a supplementary part of the Order (or an Order under s.81) requiring the transfer of property or payment to be called for/made.   
  'If you the within-named [                       ] do not comply within this [Order][Direction] you may be held to be in contempt of Court and may be imprisoned or fined or {[in the case of a company or corporation] your assets may be seized.}'
* Notice to interested parties and public notice of the Scheme may be given, providing the right to make representations, bearing in mind the criteria set out in section B8 of OG 500 Schemes and section B6 of OG 501 Orders for giving notice and publicity to Schemes and Orders.
* Any representations received within the time limit will be considered before the Scheme is made.
* We must also give notice under section 82(1) of the Charities Act to each of the charity trustees before the Scheme is made. Section 82(1) does not specifically give the charity trustees a right to make representations in response to this notice, although the charity trustees may do so in response to any public notice provided under section 88 (see notice requirements below). The purpose of the notice under section 82(1) is to ensure the other trustee are made aware of the intention for the Scheme to be made, so, for example, where necessary they can put appropriate arrangements in place.
* Under section 86 a copy of the Scheme and a Statement of Reasons (SoR) for making the Scheme must be sent to the charity (if a corporate body) or to each of the charity trustees as soon as practical after making the Scheme.
* Section 88(6) provides that a copy of the Scheme must be made available for inspection at the Commission's offices for one month after it is published.
* Once the Scheme is made we may be asked to review our action in making that scheme. Any review on our part will then be limited by the provisions of section 337(4) to cases where the Scheme has been made by mistake, under a misrepresentation or otherwise than in accordance with the Act – see OG117-10 section 4. The time limit for such a review is within 12 months of the making of the Scheme, although in practice this may be of limited help to those wanting to challenge it as the effect of the Scheme may already have taken place (eg property sold).
* An appeal can be made against the Scheme to the Tribunal. The appeal can be brought by the any charity trustee, the charity itself where it is a corporate body, or any other person affected by the Scheme. They have 42 days from the date on which we publish the Scheme. The 42 days includes weekends and bank holidays.
* Our jurisdiction to make a Scheme in respect of a charitable company has not been fully explored. In each case, it may well be that the Scheme should simply provide for the property of the charity to form part of the property of another charity or to be properly transferred to another charity (rather than change any provision of the articles of association).

### 4.4 Notice requirements

The attached table gives notice requirements for all section 76 Orders before and after publication.

The criteria for decisions to give notice and publicity for Schemes and Orders made under section 76 of the Charities Act can be found in section B8 of OG 500 Schemes and section B6 of OG 501 Orders.

## 5. Charities Act 2011 s.80(1) - Removal of a charity trustee for statutory reasons

### 5.1 Using this power

**What this power allows us to do**

This power relates only to the removal of charity trustees. It can be used without a statutory inquiry having been opened. It would not be the power that we would generally use to remove a trustee where there has been misconduct and/ or mismanagement. See section 3 above for application of our power under s.79(4) to remove trustees.

**Initial considerations**

Use of this removal power directly relates to particular circumstances of individual trustees. Those circumstances, set out in section 80(1), relate to where, for one reason or another, a trustee cannot act, is unwilling to or is unable of acting and come partly from the Trustee Act 1925. The impact of human rights issues and the use of our powers are considered at section 3 of OG117-1. Legal advice must be taken on the impact of our action on human rights issues.

They are where the trustee:

has been discharged from bankruptcy or in respect of a composition or arrangement with creditors within the last 5 years;

is a corporation in liquidation;

is incapable of acting because of mental disorders (This would be as defined in the Mental Health Act 1983 - mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind - and we would need to have evidence that this is the case and that the person is incapable of acting as a trustee as a result of such a disorder.);

has not acted and will not declare willingness or unwillingness to act; or

* is outside England and Wales or cannot be found or does not act and by absence or not acting he or she is impeding the administration of the charity. In this instance case officers will need to consider the **practical impact** of a trustee's absence or failure to act when considering removal under section 80(1)(e). In the main, it will be more straightforward to satisfy the legal test (i.e. failure to act/absence impedes the proper administration of the charity) where there is a clear impact on the governance arrangements of the charity and/or there is clear evidence that there are things that are not being done by virtue of the trustee's absence or failure to act (e.g. accounts are not being submitted, reporting obligations are not being met etc). Positive evidence of an impediment to the administration of the charity will make a case stronger, but there is a starting point that a trustee not acting or not acting due to no more than minimal presence, is impeding on the administration of the charity as it is entitled to the collective input of all trustees - CC3 makes clear that: it is important for trustees to be interested in the charity's work; be willing to give their time to help run it; and that collective decision making is one of the most important parts of the trustee role.

See also OG 510 Charity Trustees: Making and Ending Appointments.

Essentially this power will be used where a trustee should be removed because of the reasons stated above and we want to ensure the administration of the charity can continue in a satisfactory manner.

This power will often be used in conjunction with the powers in s.80(2) where we can appoint charity trustees by Order of our own motion.

Another consideration is equality and diversity. When communicating with charities caseworkers should offer to translate documents into another language, another format, e.g. Braille or Audio or to meet any other requirements needed.

### 5.2 Decision points and Authorised Officer powers

In IME context:

The Order must be signed by a PB4 or above and authorised by a PB5 or above. Whoever signs the Order must ensure that its content properly represents what has been authorised.

It is up to the officer to decide whether legal advice is required given the complexity of the case and issues involved.

### 5.3 Key issues

* If the charity is going to be inquorate or left with no active trustees, we should either: not proceed; use the power in conjunction with powers to appoint charity trustees under s.80(2); or permit the trustees to act with a smaller quorum.
* Under section 89(5) where individuals are not consenting to our action to remove we must give at least one month’s prior notice to the individual concerned, inviting representations within a specified time. This does not apply if the person cannot be found or has no known address in the United Kingdom.
* Representations from individuals will usually be made in writing although in appropriate circumstances it may be possible for representations to be given orally if for some reason the individual in question is unable to make representations in writing.
* In addition to other notices that may be given notice under section 82(1) of the Charities Act must be given to each of the charity trustees before the Order is made except any that cannot be found or has no known address in the United Kingdom. Section 82(1) does not specifically give the charity trustees a right to make representations in response to this notice, although the charity trustees may do so in response to any public notice provided under section 89 (see below). It would appear that the purpose of the notice provided to the trustees under section 82(1) is to ensure the other trustees are made aware of the intention for an Order to be made, so, for example, where necessary they can put appropriate arrangements in place.
* Notice to the person concerned, other interested parties and public notice of the Order may be given, providing the right to make representations, bearing in mind the criteria set out in section B8 of OG 500 Schemes and section B6 of OG 501 Orders.for giving notice and publicity to Schemes and Orders. S.89(4) allows us not to give public notice if we are satisfied that it is unnecessary to do so.
* Any public notice must invite representations to be made on the proposals within a time limit, which must be specified in the notice and which, according to policy, must be not less than one month from the date of the notice.
* Any representations received within the time limit will be considered before making the Order to remove.
* Once made, the Order will be accompanied by the Statement of Reasons and a letter confirming that removal is now taking place and setting out the individual's rights to appeal to the Tribunal (except for practical reasons where the trustee cannot be found).
* Section 86 states that we must also send a Statement of Reasons (SoR) to the charity (if a company) or otherwise to each of the charity trustees as soon as is practicable.
* Once the Order is made we may be asked to review our action in making that Order. Any review on our part will be limited by the provisions of section 337(4) to cases where the Order has been made by mistake, under misrepresentation or otherwise than in accordance with the Act – see OG117-10 section 4. The time limit for such a review is within 12 months of the making of the Order.
* An appeal can be made against all Orders under s.80(1) to the Tribunal. The appeal can be brought by any remaining charity trustee, the charity itself where it is a corporate body, the individual concerned or any other person affected by the Order. The person removed has 42 days from the date on which we sent notice of the Order being made. Other persons have 42 days from the date on which the decision was published. In both cases weekends and bank holidays are included in the 42 days.
* Consideration should be given to the vesting of any property held in the name of the person removed.

**IMPORTANT NOTE:** Where this power is to be exercised within Permissions and Compliance operational cases, legal advice may be taken as required on drafting the Statement of Reasons to accompany the Order.

**KEYNOTE**: Under s182(1) of the 2011 Act we have a statutory duty to keep a register of all persons removed from the office of charity trustee or trustee for a charity. This register is maintained by the Intelligence team in Investigations, Monitoring and Enforcement. When a trustee is removed the details should be passed to the Intelligence team to update the register of removed trustees. This does not apply to removals under s.80(1)(e).

### 5.4 Notice requirements

The attached table gives notice requirements for all section 76 Orders before and after publication.

The criteria for decisions to give notice and publicity for Schemes and Orders made under section 76 of the Charities Act 2011 can be found in section B8 of OG 500 Schemes and section B6 of OG 501 Orders.

**Exempt text**

### 5.5 Standard format for Orders and model paragraphs

Order under Charities Act 2011 s.80(1)

Standard text for Statement of Reasons under s.80(1)(e)

**End of exempt Text**

## 6. Charities Act 2011 s.80(2) - Appointment of a trustee

### 6.1 Using this power

This power enables the appointment of a trustee where particular circumstances apply. Because a statutory inquiry under section 46 does not need to be open this is a power that can be used also within regulatory cases although the decision points and key issues may not be the same as in a statutory inquiry context.

**What this power allows us to do**

The circumstances in which we will appoint a charity trustee are:

* to replace a charity trustee who has been removed (by the Commission or otherwise);
* where there are no trustees or where by reason of vacancies, absence or incapacity the charity cannot apply for or fill the appointment;
* where a single individual trustee is acting and we consider more trustees are required to administer the charity properly; or
* where one of the existing charity trustees cannot be found, is outside England or Wales, or does not act: and
* we consider that an additional trustee should be appointed without removing that trustee.

Further guidance about the appointment of trustees can be found in OG 510-1.

**Initial considerations**

If you are appointing any trustees to a charity where vulnerable beneficiaries are involved you must carry out disclosure and barring service checks and follow the procedures in OG 510-2. Sufficient time will be needed to ensure that the required checks have taken place.

The candidates for trusteeship must be fully informed about the circumstances of the charity and the background to their appointment so that they can make an informed decision of whether they wish to become a trustee of the charity in question. A copy of the governing document should be provided and any other relevant documents such as accounts. They should also be informed about trusteeship in general and the responsibilities attached to it. Our guidance [CC3](https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3) and [CC21](https://www.gov.uk/guidance/how-to-set-up-a-charity-cc21a) can help with this process. The suitability of the additional trustees will normally be assessed by interview. Arrangements for this process will be determined by case circumstances and location of trustees. The Head of Unit or Senior Investigator should be involved in this process.

**IMPORTANT NOTE**: The impact of human rights issues and the use of our powers are considered at section 3 of OG117-1. Where caseworkers have uncertainties or concerns about engagement of human rights or the proportionality of our action legal advice must be taken.

Consideration should also be given to the period for which the appointment is to exist. It is, for example, until the next AGM of the charity, or perhaps 6 months, or is it for life (or whatever is appropriate in the given circumstances of the case and in accordance with the provisions of the governing document).

Another consideration is equality and diversity. When communicating with charities caseworkers should offer to translate documents into another language, another format, e.g. Braille or Audio or to meet any other requirements needed.

### 6.2 Decision points and Authorised Officer powers

The authority for use of this power will be decided on a case by case basis. The level at which authority is given will depend on the results of the risk assessment for the case. See OG702 Authorised Officer Powers.

The Order must be made by a PB4 or above and authorised by a PB5 or above.

### 6.3 Key issues

* It is not necessary to have a statutory inquiry open under section 46 of the Charities Act in order to exercise this power.
* The suitability of the trustees may need to be assessed, if the investigating officer thinks necessary by interview. Arrangements for this vetting process will be determined by case circumstances and location of the trustees. In Investigations, Monitoring and Enforcement cases the vetting process will normally be discussed with the Head of Unit. How much involvement they have will depend on the case.
* Notice to the person concerned, other interested parties and public notice of the Order may be given, providing the right to make representations, bearing in mind the criteria set out in section B8 of OG 500 Schemes and section B6 of OG 501 Orders for giving notice and publicity to Schemes and Orders.
* Where it is intended to appoint an individual under this section, notice under section 82(1) of the Charities Act must be given to each of the other charity trustees before the Order is made. Section 82(1) does not specifically give the charity trustees a right to make representations in response to this notice, although the charity trustees may do so in response to any public notice provided under section 89. It would appear that the purpose of the notice provided to the trustees under section 82(1) is to ensure the other trustee are made aware of the intention for an Order to be made, so, for example, where necessary they can put appropriate arrangements in place.
* Any representations received within the time limit will be considered before the Order is made.
* The Order to the individual appointed will be sent with a Statement of Reasons and a letter confirming the appointment and setting out details of decision review and appeal.
* Section 86 states that the Order and Statement of Reasons must also be sent to each of the other trustees (or the charity, if a corporate body) as soon as practical.
* Once the Order is made we may be asked to review our action in making that Order. Any review on our part will be limited by the provisions of section 337(4) to cases where the Order has been made by mistake, under a misrepresentation or otherwise than in accordance with the Act – see [OG117-10](http://ogs.charitycommission.gov.uk/g117a010.aspx) section 4. The time limit for such a review is within 12 months of the making of the Order.
* An appeal can be made against the Order to the Tribunal. The appeal can be brought by the any charity trustee, the charity itself where it is a corporate body, or any other person affected by the Order. The person or persons appointed have 42 days of the date which they were sent the notice of our Order. Other persons have 42 days from the date on which we sent the notice of the Order being made. In both cases 42 days includes weekends and bank holidays.

### 6.4 Notice requirements

The attached [table](http://uconnectog/Library/Word_docs/g117table.doc) gives notice requirements for all section 76 Orders before and after publication.

The criteria for decisions to give notice and publicity for Schemes and Orders made under section 76 of the Charities Act 2011 can be found in section B8 of [OG 500 Schemes](http://ogs.charitycommission.gov.uk/g500a001.aspx) and section B6 of [OG 501 Orders](http://ogs.charitycommission.gov.uk/g501a001.aspx)

**Exempt text**

### 6.5 Standard format for Orders and model paragraphs

Order under section 80(2) Charities Act 2011

**End of exempt text**

## 7. Charities Act 2011 s.111 - Power to determine membership of a charity

### 7.1 Using this power

**What this power allows us to do**

This power can be used to establish who the members of a charity are. We can do this:

* if application is made by the charity for us to determine membership; or
* of our own motion as part of a statutory inquiry.

In addition to making the determination ourselves the power also allows us to appoint a third party to make this determination and, where we think fit, that person may also be appointed to conduct a statutory inquiry.

Experience has shown that incomplete membership records can impede the administration of charities leading to disputes about membership and claims of invalid elections of trustees. This power allows us or a third party appointed by us to determine who members are and therefore who is entitled to vote. However, this may not always be the most appropriate method to use in these matters and much will depend on the circumstances of the case and issues of proportionality, as detailed below.

**What is a membership charity?**

Membership charities can be corporate bodies or unincorporated organisations. Corporate charities may be, for example, charitable companies, chartered charities or charitable incorporated organisations (CIO). The membership may comprise the beneficiary class (in which case there should be no discretion to refuse admission to an otherwise eligible individual) or comprise a body of persons who exercise an administrative role in the governance of the charity. For example, electing directors or committee, as the case may be, and/or setting policy, and/or receiving reports and approving accounts. In the latter case the governing document may allow the charity trustees discretion to refuse or admit a person who applies for membership. It would be possible for the Commission to make a determination where the charity trustees have exercised their discretion unlawfully or unreasonably. In such cases it is possible that our determination would overturn an earlier decision of the trustees to admit or exclude someone from membership. However, we would not interfere with the exercise of the trustees discretion otherwise than where it was used unlawfully or unreasonably, even where we would have come to a different conclusion.

**Using the power generally**

Initial considerations for use of this power will be whether we are acting on application of a charity or as part of a statutory inquiry.

* Where we receive an application from the charity careful consideration of the circumstances will be required. This may not be the most appropriate method to use and we may therefore refuse the charity's request. However, this would not be done without setting out the reasons why this power is not appropriate and presenting the charity with an alternative plan for action.
* In a statutory inquiry context we might use the power where a statutory inquiry is open and the issue of membership arises amongst other issues. We are unlikely to open a statutory inquiry simply to access this power unless the action is a proportionate response to a serious concern arising from allegations of misconduct and/ or mismanagement.

Commission action must always be proportionate to the nature of the issues and level of risk involved. We have to accept that determination of membership can be resource intensive and costly particularly if there is a large potential membership. It is unlikely that we will have sufficient resource to conduct interviews of potential members or vet applications before making any determination. Third parties may be employed to undertake this work but again because of the resource involved the exercise is costly.

In terms of proportionality and risk we are most likely to use this power where:

* There are charity trustees who can make the application where the power is not being used as part of a section 46 statutory inquiry;
* There are compelling reasons for the charity trustees being unable to determine the membership themselves;
* Alternative action as set out below is not appropriate; and
* The charity does not have a large membership.

**IMPORTANT NOTE:** In all cases we would need to be satisfied that the charity is unable to resolve the membership issue itself. The impact of human rights issues and the use of our powers are considered at section 3 of OG117-1. Where caseworkers have uncertainties or concerns about engagement of human rights or the proportionality of our action legal advice must be taken.

Another consideration is equality and diversity. When communicating with charities case officers should offer to translate documents into another language, another format, eg Braille or Audio or to meet any other requirements needed.

**Using the power where an application is received from a charity**

Where we are asked to exercise this power it will usually be where there is a dispute within a charity and the Commission is viewed as some sort of arbiter to settle differences, including that of membership. (See the section below about using this power in dispute cases.)

The Commission is keen for the charity and groups in disagreement to take ownership of solutions rather than seeing them as something which is to be imposed by us. This approach requires involvement of all parties and therefore the directive approach of determining membership may not be our first option.

We will therefore need to know:

* the exact reason why we are being asked to determine membership; and
* why the trustees consider that they cannot determine this issue for themselves.

Where we decide that use of this power is not appropriate alternative solutions may be:

* to make trustee appointments under section 80(2) of the Charities Act so that the new trustees can determine membership;

Where disagreements exist about trusteeship ask the different groups to put forward representatives to bring about trustee elections under the charity's governing document and determine subsequent membership. This can be done by an Order under section 105 of the Charities Act authorising such action and setting out in the schedule the details of the action that should be taken;

Where appropriate agree changes to administrative provisions of a charity's governing documents that better facilitate appointment of trustees or members so that the charity can determine its own way forward. Charitable companies would use section 198 of the Charities Act, see OG 518, and changes to governing documents of smaller unincorporated charities would fall under section 280 of the Act – see OG 519.

**Using this power as part of a section 46 statutory inquiry**

We take the same initial approach under a section 46 statutory inquiry as we do for an application received from the charity trustees in that this power should only be used where there is no way for the charity to determine this issue for itself.

We may wish to consider the alternative solutions shown in the section above but a statutory inquiry will also give the options of:

* Appointment of additional trustees under section 76(3)(b) of the Charities Act who will then act with others to determine membership.
* Use of an interim manager under section 76(3)(g) to act in the affairs of the charity and determine membership amongst other specified duties.
* Making a specific direction under section 84 of the Charities Act for the trustees to make a membership determination.

**Using this power in dispute cases**

Our experience with charities indicates that internal disputes mostly concern groups that fail to agree with one another on issues such as trusteeship, administration, faith and moral arguments in relation to charitable purpose or even personality clashes. They may form part of statutory inquiry or non-statutory investigation.

* As the charity regulator we can advise on matters of charitable status, trusteeship and administration and use our powers to protect charities in certain circumstances; however,
* It is not the Commission's place to determine disputes about doctrinal or moral matters or resolve personality clashes.
* We would not use this power where there is a special question of law or fact which renders it more suitable for adjudication by the Court.

It is important, therefore, to isolate the underlying cause to any dispute before consideration of action and use of this power. This power should not be used as a way of supporting one group with a particular view at the expense of frustrating the legitimate rights of another. We need to consider carefully the effect of using this power and again look at whether other powers at our disposal might be more effective. See OG 565 Disputes in Charities

.

### 7.2 What is involved in using this power?

The use of this power does not have to be tied to a section 46 Statutory Inquiry and may be used in other regulatory cases conducted by the Commission. As part of a statutory inquiry we can use this power without application from the charity.

Where being used outside of a statutory inquiry we would need a valid application from those who have authority to make that application.

**What is a valid application?**

A valid application from an unincorporated charity will take the form of a request in writing from:

* a majority of the charity trustees, for example, members of the committee of management; or
* an agent of the charity trustees who shows that he or she has the authority to make the application, providing evidence of a resolution passed at a quorate, duly constituted meeting of the charity trustees (or passed by a majority of trustees if there is no provision for a quorum);

**Note** that two or more charity trustees applying under a general authority in accordance with section 333 of the Charities Act will not be sufficient.

It is recognised that the nature of some cases will create a situation whereby the position of those acting as charity trustees is also in dispute and that this may create "chicken and egg" type issue of how can trustees apply for us to use this power if their proper appointment is disputed. In this context therefore we will accept as charity trustees those people who are clearly fulfilling that function unless they are quite plainly and unarguably not properly appointed. In those cases we would not accept the application as valid.

A valid application form an **incorporated charity** will take the form of a request in writing from:

* The charity, executed as a deed or under seal (or executed in accordance with the provisions of its governing document if this is different); or
* The charity with evidence that its governing body have resolved that application be made to the Commission (with or without instructions for somebody to sign or make the application), provided that where there are instructions they have been complied with; or
* An agent of the charity trustee who shows that he or she has the authority to make the application.

An application request from an unincorporated or an incorporated charity should be accompanied by:

* An up-to-date copy of the governing document if this is not already held by us.
* A copy of the membership list as it stands or a copy of the disputed list.
* A copy of all rules or standing orders relevant to the question of membership.
* A statement from the charity trustees setting out:
* what they believe the criteria are for eligibility;
* how they deal with membership applications including the practices involved and the length of time these practices have operated;
* whether there is authority for the practices used or whether they have emerged through custom and usage;
* the rules or practice for the payment of subscriptions; and
* the reasons for refusing membership to the individual or individuals concerned.

This information allows us to form a view whether use of this power is proportionate to the issues and provides the best way forward for the charity.

**IMPORTANT NOTE**: Legal advice must be taken when considering the information provided.

**Action required where the Commission is to determine membership**

Where we intend to use our power to determine membership we will need to plan our action carefully. This will include:

* an estimation of the numbers likely to come forward as members;
* a reasonable timeframe in which the membership exercise will take place;
* allocation of resources for the various tasks;
* agreement on the criteria for membership with reference to governing documents and any other relevant material;
* a simple form of application which shows whether or not criteria for membership are met;
* a way in which potential members can be contacted to enable them to come forward;
* agreement on how members and other interested parties will be told the outcome of the exercise;

It is important that the charity trustees should be informed of the way we intend to handle the exercise and that we gain their full cooperation for the various stages.

**Appointing a third party to determine membership**

The Commission is given discretion to appoint a third party to carry out the determination. The Act is not prescriptive about who this person should be or about their qualification to do this work. We therefore set our own criteria for engagement, which are:

* The person appointed will usually be impartial and objective;
* They must be able to demonstrate that they have the ability and experience to enable them to discharge the power effectively; and
* The costs of appointment are less than the notional costs (of resources and disbursements) which the Commission would expend on doing this work.

Once we are satisfied that we have an appropriate person the appointment will be confirmed by letter, agreed with a legal officer, which outlines:

* The tasks to be undertaken at the different stages of the exercise;
* The timescale in which we expect the work to be done; and
* The agreed cost of the work.

Any process to determine membership should allow opportunity for individuals to show that they satisfy the relevant criteria for membership. This could mean giving publicity to the process and giving people ample time to come forward.

The case officer will monitor the progress of the appointed person and should keep the Head of Unit fully appraised of the situation.

**Making the determination**

Once the membership list has been determined we or the person appointed will provide the trustees with the membership list which should be published on the charity's notice board and in the locality of the charity to ensure transparency of results. The determination will take the form of a list attached as a schedule to a letter saying that we (or a third party) have determined charity membership in accordance with the provisions of section 111 of the Charities Act.

### 7.3 Decision points and Assistant Commissioner Powers

Use of this power is not as straightforward as it may first seem and prior legal advice should be taken. The Order must be signed by a PB4 or above and authorised by a PB5 or above.

Whoever signs the order must ensure that its content properly represents what has been authorised.

### 7.4 Key issues

* This power can be used outside of a statutory inquiry.
* The action must be expedient in the interests of the charity and to this end must show:
* the reasons and evidence to support why it is expedient to take this action rather than other alternatives open to us;
* the nature and extent to which a risk arises to charity property, beneficiaries or the charity's reputation;
* the action is proportionate to the nature of the problem and the extent of risk involved.
* As a matter of good practice we will need to inform all parties of the action being taken.
* Our action or that of our appointee will need to be kept under regular review.
* Legal advice must be taken on the use of this power, particularly in relation to whether its use is appropriate and, where it is, the basis on which decisions on membership will be judged.
* The use of this power has no recourse to the Tribunal.
* Once a determination has been made the list of members will be owned by the charity and become its responsibility. Individuals who dispute being turned down for membership will need to re-apply to the trustees to assess any subsequent claim for membership.
* Where we are satisfied that the determination has been properly undertaken but the results are still disputed by the charity trustees we will consider whether the use of remedial powers under section 76 of the Charities Act may be appropriate or disengagement from the charity where we take the view nothing more can be done.
* There are no legal requirements to provide notice of our intention to use this power or of the results of its use. However, as a matter of good practice, we will make results of determinations known to members of the charity and in the locality of the charity where this is appropriate.

## 8. Charities Act 2011 s.84 - Power to give specific directions for protection of charity

### 8.1 Using this power

**What this power allows us to do**

The purpose of this power is to allow the Commission to direct any action to be taken that we consider "expedient in the interests of the charity". We can use this power only where a statutory inquiry under section 46 has been opened. Use of this power is wide-ranging compared to that at section 85 which allows only for direction of property where there is unwillingness or inability to apply it properly for the charity's purposes.

**What we mean by expedient**

Legal precedent confirms that "expedient" in this context means "advantageous" or "beneficial". From a case perspective this means that the action we propose will be of advantage or benefit to the charity's interest, which in effect means the charity's beneficiaries. However, the advantage or benefit must be viewed only in the context of the issues raised through our inquiry and not on the belief that it would be good for the charity in general terms. It is likely to be easier to demonstrate it is expedient in the interests of the charity where we direct the trustees to take action.

**Our general approach to using section 84**

Because this power is used as part of a statutory inquiry it is used only where matters of concern have been identified. Such matters may require robust and expedient action to be taken. Section 84 may allow us an opportunity to direct specific matters in preference to the appointment of an interim manager or the use of other powers under section 76 and provides:

* a practical approach to addressing a particular issue in an effective manner;
* the trustees with a capacity to mitigate certain risks that threaten the running and/or the property of the charity in the immediate or longer term.

The power must be used to direct action rather than prevent action. Before we direct any action we need to consider whether it is an appropriate response to the circumstances of the case and whether its use is consistent with our general approach to working with charities (as highlighted by our public policy statements found on our web site and in our publications) to ensure compliance with legal obligations or whether there might be other powers that would be more appropriate to use.

**Assessing risk and having due regard to best regulatory practice**

Our investigation requires that we look at the issues presented to determine our case objectives and the strategy required to achieve those objectives. We consider these in line with our [Regulatory and Risk Framework](https://www.gov.uk/government/publications/risk-framework-charity-commission) which sets out elements of best regulatory practice, including the proportionality of our action. In line with our Framework and when deciding whether section 84 can be used as part of that strategy we will need to ask:

* Is it necessary or desirable to act to protect the property of the charity or ensure compliance with legal obligations?
* What are the implications of use of this power for the charity?
* Would use of other powers achieve the same or better effect?
* What is the benefit of using this power over other powers?
* Is there someone suitable to carry out the requirements of the Order?
* What are resource or cost implications for the charity?
* Are third party interests involved?
* What ongoing monitoring provision is required to ensure that the relevant action is taken?

**IMPORTANT NOTE**: The response to these questions and any other relevant questions arising will ensure that the action we propose is in itself reasonable and proportionate and serve the best interests of the charity concerned. The case files should clearly record the decision making process. The impact of human rights issues and the use of our powers are considered at section 3 of OG117-1. Where caseworkers have uncertainties or concerns about engagement of human rights or the proportionality of our action legal advice must be taken.

**Assessing the evidence and other factors**

The evidence or other circumstances we have from the inquiry will need to be assessed in terms of the:

* level or extent to which misconduct and/ or mismanagement has occurred;
* seriousness or nature, or immediacy of our concerns and the weight and significance attached to them;
* completeness of the information that has been provided to us;
* extent to which trustees have co-operated with our inquiries;
* extent to which the trustees have had a chance to respond to our concerns and what their response was;
* inaction on the part of the trustees resulting in a failure to manage a particular matter;
* restrictions imposed upon the trustees by the charity's governing document or a lack of provision within that document preventing trustee action;
* adequacy or lack of policies and procedures for the effective running of the charity.

**Who will carry out the action we direct?**

Any Order made under this section will be issued to:

* the charity trustees;
* any trustee for a charity;
* any officer or employee of a charity; or
* the charity itself (if a body corporate)

and will specify the action to be taken.

We can authorise an action that would not otherwise be within the powers of the person concerned. However, we will usually prefer to authorise an action to be taken by the office-holder or employee who is entitled to take actions of that kind. That said, there may be circumstances in which we might authorise employees, say, to carry out actions normally taken by the trustees, where the trustees either cannot or should not take that action and no other remedial step on our part is appropriate.

**The action required and how we express it in the Order**

The action specified may or may not be within the powers exercisable under the provisions of the charity's governing document. However, we cannot order an action that is prohibited by law or specifically by the charity's trusts or is inconsistent with the charity's purposes. We can authorise an action that would not otherwise be within the powers of the person concerned. However, we will usually prefer to authorise an action to be taken by the office-holder or employee who is entitled to take actions of that kind. That said, there may be circumstances in which we might authorise employees, say, to carry out actions normally taken by the trustees, where the trustees either cannot or should not take that action and no other remedial step on our part is appropriate.

Section 84(4) provides that the action taken under authority of our Order is deemed to be properly done and within the powers exercisable in relation to the property concerned. However, this will not affect rights of third parties where there are contractual obligations. Care will need to be taken therefore to assess the impact of directed actions and whether there may be claims against the charity or its trustees or employees as a result of our Order.

**IMPORTANT NOTE**: Legal advice must be taken and consideration given to:

* the potential for and extent of possible claims; and
* the risk of making an Order compared with the risk to the charity of not acting or taking alternative action (such as appointing trustees).

The terms of the Order should be considered carefully. It should be sufficiently clear so that the individual or trustee body upon whom it is served is clear about what they are required to do. Equally, it must not be so prescriptive that the person concerned is unable to carry out the actions required. The Order should give sufficient flexibility to allow scope to choose the best way of carrying out the action which will be of most benefit to the charity. Actions must always be expressed in positive terms – "the trustees must…" rather than "the trustees must not…"

The Order will also need to set out a timeframe in which it is reasonable for the action to be done and consider the cost and resources involved by the charity in carrying out this action. Sometimes this means that different actions may require different timescales to respond.

Another consideration is equality and diversity. When communicating with charities caseworkers should offer to translate documents into another language, another format, e.g. Braille or Audio or to meet any other requirements needed.

**Circumstances in which we might use a section 84 Order**

Situations where we might consider using this power may be to Order:

* employees of a charity to call an Annual General Meeting or an Extraordinary General Meeting to elect new trustees where no properly appointed trustees exist but where the identity of the members is clear;
* wider notice provisions for disposal of charity property where trustees are being too restrictive in order to avoid opposition to a sale or to hide a conflict of interests;
* trustees to take and act on professional advice which the charity plainly needs but which the trustees are reluctant to take for no good reason.

Specific examples where we have used this power include ordering a charity to:

* undertake a governance review within a defined period;
* review a legal agreement;
* provide specified documentation by a certain date;
* ensure that a named individual is monitored on charity premises at all times;
* draw up a risk management procedure within a certain timeframe and to implement that procedure;
* take legal advice in connection with a matter concerning the charity and its funds.

**IMPORTANT NOTE**: These examples are not exhaustive but legal advice should be taken where there is uncertainty or concerns about the effects of the proposals.

How we monitor and ensure compliance with our Order

The purpose of monitoring is to ensure that the action is being carried out in a satisfactory way and to give support to those carrying out the action where required. The way performance is to be measured is an issue that needs to be considered as part of our case strategy when making the Order. Some actions are more easily measured than others, for instance, production of evidence or taking legal advice by a certain date. Where we have directed more wide-ranging actions, such as a governance review, we need to ensure that we give trustees or other named individuals the best opportunity to comply with our Order. In doing this we will need to consider:

* what we expect to improve within the charity as a result of making the Order;
* the extent of the task and the time needed to do it;
* the component parts of the task and the appropriate time to request reviews or reports on progress;
* whether reviews and reports provide evidence of progress at an appropriate rate towards the required outcome;
* the need to highlight particular concerns and give advice and guidance as the task progresses rather than at the end of the process;

Our monitoring activity will be proportionate to the actions required and the timeframe set.

Where we make an Order we expect compliance with it. Non-compliance is a serious matter and it will be part of the ongoing case plan to take action on non-compliance and consider alternative strategies to achieve compliance. These might include:

* serving a further section 84 Order to the individual named personally so that it may be enforced through the court;
* where a person fails to carry out some or all of the provisions of the Order to issue a further Order under section 335 of the Act requiring any default to be made good;
* consider the use of other section 76 powers to achieve the same purpose;
* enforcement of the Order through the court.

KEYPOINT: Failure by the trustees to comply in full and within the deadline with any Order or Direction of the Commission can be taken as further evidence of misconduct and/or mismanagement in the administration of the charity.

Alternative strategies should be discussed with the relevant investigations manager and legal officer before action is taken.

### 8.2 Decision points and authorised officer powers

Straightforward Directions relating to missing annual accounts, reports and returns must be signed by a PB3 or above and authorised by a PB4 or above.

In all other circumstances, these must be signed by a PB4 or above and authorised by a PB5 or above.

**IMPORTANT NOTE**: In such cases legal advice should normally be taken unless agreed by a PB5 Deputy Head.

Whoever signs the Order must ensure that its content properly represents what has been authorised.

### 8.3 Key issues

* This power can be used only in conjunction with a statutory inquiry.
* The Order for direction for protection of charity must be accompanied by a Statement of Reasons (SoR) which sets out our reasons for making the Order.
* The Order and SoR should be sent to the person directed to carry out the action.
* Section 86 states that a copy of the Order and SoR must be sent to each of the charity trustees or to the charity, if it is a corporate body, as soon as practical after making the Order.
* In most cases "as soon as practical" means at the time the Order is made. However, section 86(5) of the Act allows that where the sending of the Order and SoR would prejudice the statutory inquiry or not be in the interests of the charity we can delay this process. The Order and SoR must be sent once these factors cease to apply.
* The reasons for using this power should be clearly documented on file in line with the criteria set out at section 8.1.
* Once the Order is made we may be asked to review our action in making that Order. Any review on our part will be limited by the provisions of section 337(4) to cases where the Order has been made by mistake, under a misrepresentation or otherwise than in accordance with the Act – see OG117-10 section 4. The time limit for such a review is within 12 months of the making of the Order.
* The individual who is directed to carry out the action has a right to appeal to the Tribunal. They have 42 days from which we sent the notice of the Order being made. The 42 days includes weekends and bank holidays.
* The Order is enforceable through the High Court and therefore should contain the appropriate penal notice, see OG117-10 section 3. Failure to comply with our Order may result in proceedings for contempt of court.
* The action must be kept under regular review to ensure the directions contained in the Order are carried out and whether any further intervention by us is required.

### 8.4 Notice requirements

There is no public notice requirement for Orders made under section 84. However, if we are concerned that there could be unknown third party interests in connect with what we are directing then we might consider giving notice using the provisions of section 337(3). In an appropriate case we might also consider inviting the person to whom we propose to address the Order to comment on the proposals.

**Exempt text**

### 8.5 Standard format for Orders and model paragraphs

Order under section 84

Standard text for the letter accompanying an Order under section 84 including the Statement of Reasons.

**End of exempt text**

## 9. Charities Act 2011 s.85 - Power to direct application of charity property

### 9.1 Using this power

What this power allows us to do

This power allows the Commission to direct a person in possession or control of charity property to apply it in a specific manner. We can do this where we are satisfied that the property belongs to a charity and the person in question is unwilling or unable to apply the property for its proper purposes. In this context the term "charity property" includes monies raised on exclusively charitable trusts by a fundraiser.

The power is designed to protect property held by a charity or on charitable trusts. The test when using this power is that of unwillingness or inability on the part of the person in possession of or controlling the property to apply the property properly rather than the requirement to show misconduct and/ or mismanagement in the administration of the charity. It is not necessary or a legal requirement to open a statutory inquiry. This power is more likely to be used in Investigations, Monitoring and Enforcement cases but it could equally be used in Permission and Compliance operational cases. Where a section 85 Order is ignored we have the power to apply to the High Court to enforce the Order but also we will consider whether that non-compliance along with the circumstances of the case gives us good reason to consider the opening of a statutory inquiry.

Usually the possession or control of the property will rest with the charity trustees or officers or employees of the charity or an interim manager. However, the power to direct the application of the property extends beyond the charity to anyone in control of possession of charity property, such as those raising funds on behalf of a charity and may include volunteers. The same property may be in the "possession or control" of different people. For example, if a charity has money in a bank account, in one sense the bank has possession of the money. In practical terms, the signatories to the account have possession and control of the money. However, in a strict legal sense, the charity trustees also have control of the money. That said, the power can be exercised only where the person holding the property is unwilling or unable to apply it properly. In the ordinary course of events, a bank simply acts in accordance with the instructions of the signatories to the account, who may themselves have no power to act except in accordance with the instructions of the charity trustees. In most cases, it is likely to be the unwillingness or inability of the charity trustees to apply charity property that will justify a section 85 Order. However, the unwillingness or inability of the bank to carry out instructions from the signatories, or the unwillingness or inability of the signatories to carry out the charity trustees' instructions, may in some circumstances justify the making of an Order.

Certain types of situations might lend themselves to the use of this power:

* the trustees intend to dispose of charity land which they hold on trust for a specific purpose with no powers of sale ;
* where a charity has accumulated income without sound reason and refuses to expend that income for the purposes of the charity;
* money raised by a fundraiser for a particular charity is not handed over to that charity;
* money raised by a fundraiser where the terms of the fundraising mean the money is held on trust for a charitable purpose but is not applied for that purpose;
* exclusion of some beneficiaries from using trust property without good reason.

The power cannot be used where the person holding the property can reasonably claim to hold it adversely; eg, the power cannot be used to determine title to disputed land.

The power must be used to direct action rather than prevent action although it may be possible to give a direction in such terms as effectively to prevent a particular course of action. For example, a direction to use a property for a particular purpose effectively prevents that property being sold. The action we direct does not need to be authorised by the governing document however we cannot direct an action that is prohibited by law or expressly by the trusts of the charity. An application which is inconsistent with a charity's purposes would not be proper.

Action taken under the authority of our Order is considered to be properly done and within the powers exercisable in relation to the property concerned. However, we also need to bear in mind the interests of third parties where our Order may affect them. Legal advice should be taken where our Order might impact on particular third party interests.

**Initial considerations**

Before we direct any application of property we need to consider whether our action is an appropriate response to the circumstances of the case and whether its use is consistent with our general approach to working with charities to ensure compliance with legal obligations or whether there are alternative, less intrusive powers that might be more appropriately used. The impact of human rights issues and the use of our powers are considered at section 3 of OG117-1. Where caseworkers have uncertainties or concerns about engagement of human rights or the proportionality of our action legal advice must be taken.

Whilst the overriding consideration is unwillingness or inability to apply the particular property it is helpful in our initial consideration to understand where possible what lies behind any unwillingness or inability as it can have a bearing on whether or not it is appropriate to use this power. The unwillingness or inability might appear simply as a refusal to apply the property for its proper purposes or failure to release funds without good reason. The underlying reason for the refusal or failure to act could indicate that:

* there are broader compliance issues, ie misconduct and/ or mismanagement that give rise to the unwillingness or inability to act, and that require us to use our powers of statutory inquiry under section 46 with subsequent access to powers of protection under section 76;

Or

* the charity's inaction is the result of some deficiency in the governing document powers creating an inability rather than unwillingness to apply the charity property properly. In some circumstances a section 26 Order or a Scheme might be more appropriate;

Or

* there is some other reason, for instance, tardiness or poor administration by a fundraiser in paying over proceeds of an appeal, which falls short of requiring our statutory inquiry powers and where administrative remedies are not appropriate but the situation can be helped along by use of this power.

Further to ensuring that our action is an appropriate response to the circumstances we need to ensure that the action we propose is in itself reasonable; this will include satisfying ourselves that:

* the property in question belongs to the charity or is held on exclusively charitable trusts and has no other legitimate claim against it;
* the interests of third parties will not be adversely affected by our Order;
* the person concerned is in control of the property at issue and is unwilling or unable to apply it properly for the purposes of the charity
* the unwillingness or inability to apply the property puts the property or purposes of the charity at risk
* the action we propose would mitigate that risk;
* the action we propose is lawful and is consistent with the trusts of the charity;
* the action we propose is reasonable in the interests of the charity;
* we will be able effectively to monitor expected outcomes to ensure the directions in the Order are carried through.

In considering these points we need to have sufficient information to make the decision and ensure that all relevant matters are considered with irrelevant matters being discounted.

Another consideration is equality and diversity. When communicating with charities caseworkers should offer to translate documents into another language, another format, e.g. Braille or Audio or to meet any other requirements needed.

### 9.2 Decision points and authorised officer powers

**IMPORTANT NOTE:** Legal advice should be taken where there is uncertainty or concern about:

* the grounds for action being met;
* the strength of the evidence; or
* the content of the draft Statement of Reasons.

The Direction must then be signed by a PB4 or above and authorised by a PB5 or above.

If the Direction relates to funds held in a personal bank account, then prior written legal advice must be taken. The Order can still be signed by a PB4 or above, but authorisation must be by a PB5 Deputy Head or above.

Whoever signs the Order must ensure that its content properly represents what has been authorised.

### 9.3 Key issues

* Use of this power does not require a section 46 statutory inquiry to be open.
* The Order and SoR must be sent to the individual to whom it is addressed.
* Section 86 states that a copy of the Order and SoR should be sent to each of the charity trustees or the charity, if a body corporate, as soon as practical after making the Order.
* In most cases "as soon as practical" means at the time the Order is made. However, section 86(5) of the Act allows that where the sending of the Order and SoR would prejudice the statutory inquiry or not be in the interests of the charity we can delay this process. The Order and SoR must be sent once these factors cease to apply
* The Order should carry the appropriate penal notice see [OG117-10](http://ogs.charitycommission.gov.uk/g117a010.aspx) section 3. Failure to comply with our Order may result in proceedings for contempt of court.
* The reasons for using this power should be clearly documented on file in line with the criteria set out in section 1.1 above.
* The individual to whom the Order is addressed can appeal to the Tribunal. They have 42 days from the date which we sent the notice of the Order being made. The 42 days includes weekends and bank holidays.
* Once the Order is made we may be asked to review our action in making that Order. Any review on our part will be limited by the provisions of section 337(4) to cases where the Order has been made by mistake, under a misrepresentation or otherwise than in accordance with the Act – see OG117-10 section 4. The time limit for such a review is within 12 months of the making of the Order.
* Compliance with the Order should be monitored to ensure that the Order is carried out as directed.

**KEYPOINT**: Failure by the trustees to comply in full and within the deadline with any Order or Direction of the Commission can be taken as evidence of misconduct and/or mismanagement in the administration of the charity. Non-compliance with our Order may be indicative of other compliance issues and may lead us to consider opening a section 46 statutory inquiry.

### 9.4 Notice requirements

There is no public notice requirement for Orders made under section 85. However, if we are concerned that there could be unknown third party interests in the property we might consider giving notice using the provisions of section 337(3).

Exempt text

### 9.5 Standard format for Orders and model paragraphs

Order under section 85

Standard text for letter, including Statement of Reasons (individual & trustees)

End of exempt text

|  |  |  |
| --- | --- | --- |
| G1 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - letter giving advance notice of intention to remove and [Statement of Reasons](http://ogs.charitycommission.gov.uk/g117a009.aspx#tab8#heading_toc_vs_68), to person being removed |
| G2 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - letter giving notice of intention to remove to other trustees |
| G3 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - order, letter confirming removal and [Statement of Reasons](http://ogs.charitycommission.gov.uk/g117a009.aspx#tab8#heading_toc_ZI_72), to person being removed |
| G4 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - letter confirming removal and [Statement of Reasons](http://ogs.charitycommission.gov.uk/g117a009.aspx#tab8#heading_toc_GE_75), to other trustees |
| G5 | Order under section 84 | direct trustees to take specified action - letter and Statement of Reasons, to trustees |
| G6 | Order under section 84 | direct trustees to apply charity property - letter and Statement of Reasons, to trustees |
| G7 | Order under section 80(1)(e) | removal of a charity trustee for statutory reasons - letter and Statement of Reasons |

**G1 Standard text for inclusion in a letter giving advance notice to a trustee, charity trustee, officer, agent or employee of our intention to remove them from that position - letter to person with Statement of Reasons**

**This letter contains important information. If you are not sure what it means, or you need it translated into another language or into another format, such as Braille or audio, or have other requirements, please contact me and I will see how I may be able to help you. You may contact me on [email/telephone details].**

As you are aware the Commission has suspended you from your position as [trustee/charity trustee/officer/agent/employee - *can be more than one role*] of the above charities pending consideration being given to permanent removal from your role, under section 79 of the Charities Act 2011. The reasons for suspending you were set out in the Commission's letter of [*date*].

I am now writing to inform you that the Commission proposes to exercise its formal powers to remove you from your position as [trustee/charity trustee/officer/agent/employee] of [*charity name*] subject to consideration of any representations that you may wish to make. The proposed action will have a significant impact on you and you may wish to consider seeking your own independent legal advice.

**Notice and your right to make representations**

Before the Commission proceeds any further, we are required under section 89(5) to give you notice of the Commission's proposal and of your right to make representations. This letter constitutes such notice. If you wish to make any representations please send them in writing to the above address by [*date*]. If you wish to make representations, but cannot do so in writing, please contact me as soon as possible explaining why written representations are not possible. In appropriate cases we may allow representations to be made orally. Any representations made on or before [*date*] will be taken into consideration when deciding whether to proceed to make the removal Order.

Please note that under section 79(5) of the Act, the Commission can proceed with your removal even if, in the interim, you resign or otherwise cease to be [a trustee] [a charity trustee] [an officer or agent] [employed by the charity].

[We have decided in this case that no useful purpose would be served by publicising the fact that we are considering your removal.] [However, you do need to be aware that should we receive enquiries about whether we have taken this action, we may confirm this.]

[We have decided to give public notice of our intentions under the provisions at section 89(1) of the Act].

**The Commission’s power to act**

The Commission's power to remove an individual as a [trustee/charity trustee/officer/agent/ employee] is given by section 79(4) of the Act.

We are proposing to remove you (subject to any representations that you make)

[for the same reasons that led us to suspend you, those reasons are set out in our letter of [*date*] and I attach a copy of those reasons - *Refer to key changes that have happened since suspension- NB you are likely to have to revisit your analysis of proportionality/ regulatory and risk framework AND human rights/ equality Act considerations in doing this*.]

[for the same reasons that led us to suspend you and, additionally, because [*set out any additional reasons that may have arisen since suspension*]. A full statement of reasons is attached]

[for the reasons set out in the statement attached]

**Effect of removal**

The effect of an Order to remove you as [trustee/charity trustee/officer/agent/employee] would be that you would be disqualified from being a charity trustee or trustee for any charity under section 178 of the Charities Act 2011. Acting as a trustee whilst disqualified is a criminal offence under section 183 of the Charities Act 2011. If you are a trustee of any other charity you must notify that charity that you are no longer able to act as a trustee once the removal Order is made.

We will revert to you once we have considered any representations you wish to make.

Yours sincerely

**G1.1 STATEMENT OF REASONS**

[*Attach as a separate sheet - number pages and paragraphs as appropriate, the amount of detail will depend on the issues in question and the complexity of the case*]

**STATEMENT OF REASONS IN ACCORDANCE WITH SECTIONS 79(4) and 86 OF THE CHARITIES ACT 2011 - REMOVAL OF TRUSTEE / CHARITY TRUSTEE / OFFICER / AGENT / EMPLOYEE OF THE CHARITY**

This is a statement of the Commission's reasons given in accordance with section 86 of the Charities Act 2011

**Grounds for the removal under section 79(4) of the Charities Act 2011 of [*name*] as [trustee/charity trustee/officer/agent/employee] of [charity name]**

We informed you on [*date*] that a statutory inquiry under section 46 of the Charities Act 2011 had been opened.

We consider that the statutory grounds for your removal are met; the evidence is set out below.

There has been misconduct and/ or mismanagement in the administration of the charity which has taken the form of: [*Set out the reasons under different topics and numbering each one*]

and your involvement has been [*specify in numbered points*]

It is necessary or desirable to act for the protection of the property of the charity, securing a proper application for the purposes of the charity of that property and any property coming to the charity because: [*Set out the reasons under different topics and numbering each one as to why removal will achieve this objective*].

It is for these reasons that the Commission considers that misconduct and/ or mismanagement has taken place in the administration of the charity and it is necessary to act for the purposes of protecting the property of the charity [and/or] [securing a proper application of that property or property coming to the charity].

(Please note that under section 79(5) of the Act, the Commission can proceed with your removal, notwithstanding your resignation or otherwise cessation as [a trustee] [a charity trustee] [an officer or agent] [employed by the charity])

**Proportionality**

[*Use in all cases*] The Commission as a public authority and regulator of the charitable sector has the objectives of increasing public trust and confidence in charities and to promote compliance by charity trustees with their legal obligations in connection with the administration of their charities.

As set out above, the evidence available shows that there has been misconduct and/ or mismanagement in the administration of the charity [and/or] [it is necessary or desirable to act to protect the property of the charity or secure its proper application for charitable purposes or that of any property coming to the charity. Your removal as [trustee/ charity trustee/ officer/ agent/ employee] of this charity is proportionate to the level of risk to the charity, including its reputation.

This is because [*set out here our overarching reasons for why this action is proportionate - eg, public money is being raised and our concerns are that it is not being used for its proper purpose; or considering the evidence we hold any lesser intervention would be inadequate to resolve the issues*]

**Human Rights Considerations**

[*Use in all cases*] The Commission has considered its duty not to interfere with the rights protected by the European Convention on Human Rights and the Human Rights Act except to the extent that any such interference is legitimate and proportionate. The Commission is satisfied that the decision to remove you as [trustee/ charity trustee/ officer/ agent/ employee} of this charity does not so interfere with such rights.

[Set out here, as appropriate, any specific issues that have been considered and why using this power has not interfered with that person's human rights.]

**Equality Duty**

[*Use in all cases*] The Commission has considered its public sector equality duty and had regard to it in reaching this decision. It did not identify any adverse impact on rights protected by the Equality Act.

[*Set out here, as appropriate, any adverse impacts that were identified and why we continued with the action - examples might be, awareness of a religious festival or being aware of someone's disability. Continuation of our action would look to our action being a proportionate response to the situation, for example if beneficiaries were shown to be at serious risk. Seek legal advice on setting out more complex arguments on interference with property or impact on right to a family life*.]

**Better Regulation Principles and Economic Growth Duty**

The Commission has considered the better regulation principles in making this decision and is satisfied that it is in accordance with them.

The Commission has had regard to the economic growth duty and in particular on the impact of this particular regulatory power on the desirability for economic growth of the charity. It is satisfied that this power will have no impact on the charity in this regard.

**OR**

This power may have a potential impact on the economic growth of the charity by way of (*insert identifiable impact e.g. a drop in donations / unable to apply assets for investment / charitable activity / inability to employ persons*) but this regulatory action is taken only because it is needed and is proportionate to address the risk or concern present. .

[*Use footnotes or appendices as appropriate to the level of detail required in the Statement where their use adds clarity*.]

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| --- | --- | --- |
| G1 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - letter giving advance notice of intention to remove and [Statement of Reasons](http://ogs.charitycommission.gov.uk/g117a009.aspx#tab8#heading_toc_vs_68), to person being removed |
| G2 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - letter giving notice of intention to remove to other trustees |
| G3 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - order, letter confirming removal and [Statement of Reasons](http://ogs.charitycommission.gov.uk/g117a009.aspx#tab8#heading_toc_ZI_72), to person being removed |
| G4 | Order under section 79(4) | removal of a trustee, charity trustee, officer, agent or employee - letter confirming removal and [Statement of Reasons](http://ogs.charitycommission.gov.uk/g117a009.aspx#tab8#heading_toc_GE_75), to other trustees |
| G5 | Order under section 84 | direct trustees to take specified action - letter and Statement of Reasons, to trustees |
| G6 | Order under section 84 | direct trustees to apply charity property - letter and Statement of Reasons, to trustees |
| G7 | Order under section 80(1)(e) | removal of a charity trustee for statutory reasons - letter and Statement of Reasons |

## G1 Standard text for inclusion in a letter giving advance notice to a trustee, charity trustee, officer, agent or employee of our intention to remove them from that position - letter to person with Statement of Reasons

This letter contains important information. If you are not sure what it means, or you need it translated into another language or into another format, such as Braille or audio, or have other requirements, please contact me and I will see how I may be able to help you. You may contact me on [email/telephone details].

As you are aware the Commission has suspended you from your position as [trustee/charity trustee/officer/agent/employee - *can be more than one role*] of the above charities pending consideration being given to permanent removal from your role, under section 79 of the Charities Act 2011. The reasons for suspending you were set out in the Commission's letter of [*date*].

I am now writing to inform you that the Commission proposes to exercise its formal powers to remove you from your position as [trustee/charity trustee/officer/agent/employee] of [*charity name*] subject to consideration of any representations that you may wish to make. The proposed action will have a significant impact on you and you may wish to consider seeking your own independent legal advice.

Notice and your right to make representations

Before the Commission proceeds any further, we are required under section 89(5) to give you notice of the Commission's proposal and of your right to make representations. This letter constitutes such notice. If you wish to make any representations please send them in writing to the above address by [*date*]. If you wish to make representations, but cannot do so in writing, please contact me as soon as possible explaining why written representations are not possible. In appropriate cases we may allow representations to be made orally. Any representations made on or before [*date*] will be taken into consideration when deciding whether to proceed to make the removal Order.

Please note that under section 79(5) of the Act, the Commission can proceed with your removal even if, in the interim, you resign or otherwise cease to be [a trustee] [a charity trustee] [an officer or agent] [employed by the charity].

[We have decided in this case that no useful purpose would be served by publicising the fact that we are considering your removal.] [However, you do need to be aware that should we receive enquiries about whether we have taken this action, we may confirm this.]

[We have decided to give public notice of our intentions under the provisions at section 89(1) of the Act].

The Commission’s power to act

The Commission's power to remove an individual as a [trustee/charity trustee/officer/agent/ employee] is given by section 79(4) of the Act.

We are proposing to remove you (subject to any representations that you make)

[for the same reasons that led us to suspend you, those reasons are set out in our letter of [*date*] and I attach a copy of those reasons - *Refer to key changes that have happened since suspension- NB you are likely to have to revisit your analysis of proportionality/ regulatory and risk framework AND human rights/ equality Act considerations in doing this*.]

[for the same reasons that led us to suspend you and, additionally, because [*set out any additional reasons that may have arisen since suspension*]. A full statement of reasons is attached]

[for the reasons set out in the statement attached]

Effect of removal

The effect of an Order to remove you as [trustee/charity trustee/officer/agent/employee] would be that you would be disqualified from being a charity trustee or trustee for any charity under section 178 of the Charities Act 2011. Acting as a trustee whilst disqualified is a criminal offence under section 183 of the Charities Act 2011. If you are a trustee of any other charity you must notify that charity that you are no longer able to act as a trustee once the removal Order is made.

We will revert to you once we have considered any representations you wish to make.

Yours sincerely

### G1.1 STATEMENT OF REASONS

[*Attach as a separate sheet - number pages and paragraphs as appropriate, the amount of detail will depend on the issues in question and the complexity of the case*]

**STATEMENT OF REASONS IN ACCORDANCE WITH SECTIONS 79(4) and 86 OF THE CHARITIES ACT 2011 - REMOVAL OF TRUSTEE / CHARITY TRUSTEE / OFFICER / AGENT / EMPLOYEE OF THE CHARITY**

This is a statement of the Commission's reasons given in accordance with section 86 of the Charities Act 2011

**Grounds for the removal under section 79(4) of the Charities Act 2011 of [*name*] as [trustee/charity trustee/officer/agent/employee] of [charity name]**

We informed you on [*date*] that a statutory inquiry under section 46 of the Charities Act 2011 had been opened.

We consider that the statutory grounds for your removal are met; the evidence is set out below.

There has been misconduct and/ or mismanagement in the administration of the charity which has taken the form of: [*Set out the reasons under different topics and numbering each one*]

and your involvement has been [*specify in numbered points*]

It is necessary or desirable to act for the protection of the property of the charity, securing a proper application for the purposes of the charity of that property and any property coming to the charity because: [*Set out the reasons under different topics and numbering each one as to why removal will achieve this objective*].

It is for these reasons that the Commission considers that misconduct and/ or mismanagement has taken place in the administration of the charity and it is necessary to act for the purposes of protecting the property of the charity [and/or] [securing a proper application of that property or property coming to the charity].

(Please note that under section 79(5) of the Act, the Commission can proceed with your removal, notwithstanding your resignation or otherwise cessation as [a trustee] [a charity trustee] [an officer or agent] [employed by the charity])

**Proportionality**

[*Use in all cases*] The Commission as a public authority and regulator of the charitable sector has the objectives of increasing public trust and confidence in charities and to promote compliance by charity trustees with their legal obligations in connection with the administration of their charities.

As set out above, the evidence available shows that there has been misconduct and/ or mismanagement in the administration of the charity [and/or] [it is necessary or desirable to act to protect the property of the charity or secure its proper application for charitable purposes or that of any property coming to the charity. Your removal as [trustee/ charity trustee/ officer/ agent/ employee] of this charity is proportionate to the level of risk to the charity, including its reputation.

This is because [*set out here our overarching reasons for why this action is proportionate - eg, public money is being raised and our concerns are that it is not being used for its proper purpose; or considering the evidence we hold any lesser intervention would be inadequate to resolve the issues*]

**Human Rights Considerations**

[*Use in all cases*] The Commission has considered its duty not to interfere with the rights protected by the European Convention on Human Rights and the Human Rights Act except to the extent that any such interference is legitimate and proportionate. The Commission is satisfied that the decision to remove you as [trustee/ charity trustee/ officer/ agent/ employee} of this charity does not so interfere with such rights.

[Set out here, as appropriate, any specific issues that have been considered and why using this power has not interfered with that person's human rights.]

**Equality Duty**

[*Use in all cases*] The Commission has considered its public sector equality duty and had regard to it in reaching this decision. It did not identify any adverse impact on rights protected by the Equality Act.

[*Set out here, as appropriate, any adverse impacts that were identified and why we continued with the action - examples might be, awareness of a religious festival or being aware of someone's disability. Continuation of our action would look to our action being a proportionate response to the situation, for example if beneficiaries were shown to be at serious risk. Seek legal advice on setting out more complex arguments on interference with property or impact on right to a family life*.]

**Better Regulation Principles and Economic Growth Duty**

The Commission has considered the better regulation principles in making this decision and is satisfied that it is in accordance with them.

The Commission has had regard to the economic growth duty and in particular on the impact of this particular regulatory power on the desirability for economic growth of the charity. It is satisfied that this power will have no impact on the charity in this regard.

**OR**

This power may have a potential impact on the economic growth of the charity by way of (*insert identifiable impact e.g. a drop in donations / unable to apply assets for investment / charitable activity / inability to employ persons*) but this regulatory action is taken only because it is needed and is proportionate to address the risk or concern present. .

[*Use footnotes or appendices as appropriate to the level of detail required in the Statement where their use adds clarity*.]

## G2 Standard text for inclusion in a letter to notify other trustees of our intention to remove a trustee, charity trustee, officer, agent or employee of a charity under section 79(4)

**REQUIREMENT OF ADVANCE NOTICE UNDER S.82(1) OF INTENTION TO REMOVE**

**This letter contains important information. If you are not sure what it means, or you need it translated into another language or into another format, such as Braille or audio, or have other requirements, please contact me and I will see how I may be able to help you. You may contact me on [email/telephone details].**

As you are aware the Commission has suspended [*name*] from [his/her] position as [trustee/charity trustee/officer/agent/employee] within the above charity pending consideration being given to [his/her] permanent removal from [his/her] role under section 79(4) of the Charities Act 2011. The reasons for suspending [*name*] were set out in the Commission's letter of [*date*]. As required by section 82(1) of the Act, I am now writing to inform you that the Commission intends to exercise its formal powers to remove [*name*] from his/her position as [trustee/charity trustee/officer/agent/employee] of [*charity name*].

Once we have made the Order we will send you a copy with a statement of our reasons.

Please note that under section 79(5) of the Act, the Commission can proceed with the removal even if, in the interim, [they] [he] [she] resign[s] or otherwise cease[s] to be [a trustee] [a charity trustee] [an officer or agent] [employed by the charity]

*Note for Investigators*

*[If charity property is vested in the individual concerned you may need to mention the need to consider what arrangements are required for the property to be transferred. Alternatively, you may already have a strategy for dealing with this, ie vesting in the OC etc*.]

## G3 Standard test for inclusion in a letter to accompany an Order made under section 79(4) to remove a trustee, charity trustee, officer, agent or employee - Final letter to person being removed with Statement of Reasons

**This letter contains important information. If you are not sure what it means, or you need it translated into another language or into another format, such as Braille or audio, or have other requirements, please contact me and I will see how I may be able to help you. You may contact me on [email/telephone details].**

I am writing following the Commission’s letter of [*date*] in which you were notified of our intention to remove you from acting as a [trustee/charity trustee/officer/agent employee] of the above named charity. That letter also invited you to make representations as to why your removal should not take place. [The deadline for representations has expired and no submissions were made to the Commission. We are therefore proceeding to remove you from acting as a [charity trustee/ trustee/ officer/ agent/employee ] of the charity.]

(Please note that under section 79(5) of the Act, the Commission can proceed with your removal, notwithstanding your resignation or otherwise cessation as [a trustee] [a charity trustee] [an officer or agent] [employed by the charity])

*or*

[We have taken account of representations received from you on [date] but have nonetheless decided that we should remove you as [trustee/charity trustee/officer/agent/ employee]

Enclosed is a copy of the Commission's Order of [*date*] which removes you as [*select role(s*)] of the charity [*This will need to be changed if it is a paid position*]. The grounds for your removal are set out in the Statement of Reasons attached to this letter. This decision will have a significant impact on you and you may wish to seek your own legal advice.

**Right of Decision Review and Appeal to the Charity Tribunal**

The Commission’s decision to use this power was made under section 79(4) of the Charities Act 2011 (the Act). Decisions under this section are listed in Schedule 6 to the Act as having a right of appeal to the First-tier Tribunal (Charity) – (the Tribunal).

The Tribunal is an independent legal body which has the power to look again at some decisions made by the Commission and to overturn them or adjust them.

**To start a case in the Tribunal, a 'Notice of Appeal' must be sent to the Tribunal within 42 days of the date on which the notice of our decision was sent to you, which will normally be the date of this document. Weekends and bank holidays are included in the 42 days**. **If you miss this deadline, you will need to ask the Tribunal for an extension of time and this may not be granted.**

If you wish to challenge our decision in the Tribunal, you may find it helpful to visit the Tribunal's [website](https://www.gov.uk/guidance/appeal-against-a-charity-commission-decision-about-your-charity) for more information about time limits, the form of the Notice of Appeal and how to start a case.

Alternatively, you can ask the Commission to carry out an internal review of its decision by:

* using our [online form](https://forms.charitycommission.gov.uk/decision-review/); or
* sending an email to the Commission's Litigation and Review Team at:

[litigationandreview@charitycommission.gov.uk](mailto:litigationandreview@charitycommission.gov.uk)

If the Commission agrees to conduct a review, someone who did not make the original decision will look at your application and any additional information and evidence you send in and consider whether the original decision should be maintained or changed. We ask that any application for a decision review is made as soon as possible and in any event, within 3 months of the date on which the notice of our decision was sent to you.

There is no requirement that you use the Commission's internal decision review procedure before starting a case at the Tribunal. Please note that if you do request a decision review, this process may not be completed in time for you to bring a case in the Tribunal.

Further details about our decision review procedure and the Tribunal are provided in our guidance on requesting a review.

Any review will be limited by the provisions of section 337(4) of the Charities Act 2011 to cases where the Order has been made by mistake, under a misrepresentation or otherwise than in accordance with the Act. The time limit for such a review is within 12 months of the making of the Order.

**Disqualification from acting a charity trustee** *[use only if removed as trustee/charity trustee]*

As a consequence of the Order removing you from acting as a [trustee/charity trustee] of [*name of charity*] you are now disqualified from acting as a charity trustee or a trustee for any other charity under the provisions of section 178 Charities Act 2011. Acting as a trustee whilst disqualified is a criminal offence under section 183 Charities Act 2011. If you are a trustee for any other charity you must notify that charity that you are no longer able to act as a trustee.

Details on waivers from disqualification to act as a trustee can be found in [refer to guidance on website]

### G3.1 STATEMENT OF REASONS

[*Attach as a separate sheet - number pages and paragraphs as appropriate, the amount of detail will depend on the issues in question and the complexity of the case*]

**STATEMENT OF REASONS IN ACCORDANCE WITH SECTIONS 79(4) and 86 OF THE CHARITIES ACT 2011 - FINAL REMOVAL OF TRUSTEE / CHARITY TRUSTEE / OFFICER / AGENT / EMPLOYEE OF THE CHARITY**

This is a Statement of Reasons given in accordance with section 86 of the Charities Act 2011.

Grounds for the removal of [*name*] as [*trustee/charity trustee/officer/agent/employee*] of [*charity name*] under section 79(4) of the Charities Act 2011

The statutory grounds for removal under section 79(1) of the Charities Act 2011 are that:

there is or has been any misconduct or mismanagement in the administration of the charity; and

it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity. We consider that the statutory grounds for your removal are met.

Under section 79(4) we must also be satisfied that the person being removed has been responsible for or privy to the misconduct or mismanagement or has by their conduct contributed to or facilitated it.

The evidence in support of the statutory grounds is as follows:

a) Misconduct and/ or mismanagement in the administration of the charity [*Set out reasons using different topic headings and numbering paragraphs within each heading*.]

and your involvement has been [*specify the misconduct and/ or mismanagement and how their conduct has contributed to it, in numbered points*]

b) Necessity or desirability to act for the protection of the property of the charity, securing a proper application for the purposes of the charity of that property and any property coming to the charity [*Continue with reasons under topic headings and numbered paragraphs*]

It is for these reasons that the Commission considers that misconduct and/ or mismanagement has taken place in the administration of the charity and it is necessary to act for the purposes of protecting the property of the charity [and/or securing a proper application of that property or property coming to the charity].

**Proportionality**

[*Use in all cases*] The Commission as a public authority and regulator of the charitable sector has the objectives of increasing public trust and confidence in charities and to promote compliance by charity trustees with their legal obligations in connection with the administration of their charities.

As set out above, the evidence available shows that there has been misconduct and/ or mismanagement in the administration of the charity and [it is necessary or desirable to act to protect the property of the charity or secure its proper application for charitable purposes or that of any property coming to the charity. Your removal as [*name of office*] from this charity is proportionate to the level of risk to the charity, including its reputation.

This is because [set out here our overarching reasons for why this action is proportionate - eg, public money is being raised and our concerns are that it is not being used for its proper purpose; or considering the evidence we hold any lesser intervention would be inadequate to resolve the issues]

**Human Rights Considerations**

[*Use in all cases*] The Commission has considered its duty not to interfere with the rights protected by the European Convention on Human Rights and the Human Rights Act except to the extent that any such interference is legitimate and proportionate. The Commission is satisfied that the decision to remove you as [*name of office*] from this charity does not so interfere with such rights.

[Set out here, as appropriate, any specific issues that have been considered and why using this power has not interfered with that person's human rights.]

**Equality Duty**

[*Use in all cases*] The Commission has considered its public sector equality duty and had regard to it in reaching this decision. It did not identify any adverse impact on rights protected by the Equality Act.

[Set out here, as appropriate, any adverse impacts that were identified and why we continued with the action - examples might be, awareness of a religious festival or being aware of someone's disability. Continuation of our action would look to our action being a proportionate response to the situation, for example if beneficiaries were shown to be at serious risk. Seek legal advice on setting out more complex arguments on interference with property or impact on right to a family life.]

**Better Regulation Principles and Economic Growth Duty**

The Commission has considered the better regulation principles in making this decision and is satisfied that it is in accordance with them.

The Commission has had regard to the economic growth duty and in particular on the impact of this particular regulatory power on the desirability for economic growth of the charity. It is satisfied that this power will have no impact on the charity in this regard.

**OR**

This power may have a potential impact on the economic growth of the charity by way of (*insert identifiable impact e.g. a drop in donations / unable to apply assets for investment / charitable activity / inability to employ persons*) but this regulatory action is taken only because it is needed and is proportionate to address the risk or concern present.

[*Use footnotes or appendices as appropriate to the level of detail required in the Statement where their use adds clarity.]*

## G4 Standard text for inclusion in a letter to accompany an Order under section 79(4) to remove a trustee, charity trustee, officer, agent or employee of a charity - letter to (other) trustees

This letter contains important information. If you are not sure what it means, or you need it translated into another language or into another format, such as Braille or audio, or have other requirements, please contact me and I will see how I may be able to help you. You may contact me on [email/telephone details].

We wrote to you on [date] informing you of our intention to remove [*name*] as [*position*] of [*charity name*]. I am now writing to confirm that the Order for removal was made on [*date*] and that [*name of removed*] has been informed accordingly.

I attach a copy of the Order along with the Statement of Reasons showing why this decision was made.

Please note that under section 79(5) of the Act, the Commission can proceed with the removal even if, in the interim, [they] [he] [she] resign[s] or otherwise cease[s] to be [a trustee] [a charity trustee] [an officer or agent] [employed by the charity])

Right of Decision Review and Appeal to the Charity Tribunal

The Commission’s decision to use this power was made under section 79(4) of the Charities Act 2011 (the Act). Decisions under this section are listed in Schedule 6 to the Act as having a right of appeal to the First-tier Tribunal (Charity) – (the Tribunal).

The Tribunal is an independent legal body which has the power to look again at some decisions made by the Commission and to overturn them or adjust them.

To start a case in the Tribunal, a 'Notice of Appeal' must be sent to the Tribunal within 42 days of the date on which the notice of our decision was sent to you, which will normally be the date of this document. Weekends and bank holidays are included in the 42 days. If you miss this deadline, you will need to ask the Tribunal for an extension of time and this may not be granted.

If you wish to challenge our decision in the Tribunal, you may find it helpful to visit the Tribunal's [website](https://www.gov.uk/guidance/appeal-against-a-charity-commission-decision-about-your-charity) for more information about time limits, the form of the Notice of Appeal and how to start a case.

Alternatively, you can ask the Commission to carry out an internal review of its decision by:

* using our [online form](https://forms.charitycommission.gov.uk/decision-review/); or
* sending an email to the Commission's Litigation and Review Team at:

[litigationandreview@charitycommission.gov.uk](mailto:litigationandreview@charitycommission.gov.uk)

If the Commission agrees to conduct a review, someone who did not make the original decision will look at your application and any additional information and evidence you send in and consider whether the original decision should be maintained or changed. We ask that any application for a decision review is made as soon as possible and in any event, within 3 months of the date on which the notice of our decision was sent to you.

There is no requirement that you use the Commission's internal decision review procedure before starting a case at the Tribunal. Please note that if you do request a decision review, this process may not be completed in time for you to bring a case in the Tribunal.

Further details about our decision review procedure and the Tribunal are provided in our guidance on requesting a review.

**This letter is notice of your right to appeal.**

Please contact me if you need this [*letter*] to be translated into another language, translated into another format, for example, Braille or audio or if you have any other requirements.

[*NB This letter is sent to the other trustees once the Order has been made and the removed person informed. The trustees should have already received a letter from us under section 82(1) telling them of our intention to remove*.]

### G4.1 STATEMENT OF REASONS

[*Attach as a separate sheet, number pages and paragraphs as appropriate, the amount of detail will depend on the issues in question and the complexity of the case.]*

**STATEMENT OF REASONS IN ACCORDANCE WITH SECTIONS 79(4) and 86 OF THE CHARITIES ACT 2011 - REMOVAL OF TRUSTEE / CHARITY TRUSTEE / OFFICER / AGENT / EMPLOYEE OF THE CHARITY**

This is a Statement of Reasons given in accordance with section 86 of the Charities Act 2011.

**Grounds for the removal of [name] as [trustee/charity trustee/officer/agent/employee] of [charity name] under section 79(4) of the Charities Act 2011**

The statutory grounds for removal under section 79(1) of the Charities Act 2011 are that:

there is or has been any misconduct or mismanagement in the administration of the charity

and

it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity.

Under section 79(4) we must also be satisfied that the person being removed has been responsible for or privy to the misconduct or mismanagement or has by their conduct contributed to or facilitated it.

We consider that the statutory grounds for removal are met.

The evidence in support of the statutory grounds is as follows:

**Misconduct and/ or mismanagement in the administration of the charity**

[*Set out reasons using different topic headings and numbering paragraphs within each heading]*

and their involvement has been [*specify the misconduct and/ or mismanagement and how their conduct has contributed to it, in numbered points*].

**Necessity or desirability to act for the protection of the property of the charity, securing a proper application for the purposes of the charity of that property and any property coming to the charity**

[*Continue with reasons under topic headings and numbered paragraphs*]

It is for these reasons that the Commission considers that misconduct and/ or mismanagement has taken place in the administration of the charity [and/or it is necessary to act for the purposes of protecting the property of the charity] [and/or] [securing a proper application of that property or property coming to the charity].

**Proportionality**

[*Use in all cases*] The Commission as a public authority and regulator of the charitable sector has the objectives of increasing public trust and confidence in charities and to promote compliance by charity trustees with their legal obligations in connection with the administration of their charities.

As set out above, the evidence available shows that there has been misconduct and/ or mismanagement in the administration of the charity [and/or] [it is necessary or desirable to act to protect the property of the charity or secure its proper application for charitable purposes or that of any property coming to the charity. The removal of [*name*] as a [*name of office*] of this charity is proportionate to the level of risk to the charity, including its reputation.

This is because [set out here our overarching reasons for why this action is proportionate - eg, public money is being raised and our concerns are that it is not being used for its proper purpose; or considering the evidence we hold any lesser intervention would be inadequate to resolve the issues]

**Human Rights Considerations**

[*Use in all cases*] The Commission has considered its duty not to interfere with the rights protected by the European Convention on Human Rights and the Human Rights Act except to the extent that any such interference is legitimate and proportionate. The Commission is satisfied that the decision to remove [*name*] as a [*name of office*] of this charity does not so interfere with such rights.

[Set out here, as appropriate, any specific issues that have been considered and why using this power has not interfered with that person's human rights.]

**Equality Duty**

[*Use in all cases*] The Commission has considered its public sector equality duty and had regard to it in reaching this decision. It did not identify any adverse impact on rights protected by the Equality Act.

[*Set out here, as appropriate, any adverse impacts that were identified and why we continued with the action - examples might be, awareness of a religious festival or being aware of someone's disability. Continuation of our action would look to our action being a proportionate response to the situation, for example if beneficiaries were shown to be at serious risk. Seek legal advice on setting out more complex arguments on interference with property or impact on right to a family life*.]

**Better Regulation Principles and Economic Growth Duty**

The Commission has considered the better regulation principles in making this decision and is satisfied that it is in accordance with them.

The Commission has had regard to the economic growth duty and in particular on the impact of this particular regulatory power on the desirability for economic growth of the charity. It is satisfied that this power will have no impact on the charity in this regard.

**OR**

This power may have a potential impact on the economic growth of the charity by way of (*insert identifiable impact e.g. a drop in donations / unable to apply assets for investment / charitable activity / inability to employ persons*) but this regulatory action is taken only because it is needed and is proportionate to address the risk or concern present.

[*Use footnotes or appendices as appropriate to the level of detail required in the Statement where their use adds clarity*.]

## G5 Standard text for inclusion in a letter to accompany an Order under section 84 of the Charities Act 2011- power to give specific directions for protection of charity

[Note for investigators

*1. The first paragraph to the letter may need additions or adjustments if there has been significant correspondence or engagement leading up to this letter.*

*2. This letter should normally be sent to each of the trustees unless the Head of Unit agrees for handling reasons that an alternative approach is appropriate. Sometimes the letters might be sent to the trustees via their legal advisers, if this is thought more appropriate*.]

**This letter contains important information. If you are not sure what it means, or you need it translated into another language or into another format, such as Braille or audio, or have other requirements, please contact me and I will see how I may be able to help you. You may contact me on [*email/telephone details*].**

This letter is accompanied by an Order made under section 84 of the Charities Act 2011.

If - *insert which applies*

[you, as the person named in the Order, fail]

[*name of company/corporate body*, fails]

to comply with the Order, the Commission may make an application to the High Court for this failure to be treated as disobedience of the High Court - ie contempt of court (see section 336 of the Charities Act 2011).

The Order directs that you

[*insert action to be undertaken as directed by the Order*]

This action must be taken by [*the dates specified in the Order*] and we will monitor your progress in taking this action. If there is anything the Commission needs to know in relation to making this Order, or about the charity, the trustees or the issues being covered by the investigation that may impact on this Order [or our making it] [or whether it should continue] it is very important that you let me know as soon as possible. This might include, for example, factors that you consider we ought to take into account because of the types of services or activities that charity carries out, where it carries them out or the needs of the trustees or the charity's beneficiaries.

The reasons for making the Order are given in a Statement of Reasons attached to this letter. Given that this Order may have an impact you may wish to seek your own independent legal advice.

[This action is taken in addition to the Order of [*date*] made under [section ###] to [*action taken*] for which a separate Statement of Reasons was given – *use this where we have already made other Orders under section 76 to emphasize that we have considered this action afresh with the SoR reflecting any new grounds that have come to light*.

The Commission’s decision to use this power was made under section 84 of the Charities Act 2011 (the Act). Decisions under this section are listed in Schedule 6 to the Act as having a right of appeal to the First-tier Tribunal (Charity) – (the Tribunal).

The Tribunal is an independent legal body which has the power to look again at some decisions made by the Commission and to overturn them or adjust them.

**To start a case in the Tribunal, a 'Notice of Appeal' must be sent to the Tribunal within 42 days of the date on which the notice of our decision was sent to you, which will normally be the date of this document. Weekends and bank holidays are included in the 42 days**. **If you miss this deadline, you will need to ask the Tribunal for an extension of time and this may not be granted.**

If you wish to challenge our decision in the Tribunal, you may find it helpful to visit the Tribunal's [website](https://www.gov.uk/guidance/appeal-against-a-charity-commission-decision-about-your-charity) for more information about time limits, the form of the Notice of Appeal and how to start a case.

Alternatively, you can ask the Commission to carry out an internal review of its decision by:

* using our [online form](https://forms.charitycommission.gov.uk/decision-review/); or
* sending an email to the Commission's Litigation and Review Team at:

[litigationandreview@charitycommission.gov.uk](mailto:litigationandreview@charitycommission.gov.uk)

If the Commission agrees to conduct a review, someone who did not make the original decision will look at your application and any additional information and evidence you send in and consider whether the original decision should be maintained or changed. We ask that any application for a decision review is made as soon as possible and in any event, within 3 months of the date on which the notice of our decision was sent to you.

There is no requirement that you use the Commission's internal decision review procedure before starting a case at the Tribunal. Please note that if you do request a decision review, this process may not be completed in time for you to bring a case in the Tribunal.

Further details about our decision review procedure and the Tribunal are provided in our guidance on requesting a review.

### G5.1 STATEMENT OF REASONS

[*Attach as a separate sheet - number pages and paragraphs as appropriate, the amount of detail will depend on the issues in question and the complexity of the case*]

**STATEMENT OF REASONS IN ACCORDANCE WITH SECTIONS 84 and 86 OF THE CHARITIES ACT 2011**

The Commission has made an Order dated [*date*] requiring you to [*describe action*] for the following reasons

The Commission is satisfied that:

There is or has been misconduct and/ or mismanagement in the administration of the charity – [*specify details of misconduct and/ or mismanagement in numbered points*]; and/ or

That it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or property coming to the charity – *[specify details of misconduct and/ or mismanagement in numbered points*].

It is for these reasons that the Commission considers that misconduct and/ or mismanagement has taken place in the administration of the charity [and/or it is necessary to act for the purposes of protecting the property of the charity] [and/or] [securing a proper application of that property or property coming to the charity].

**Proportionality**

[*Use in all cases*] The Commission as a public authority and regulator of the charitable sector has the objectives of increasing public trust and confidence in charities and to promote compliance by charity trustees with their legal obligations in connection with the administration of their charities.

As set out above, the evidence available shows that there has been misconduct and/ or mismanagement in the administration of the charity [and/or] [it is necessary or desirable to act to protect the property of the charity or secure its proper application for charitable purposes or that of any property coming to the charity. The action to [*set out action required*] for this charity is proportionate to the level of risk to the charity, including its reputation.

This is because [*set out here our overarching reasons for why this action is proportionate - eg, public money is being raised and our concerns are that it is not being used for its proper purpose; or considering the evidence we hold any lesser intervention would be inadequate to resolve the issues*]

**Human Rights Considerations**

[*Use in all cases*] The Commission has considered its duty not to interfere with the rights protected by the European Convention on Human Rights and the Human Rights Act except to the extent that any such interference is legitimate and proportionate. The Commission is satisfied that the action to [*set out action required*] for this charity does not so interfere with such rights.

[*Set out here, as appropriate, any specific issues that have been considered and why using this power has not interfered with that person's human rights*.]

**Equality Duty**

[*Use in all cases*] The Commission has considered its public sector equality duty and had regard to it in reaching this decision. It did not identify any adverse impact on rights protected by the Equality Act.

[*Set out here, as appropriate, any adverse impacts that were identified and why we continued with the action - examples might be, awareness of a religious festival or being aware of someone's disability. Continuation of our action would look to our action being a proportionate response to the situation, for example if beneficiaries were shown to be at serious risk. Seek legal advice on setting out more complex arguments on interference with property or impact on right to a family life*.]

**Better Regulation Principles and Economic Growth Duty**

The Commission has considered the better regulation principles in making this decision and is satisfied that it is in accordance with them.

The Commission has had regard to the economic growth duty and in particular on the impact of this particular regulatory power on the desirability for economic growth of the charity. It is satisfied that this power will have no impact on the charity in this regard.

**OR**

This power may have a potential impact on the economic growth of the charity by way of (*insert identifiable impact e.g. a drop in donations / unable to apply assets for investment / charitable activity / inability to employ persons*) but this regulatory action is taken only because it is needed and is proportionate to address the risk or concern present.

*[Use footnotes or appendices as appropriate to the level of detail required in the Statement where their use adds clarity.*]

## G6 Standard text for inclusion in a letter to accompany an Order under section 85 of the Charities Act 2011 - to direct application of charity property

[*Note for Investigators - The first paragraph to the letter may need additions or adjustments if there has been significant correspondence or engagement leading up to this letter*.]

**This letter contains important information. If you are not sure what it means, or you need it translated into another language or into another format, such as Braille or audio, or have other requirements, please contact me and I will see how I may be able to help you. You may contact me on [email/telephone details]**.

This letter is accompanied by an Order made under section 85 of the Charities Act 2011.

If - *insert which applies*

[you, as the person named in the Order, fail]

[*name of company/corporate body*, fails]

to comply with the Order, the Commission may make an application to the High Court for this failure to be treated as disobedience of the High Court - ie contempt of court (see section 336 of the Charities Act 2011).

The action directed by the Order must be taken by [*date*] [*the dates specified in the Order*] and we will monitor your progress in taking this action. It means that [*insert explanation relevant to the content of the Order*]. If there is anything the Commission needs to know in relation to making this Order, or about the charity, the trustees or the issues being covered by the investigation that may impact on this Order [or our making it] [or whether it should continue] it is very important that you let me know as soon as possible. This might include, for example, factors that you consider we ought to take into account because of the types of services or activities that charity carries out, where it carries them out or the needs of the trustees or the charity's beneficiaries.

The reasons for making this Order are set out a Statement of Reasons attached to this letter. Given the impact that this Order will have, we recommend that you take independent legal advice.

The Commission's decision to use this power under section 85 of the Charities Act 2011 2011 (the Act). Decisions under this section are listed in Schedule 6 to the Act as having a right of appeal to the First-tier Tribunal (Charity - (the Tribunal).

The Tribunal is an independent legal body which has the power to look again at some decisions made by the Commission and to overturn them or adjust them.

**To start a case in the Tribunal, a 'Notice of Appeal' must be sent to the Tribunal within 42 days of the date on which the notice of our decision was sent to you, which will normally be the date of this document. Weekends and bank holidays are included in the 42 days**. **If you miss this deadline, you will need to ask the Tribunal for an extension of time and this may not be granted.**

If you wish to challenge our decision in the Tribunal, you may find it helpful to visit the Tribunal's [website](https://www.gov.uk/guidance/appeal-against-a-charity-commission-decision-about-your-charity) for more information about time limits, the form of the Notice of Appeal and how to start a case.

Alternatively, you can ask the Commission to carry out an internal review of its decision by:

* using our [online form](https://forms.charitycommission.gov.uk/decision-review/); or
* sending an email to the Commission's Litigation and Review Team at:

[litigationandreview@charitycommission.gov.uk](mailto:litigationandreview@charitycommission.gov.uk)

If the Commission agrees to conduct a review, someone who did not make the original decision will look at your application and any additional information and evidence you send in and consider whether the original decision should be maintained or changed. We ask that any application for a decision review is made as soon as possible and in any event, within 3 months of the date on which the notice of our decision was sent to you.

There is no requirement that you use the Commission's internal decision review procedure before starting a case at the Tribunal. Please note that if you do request a decision review, this process may not be completed in time for you to bring a case in the Tribunal.

Further details about our decision review procedure and the Tribunal are provided in our [guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/640080/Dissatisfied_with_one_of_the_Commission_s_Decisions_How_can_we_help_you.pdf) on requesting a review.

### G6.1 STATEMENT OF REASONS

[*Attach as a separate sheet - number pages and paragraphs as appropriate, the amount of detail will depend on the issues in question and the complexity of the case*]

**STATEMENT OF REASONS IN ACCORDANCE WITH SECTIONS 85 and 86 OF THE CHARITIES ACT 2011 - ORDER TO DIRECT THE APPLICATION OF CHARITY PROPERTY**

This is a Statement of the Commission's reasons given in accordance with section 86 of the Charities Act 2011.

The Commission has made an Order dated [###] requiring you to [*specify action required*] for the following reasons:

The Commission is satisfied that you, [*name of person holding property*] are in possession or control of [*property details*] belonging to [*charity name*] *or* [You [*name*] are in possession or control of [*property details*] held on charitable trusts to be applied for [*purposes*]; and

You are [*unwilling*] [*unable*] to apply [*property details*] for the proper purposes for which it was intended; and

The making of this Order will secure a proper application of this property.

The reasons in support of these grounds are:

[*These should be listed one by one in numbered paragraphs and must accurately reflect the reasons why it is expedient in the interests of the charity/ property for this Order to be made.]*

**Proportionality**

[*Use in all cases*] The Commission as a public authority and regulator of the charitable sector has the objectives of increasing public trust and confidence in charities and to promote compliance by charity trustees with their legal obligations in connection with the administration of their charities.

As set out above, the evidence available shows it is necessary or desirable to act to secure proper application of the charity's property for charitable purposes.This action is proportionate to the level of risk to the charity, including its reputation.

This is because [*set out here our overarching reasons for why this action is proportionate - eg, public money is being raised and our concerns are that it is not being used for its proper purpose; or considering the evidence we hold any lesser intervention would be inadequate to resolve the issues*]

**Human Rights Considerations**

[*Use in all cases*] The Commission has considered its duty not to interfere with the rights protected by the European Convention on Human Rights and the Human Rights Act except to the extent that any such interference is legitimate and proportionate. The Commission is satisfied that the decision to [*specify action directed*] does not so interfere with such rights.

[Set out here, as appropriate, any specific issues that have been considered and why using this power has not interfered with that person's human rights.]

**Equality Duty**

[*Use in all cases*] The Commission has considered its public sector equality duty and had regard to it in reaching this decision. It did not identify any adverse impact on rights protected by the Equality Act.

[*Set out here, as appropriate, any adverse impacts that were identified and why we continued with the action - examples might be, awareness of a religious festival or being aware of someone's disability. Continuation of our action would look to our action being a proportionate response to the situation, for example if beneficiaries were shown to be at serious risk. Seek legal advice on setting out more complex arguments on interference with property or impact on right to a family life.]*

**Better Regulation Principles and Economic Growth Duty**

The Commission has considered the better regulation principles in making this decision and is satisfied that it is in accordance with them.

The Commission has had regard to the economic growth duty and in particular on the impact of this particular regulatory power on the desirability for economic growth of the charity. It is satisfied that this power will have no impact on the charity in this regard.

**OR**

This power may have a potential impact on the economic growth of the charity by way of (*insert identifiable impact e.g. a drop in donations / unable to apply assets for investment / charitable activity / inability to employ persons*) but this regulatory action is taken only because it is needed and is proportionate to address the risk or concern present.

*Use footnotes or appendices as appropriate to the level of detail required in the Statement where their use adds clarity*.]

## G7 Statement of Reasons in accordance Sections 80(1)(e) and 86 of the Charities Act

This is a statement of the Commission’s reasons given in accordance with section 86 of the Charities Act 2011 (‘the Act’)

**Grounds for removal of [XXXX] as a trustee of [charity name], [charity number] (‘the Charity’) under section 80(1)(e) of the Act**.

Under section 80(1)(e), the Commission may remove a charity trustee by Order made of its own motion if the trustee:

* is outside England and Wales or cannot be found, or does not act
* and the trustee's absence or failure to act impedes the proper administration of the charity.

In this instance:

***[The trustee is outside of England and Wales] [The trustee cannot be found] [The trustee does not act].***

*[Provide evidence that either the trustee is outside of England and Wales, cannot be found, or does not act. For example, give details of how the Commission has been informed that the trustee is no longer in England and Wales or how the Commission has attempted to make contact with the trustee but has been unable to find him/her, including, for example, the details of any address on the Register, emails/ letters written/ visits made and dates etc. Or include evidence of the trustee’s failure to act.]*

**The trustee’s absence or failure to act impedes the proper administration of the Charity**

*[Set out the relevant facts, for example]:*

* [the Charity’s objects as stated in its governing document].
* [the practical impact of the trustee’s absence or failure to act and how this impedes the proper administration of the charity, i.e. the evidence of a consequential impact on the governance arrangements of the charity and/ or that things that are not being done by virtue of the trustee’s absence or failure to act (e.g. no charitable activity and over what period; accounts are not being submitted; reporting obligations are not being met etc), taking care to show that this is as a result of the trustee’s absence/ failure to act etc.]
* [any clauses in the charity’s Governing Document with which the trustee cannot comply either because he/she [lives outside England and Wales/ cannot be found/ does not act]. This may refer, for example, to trustee meetings being inquorate.]
* [any additional reasons why the Commission considers that the fact that the trustee cannot be found, has no known address in England and Wales or fails to act impedes the proper administration of the Charity.

**Proportionality**

The Commission as a public authority and regulator of the charitable sector has the objectives of increasing public trust and confidence in charities and to promote compliance by charity trustees with their legal obligations in connection with the administration of their charities.

*As set out above, the information shows that trustee [XXXX] [cannot be found] [has no known address in England and Wales] [does not act] and that [XXXX]’s absence or failure to act impedes the proper administration of the Charity. [His] [Her] removal as trustee of [name of Charity] is proportionate to the level of risk to the Charity, including its reputation.*

**Human Rights Consideration**

The Commission has considered its duty not to interfere with the rights protected by the European Convention on Human Rights and the Human Rights Act except to the extent that any such interference is legitimate and proportionate. The Commission is satisfied that the decision to remove [XXXX] as trustee of [name of Charity] does not interfere with such rights.

*[Set out here, as appropriate, any specific issues that have been considered and why using this power has not interfered with that person's human rights.]*

*[For example]:*

*[Although it is possible that the decision to make an Order removing [XXXX] from [his] [her] role as a trustee could be seen as having an adverse impact on his reputation and human rights, it is the Commission’s view that Article 8 rights (respect for private life) is not engaged by this decision as it does not relate to his private affairs, rather, it arises from a public duty and responsibility for which he has volunteered.*

*[Article 8 rights are qualified rights. Interference with those rights is permitted under the Human Rights Act 1998 where the Commission can demonstrate that the interference is legal, is in pursuit of a legitimate aim, and properly balances the rights of the possessor against the public interest. In the Commission’s view, this situation would fall within these limited circumstances for the reasons set out in this Statement of Reasons.*

*It is the Commission’s view that the removal of [XXXX] is in accordance with its statutory objectives and functions (Public Confidence, Compliance, Resources and Accountability)]*

**Equality Duty**

The Commission has considered its public sector equality duty and had regard to it in reaching this decision. It did not identify any adverse impact on rights protected by the Equality Act.

**Better Regulation Principles and Economic Growth Duty**

The Commission has considered the better regulation principles in making this decision and is satisfied that it is in accordance with them.

The Commission has had regard to the economic growth duty and in particular on the impact of this particular regulatory power on the desirability for economic growth of the charity. It is satisfied that this power will have no impact on the charity in this regard.

**OR**

This power may have a potential impact on the economic growth of the charity by way of (*insert identifiable impact e.g. a drop in donations / unable to apply assets for investment / charitable activity / inability to employ persons*) but this regulatory action is taken only because it is needed and is proportionate to address the risk or concern present.

*[Use footnotes or appendices as appropriate to the level of detail required in the Statement where their use adds clarity].*