

The essentials: automatic disqualification of trustees and senior managers

Introduction

On August 1st 2018 the law regarding the automatic disqualification of charity trustees was extended to include a wider range of circumstances and senior managers.

Being automatically disqualified means that an individual cannot be a charity trustee or senior manager. Once the condition applies, and until it ceases to apply, an individual is disqualified unless the Commission gives them a waiver. These rules apply to all charities, including charities that are not registered with the Charity Commission.

List of reasons for disqualification

1. Being on the Sex Offenders' Register
2. Unspent conviction for an offence involving:
 - deception or dishonesty
 - terrorist offences
 - money laundering
 - bribery
 - misconduct in public office, perjury, perverting the course of justice
 - contravention of certain preventative Orders of the Charity Commission (s.77 of the Charities Act 2011)
 - attempting, aiding or abetting these offences
3. Contempt of court
4. Designation under specific anti-terrorist legislation
5. Found guilty by the High court of disobeying a Commission order or direction
6. Removed from:
 - trusteeship, or as an officer, agent or employee of a charity by the Court or the Commission for misconduct or mismanagement
 - a position of management or control of a charity in Scotland for mismanagement or misconduct
7. Disqualification order under the Company Directors Disqualification Act 1986
8. Undischarged bankruptcy
9. Composition or arrangement with creditors which includes an individual voluntary arrangement (IVA), and is currently on the Insolvency Service Register

One of the biggest changes to disqualification rules is the extension to include senior managers. Relevant senior manager positions are Chief Executive (or equivalent) positions and Chief Finance Officer (or equivalent) positions. It is the role that the senior manager takes rather than the job title that is important.

A Chief Executive (or equivalent) position:

- carries overall responsibility for the day day-to-day management and control of the charity
- is accountable only to the charity trustees

A Chief Finance Officer (or equivalent) position:

- is accountable only to the chief executive or the trustees
- is responsible for overall management and control of the charity's finances

Actions to take

1. You should put systems in place so you can be sure any new trustees or senior managers appointed are not disqualified. This can be done by asking a prospective senior manager/trustee to sign a declaration to confirm that they are not disqualified. The Charity Commission have produced sample declarations for both trustees and senior managers. See the information at <https://www.gov.uk/guidance/automatic-disqualification-rule-changes-guidance-for-charities>
2. You will also need to check that people who are already in a senior manager or trustee position have not become disqualified since they were appointed. This can be done by asking them to sign a fresh declaration at reasonable intervals to confirm they are not disqualified.
3. In addition to obtaining signed declarations, your charity should also check any relevant official registers which record the names of people who are disqualified from acting as charity trustees.
4. If you do have a trustee or senior manager that is disqualified they must:
 - Formally resign as a trustee
 - Cease to act as a senior manager (You may need legal advice with regard to employment rights).
5. Individuals may apply to the Charity Commission for a waiver to allow them to continue in a trustee or senior manager role.

Full Guidance is available from the Charity Commission <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions>

Do you need more support with the rules around automatic disqualification or any other governance issue?

- Email: enquire@northumberlandcva.org.uk
- Call: 01670 858688