



## **Consultation feedback**

# **Reporting serious incidents in charities – updated guidance for trustees**

## **Analysis of consultation responses**

### **Introduction**

Thank you to everyone who took part in this consultation. All of the feedback has been helpful in improving the Charity Commission's existing policy and guidance on reporting serious incidents.

The Commission's serious incident reporting regime has been in operation since 2007 and is an important compliance and monitoring tool, providing regulatory oversight of individual charities and risk assessment of the sector as a whole.

In autumn 2016, the Commission published a consultation seeking views on proposed updated guidance for charities reporting serious incidents, including; removing the requirement to report lack of a policy or procedure (reclassifying to risks rather than serious incidents), proposing new incidents under the significant financial loss grouping and introducing new reference tools such as checklists and a table of examples.

It is hoped that greater awareness of the updated guidance will prompt more timely and effective reporting.

The consultation ran for 12 weeks and generated over fifty responses. Organisations who responded are listed in Annex 1 - these include charities, professional organisations and sector umbrella bodies, as well as law and accountancy firms.

In summary, responses comprised:

- 60% from charities directly
- 20% from professional organisations or umbrella bodies
- 20% from legal advisers

### **Summary and analysis**

Responses were mixed in their detailed feedback, but with the majority being supportive of the updated guidance and welcoming it as an improvement on the current, published version.

A number of common themes emerged from the consultation and the Commission has considered these in its review of the updated guidance, though not all comments are responded to in this document. It has taken some time to work through consultation feedback and to ensure a comprehensive outcome.

The main themes and responses were:

## **1. Format, style and length of the guidance were broadly welcomed**

The new examples table, showing what to (and not to) report, was well received. The new emphasis on practical, case study based guidance was seen as a helpful development, particularly for smaller charities.

However, the example based approach was considered less helpful for larger charities with high incomes and established risk assessment procedures, highlighting the difficult task the commission has in providing 'one size fits all' guidance.

Some feedback noted that the new examples table is sufficient and recommended that it should not be expanded to cover all conceivable incidents, as this could risk fuelling a 'tick box' mentality, where individual judgement is discouraged.

## **2. The statutory basis of reporting was questioned**

Legal advisers and some larger charities expressed concern over the term 'duty to report', urging the guidance to be clear that there is no legal duty on trustees to declare serious incidents outside the context of the Commission's Annual Return.

Respondents argued that an overly punitive tone to the guidance may run counter to the Commission's publicly stated aim to operate as a risk based and proportionate regulator and could cause confusion.

Confirmation was sought that the responsibility to report is best practice (a 'should') and not a legal duty, outside the Annual Return (a 'must'), with the Commission being urged to reflect this more clearly in its final guidance.

Introduction of the line, 'if in doubt, report it', was not welcomed by a few respondents, on the basis that its inclusion could prompt unnecessary reporting of minor incidents and encourage a 'tick box' mentality. This, it was argued, could be counter-productive, potentially discouraging due consideration and individual judgement.

In response, the Commission will:

- Alter the main heading in the guidance to ensure it doesn't imply a general legal duty for all charities; in addition, by referring to reporting expectations and responsibilities, and using the terms 'should' or 'the Commission expects' to demonstrate this
- Make clear that the statutory duty to report exists exclusively within the context of the Annual Return (a 'must'); include updated wording to explain this, outlining that the legal requirement relates to charities with an income of over £25,000 per year
- Continue to encourage good practice and prompt reporting from all charities
- Retain the proposed call to action, 'if in doubt, report it', on the basis that many charities (especially smaller ones) welcomed it and the new examples

table will help trustees in their decision making. Its inclusion may prompt earlier identification and timely reporting

- Explain that where trustees don't report promptly and subsequently fail to manage risks properly (and breach their legal duties), this may be regarded as mismanagement. The Commission's casework shows that charities who report promptly and engage positively with the Commission can be supported effectively with early advice and guidance.

### **3. Optimum timing of reports and multiple reporting**

Some respondents questioned the increased emphasis on immediacy, advising that charities need time to gather facts, take remedial steps and possibly to report to other agencies. Hence, it may be impractical and unrealistic to make an immediate report and the Commission could risk prompting incomplete or interim reports.

Multiple ('bulk') reporting was broadly welcomed by respondents. The Commission's enquiries reveal that during 2016-17, 23 charities made use of multiple reporting, with 15 of them submitting over 10 reports in total. Detailed feedback stressed the importance of allowing trustees to use their own judgement, both with the timing and format of reports.

The option of submitting in-house (e.g. quarterly or board) reports was well received and the benefit to larger, corporate charities noted.

In response, the Commission will:

- Encourage good practice for all charities, regardless of size or income, in reporting serious incidents to the Commission promptly
- Acknowledge, however, that immediacy may not always be achievable, by including the qualification, 'as soon as is reasonably possible', into the specific advice on when to report.

### **4. Concern was expressed about expanding the 'significant financial and other loss' classifications to include withdrawal of funding, banking services and litigation costs**

The inclusion of new reportable incidents around significant financial loss provoked strong feedback, especially from legal advisers and professional organisations, but also from larger charities, with some opposing it outright. The proposed criteria was thought to be disproportionate and if introduced, may represent a misapplication of the Commission's regulatory interest.

In considering financial loss, feedback focused upon the central issue of a charity's overall health and ability to operate. On this basis, many respondents argued that the new criteria relating to financial distress would cover scenarios which are commonplace but manageable for most charities - even 'part and parcel' of daily life for larger charities.

It was stated that charities routinely undertake risk assessments and manage their budgets in order to allow for financial loss, and that encountering such incidents will

not necessarily threaten operations, certainly not beyond the immediate short term. Some respondents advised that larger charities can legitimately draw upon financial reserves and that doing so represents sound financial management and should not prompt regulatory interest.

On loss of funding:

- There was strong opposition to classifying loss of funding as a reportable incident, with feedback citing such loss as 'routine business these days', especially for larger charities, who simply get on with sourcing new funding
- Respondents considered that introducing a new classification around a low-risk operational issue could add considerably to charities' administrative burden, cause confusion and represent an unrealistic regulatory role for the Commission.

On withdrawal of banking services:

- Feedback emphasised that 'de-risking' policies are prevalent within the banking industry now and are factored in routinely by larger charities within their planning cycles
- Some respondents questioned what the Commission would envisage doing with the new collated data; the regulatory benefit was queried, especially when replacement banking services may have been secured in the interim
- The consensus feedback was that, especially for larger/ international charities, loss of banking services should not be reportable unless it involves a loss of all services, which the charity is then unable to replace, so threatening operational capacity.

On litigation costs:

- Feedback stressed that losses sustained due to litigation should not be reportable and could risk dissuading charities from undertaking legitimate work in representing their beneficiaries
- The basis of this opposition was that charities will have considered action carefully, planned their budgets accordingly and sought professional advice before undertaking litigation. In short, action will not have been entered into lightly but will have been the result of responsible deliberation.

In response, the Commission will:

- Retain the proposed requirement to report financial loss, where this threatens the charity's ability to operate and serve its beneficiaries, or where the charity's financial reserves are not sufficient to cover the loss. It is reassuring

to hear that larger charities routinely undertake risk assessments and manage their budgets to guard against loss, but not all charities do so.

- Retain loss of banking services as a new classification, in order to best protect charity funds and afford the Commission adequate sector oversight. Charities are stating that ‘de-risking’ is hampering their ability to operate, so it is important to ensure that the risks are being managed properly.

The Commission will seek to clarify requirements by qualifying the wording in some of the new examples:

- in the loss of funding example, changing the text to ‘being unable to replace these in order to ensure the charity’s survival’, indicating a sufficient degree of seriousness
- in the loss of banking services example, making clear that a serious incident constitutes ‘where the charity’s operations are threatened due to the combined loss of primary or sole bank account/ difficulties replacing these from within the regulated banking sector’
- in the litigation example, stating that it will apply only to ‘significant loss incurred through non-routine litigation’; specialist charities undertaking advocacy work on behalf of beneficiaries (in accordance with their aims) will not be expected to report.

## **5. Concern was expressed at the updated wording on unverified donations**

Some respondents considered the proposed classification to be too broad and unlikely to take account of the requisite due diligence and lengthy timescales involved in verification.

There was concern that charities could feel penalised for accepting perfectly legitimate funding streams. In particular, the point was made that some donors, especially in faith based contexts, wish to remain anonymous, but that this does not necessarily represent grounds for suspicion.

The central issue should be about identifying ‘tainted’ donations and managing the risk of money laundering.

In response, the Commission will:

- Refine the classification to include the word ‘significant’ and qualify it to where donations ‘cannot’ be verified
- Ensure that trustees are directed to the Commission’s Compliance Toolkit for more detailed guidance on due diligence and verification.

## **6. Understanding the Commission’s safeguarding remit**

The Commission’s safeguarding remit was generally seen to be clear and distinct from that of other agencies. In addition, virtually all respondents agreed that ‘not having a safeguarding policy’ should be removed from the list of reportable incidents

– feedback agreed this failure represents a policy/governance oversight, not an incident that alone should be worthy of report or investigation.

Significant concerns were expressed about the ability of some charities whose core work involves dealing with children/ safeguarding issues to comply, since they have specialist responsibility for safeguarding operations and manage a high number of serious incidents routinely.

It was stressed that some charities are overseen by more than one regulatory body with different reporting requirements. For example, the CQC requires notification of abuse occurring on the charity's premises; it was suggested that it would be helpful for the Commission to acknowledge this and to clarify that the requirements of each regulator must be met.

Some charities did not consider that allegations, as opposed to proven incidents, should be reported to the Commission. This was said to be for reasons of logistics and fairness, as there are many more allegations than substantiated cases, representing an untenable volume of reportable incidents on a regular basis.

In response, the Commission:

- As proposed, will remove the criterion, 'not having a safeguarding policy', from the list of reportable incidents
- Does not accept that only proven incidents should be reported. The Commission's regulatory remit requires it to oversee the risks facing charities and to ensure allegations are handled responsibly, whether proven to be substantiated or not.
- Acknowledges the specialist nature of the safeguarding work undertaken by some charities in furtherance of their objects and agrees that 'routine' incidents will not need to be reported; updated text will be included in the main guidance and examples section to make this clear
- Accepts that the guidance should make clear that safeguarding relates to both children and adults at risk, and also includes neglect
- Will include more examples of safeguarding incidents that should be reported
- Will make it clear that charities should ensure compliance with all the relevant regulators on safeguarding matters
- Will engage further with specialist charities who regularly report multiple safeguarding incidents to clarify appropriate reporting arrangements.

## **7. The impact of negative media attention**

Strengthened wording on the potential impact of media reporting, particularly within the context of extremism, prompted mixed feedback.

Whilst some respondents welcomed the Commission's recognition that negative media attention can be challenging, others felt strongly that negative comment is 'part and parcel' of the broader operational landscape now, especially with the proliferation of social media, and should not influence reporting rationale.

In response, the Commission will:

Qualify the updated wording in the reporting advice and related examples by inserting the words, 'serious' or 'significant', in order to be proportionate and encourage meaningful compliance.

## **8. The issue of what happens after reporting**

Some respondents wanted the guidance to offer more detail about what happens to a charity's report once it's been submitted. There were concerns that trustees may not receive feedback, help or advice from the regulator, which could be demotivating and deter others from reporting.

In response, the Commission will:

- Continue to ensure a timely acknowledgement of receipt is issued to all reporting charities, on the understanding that specific advice cannot be provided on an individual basis at that initial reporting stage
- Include in the guidance some advice about future improvements planned for digitalising the serious incident reporting process
- Forming part of the Commission's online services, a standard reporting form will be developed, offering vital information prompts, in order to ensure trustees submit the essential detail needed.

## ANNEX 1

### List of organisations who responded to the consultation

NAME	
Charity Law Association (CLA) Lawyers in Charities The Law Society National Council for Voluntary Organisations Higher Education Funding Council England General Optical Council Independent Schools Council Girls Day School Trust Charity Finance Group Small Charities Coalition Welsh Council of Voluntary Associations Ballamy PKF Francis Clark Macintyre Hudson Associates Bircham Dyson Bell Stone King	[* see CLA membership breakdown below]
Action for Children Barnardo's British Red Cross Cancer Research UK Concern Worldwide Diocese of Exeter Disability Challengers Family Action Girlguiding Help for Heroes Leonard Cheshire Macmillan Marie Curie Missing People NSPCC Oxfam PDSA (Pets charity) Retrak (homeless charity) Sense (National Deafblind Association) The Children's Society The Samaritans	



The Scouts Association  
The Harpur Trust  
The Hospice of St Francis  
The National Trust  
Walsingham Support  
Thomley Disability  
UK Youth

\*Constituent members of CLA working party:

Baites Wells Braithwaite  
Barlow Robbins  
Bircham Dyson Bell  
Farrer & Co.  
Hewistons  
Johns and Saggar  
Joseph Rowntree Trust  
McCarthy Denning  
Royds Withy King  
Russell Cooke  
Salvation Army  
Taylor Vinters  
Veale Wasbrough Vizards  
Withers