



Becoming a trustee of a charity with a criminal record

Information & Advice

Contents [Back to top](#)

1. [Background](#)
2. [Am I disqualified?](#)
3. [What is classed as dishonesty or deception?](#)
4. [How do I know whether my convictions are spent?](#)
5. [What if I'm disqualified and want to become a trustee?](#)
6. [How do I apply for a waiver?](#)
7. [What do I include in my letter?](#)
8. [Who do I send it to?](#)
9. [How likely is my application for a waiver?](#)
10. [How will the Charity Commission make their decision?](#)
11. [How can I support my application?](#)
12. [How will I find out the result?](#)
13. [Can I appeal the decision?](#)
14. [What if I'm disqualified and still act as a trustee?](#)
15. [Who can I contact for more information?](#)

1. Background [Back to top](#)

If you have been convicted of an offence involving dishonesty or deception, and the conviction remains unspent, you are disqualified from becoming a trustee of a charity, and therefore must seek a waiver from the Charity Commission before acting as a trustee. This document sets out who is disqualified and how you can apply for a waiver.

2. Am I disqualified? [Back to top](#)

Section [72\(1\) of the Charities Act 1993](#) sets out those who are disqualified from becoming a trustee of a charity. This includes those who have been convicted of any offence involving dishonesty or deception. However, this section is covered by the Rehabilitation of Offenders Act 1974, and therefore if all of your convictions relating to dishonesty or deception are spent, you are able to undertake the role of trustee without having to seek a waiver.

Section 72(1) is in addition to other elements of this section of the Act, which also disqualifies people on the basis of other things, including undischarged bankrupts and those who have been placed on the list of those unable to become a trustee (which is currently maintained by the Charity Commission) on grounds of any misconduct or mismanagement in the administration of a charity. You need to make sure that you are not disqualified for one of these other reasons.

3. What is classed as dishonesty or deception? [Back to top](#)

The definition of dishonesty or deception is written in statute. It is not something that the Charity Commission is willing to either add to or expand upon. You will have to look at each individual offence that you have been convicted of to see if dishonesty or deception forms an element of the offence that has to be proved for someone to be convicted of the offence.

For example in the Theft Act 1968, the basic definition of theft is stated in section 1: *“A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly”.*

Dishonesty and deception is separately defined in relation to different offences, and so the Charities Act does not provide a separate definition. If you are in doubt as to whether your conviction involved dishonesty or deception you would need to seek your own legal advice. Otherwise, you may wish to submit an application for waiver from the Charity Commission

4. How do I know whether my convictions are spent? [Back to top](#)

If you have been convicted of an offence involving dishonesty or deception, you need to establish whether the conviction is spent or unspent. If it is unspent, you will have to obtain a waiver before acting as a trustee.

There are a number of ways to find out whether your convictions are spent or unspent:

Basic disclosure – Disclosure Scotland

To obtain a list of your unspent convictions you can apply for a basic disclosure from Disclosure Scotland (www.disclosurescotland.gov.uk). This costs £23. It is only accurate at the time you apply, cannot be backdated and will not show other convictions.

Subject Access Request

Under the Data Protection Act, you can apply for a Subject Access Request from your local police force. This costs £10, and provides all information that is held on the Police National Computer (PNC) about you, not just unspent convictions. It doesn't identify which convictions are spent and which are unspent.

Resettlement Plus Helpline

The national Resettlement Plus Helpline can advise you on whether a conviction is spent, based on the information you provide.

Telephone: 020 7840 6464

Email: helpline@nacro.org.uk

Work it out yourself

If you already have a record of your criminal convictions, you may find it helpful to consult a [detailed guide to the ROA](#), available from the Information & Advice section of www.unlock.org.uk. This covers more complex issues such as multiple convictions and other sentences/disposals.

5. What if I'm disqualified and want to become a trustee? [Back to top](#)

Section 72(4) states that there is the ability for an individual to apply for a waiver of disqualification, either generally or in relation to a particular charity or a particular class of charities. There is information available on the [Charity Commission website](#) about how the Charity Commission process applications for a waiver.

However, until you have been granted a waiver, you are unable to act as a trustee.

The Charity Commission power of waiver does not extend to trustees disqualified under legislation other than s.72 of the 1993 Act. This includes those convicted of individuals convicted of offences under Schedule 4 of the Criminal Justice and Court Services Court Act 2000 which specifically disqualifies individuals with convictions for certain offences against children from being trustees of children's charities.

6. How do I apply for a waiver? [Back to top](#)

The Charity Commission starts from the basis that anybody currently disqualified should normally remain disqualified until those circumstances no longer exist. In the case of criminal convictions, that means when the conviction(s) become spent.

However, if you are disqualified, you may apply, with the support of the charity trustees, for your disqualification to be waived.

In this situation, the onus is entirely on you and the trustees to convince the Charity Commission that it is in the best interests of the charity (and will not undermine public confidence in charity generally) for them to grant a waiver.

The application for a waiver should be done in writing and must be signed by you. Whilst there is no specific form for an application, there are certain factors that you should include in your letter, which are listed below. However, every case will have specific factors which may mean the Charity Commission may ask you for more information.

7. What do I include in my letter? [Back to top](#)

Before submitting an application for a waiver, you should make sure that there is nothing in the governing document(s) of the charity or charities concerned which prevent you from acting as a trustee. If there is, a waiver of disqualification would not be effective in respect of that particular charity.

The following is a checklist of factors the Charity Commission will take into account when considering your case. These are the areas that the letter you submit should cover:

- a) In relation to a conviction:
 - i. the specific nature of the offence which results in a disqualification
 - ii. the gravity of the offence and the sentence passed by the Court.
- b) The nature of the charity's property, for instance:
 - i. whether it consists only of land used for the purposes of the charity; or

- ii. whether there are investments and money which would or might pass through your own hands.
- c) The degree of risk to the funds or property of any charity concerned, including:
 - i. whether you are likely to receive or have custody of charitable funds or property; and
- d) Whether and, if so, how seriously, the reputation of charity in general or of a particular charity would be damaged by the grant of a waiver.
- e) The purposes and interests of the charity or class of charity, for instance, the rehabilitation of offenders through charitable works.
- f) Whether you are prohibited from acting as a director of any company by a disqualification order under the Company Directors Disqualification Act 1986; and if so, whether leave has been granted under that Act for you to act as a director of any other company. Also whether you are similarly disqualified as a result of proceedings under the Insolvency Act 1986.
- g) If a disqualification order as in (i) above has not been made in circumstances where you have been convicted of a criminal offence involving dishonesty or deception in the course of company administration, the reason why no such order was made.
- h) Whether you have ever been associated with any other charity which has been the subject of a formal Charity Commission inquiry as a result of which a report critical of your involvement has been made.
- i) The view of the other trustees of the charity or charities concerned, especially as to any particular benefit to the charity or charities it is considered would result from you acting as a trustee.
- j) The length of time that has elapsed since the events giving rise to the disqualification.
- k) Evidence of "good conduct" in the meantime and why it is considered that there is no risk of history repeating itself.
- l) Whether or not the waiver sought is a specific waiver in relation to a charity or charities or a general waiver in respect of all charities.

Evidence

The submission of sufficient and relevant evidence to support an application is a matter for you but, generally, the Commission will require:

- a) documentary evidence, particularly copies of any Court judgement relating to the disqualification (we may ask for further Court documents later if we feel it necessary);
- b) confirmation that you have never been associated with any other charity which has been subject of a formal Charity Commission inquiry as a result of which a report critical of your involvement was made.
- c) written support for a waiver from all the other trustees of the charity or charities concerned, including any special qualities they feel only you can bring to the administration of the charity, and any other information they feel may be useful with regard to this application.

This is not an exhaustive list and you may put before the Commission any other matter you feel is relevant to the application.

The Charity Commission do not state in their guidance whether it is necessary to provide a copy of your unspent criminal convictions (i.e. a basic disclosure from Disclosure Scotland), but it may be that it is required at a later date. If you have a copy which has all your currently unspent criminal convictions, it may be worthwhile including it in your waiver application. If you do not have a copy, you may wish to wait until being asked for one before obtaining one, as the current cost is £23 and there is a relatively quick turnaround if you later need to apply for one.

General issues

- a) The letter you submit must be signed by you
- b) You should make it clear whether you are seeking a waiver generally, or specific to a certain charity or group of charities (see below for what type of waiver you should apply for).
- c) You must make it clear under which section of the 1993 Act you are applying for a waiver – the section for disqualification because of a conviction for any offence involving dishonesty or deception is s.72(4)

8. Who do I send it to? Back to top

All applications for waiver of disqualification should be sent to the Charity Commission direct via post or email.

A: Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG

E: enquiries@charitycommission.gsi.gov.uk

The Charity Commission have a target of responding substantively in 15 working days to postal enquiries, and 5-10 working days to email enquiries, so if you are in a hurry emailing your application for a waiver may be quickest.

9. How likely is my application for a waiver? Back to top

It is more usual for the Charity Commission to consider applications for waivers of disqualification in respect of a particular charity or even a group of charities with **similar characteristics**. An application for a general waiver of disqualification will require closer scrutiny and is generally more difficult to accept.

10. How will the Charity Commission make their decision? Back to top

By the very nature of the circumstances giving rise to the disqualification in the first place, the Charity Commission are very cautious about agreeing to a waiver. They will carefully consider the following:

- a) The factors set out in the checklist in part 6;
- b) What led to the disqualification in the first place;
- c) The length of time that has elapsed since the events giving rise to the disqualification;
- d) Evidence of "good conduct" in the meantime and why it is considered that there is no risk of history repeating itself;
- e) Balancing risks against the rewards of granting a waiver
- f) Whether there is evidence that there are no reasonable alternatives who could be appointed;
- g) Whether they can place conditions on a waiver, including whether there is a higher threshold in assessing the impact of the special circumstances and the risk against reward test if the waiver applied for is subject to condition
- h) If they grant a waiver after considering these points what would it cover

11. How can I support my application? [Back to top](#)

In the case of any application for a waiver, the Charity Commission would normally expect all the other trustees to support the application to waive disqualification in relation to one or more specific charities. They will need to know from trustees:

- a) Why they believe the charity and the charitable beneficiaries need to have this person appointed as a trustee;
- b) What steps they have taken to find alternatives;
- c) What special skills you possess which are not otherwise available;
- d) Why you cannot advise rather than be a trustee;
- e) What reassurance they can provide that you will be no risk to the charity or its assets; and
- f) Their views on the impact on the standing of the charity and the integrity of charity generally if you are free to become a trustee of this charity.

It is for you to ensure that the written views of your co-trustees are made available to the Charity Commission either by being attached to the application or by letters being sent direct to the Commission. The Charity Commission also advise that the trustees might wish to ensure that, if they are otherwise content, you should not:

- a) be the Chairman or Treasurer of the charity;
- b) be a signatory to the charity's cheques or have access to the charity's accounts at banks, building societies etc; or
- c) have any of the charity's property vested you.

This is for the other trustees to decide, although the Charity Commission may impose conditions on a waiver.

12. How will I find out the result? [Back to top](#)

- If you have been granted a waiver, you will be notified in writing with reasons provided
- If you have been refused a waiver, you should be notified in writing, including concise reasons and a warning of the consequences of a disqualified person continuing to act as trustee.

13. Can I appeal the decision? [Back to top](#)

You should be informed on your right to have the decision made reviewed. Any decision taken by the Head of Charity Services to reject an application for a waiver may be reviewed. Any decision not to grant a waiver taken by the Board will not be eligible to be reviewed as decisions involving Commissioners are final.

14. What if I'm disqualified and still act as a Trustee? [Back to top](#)

If you act as a charity trustee or trustee for a charity while disqualified from being such a trustee by virtue of section 72 you are guilty of an offence and liable to a maximum sentence of two years imprisonment or to a fine, or both.

15. Who can I contact for more information [Back to top](#)

The Charity Commission

A: Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG
T: 0845 300 0218
E: enquiries@charitycommission.gsi.gov.uk

The Charity Commission have a telephone helpline for anybody looking for general advice on Charity Commission rules and procedures.

UNLOCK, the National Association of Reformed Offenders

A: 35a High Street | Snodland | Kent | ME6 5AG
T: 01634 247350
F: 01634 247351
E: enquiries@unlock.org.uk
W: www.unlock.org.uk & forum.unlock.org.uk

UNLOCK provides information & advice to reformed offenders to help them overcome the barriers that they are facing because of their criminal convictions.

This information has been produced by UNLOCK's Information & Advice service. It can be viewed as text on the Information & Advice area of www.unlock.org.uk. Copies can also be downloaded as a PDF.

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