

## **Can you lose your charitable status?**

### **How is charitable status regulated?**

In order to be recognised as a charity in law, an organisation must be both established exclusively for charitable purposes as defined in the Charities Act 2011 (for example the advancement of education or the relief of poverty), and be operated for the public benefit. Once assets have been dedicated to a charitable purpose they must always be applied for that purpose, or a charitable purpose similar to it. The principal duty of charity trustees is to ensure that the charity's assets are applied in pursuance of the charitable objects.

The Charity Commission is the registrar and regulator of charities in England and Wales and has a statutory function to determine whether organisations that are eligible for entry on the register of charities can legally be considered charitable. Under section 34(1) of the Charities Act 2011, the Charity Commission must remove from the register any institution which it no longer considers is a charity and any charity which has ceased to exist or does not operate.

### **When could you lose your charitable status?**

The Charity Commission has confirmed to the House of Commons that an organisation would be most likely to lose its charitable status in the case of mistaken registration. This applies when an organisation which has never been charitable has been placed on the register of charities in error. This could happen because the Charity Commission was provided with incorrect information at the point of registration, because the organisation is shown to be a sham, or simply because of an error on the part of the Charity Commission. Whatever the reason for mistaken registration, once it has been discovered, the organisation will be removed from the register. The assets of the organisation will be considered to have never been held for charitable purposes and will remain with the organisation.

In their response to the House of Commons, the Charity Commission stated that an organisation would not lose charitable status simply because the purposes of the organisation were no longer charitable. This could occur as a result of a change in social circumstances. In this instance, the organisation's trustees would be under an ongoing

obligation to secure the effective use of the assets for charitable purposes. This would involve the trustees either changing the objects of the organisation, or applying to the Charity Commission for a cy-pres scheme. A cy-pres scheme will change the purposes for which the organisations asset's can be applied so that they continue to be charitable.

Mismanagement or misconduct will not automatically lead to an organisation losing charitable status. The Charity Commission states that its principal role is to protect charitable assets and secure their application for charitable purposes. The Commission has wide regulatory powers to achieve this (such as freezing assets, suspending or removing trustees and making directions). The Charity Commission will therefore attempt to apply its wide range of powers to help a charity to get back on track and continue its charitable mission, rather than simply dismissing an organisation from the register.

Charities often worry that they will do something that will lead to the loss of their charitable status, but the Charity Commission have made it clear that if things go wrong, they are more likely to intervene and take steps to change a charity's behaviour rather than remove charitable status.

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