
The Charity Tribunal

How it works and how you can use it

This guide will help you understand more about the Tribunal, and explains in plain English when and how to take your case, without the need for any lawyers.

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Foreword

Alison McKenna, Principal Judge of the First-tier Tribunal (Charity)

The Charity Tribunal was created to provide charities with a swift, low-cost means of challenging decisions of the Charity Commission.

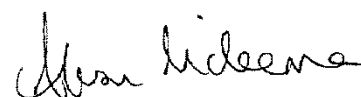
The level of awareness of the Tribunal within the sector still seems to be low. When the Tribunal was launched, there was no accompanying budget for outreach and education about its work. So I am pleased to endorse this first 'know your rights' initiative for the sector from NCVO.

It is crucially important for charities to know that the Tribunal exists as an independent appeals body which they can access without needing to use the Charity Commission's internal appeal process. Also that it is not necessary to be legally represented to use the Tribunal. Tribunals as a whole decide well over a million cases a year - and lawyers are a rarity. The Tribunal has no power to direct whether anyone who appears before it is represented by a lawyer or not, that is a matter for them. But we are always happy to assist anyone who chooses to represent themselves.

It is also important to raise sector awareness that there is no risk of costs being awarded against a charity simply because it loses an appeal in the Tribunal: although the Tribunal has the power to make a charity pay the Commission's costs, this arises only where a charity behaves 'unreasonably' in conducting its case, and in fact such an order has never been made.

This guide is intended to assist charities in understanding how the Tribunal works and how to bring a case to the Tribunal without lawyers. The Tribunal has a website with details of our rules, our current cases, our previous decisions and useful guidance on how to use the Tribunal at www.justice.gov.uk/tribunals/charity.

I do hope the guide is useful.



1. About tribunals

The very essence of tribunal proceedings is that they are informal and flexible.

No two cases are the same – the Tribunal has wide discretionary powers in case management and there are no formal rules of evidence, so cases can proceed largely in response to the issues they raise. The Tribunal will discuss these matters with you at an early stage.

The Tribunal has a target of completing each case in less than 30 weeks. A standard time frame is set out in the rules of procedure but the Tribunal is also able to shorten and extend timetables so that cases can be progressed more quickly or proceed more slowly, according to the wishes of the parties.

Under the procedural rules, the parties may opt for cases to be decided on the basis of written submissions and evidence only and, if both parties agree, without the need to attend an oral hearing at all. This is a distinctive feature of tribunals justice, which can save charities, trustees and other applicants both costs and time.

2. Can the Charity Tribunal hear my appeal?

The Tribunal can hear three types of case:

- I. appeals against certain decisions, directions or orders of the Charity Commission
- II. applications for review (similar to judicial review) of certain decisions, directions or orders of the Charity Commission
- III. 'references' from the Attorney General or the Charity Commission about general charity law matters.

This guide does not deal with references, but rather with the types of appeal that a charity can bring itself.

The decisions, directions and orders which can be appealed (or reviewed) are set out in [column one of schedule 6](#) to the Charities Act 2011.

These include:

- a decision to refuse registration
- a decision to open an inquiry into a charity
- a decision to make a scheme
- a decision to refuse to allow a charity to amend its governing document.

Some examples of cases previously brought to the Tribunal are on page 9.

Appeals

Appeals are cases which require the Tribunal to make a completely fresh decision. In doing so, it can consider all the evidence that was before the Charity Commission and also other evidence. It can usually replace the Commission's decision with its own.

Reviews

Reviews look at the procedure followed by the Charity Commission when making a decision, taking into account issues such as fairness to the charity. If the Tribunal considers it appropriate, it can send back

('remit') the case to the Commission to make a fresh decision taking into account the Tribunal's findings. The actions that the Tribunal can take are those in [column three of schedule 6](#) to the 2011 Act.

Generally, the charity trustees (or the charity itself if it is a company or a CIO) can bring the appeal to the Tribunal. Sometimes 'other persons affected' (such as a potential beneficiary) will bring the appeal. The people who can bring particular types of case to the Tribunal are listed in [column two of schedule 6](#) of the 2011 Act.

3. Who decides the cases?

The Charity Tribunal has one salaried full time principal judge, four fee-paid (ie sessional) tribunal judges (legally qualified) and seven fee-paid members (lay people with 'appropriate knowledge or experience relating to charities').

All were appointed by the Lord Chancellor following an open competition conducted by the Judicial Appointments Commission, and are completely independent of the Charity Commission.

Many of the Tribunal's judges and members are themselves charity employees or trustees. Their biographical details are available on the Tribunal's website: see the [Judges](#) and the [Other Members'](#) details.

4. The stages of an appeal

Application

The first stage of an appeal is to file your notice of appeal form. This is a standard form and can be downloaded from the [Tribunal's website](#).

You are required to do this within 42 days of the decision you wish to appeal against, although the Tribunal has a power to allow applications out of time. If the application is late, you need to explain why.

You need to say on the form why you think the Charity Commission's decision is wrong. You also need to state your interest in challenging the decision, eg trustee, potential beneficiary, etc. You don't need to have been through the Commission's internal review system before applying.

Further guidance on how to complete the form is available on the [Tribunal website](#).

The form can be emailed to the Tribunal and there is no fee to pay. You must include a copy of the Charity Commission's decision you are appealing against. You must also send a copy of the notice of appeal to the Charity Commission.

If there is a problem with your application eg it is not a decision the Tribunal can deal with, or there is insufficient information, the Tribunal's staff will contact you. If all is in order, your application will be acknowledged and given a reference number. Pre-hearing correspondence is usually conducted by email.

Response

If your application is valid, the Charity Commission must provide a response. It has 28 days to do this. The Commission is required to state what documents it relies upon at this stage. This may be the first time you see what information the Charity Commission has about your charity.

Reply

Your charity then has the option of sending a reply to the Commission's response, for example, taking issue with what it says. This stage is optional and can be skipped, in which case the Tribunal moves straight to directions (see below). You would have 28 days to do this under the rules.

Secondary Disclosure

If your charity does make a reply then the Commission has 14 days to say if there are any other documents on which it wishes to rely.

Directions

The Tribunal will then issue 'directions' as soon as it can. These are instructions for how the case should proceed to a final hearing, for example the dates by which the papers must be filed and whether any witnesses need to attend the final hearing. Sometimes the directions are simply agreed by the charity and the Charity Commission, sometimes there is a telephone conference or, unusually, an oral hearing to discuss them. Some sample directions are available.

5. The hearing

In most cases, it is possible to resolve the issue through a hearing on the papers, which is quicker and more cost effective.

If there is to be an oral hearing, you will be given the date well in advance. The venue for hearings varies as the Tribunal has no permanent seat but uses rooms in tribunal and court buildings around England and Wales. Ideally the hearing is held in a location that is convenient to the parties. There is a space on the application form for you to specify this, in addition to any special requests you may have, for example if you require an interpreter.

Hearings are usually in public, which means that people can come and watch (although generally not many do). The Tribunal keeps a register of cases on its [website](#) which lists the time and place of any hearings.

For final hearings the Tribunal usually sits in panels of three (chaired by a judge). Judges tend to sit alone to deal with directions hearings.

Proceedings are kept as informal as possible: the charity and the Commission's representatives can simply address the panel members as 'Sir' and 'Madam', and can stay sitting down; the judges on the panel don't wear wigs or gowns.

Sometimes each side merely makes 'submissions' ie states what their case is, with reference to the Tribunal's bundle of papers. Sometimes witnesses give evidence to the Tribunal and are asked questions by the other side.

There is an assistant to the Tribunal at the hearing, called a clerk. They will show you where to sit and what to do. Don't worry about getting these things wrong – the clerk is there to help you.



What a typical Tribunal hearing looks like

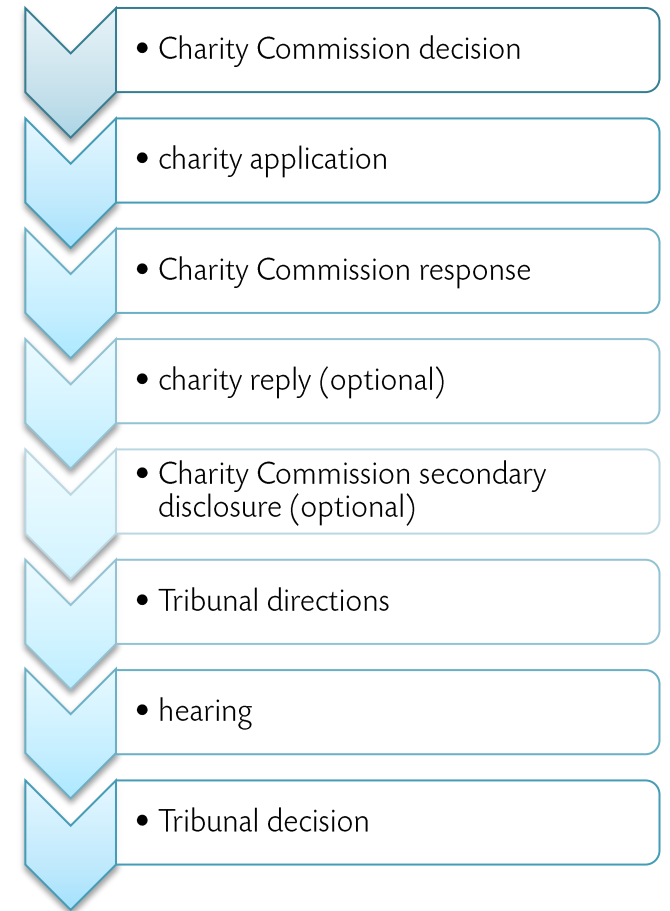
6. Decisions

Sometimes it is possible to give the charity a decision on the day, followed up by written reasons. More often, the Tribunal wishes to take time to consider its decision and re-read the papers and the decision is sent to you as soon as possible, usually in a couple of weeks.

The Tribunal's decisions are published on its [website](#)

7. Appeals from the Tribunal

If you think that the Tribunal's decision in your case is wrong in law, you can apply for permission to appeal to the Upper Tribunal (Tax and Chancery Chamber). You have 28 days from the decision date to do this. Details of how to apply are on the Tribunal's [website](#).



What a typical Tribunal hearing looks like

8. What sort of cases has the Tribunal heard so far?

The appeal cases which have come before the Tribunal so far have varied greatly in complexity and subject matter, ranging from disputes about recreation grounds and disused schools, to the impact of equality legislation on charitable adoption agencies, and the human rights issues involved in the removal from office of a charity trustee.

Here is a very brief summary of the issues in a thematic selection of cases, in order to give you a flavour of the type of case it has dealt with. All decisions are published on [this website](#).

Statutory Inquiries:

- Mr S appealed against the Charity Commission's removal of him from his position as charity trustee. The case

involved allegations that he had inappropriately supported an organisation which was proscribed under anti-terrorism legislation. The Tribunal restored him to his position as charity trustee.

Regulatory Issues

- A Catholic voluntary adoption agency appealed to the Tribunal against the Charity Commission's refusal of consent for it to amend its objects. It wished to amend its objects in order to fall within an exemption for charities to the Equality Act 2010 so as not to be required to offer adoption services to same sex couples or to single people. The Tribunal refused its application.
- Mr R and Mr M were beneficiaries of a local recreation ground charity whose land had been sold in breach of trust. The Charity Commission made a scheme to regulate the charity which was established with replacement land. The appellants appealed against the Scheme. The Tribunal

amended the Charity Commission's scheme.

- Mr G and others were beneficiaries of a charity which comprised a disused village school. The Charity Commission had made a scheme providing alternative uses for the building. The Tribunal amended the Charity Commission's scheme.

Registration

- Full Fact applied for registration as a charity but was refused by the Charity Commission on the basis that its objects were not exclusively charitable. The Tribunal agreed with the Charity Commission and refused the appeal.
- Uturn UK applied for registration as a charity but was refused by the Charity Commission on the basis that its objects were not exclusively charitable. The Tribunal agreed with the Charity Commission and refused the appeal.

9. Useful contact details

Charity Tribunal

www.justice.gov.uk/tribunals/charity
Phone: 0300 1234504
Fax: 0116 249 4253
Email: CharityTribunal@hmcts.gsi.gov.uk

Address:
The First-tier Tribunal (Charity)
Tribunals Operational Support Centre
PO Box 9300
Leicester LE1 8DJ

Free legal advice services

LawWorks: www.lawworks.org.uk

Bar Pro Bono Centre:
www.barprobono.org.uk

NCVO Members Helpdesk:
www.ncvo-vol.org.uk/helpdesk

NCVO membership

NCVO members regularly get free exclusive publications, practical guides and in-depth reports.

Exclusive member resources include:

- the 2013 edition of The UK Civil Society Almanac, the definitive voluntary sector reference title
- political insight guides – titles include Peers and Charities: Our top 10 and Campaigns and Political Change
- ten Quick Guides, covering practical topics such as getting legal support, writing a funding bid, recruiting volunteers and local campaigning
- a guide to sustainable funding for trustees
- Charity Forecast, our quarterly poll of charity sector leaders.

[Find out more about NCVO membership](#)