



# Investigation Report

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## Investigation of a complaint against the Charity Commission for Northern Ireland

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**NIPSO Reference: 16742**

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## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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## EXECUTIVE SUMMARY

I received a complaint about the actions of the Charity Commission for Northern Ireland (CCNI). The complainant claimed that CCNI published a statutory inquiry report (the SI report) which named him without giving him a chance to comment on its factual accuracy. The report was critical of his actions and he complained it was biased and written in ‘bad faith’.

I accepted the following issues of complaint for investigation:

**Issue 1** – Whether CCNI acted fairly in not providing the complainant with an opportunity to comment on the statutory inquiry report prior to publication; and

**Issue 2** – Whether the report demonstrated bias against him and was written in bad faith.

I found the following:

- i. The CCNI decision to publish the statutory inquiry report without giving the complainant an opportunity to comment on its factual accuracy was unfair. This was because:
  - CCNI departed from its policy regarding the publication of statutory inquiry reports; and
  - the statutory inquiry report itself wrongly conflated the complainant’s actions with those of a trustee.
- ii. The rationale behind the decision to name the complainant was not properly recorded. Therefore there was no evidence that CCNI had adequate regard to the complainant’s right to privacy in respect of his personal information.

Although I have identified maladministration by CCNI I did not find this was sufficient to support a complaint of bias or that the report was written in bad faith. I am satisfied that the complainant sustained the injustice of upset and frustration and the loss of opportunity to comment on the factual accuracy of the report. He also sustained the injustice of time and trouble bringing his complaint to my Office.

In order to remedy the injustice sustained by the complainant, I recommended:

- iii. CCNI apologise to the complainant for the injustices identified in my report and make a payment to him of £500 within one month of the date of my final report.
- iv. CCNI to remove the statutory inquiry report from its website forthwith and correct all factual inaccuracies in relation to the complainant within one month of the issue of my final report.
- v. In order to correct the factual inaccuracies, CCNI to provide the complainant with an opportunity to comment on those amendments relating to him within 14 days of the date of issue of my final report.
- vi. CCNI to reflect in its Dealing with Concerns about Charities policy to ensure that all considerations relating to the publication of personal information of named individuals are fully documented and supported by adequate reasons.
- vii. CCNI consider a review mechanism within its own process of decision making, in the interests of early resolution of concerns

## THE COMPLAINT

1. The complainant was a Trustee<sup>1</sup> of a charity from 2006 until the charity removed him in May 2015<sup>2</sup>. In May 2013 CCNI received evidence of mismanagement in the governance arrangements of the charity and opened a statutory inquiry into its affairs. During the course of the statutory inquiry CCNI removed a separate individual (referred to in this report as the 'Trustee'), as well as the complainant and a number of his colleagues as members and officers of the charity. The Trustee, the complainant and the other individuals affected by this decision appealed to the Charity Tribunal and its decision on these matters was handed down on 3 July 2014. The Charity Tribunal decision made a number of findings of fact regarding the actions of the Trustee but not in respect of the complainant and his fellow trustees. It distinguished between the actions of the Trustee and the actions of the complainant and his colleagues. The complaint made to this Office does not relate to the actions or the decisions of the Charity Tribunal.
2. On 20 January 2015, CCNI published its Statutory Inquiry report (the SI report) into the affairs of the charity on its website. The report defines the group who were subject to regulatory action as '[The Trustee] and his colleagues'. This definition includes five other members of the charity, including the complainant. The SI report contains four critical references to the actions of this group. The complainant stated that these references were factually incorrect and that as a matter of fairness he should have been given an opportunity to comment on the accuracy of the SI report prior to publication. He also complained that the SI report was biased and written in bad faith.

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<sup>1</sup> From approximately Dec 2010 to Sept 2011

<sup>2</sup> The complainant disputes that he was removed as a member of the charity.

## INVESTIGATION METHODOLOGY

3. The Investigating Officer obtained from CCNI all relevant documentation together with its comments and reviewed all relevant legislation.

### **Relevant Standards**

4. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. The general standards are the Ombudsman's Principles of Good Administration<sup>3</sup>.
5. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of CCNI's actions that are the subject of this complaint. The specific standards relevant to this complaint are:
  - The Charities Act NI 2008 (the 2008 Act)
  - The Data Protection Act 1998 (the DPA 1998)
  - The Human Rights Act 1998 (the HRA 1998)
  - CCNI 's 'Publishing our Decisions' (June 2014)
  - CCNI's 'Challenging a Decision of the Commission' ( Jan 2015)
  - CCNI's 'Dealing with Concerns about Charities' (Dec 2015)
6. The relevant extracts of the legislation and these documents are reproduced in the report. I have not included all of the information obtained in the course of the investigation in this report. However, I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.
7. I have taken into consideration detailed submissions made by CCNI and the complainant in response to my draft investigation report dated 20 February 2018. I have, where appropriate, addressed the concerns of both parties but ultimately

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<sup>3</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

the question as to whether maladministration exists is a matter for my determination.

## THE INVESTIGATION

8. My investigation considered whether CCNI acted fairly by failing to provide the complainant with an opportunity to comment on its SI report prior to publication. My investigation also considered whether the SI report demonstrated any bias against him and was written in bad faith. I also considered whether CCNI had adequate regard for the complainant's right to privacy in respect of his personal information when it took the decision to name him in the published SI report.
9. On 20 January 2015 CCNI published its SI report of the investigation into the affairs of the charity on its website. The SI report summarised the regulatory action taken by CCNI and contained the following statement *'On the occasions in this report where references are made to [The Trustee, the complainant and four other individuals] the individuals are referred to as 'The Trustee and his colleagues'. In referring to The Trustee and his colleagues in this manner the Commission does not intend any disrespect to [the others], the aim is to have a short and convenient term of reference'*.
10. The SI report contains a number of references to '[The Trustee] and his colleagues'. The complainant stated that these references impugned him because the Tribunal made findings of fact only in relation to the Trustee and no-one else. He wrote to the Charity Commissioners asking them to remove the report from CCNI website in January 2015, November 2015 and September 2016. He also sought legal advice and his solicitor contacted the CCNI in January 2015. His correspondence of November 2015 was passed to CCNI's Head of Compliance who treated it as a request for action (not a complaint). The Head of Compliance responded on 19 November 2015 by stating that *'he was content that the Commission's statutory inquiry report is accurate, both in terms of the Commission's inquiry and the findings of the Charity Tribunal...and therefore as due process has been followed, this case is closed. I refute the*

*statements in your e-mail and the Commission will not be entering into any further correspondence on this closed matter.'*

11. The complainant contacted my Office, alleging injustice in consequence of maladministration. He complained that the decision to name him in the published SI report without giving him sight of a draft for factual accuracy was unfair and the SI report itself was biased and written in 'bad faith'.

12. The relevant legislation is the Charities Act (NI) 2008 (the 2008 Act). The CCNI is the statutory regulator for charities in Northern Ireland. It was created as a body corporate pursuant to the provisions of section 6 of the 2008 Act. Its functions are set out in section 8 (2) of the 2008 Act. The functions outlined in that provisions which relate to this investigation are set out below:

8(2)...

*'2. Encouraging and facilitating the better administration of charities*

*3. Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein '...*

13. I note that section 9 of the 2008 Act sets out the general duties of CCNI. The relevant duties outlined in section 9(2) of the 2008 Act relating to this investigation are set out below:

*...'3. In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.*

*4. In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed)...*

14. Section 10 of the 2008 Act provides that:

***'The Commission's incidental powers***

*10—(1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its*

*functions or general duties.*

*(2) However, nothing in this Act authorises the Commission—*

*(a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or*

*(b) otherwise to be directly involved in the administration of a charity.*

*(3) Subsection (2) does not affect the operation of section 36 or 37 (power of Commission to give directions as to action to be taken or as to application of charity property).'*

15. Section 22 (6) of the 2008 Act provides for the discretionary power of the Commission to publish a report of its statutory inquiry as follows:

*'Where an inquiry has been held under this section, the Commission may either—*

- a. cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as the Commission thinks fit, to be printed and published, or*
- b. publish any such report or statement in some other way which is calculated in the Commission's opinion to bring it to the attention of persons who may wish to make representations to the Commission about the action to be taken.'*

15. The First Principle of Good Administration requires public bodies like CCNI, to 'Get things right'. This means acting in accordance with the law and having regard to the rights of individuals (including their human rights and rights which arise under the DPA).

16. The Human Rights Act 1998 (HRA) incorporates into UK law the European Convention of Human Rights. Article 8 of the European Convention of Human Rights (ECHR) which is set out at Schedule 1, Part I of the Act states:  
*'1. Everyone has the right to respect for his private and family life, his home and his correspondence.'*

Article 8 is a qualified right and article 8(2) provides for exceptions to this right:  
*'2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'*

Section 6 of the HRA provides that, in relation to acts of public authorities:

*'(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.*

*(2) Subsection (1) does not apply to an act if—*

*(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or*

*(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.'*

17. In order to consider the issue of CCNI's acting in accordance with the law and relevant good practice, I also considered the Information Commissioner's Code of Practice 'Privacy notices, transparency and control' to be relevant to this investigation. This statutory code explains how the provisions of the DPA apply in circumstances where personal data is disclosed. The Code sets out the information which a data controller is required to provide to data subjects in order to fairly process the information they hold. Part II Para 2 of Schedule 1 of the DPA provides:

*'(1) Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless-*

*a. in the case of data obtained from the data subject, the data controller ensures so far as practicable the data subject has, is provided with, or has made readily available to him, the information specified in subparagraph (3) and*

*b. in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that*

*time, the data subject has, is provided with, or has made readily available to him, the information specified in subparagraph (3).*

- (3) *The information referred to in sub-paragraph (1) is as follows, namely-*
- a. the identity of the data controller,*
  - b. if he has nominated representative for the purposes of this Act, the identity of that representative,*
  - c. the purpose or purposes for which the data are intended to processed and,*
  - d. any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.*

18. The CCNI has a publication policy entitled CCNI 'Publishing our Decisions' June 2014 (publication policy). The relevant extracts of CCNI publication policy are set out below:

***'Section 1: Overview:***

*Through publishing the decisions we make, the Charity Commission for Northern Ireland (the Commission) aims to increase openness, transparency and levels of public trust and confidence in the charity sector. Additionally, publishing decisions gives individuals and organisations that are affected by a decision an opportunity to find out more about it and, if necessary, to provide comments or make representations. There is no statutory requirement for the Commission to publish every decision it makes and publication is, in the majority of cases, at the Commission's discretion. The Charities Act (Northern Ireland) 2008 does, however, set out certain circumstances where the Commission is required to publish its decisions or intentions unless there is a good reason not to. In addition, we intend to publish decisions where there is sufficient justification, it would be in the best interests of the charity, and publication is in the public interest.'*

***Section 3.5 Challenging a decision***

*If you disagree with the decision we have made, there are a range of options available to challenge that decision. For further information on the options available, depending on the particular decisions, refer to our guidance challenging a decision of the Commission.*

#### **Section 4: Programme specific examples**

*The following tables set out examples of the approach taken to publishing decisions made under particular programmes.*

| <b><i>Decision</i></b>                    | <b><i>What will be published</i></b>   | <b><i>Possible justification for diverging from the policy</i></b>   |
|---|--|--|
| <i>The outcome of a statutory inquiry</i> | <i>A statutory inquiry report will be published on the Commission's website. Statutory inquiry reports provide information on the inquiry process, the issue that was investigated, and any actions taken by the Commission.</i> | <i>If the publication may be detrimental to public interest or confidence in the charity, if an individual's security would be put at risk, or where publication may prejudice ongoing or pending legal proceedings.</i> |
| <i>To authorise an ex-gratia payment</i>  | <i>A copy of the section 47 order authorising the transaction will be published on the Commission's website.</i>   | <i>If the publication may be detrimental to public interest or confidence in the charity or if an individual's security would be put at risk.</i>  |

19. The Investigating Officer asked CCNI why the complainant's email correspondence of 15 and 23 November 2015 were treated as a request for action rather than a complaint. CCNI did not respond adequately to this investigation enquiry. However, CCNI did confirm in response to the draft report issued on 20 February 2018 that on 21 January 2015 the complainant's legal representative wrote to the Commission about the SI report in respect only of the wording of 2.6 of the report and no other issue was raised at that time.
  
20. The Investigating Officer also enquired as to review mechanisms in place in respect of CCNI's decisions. CCNI responded there were many options available including raising a formal complaint with the Commission; seeking legal advice and raising a defamation action as well as complaining to the Information

Commissioner (ICO) and other options. The CCNI guidance entitled 'Challenging a decision of the Commission' January 2015 (Decision Review Policy) does not provide for a decision review in respect of the decision to publish a SI report or the decision to name a person within that report. It is accepted by the Commission that the Decision Review Policy was not a mechanism open to the complainant. I have commented on the issue of a review mechanism in the conclusion to this report.

21. The Investigating Officer requested details of CCNI's data protection policy and was referred to the Data Protection section on its website which states:

*'Any information you provide to the Commission will be held securely and in accordance with the rules on data protection. Your personal details will be treated as private and confidential and safeguarded, and will not be disclosed to anyone not connected with the Commission unless you have agreed to its release, or in certain circumstances where:*

- *we are legally obliged to do so*
- *it is necessary for the proper discharge of a statutory functions*
- *it is necessary to disclose this information in compliance with our function as the regulator of charities where it is in the public interest to do so.*

*We will ensure that any disclosure made for this purpose is proportionate, considers your right to privacy and is dealt with fairly and lawfully in accordance with the data protection principles of the Data Protection Act 1998'*

22. I have examined the guidance on CCNI's 'Dealing with Concerns about Charities' dated December 2015 (DCAC). Section 5 of the DCAC guidance outlines CCNI's approach in reporting the outcome of a statutory inquiry. The relevant extracts from the DCAC are highlighted below.

*'Reporting on the outcome of a statutory inquiry helps to inform the public about a particular case and any action that has been taken to protect the charity, its assets, or its beneficiaries. Through increasing accountability and transparency, statutory inquiry reports are a key tool in promoting compliance, and enhancing public trust and confidence in the charitable sector. Additionally, statutory inquiry*

*reports generate learning for other organisations to help them avoid making similar mistakes.'*

23. I refer to Section 5.1 which states:

*'The Charities Act gives the Commission discretion to decide whether or not to publish statutory inquiry reports or such other statements of the result of a statutory inquiry as it sees fit, however, a report will usually be published unless there is good reason not to. This is in the interests of promoting public trust and confidence and in keeping with the Commission's role as an open and transparent regulator.'*

24. I refer also to Section 5.2 which states as follows:

*'There may be occasions when the Commission delays the publication of a statutory inquiry report or decides not to publish a report. Any decision to delay or not publish a statutory inquiry report will be balanced against the public interest in publishing the results. In the publication of statutory inquiry reports, we will always have regard to the **principles of best regulatory practice**....in some cases we may publish an anonymised or summary report...'*

25. I refer to Section 5.5 which sets out CCNI's policy regarding the sharing of Statutory Inquiry reports prior to publication as follows:

*'Before a statutory inquiry report is published, the Commission will usually give the charity, and anyone named in the report, the opportunity to comment on the factual accuracy of its content. There are circumstances when it may not be appropriate to share a report for comment in advance of its publication, for example, where the factual accuracy of the content has already been verified by the Charity Tribunal. Generally the individual who raised the original concerns is not entitled to comment on the report in advance of its publication, unless they are named in the report or are a trustee of the charity in question. When a statutory inquiry report is shared with individuals in advance of its publication the following conditions apply:*

- *only comments on the factual accuracy of the information in the report will be considered*

- *individuals will be given a specified time period within which to provide a response*
- *comments must be submitted in writing*
- *the report is to be kept strictly confidential and information contained must not be shared with anyone else*

*Following receipt of comments the statutory inquiry report will be finalised and published including details of any amendments made as a result of the comments received.'*

26. The CCNI has an enquiries manual. The Investigating Officer reviewed the relevant extract from this manual which states:  
*'Following the conclusion of a Statutory Inquiry, enquiries staff will compile a statutory inquiry report. This policy details the preferred option of publication in accordance with section 22(6) of the Act. Statutory inquiry reports provide information on the inquiry process, the issue that was investigated, and any actions taken by the Commission. The Commission may deviate from this course of action if the publication may be detrimental to public trust and confidence in the charity, if an individual's security would be put at risk, or where publication may prejudice ongoing or pending legal proceedings. In these instances, the Commission shall document this by way of a decision log.'*
30. As part of the investigation enquiries, the Investigating Officer reviewed the Charity Tribunal's directions of 18 December 2013 and the relevant extracts are as follows:  
*'10. The Tribunal raised with the parties as to whether or not it would be possible for the appellants, other than [the Trustee] to agree to be bound by the outcome of the decision in [his] appeal. [Others] indicated that they were willing to be so bound. However, [another individual] raised the possibility that such an agreement would be problematical"<sup>4</sup>*
13.  
3. *"Pursuant to Rule 12 (c) of the Charity Tribunal Rules (Northern Ireland) 2010, all the appeals, both the current appeals and the new appeals, are consolidated*

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<sup>4</sup> Para 10 Directions Hearing of 18 December 2013

*on the ground that they raise issues which are the same or similar.”<sup>5</sup>*

31. As part of the investigation enquiries, the Investigating Officer also reviewed the Charity Tribunal decision of 3 July 2014 and the following are paragraphs relevant to the consideration of the complaint:

*‘...8. On the occasions in this Decision when reference is made to those of the appellants excluding [the Trustee], those appellants shall be referred to as ‘the complainant and his colleagues’. In referring to the complainant and his colleagues in this manner the Tribunal does not intend any disrespect [...] Rather, the Tribunal’s wish is simply to have a short and convenient term of reference.*

*152. On the last day of the main part of the hearing, the Tribunal raised two issues by way of case management under the Rules. The issues were, first of all whether or not, the complainant and his colleagues were officers or agents of the charity, such that they might be removed by the Respondent from the position of officers and agents and, therefore, from the position of members. Secondly, whether the complainant and his colleagues were given the notice period required by the legislation before the orders in respect of them were made. The Tribunal had invited the respondent to clarify its position.*

*153. [One individual] said that these were points which the Respondent had been aware of and was alive to. [He] indicated that he considered that the Respondent had a fairly and properly reasoned position on those points. However, [he] said that, without addressing or commenting on the points in question, he had instructions, under Rule 24 of the Rules, not to oppose the appeals which had been brought by the complainant and his colleagues. [He] sought the Tribunal’s permission to withdraw the Respondent’s opposition to the appeals of the complainant and his colleagues. Needless to say, [another individual] did not oppose this application.*

*154. In delivering its decision on this application, the Tribunal noted the points that it raised with the parties. The Tribunal noted that the Respondent had not sought to make any arguments or lead any evidence on these questions. The*

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<sup>5</sup> Para 13(3) Directions Hearing 18 December 2013

*Respondent rather had applied to withdraw its opposition to the appeals and Mr [...] did not object to that. The Tribunal was conscious of the need to make a cost effective disposal of the matter and in the circumstances, having regard to the foregoing matters, the Tribunal acceded to the application made by the Respondent.*

*155. In those circumstances, the Tribunal allowed the appeals of the complainant and his colleagues and quashes the Orders made in respect of them.'*

32. The Investigating Officer reviewed the SI report and noted that at paragraph 1.10 it outlines CCNI's definition of '*[the Trustee] and his colleagues*' which includes the complainant and four other colleagues. At page 3 it states '*Some material was not considered by the Tribunal, therefore remains untested and, in some cases, is disputed by some of those involved.*' In addition the relevant references which include the complainant in the SI report are re-produced below:

*'This decision was made due to the serious issues identified during the investigation of the governance of the charity whilst under the chairmanship of [the Trustee] and subsequently. These actions, by [the Trustee] and his colleagues, included freezing the charity's bank account, attempts to divert assets, restriction of access to a lifeboat, removal of collection tins and actions to undermine the Charity's board.'* Paragraph 2.3

33. Further, paragraph 2.4 which is reproduced below, is also relevant to the investigation:

*'Those actions, combined with the actions of [the Trustee] and his colleagues in 2012 and 2013, were investigated in further detail and led to the Commission finding what it considered to be sufficient evidence to warrant the removal of [the Trustee] and his colleagues from positions within the charity.'*

34. I refer also to paragraphs 3.3 and 3.4 of the SI report:

*3.3 'The purpose of the inquiry was to resolve historic administration and governance issues, which were impacting on the ongoing management of the charity. The charity bank account remained frozen, its accounts were overdue filing, bogus social media pages controlled by [the Trustee] and his colleagues*

*continued to mislead the public and stakeholders as to the status and activities of the charity, and significant potential funding for a new station at Antrim was still withheld and at risk.'*

*3.4 'Minutes for board meetings were produced and distributed but trustees did not as a rule endorse or reconcile minutes properly at the commencement of the subsequent meetings, leaving themselves open to later dispute and reinterpretation of what had occurred been agreed or even discussed on the part of [the Trustee] and his colleagues.'*

35. The CCNI stated in its response to investigation enquiries that it considers it acted in accordance with its publications policy. CCNI also stated that it acted fairly by not providing the complainant with an opportunity to comment on the SI report prior to publication because the facts in relation to the complainant had already been tested by the Charity Tribunal.
36. The Investigating Officer made enquiries about the process which led to the decision to name the complainant in the published report. The Investigating Officer also asked whether CCNI applies standard criteria when deciding to publish a SI report. The CCNI responded:  
*'The Commission has a policy on publishing statutory inquiry reports.... The legislation states that the Commission may issue a report. Our policy is that a statutory inquiry report will be published unless there is a justification not to. Each publication is considered in its own right.'*
37. The Investigating Officer enquired of CCNI why the complainant was not given an opportunity to comment on the factual accuracy of the SI report prior to publication. It stated:  
*'...the Commission will usually give the charity, and anyone named in the report, the opportunity to comment on the factual accuracy of its content..... However, there are circumstances where it may not be appropriate to share a report for comment in advance of its publication, for example, where the factual accuracy of the content has already been verified at the Charity Tribunal. As the facts in relation to the complainant had already been tested at Charity Tribunal level, the*

*complainant did not receive a copy of the report prior to publication, in fact no individual did. The Commission has therefore acted within its stated policy.'*

38. The Investigating Officer enquired as to which facts (in relation to the complainant) were tested at Tribunal level and CCNI responded as follows:
- 'The evidence presented to Tribunal in respect of the complainant was substantial.....the Commission is content that the evidence considered by the Tribunal included the evidence provided by the Commission in respect of the complainant. While the Tribunal report refers more specifically to [the Trustee], you will note the following from its findings:*
- "for reasons that will become apparent in terms of the disposal of the appeals brought by the complainant and his colleagues, the Tribunal does not consider it necessary or appropriate to set out in detail the reasons that were contained in the respondent's draft statement of reasons of 25 September 2015. Suffice it to say, the statement of reasons overlap to some degree with the matters contained in the statement of reasons concerning [the Trustee], but in large measure, they also comprise different and additional reasons"*<sup>6</sup>
- "Although the Tribunal does not here record all of the evidence and the submission received by it, it confirms that it has considered all of that evidence and those submissions."*<sup>7</sup>
- The Commission, therefore, is content that all of the evidence submitted by the Commission in its bundle and submissions was considered by the Tribunal.*
- "Further, having regard to the evidence discussed in detail in this decision above, the Tribunal considers that [the Trustee] was responsible for and privy to each of these matters and further that his conduct has contributed to each of them and facilitated each of them"*<sup>8</sup>
- It is clear from paragraph 170 (above) that the Tribunal is not stating that [the Trustee] looks solely responsible for the mismanagement, but that he was responsible for and privy to each the matters.*

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<sup>6</sup> Para 18 q

<sup>7</sup> Para 25 Tribunal Decision

<sup>8</sup> Para 170 Tribunal Decision

*The Commission attaches the complainant's witness statement presented to the Tribunal dated 31 January 2014, paragraph 9 of the complainant's witness statement reads:*

*"[The Trustee] always acted with the permission and at the request of members and senior officers in good standing, for the protection of the beneficiaries, the charity and the membership".*

*This is just an example of the evidence within the bundles highlighting that the complainant and others accepted that the actions of [the Trustee] were at the complainant's request and were on his behalf.*

39. The CCNI also stated:

*'I have previously referred you to paragraph 9 of the complainant's witness statement which he states he accepts that [the Trustee's] actions were done at his request and on his behalf. However, there is further information to support this position directly from the Tribunal. Prior to the substantive hearing, in March 2014, there were a number of directions hearings recording the two sets of cases. I have attached the direction from the Charity Tribunal which records the directions hearing of 18 December 2013. There are three specific paragraphs from the notes of the hearing which are particularly relevant to this case:*

*"The Tribunal raised with the parties as to whether or not it would be possible for the appellants, other than [the Trustee] to agree to be bound by the outcome of the decision in [the Trustee's] appeal. The complainant [and 2 others] indicated that they were willing to be so bound. However, Mr [...] raised the possibility that such an agreement would be problematical"<sup>9</sup>*

*"Pursuant to Rule 12 (c) of the Charity Tribunal Rules (Northern Ireland) 2010, all the appeals, both the current appeals and the new appeals, are consolidated on the ground that they raise issues which are the same or similar."<sup>10</sup>*

*While it did not transpire that there was the ruling in respect of the complainant, as the Commission withdrew its opposition to his appeal (see para to .4 below), it is clear from this statement from the complainant, recorded by the Charity*

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<sup>9</sup> Para 10 Directions Hearing of 18 December 2013

<sup>10</sup> Para 13(3) Directions Hearing 18 December 2013

*Tribunal that he agreed to be bound by the Charity Tribunal findings in respect of [the Trustee].*

40. The Investigating Officer made further enquires as why CCNI did not put the specific individual references to the complainant for his comments. The CCNI stated:

*'There is a misunderstanding in this point in that it should be noted that the Statutory Inquiry report is the summation of the thorough investigation by the Commission which included a vast amount of correspondence between the Commission and [the complainant]. [The complainant] clearly agreed to be bound by the Charity Tribunal findings in respect of [the Trustee]. As the report quotes only the Tribunal's findings, there was no scope for comment as to factual accuracy. The contents of the Tribunal decision are a matter of fact..... '*

41. The Investigating Officer enquired further as to whether the draft SI report was shared with any party prior to publication. The CCNI responded by referring to its policy outlined at paragraph 22 above and stated:

*'In keeping with this policy, the [...] report was shared with the charity prior to publication. This is because the report included information on the charity which had not been included within the Charity Tribunal decision. As a result the charity was asked to provide written comment on that part of the report only. However, there are circumstances where it may not be appropriate to share a report for comment in advance of its publication, for example, with the factual accuracy of the content has already been verified at the Charity Tribunal. As the facts in relation to the complainant had already been tested at Charity Tribunal level, [the complainant] did not receive a copy of the report prior to publication, in fact no individual did. The Commission has therefore acted within its stated policy.'*

42. The Investigating Officer asked how CCNI evaluate whether or not to let a person who is named in a SI report have sight of the report prior to publication. It stated that:

*'Where there are clear findings from the Charity Tribunal and substantial correspondence already held by the Commission then there will be a consideration of whether further correspondence is required from any named*

*parties. In this case we determined that the voluminous correspondence already received from [the complainant], his witness statements and other material submitted to the Tribunal as evidence plus the Tribunal report itself, was sufficient to negate reverting to [the complainant] on matters that had already been concluded.'*

43. The Investigating Officer sought from CCNI details about its policies and procedures regarding its duties pursuant to the DPA 1998. CCNI directed the Investigating Officer to the privacy notice on their website which states: *'Your personal details will be treated as private and confidential and safeguarded, and will not be disclosed to anyone not connected with the commission unless you have agreed to its release or in certain circumstances where:*

- we are legally obliged to do so*
- it is necessary for the proper discharge of our statutory functions*
- it is necessary to disclose information in compliance with our function as a regulator of charities where it is in the public interest to do so*

*We will ensure that any disclosure made for this purpose is proportionate, considers your right to privacy and is dealt with fairly and lawfully in accordance with the data protection principles of the Data Protection Act 1998.'*

44. The Investigating Officer asked CCNI for the decision log recording the contemporaneous rationale for the decision to name the complainant. The CCNI stated the rationale for this decision was not recorded, neither were the data protection and article 8 considerations recorded.

45. The Investigating Officer sought confirmation of CCNI's mechanisms for a person named in a SI report to seek a review of the decision to name them. The CCNI stated:

*'There is no statutory requirement to publish a report, and no appeal to a decision to publish a report, therefore there is no review mechanism available.'*

The CCNI also confirmed that the complainant's email correspondence of 15 and 23 November 2015 was not dealt with under its internal complaints procedure as it was considered as a request for action rather than a request for a decision

review. In response to my draft report dated 20 February 2018, CCNI confirmed that its decision review policy sets out which specific statutory provisions the process covered and the decision to publish a report along with the naming of an individual is not a statutory decision reviewable by the Charity Tribunal.

Therefore CCNI could not have considered a request for review under this policy.

46. The Investigating Officer asked CCNI to explain how it took the complainant's right to privacy into account when it published the SI report naming him. The CCNI acknowledged the complainant's article 8 rights were engaged by naming him in the SI report. It stated:

*'However, the Court has limited the scope of this right by taking the view that: "the claim to respect for private life is automatically reduced to the extent that the individual himself brings his private life into contact with public life or into close contact with other protected interests"<sup>11</sup>*

*This illustrates how convention rights, and this Article in particular, are about balancing rights and responsibilities. Before taking decisions affecting people's rights under Article 8, the Commission considers all the competing interests.....The publication of the statutory inquiry report [...] was an act in furtherance of the Commission is fulfilling its legal obligations under the Charities Act (NI) 2008.*

*In response to your questions:*

*[The complainant] is identified as one of the original parties who raised concerns regarding the governance and administration of [the charity]. As a rule, it is the Commission's position that it does not disclose the identity of those persons who submit a concern. However, the fact the complainant was one of the original concerned parties is in the public domain (see BBC News report 2 April 2014). Therefore, the complainant can have no expectation of privacy in relation to the publication of this fact. Reference to the Charity Tribunal proceedings and the information in the report directly relating to the decision of the Tribunal is also not a breach of the complainant privacy as this information is also in the public domain, published on the Court Service website. As one of the appellants of the proceedings relating to [the charity] which were heard in public, [the complainant]*

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<sup>11</sup> Extract from Blackstone's guide to the Human Rights Act 1998 John Wadham and Helen Mountfield Second Edition 2001

*can have no expectation of privacy with regard to both proceedings and their published outcome. Consequently, the Commission contends that we did consider the complainant's Article 8 rights and found that they had not been affected through the investigation and publication of our report. [The complainant] voluntarily brought the concerns to the Charity Commission and voluntarily brought an appeal to the Charity Tribunal as an affected person. The Charity Tribunal is a public hearing and, therefore, [the complainant] could have no expectation of privacy with regard to those proceedings.*

47. The Investigating Officer asked CCNI to explain how naming the complainant in the SI report is an act in furtherance of CCNI's legal obligations under the Charities Act (NI) 2008. The CCNI responded:
- ' Section 22 (6), which the Commission may follow, allows the Commission to consider publishing a report as it thinks fit. Considering all of the above answers, the Commission is content that it was appropriate to name the complainant.'*
48. The Investigating Officer also asked CCNI what steps it took in order to ensure that the SI report accurately reflected the findings of the Charity Tribunal. The CCNI responded as follows:
- 'The Commission reviewed the Charity Tribunal proceedings, our own evidence and the voluminous amounts of correspondence held in this case and we were, and are, content that the report is accurate. No information has been provided to the Commission to counter the findings of the Tribunal or our report. It should be reiterated, however, that there is no means to reopen or revisit findings of the Tribunal other than by legally challenging a decision. No legal challenge to the decision of the Charity Tribunal has ever been submitted in this case.'*
49. I note that that the time of writing this response (February 2017) CCNI were correct that no appeals had been submitted as the appellant had been refused leave to appeal. However, I note that an appeal was subsequently submitted in November 2017.

50. The Investigating Officer sought the details of CCNI criteria for determining whether to name a person in a SI report and how those criteria were applied in the complainant's case. The CCNI responded:
- 'The Commission named those responsible for actions against the governance of the charity and have put the assets of the charity at risk. In general, the Commission will only name an individual when the evidence supports the findings of the Commission and naming is justified.'*
51. The Investigating Officer made enquires as to the competing public and private interests CCNI identified in relation to the decision to name the complainant in the SI report. The CCNI responded:
- '[The complainant] had already put himself into the public arena through his appeals to the Charity Tribunal (as an affected person in [the Trustee's] appeal) and is clearly named in a published Tribunal Decision. He also recorded a video which was shared on social media detailing the findings within this case, or at least his version of the findings. The Commission considered that charity membership, stakeholders and funders required assurance following years of debate and confusion regarding the activities of its members during this internal dispute. Through his own actions, [the complainant] had already placed his name into the public domain in connection with this inquiry.'*
52. The Investigating Officer requested that CCNI describe the balancing exercise undertaken in the assessment of these public and private factors. The CCNI responded:
- 'The key decision to name [the complainant] was that the Commission was content with the vast amount of evidence it held to support the findings in the report, and secondly that it was important for the charity, and its stakeholders and funders to know that those responsible for the serious actions within the charity were named. The charity, in taking action to remove those members, could satisfy its funders and other stakeholders that it was now in a position to move forward, beyond this dispute. Prior to publication we considered that it was appropriate to name the relevant parties, considering all of the above.'*

53. The Investigating Officer also sought to clarify what factors were identified by CCNI in favour of and against naming the complainant. The CCNI responded: ‘See 1.iv above’<sup>12</sup>

## **Analysis and Findings**

### **Issue 1 – Did CCNI act fairly by naming the complainant in its published report without providing him an opportunity to comment?**

54. The complainant appealed to the Charity Tribunal against a CCNI decision dated 25 October 2013, which terminated his membership of the charity. When the matter came for hearing in March 2014, CCNI withdrew its opposition to his appeal and the Tribunal removed the order made against him. The Tribunal’s decision on the appeals was published in July 2014. At the hearing in March 2014 CCNI made an application to withdraw its opposition to the complainant and his colleague’s appeals. The Tribunal acceded to the CCNI application. I consider therefore, that the complainant had no reason to anticipate that he would be the subject of adverse comment in CCNI’s report of these matters which was published in January 2015.
55. Section 5.5 of CCNI’s ‘Dealing with concerns about Charities’ policy states: *‘Before a statutory inquiry report is published, the Commission will usually give the charity, and anyone named in the report, the opportunity to comment on the factual accuracy of the report’.*
- The CCNI stated that it did not give the complainant an opportunity to comment on the SI report because the *‘facts in relation to the complainant had been tested at Tribunal level,’* and also that it was satisfied the complainant accepted in his witness statement to the Tribunal<sup>13</sup> dated 31 January 2014 that *‘[The Trustee] always acted with the permission and at the request of members and senior officers in good standing, for the protection of the beneficiaries, the charity and the membership’.* It also stated in response to my draft report that the

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<sup>12</sup> The reasons outlined in paragraph 46

<sup>13</sup> Which was not admitted into evidence by the Tribunal

complainant agreed at a directions hearing on 18 December 2013 *'to be bound by the outcome of the decision in of [the Trustee's] Appeal'* and not as wrongly asserted by it that the complainant had agreed to be bound by the Charity Tribunal findings in respect of the Trustee.

56. The complainant complained to my Office of unfairness. I refer to the Third Principle of Good Administration which requires public bodies to be 'Open and Accountable' and to be transparent in their dealings with the public. I consider that in circumstances where a person is adversely affected by a decision, fairness and good administrative practice requires that they are informed in advance as to how the decision affecting them will operate and given an opportunity to effectively participate in the process. I conclude therefore that the complainant had a right to know in advance that his name would be published in the SI report and be given a reasonable opportunity to comment on the factual accuracy of the report.
57. I do not consider CCNI's characterisation of the evidence as 'tested' accurately reflects the Tribunal's assessment of all of the evidence submitted by CCNI in relation to the complainant. I accept the Tribunal did consider all the evidence submitted in the appeal. However it did not make a finding or ruling on this evidence relating to the complainant or his colleagues because CCNI's opposition to their appeals was withdrawn, and this application was acceded to by the Tribunal.
58. The failure to inform the complainant in advance as to the intention to publish the SI report and to give him an opportunity to respond to relevant extracts in a draft was unfair and failed to meet the requirements of the Third Principle, 'Being Open and Accountable'. I consider fairness required that the complainant be invited directly to comment on factual accuracy before publication of the SI report. Where specific facts are disputed and the evidence in relation to those facts has not been ruled upon, fairness also requires that this should have been recorded clearly in the SI report.

59. I note that CCNI have stated that *'the complainant agreed to be bound by the outcome of the decision in of [the Trustee's] Appeal.'* The Investigating Officer and I have reviewed the Tribunal's directions and there is no direction in these terms. I am unable to accept, therefore, that the complainant agreed to be *'bound'* by the Charity Tribunal's findings in respect of the Trustee and CCNI have accepted that the correct quote is that the complainant accepted *'to agree to be bound by the outcome of the decisions in [the Trustee's] appeal'*.
60. I note that CCNI have stated that it took appropriate steps in order to ensure the factual accuracy of the matters set out in its SI report. I note, in particular, CCNI's statement that *'where the report details the actions of individuals, including the complainant, it is an almost verbatim lift from the Charity Tribunal decision of 3 July 2014. This highlights the Commission's work to ensure that the contents of the report were based on factual information, which had been subject to legal review'*. The Investigating Officer reviewed the Charity Tribunal findings. I have also reviewed these findings. I am unable to concur with this statement. The Tribunal made findings of fact and a determination (decision) in respect of the Trustee's position, as the CCNI removed its objections to the complainant's and his colleague's appeals.
61. The Fourth Principle of Good Administration states that public bodies should always treat people fairly and with respect. It also states that when taking decisions public bodies should behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned. CCNI have explained it did not share the draft statutory inquiry report with the complainant prior to publication. CCNI have stated the criteria set out in Dealing with Concerns about Charities policy, for not having to share the draft with the complainant, were met in this case. Namely that *'there are circumstances when it may not be appropriate to share a report for comment in advance of its publication, for example, where the factual accuracy of the content had already been verified at the Charity Tribunal'*. I consider this is not a valid reason as the Tribunal had not ruled on the evidence relating to the complainant. Therefore CCNI have departed from their Dealing with Concerns about Charities document which states that

reports would usually be shared for factual accuracy with anyone named in the report where, for example, the accuracy of the content has been verified at the Tribunal. Following the issue of my draft Investigation Report, CCNI stated that 'Dealing with Concerns about Charities' is a guidance document. It also stated that its definition of verified is the 'simple English definition' and stated that the 'mismanagement issue was verified through the Charity Tribunal process'. In my view, 'verified' in this context means evidence tested and verified by the Charity Tribunal and for the reasons outlined above, CCNI's actions amount to maladministration.

62. I am satisfied the complainant was denied an opportunity to participate in a decision-making process which adversely affected him as the publication of the SI report named him. I find this failure was unfair to him and falls below the standard of good administrative practice as required by the Fourth Principle. That is because in this instance the Tribunal had not verified the accuracy of the content of the SI report. This failure constitutes maladministration. In response to my draft Investigation Report, the complainant stated that the draft SI report was also shared with a named Trustee. Following investigation enquiries, I have established that the report was shared with this individual in his capacity as a representative of the charity.
63. The publication of his name and the lack of opportunity to comment in the factual accuracy of the report caused the complainant the injustice of upset and frustration and time and trouble having to bring a complaint to my Office.
64. In response to my draft investigation report the complainant referred to the '*victim impact statement*' he had previously supplied to my Office as evidence of the '*real and tangible harm*' he had suffered. The complainant asserts both he and his family have suffered and that he has sustained financial loss as a result of the CCNI publication of the SI report and its contents. This evidence has been considered as part of the investigation. I remain of the view that the complainant has sustained the injustice referred to in paragraph 63 above. He has claimed that his reputation has been damaged as a result of CCNI's actions and he has suffered loss. As indicated to the complainant on several occasions during this

investigation, I am unable to make a finding of defamation as this is a matter for the court. I am statutorily barred from investigating matters where an alternative legal remedy exists, as in this case, in relation to the complainant's claim for reputational damage.

65. The CCNI's approach in dealing with issues which arise in the course of its regulatory activities involves the exercise of professional judgement by its officers. The exercise of this discretion inevitably involves a high degree of subjective judgement by individuals with considerable expertise in this specialised area. I am not authorised to question the merits of a discretionary decision taken by a body within my jurisdiction unless the administrative process leading to a decision is attended by maladministration.
66. As part of my investigation I have considered CCNI's administrative process in order to establish how it arrived at the decision to name the complainant in the published report. In particular, I have examined whether CCNI process took into consideration all the relevant factors before this decision was made, whether the decision was proportionate, took into consideration his rights to privacy and was appropriate in all the circumstances.
67. In response to investigation enquiries, CCNI advised that its process for publishing SI reports is documented in its Enquiries Manual (the Manual). The Manual states:  
*'At the conclusion of a statutory inquiry enquiries staff will compile a statutory inquiry report. This policy details the preferred option of publication in accordance with section 22(6) of the Act. Statutory Inquiry reports provide information on the inquiry process, the issue that was investigated, and any actions taken by the Commission'*
68. I note the Manual provides no additional guidance for its enquiries staff on naming individuals. CCNI also confirmed in response to investigation enquiries that it does not have a specific policy about naming individuals within its SI report. I note that the development of guidelines, policies and procedures that are adequate and fit for purpose is an ongoing process within CCNI, and that this is carried out by teams in addition to their core duties. I welcome this initiative and

am mindful that this is an ongoing process in a small organisation with limited resources and a wide remit.

69. The First Principle of Good Administration requires public bodies to 'Get it Right'. This Principle requires these bodies to act in accordance with the law and established policy and procedures. The First Principle also requires public bodies to have regard to the right of individuals (including their human rights). The power to publish SI reports under section 22 of the 2008 Act is a power of the Charity Commissioners. In arriving at a decision to publish a SI report and to name an individual, CCNI must take account of an individual's rights. In this instance, CCNI clearly were required to have due regard to and respect for the complainant's right to privacy and to the protection of his personal data. However, the complainant should raise his concerns in this regard with the ICO.
70. In response to my draft investigation report the complainant stated CCNI's failure to have due regard to and respect for his right to privacy and the protection of his personal data demonstrated systemic maladministration which should be reported to the Attorney General pursuant of my powers under Section 54 of the Public Services Ombudsman Act 2016. Section 54 provides me with the power to request that the Attorney General seeks the relief of the High Court where I consider there is systemic maladministration by a listed authority. The consideration of a request to the Attorney General is at my discretion. I will consider the complainant's request outside of this investigation as it is not a matter for consideration under section 5 of the 2016 Act.
71. In circumstances where a public body is required to make a decision affecting a person's rights or entitlements, I consider that good administrative practice requires clear consideration of the issues recorded to see how the decision is arrived at and who made the decision. My investigation found that the decision to publish the SI report and to name the complainant was made by CCNI's Head of Compliance. In response to investigation enquiries, CCNI confirmed there is no record of how the Head of Compliance evaluated the complainant's rights in respect of his private and personal information. CCNI also confirmed that the Commissioners were advised in November 2014 and in December 2014 that the

report was being drafted for intended publication. I note also that although not an issue which forms part of the issues of investigation in this case, that the Charity Tribunal has ruled on the delegation by CCNI of its functions to its staff where there is no statutory authority for delegation, as in this case.

72. In order to assess CCNI meeting the First Principle of Good Administration, my investigation also considered whether CCNI had adequate regard for the complainant's rights to privacy<sup>14</sup> in respect of his personal information when it took the decision to name him in the SI report.
73. The First Principle of Good Administration 'Getting it Right' states that public bodies should comply with the law and have regard to the rights of those concerned. They should follow their own policy and procedural guidance whether published or internal. I find that the decision to name the complainant without giving him an opportunity to comment on the factual accuracy of the SI report did not meet the standard required by this principle. CCNI failed to follow its policy which stated that it normally asks persons named in SI reports for their comments to ensure factual accuracy. In this case CCNI departed from this policy for a reason which, when tested by my investigation, was ill founded, namely that the evidence in relation to the complainant was tested by the Charity Tribunal, which did not occur.
74. I am also satisfied that the maladministration identified has caused injustice to the complainant in that he sustained the injustice of upset and frustration at the publication of his name in a SI report.

**Issue 2 – Whether the CCNI statutory report demonstrates bias against the complainant and was written in bad faith?**

75. The complainant claimed that the SI report was biased against him and was written in bad faith. I have considered the SI report and I find that it does not accurately reflect the Charity Tribunal's findings as it wrongly conflates the actions of the Trustee with those of the complainant and his colleagues.

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<sup>14</sup> Both his rights under the DPA and Article 8 of the European Convention on Human Rights

However, I do not consider that this alone is sufficient to sustain a complaint of bias or the report having been written in bad faith.

76. In response to my draft investigation report the complainant provided evidence to support his assertion that the report was biased and written in bad faith. Bias is defined as an *'inclination or prejudice for or against one person or group, especially in a way considered to be unfair'*<sup>15</sup>. I have considered the complainant's submission. I carefully considered the issue of the apologies given in a different context by the CCNI but I do not consider this is sufficient evidence of bias. I am also mindful that the CCNI gave evidence of a similar approach to sharing draft SI reports in an unrelated matter which supports its assertion to me that there is no evidence of bias or bad faith.
77. I have reviewed the process which led to the complainant being named in the SI report. I have found no evidence of bias or that the SI report was written in bad faith. I do not therefore uphold this aspect of the complaint.

## **Responses to my draft Investigation Report**

### The complainant

78. The complainant submitted that the former Committee for Social Development (DSD Committee) found that the failure by CCNI to share the draft SI report was procedurally unfair. Following further enquiries, I have established that the DSD Committee did not investigate or prepare a report in relation to this issue. There is evidence that the complainant wrote to the Committee expressing his concerns about being named in the draft SI report. The DSD Committee then wrote to CCNI and 'expressed concern' that those named in the report did not have sight of it prior to publication. The DSD Committee also sought clarification from CCNI regarding its processes and following this, no further action was taken by the DSD Committee.

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<sup>15</sup> <https://en.oxforddictionaries.com/definition/bias>

79. The complainant also brought to my attention ongoing litigation in this jurisdiction of which CCNI is a party. I note this is separate action and I am concerned not to cause prejudice to these ongoing court proceedings. The proceedings relate to issues which are not the subject matter of the complaint to my Office. However, the backdrop to the complaint and the ongoing proceedings are the same.
80. The complainant also stated *'the report into the statutory inquiry in my case has been replicated with other charities in other equally contentious circumstances...'* I have investigated only his complaint of injustice in this case.
81. The complainant further stated that he and his family suffered *'real and tangible harm'* as a result of CCNI's decision to publish the draft SI report. I have made further enquiries regarding this assertion. I have not been provided with sufficient medical or other evidence to support this contention.
82. Finally, the complainant raised an issue about the report which was shared with the ICO by CCNI. The complainant states it was a 'substantially different' draft report that was shared. This is a matter for the ICO and is not part of my investigation.

### CCNI

83. CCNI stated 'there is no legislative requirement within the Charities Act (Northern Ireland) 2008 (the Charities Act) to provide an affected person with an opportunity to comment on a draft SI report. CCNI referred to Section 55 of the Charities Act 'which states that CCNI's report is admissible in applicable proceedings as "evidence of fact stated in the report; and evidence of the opinion" of the person who produced the report'. I consider this provision does not obviate the necessity for CCNI to comply with the basic rule of natural justice to provide an individual a right to reply to allegations made against them. This is a key tenet of procedural fairness as reflected in the CCNI guidance 'Dealing with concerns about charities'.
84. Further enquiries were made of CCNI regarding what other information is provided to individuals to allow them the opportunity to respond meaningfully to a

draft SI report. CCNI stated that on the occasions where it has shared its draft SI report with named persons, no additional information has been provided. I make an observation that I consider it good administrative practice and in the interests of fairness for named individuals to be provided with sufficient information to allow them to fully participate in the SI process to enable them to comment on the draft SI report.

## CONCLUSION

85. The complainant submitted a complaint to me about the actions of the Charity Commission for Northern Ireland. I have investigated the complaint and have found maladministration in relation to the following matters:
  - i. The CCNI decision to publish the statutory inquiry report without providing the complainant with an opportunity to comment on its factual accuracy was unfair because:
    - CCNI departed from its policy regarding the publication of statutory inquiry reports.
  - ii. The rationale behind the decision to name the complainant was not properly recorded.
86. Although I have identified administrative failings in the manner in which the decision to name the complainant was reached, I found these were insufficient to support a complaint of bias or that the SI report was written in bad faith.
87. I am satisfied that the complainant sustained the injustice of upset and frustration and the loss of opportunity to comment on the factual accuracy of the report. He also sustained the injustice of time and trouble bringing his complaint to my Office.
88. I have carefully considered the submissions by CCNI and the complainant in relation to my draft report. I identified administrative failings in the manner in which the decision to name the complainant was reached. However I found these were insufficient to support a complaint of bias or that the SI report was written in bad faith.

89. I am satisfied that in consequence of this maladministration, the complainant sustained the injustice of a loss of opportunity to comment on the factual accuracy of the statutory inquiry report. He also experienced the injustice of frustration and upset as well as having to take the time and trouble to bring a complaint to this Office. As stated previously, the complainant claims financial loss as a result of reputational damage; this is not a matter for me, it is a matter for the court.
90. I refer to paragraphs 20, 21 and 45 of my report. Although not part of the complaint to my office, I considered the absence of a review mechanism in respect of the naming of individuals in published statutory inquiry reports. I note also that the complainant's correspondence raising a complaint about the accuracy of the report was not investigated under CCNI's internal complaints procedure. This issue had arisen and caused confusion during the initial assessment of this complaint to my office. A complaint is defined as any expression of dissatisfaction with an action or decision, oral or in writing. I would urge CCNI to consider this matter further as part of its policy review in the interests of ensuring that an internal mechanism exists for the early resolution of complaints. I am mindful of the time, trouble and resource expended by the parties and my office in investigating this case.

### **Recommendations**

91. In order to remedy the injustice sustained by the complainant, I recommended:
- viii. CCNI apologise to the complainant for the injustices identified in my report and make a payment to him of £500 by way of solatium within one month of the date of my final report.
  - ix. CCNI to remove the statutory inquiry report from its website forthwith and correct all factual inaccuracies in relation to the complainant within one month of the issue of my final report.
  - x. In order to correct the factual inaccuracies, CCNI to provide the complainant with an opportunity to comment on those amendments relating to him within 14 days of the date of issue of my final report.

- xi. CCNI to reflect in its Dealing with Concerns about Charities policy to ensure that all considerations relating to the publication of personal information of named individuals are fully documented and supported by adequate reasons.
- xii. CCNI consider a review mechanism within its own process of decision making, in the interests of early resolution of concerns

92. In response CCNI presented an alternative form of remedy to address the injustice I have identified. That is to remove the explanation in paragraph 1.10 of the SI report which defines the complainant and his colleagues, in relation to the Trustee. I have considered this carefully but remain of the view that CCNI reflecting the complainant's response as recommended above, should ensure the factual accuracy of the SI report.

## PRINCIPLES OF GOOD ADMINISTRATION

**Good administration by public service providers means:**

### **1. Getting it right**

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

### **2. Being customer focused**

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

### **3. Being open and accountable**

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

#### **4. Acting fairly and proportionately**

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

#### **5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

#### **6. Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance

