



Consultation report

Charities that are connected with non-charitable organisations: maintaining your charity's separation and independence

Introduction

On 13 February 2018 the Commission published a consultation on this subject. The consultation was open for 13 weeks and closed on 15 May 2018.

We received a total of 57 responses, 34 through an online survey and 23 by email.

During the consultation there were 9,148 page views of the webpage.

We also held 8 meetings in person or by phone with 24 sector bodies, charities and others to discuss the draft guidance.

We welcome the good level of engagement with this consultation from charities, individuals, sector umbrella bodies and other organisations.

Respondents and participants to the consultation included several organisations who responded on behalf of a membership or wider group. 8 of these organisations included data on their membership numbers in their consultation response. They reported a total number of 337,526 members.

We would like to thank everyone who took the time to take part.

Our analysis of the feedback

We have read and considered all of the survey and email responses and reflected on what we learnt through our meetings with stakeholders. Through the feedback we have identified that:

- production of a single source of guidance on this topic is largely perceived as useful, even by many respondents who have reservations about some of the current draft content
- there are some common themes which emerged from the consultation - the feedback showed a significant degree of consensus about these themes and they are listed below
- in addition to the common themes, the consultation feedback also includes many very useful suggestions and reactions to the draft guidance which will also inform our approach

What we will do next

1. We will publish guidance on this topic to help charities to better manage their valuable relationships with related organisations so that the interests of the charity are always protected. Through our casework engagement with charities we have seen the difficulties and risks that can arise in this area and we are pleased that the consultation feedback shows support for guidance. We aim to publish the final guidance later this year.

Before publishing the guidance

2. We will decide which changes to content or design best address the consultation feedback, with an emphasis on the following common themes highlighted by respondents:
 - the tone - and some of the content - of the current draft puts too much emphasis on the risks of charities' connections with non-charities - there should be more focus on the benefits
 - the current draft guidance is too long for busy volunteer trustees – a more concise version, together with a further developed version of the useful 'at- a- glance summary' would work better
 - where the draft summarises the Commission's lead guidance on related topics such as *Campaigning and Political activity guidance for charities (CC9)* and *Grant funding an organisation that isn't a charity*, the paraphrasing produces a result that is not consistent with the lead guidance
 - the draft guidance appears to introduce an expectation that the charity should be visibly separate from the non-charity, in branding and other terms - the basis of this is not clear and charities need more information about what they are expected to do in practice
 - the practical parts of the guidance, whilst welcomed by many respondents, could (as currently drafted) have the effect of imposing a disproportionate regulatory burden on some charities
 - the scope of the guidance needs to be clearer
 - design and content could better recognise the different types of common structures and relationships covered by the guidance, and address them more directly
 - the guidance is, in parts, impractical to implement for charities with wholly owned trading subsidiary companies
3. We will run some further limited engagement to test our developing approach to the final guidance. If you or your organisation would like to be involved with this you can let us know by emailing guidanceandpractice@charitycommission.gsi.gov.uk using the subject heading or reference 'Further engagement/charities connected with non-charitable organisations'.
4. We will make an assessment of the regulatory impact of the guidance.

Detailed summary of responses

The next section of this report sets out a summary of the responses received via the online survey, by email and at roundtables.

List of respondents to the consultation

Annex A is a list of respondents who participated by together with details of organisations we met.

Summary of responses and feedback

This section shows the numerical results of the online survey.

It also summarises the themes which emerged from the

- 'comment' options in the online survey
- email responses and the roundtable discussions

Questions 1 – 4

These questions collected names, organisation and contact details for respondents.

Responses showed that 22/34 survey participants were responding on behalf of a registered charity.

Q5. Is your charity connected with a non-charitable organisation as explained in the draft guidance? (Yes/No)

21/34 answered yes

Q6. Are you responding on behalf of a non-charitable organisation that has links to a charity? (Yes/No)

3/34 answered yes

Q7. Are you responding on behalf of a body that represents people, charities or other organisations working in the charity sector? (Yes/No)

11/34 answered yes

Q8. About the section called 'Who this guidance for'

How well does this section explain whether you need to read this guidance?

What survey respondents said

Very well	Satisfactory	Poorly	Don't know	No response	Total
11	12	8	1	2	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- the scope of the draft guidance is very ambitious - perhaps overly so, in trying to identify all the issues for such a wide range of affected charities
- it is useful to charities to bring together relevant principle and good practice on this topic
- the scoping section of the guidance could be improved to make it clearer which 'links' are and aren't covered by the guidance
- the definition of connected organisation in this section takes in a very wide range of circumstances

Q9. About the section called 'Get it right from the start'

How well does this section provide an overall framework for trustees to manage their charity's relationship with a connected non-charitable organisation?

What survey respondents said

Very well	Satisfactory	Poorly	Don't know	No response	Total
10	12	9	1	2	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- overall it is useful and helpful to trustees to provide them with this framework for overseeing their charity's relationship with a non-charity
- the tone is too heavy on the risks of charities' connections with linked non charities, and too light on the benefits of those connections
- where the draft summarises the Commission's published positions on topics - such as political activity and grant funding a non-charity - it does so in a confusing way and the paraphrasing appears to introduce a different/more cautious approach
- the requirement for the identity of the charity always to be clear and separate from the non-charity; what is this expectation based on, and what level and type of separation would be enough to meet it

Q10. About the section called 'Common issues for trustees'

What survey respondents said

i. How well does this section identify all the main issues that can arise?

Very well	Satisfactory	Poorly	Don't know	No response	Total
7	22	3	0	2	34

ii. How well does this section help trustees consider and address these issues?

Very well	Satisfactory	Poorly	Don't know	No response	Total
6	15	9	1	3	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- the range of issues listed is important and will be helpful to trustees
- this part of the document should not try to do all of the thinking for trustees - instead, it should help them to think
- the section on shared names, branding and websites could include more acceptance of common brand-sharing arrangements
- the section on grant funding is a concern because it says that the charity cannot fund the connected organisation's general running or administrative costs
- it goes beyond CC9 (Campaigning and Political activity guidance for charities) to raise questions about the ability of a charity to fund political activity through a non-charity - even where such activity would be permissible if undertaken by the charity
- the Commission's interpretation of conflicts of loyalty is very wide

Q11. About the section called 'If things go wrong'

What survey respondents said

i. How useful is this section?

Very useful	Satisfactory	Not useful	Don't know	No response	Total
10	18	2	1	3	34

ii. How useful are the examples of how things could go wrong?

Very useful	Satisfactory	Not useful	Don't know	No response	Total
6	16	7	1	4	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- this section is shorter than those which precede it and more to the point
- it is reassuring that the Commission outlines its approach to honest mistakes
- there are helpful and useful examples in this section
- the guidance should indicate that personal liability for trustees is rare

Q12. About the section called 'Applying to register a charity'**What survey respondents said**

Does this section explain the information which we need in a helpful way?

Yes	No	No response	Total
22	7	5	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- this section is to the point and short
- this section lacks proportionality in places such as by asking for pre-registration documentation, which is more than currently required to register a charity - and more than would be reasonable to expect of a charity at this stage
- the Commission should reassure new charities that, where Commission advice is needed, post registration, the charity will not immediately face penalties or investigation

Q13. About the additional resources**What survey respondents said**

i. How helpful is the at a glance document?

Very helpful	Helpful	Not very helpful	Don't know	No response	Total
9	17	4	2	2	34

ii. How helpful is the checklist for putting the guidance into practice?

Very helpful	Helpful	Not very helpful	Don't know	No response	Total
7	17	5	2	3	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- it is good to see some practical documentation - there are benefits in having a tool of this type
- the at a glance document is a useful summary and resource - it is likely that many busy volunteer trustees would rely on this - content needs review, particularly in terms of distinguishing better between legal obligations and best practice
- the checklists and other practical parts of the guidance are useful but they are too long, too prescriptive and impose too high a compliance burden in many situations

- if the checklists are for trustees (rather than for internal Charity Commission use) they will encourage a formulaic/box ticking approach to decision making - a self-assessment approach to the checklists would work better, as would removing the scoring approach
- the level of documentation that the checklists and the guidance imply are too onerous - the cost of compliance with this approach is not likely to be proportionate to the risks in many cases

Q14. Title of the guidance

What survey respondents said

How helpful is the title of the guidance?

Very helpful	Helpful	Not very helpful	Don't know	No response	Total
5	16	9	0	4	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- the title does not match the document well
- the title of the at a glance document is more helpful
- a clearer title will make it easier for trustees using a search engine to find the guidance
- the first half of the title works reasonably well - the second half which references separation and independence doesn't reflect some common structures to which the guidance applies

Q15. Examples within the guidance

What survey respondents said

How helpful are the examples in explaining the advice?

Very helpful	Helpful	Not very helpful	Don't know	No response	Total
5	12	9	4	4	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- including examples is very helpful
- the examples used are based on unusual/extreme scenarios - more common everyday situations should be used as examples
- think about using the examples to focus on what should be done, rather than on what not to do

Q16. Overall, is the level of detail right?**What survey respondents said**

Yes	No	No response	Total
17	13	4	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- this guidance is too long for lay volunteer trustees to read, navigate and understand
- it could be less repetitive
- the inclusion of practical material adds to length and seems to overstep the Commission's principles based approach - on the other hand, this level of detail may be useful to some readers

Q17. Is the language sufficiently clear and easy to understand?**What survey respondents said**

Yes	No	No response	Total
21	9	4	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- the language is technical in places
- where paraphrasing other guidance - use the same language used in the lead guidance - at the moment, where the draft summarises lead guidance it does so in a way which materially alters or supplements its tone and content
- use more positive language, not just the language of risk
- language around 'must' 'should' 'needs to' 'expects' needs clarifying

Q18. Is the purpose of each section and resource document clear enough to enable you to easily navigate and access the information you need? If it is not clear, or there is too much, what could be omitted and why?**What survey respondents said**

Yes	No	No response	Total
22	7	5	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- the length of the guidance - and the breadth of the different connections it covers - make for some clarity and navigation problems
- organising the guidance by type of common relationship, or - including some pointers for each of the common types of relationship covered by the guidance - would be a more manageable structure
- be clearer at the top of the guidance which arrangements are intended to be in scope

Q19. Are there any gaps in the guidance? If so what are these?

What survey respondents said

Yes	No	No response	Total
17	11	6	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- there should be more material specific to the key types of relationships covered by the guidance - currently it reads as though some common structures have not been considered in every section
- there should be better coverage of:
 - intra-group arrangements and charges between charities and non-charities
 - company law on conflicts of interest

Q20. Are there any unintended consequences of the advice in the guidance? Please describe these.

What survey respondents said

Yes	No	No response	Comment given, rather than a yes/no answer	Total
0	2	13	19	34

Comments about this section of the guidance given in the online survey, in email responses and at roundtables included the following themes:

- the draft guidance is very high impact for corporate foundations, introducing new requirements and expectations
- the guidance is impractical and will be costly to implement for charities with wholly owned trading subsidiaries
- if you follow the checklist approach suggested by the guidance, it will generate a tick box approach to decision making

- the Commission shouldn't force a separation between a charity and an organisation that is addressing the purpose of the charity
- the guidance creates potential for confusion with other Commission guidance
- the guidance appears to change existing Commission guidance positions

Q21. *Please provide any further comments you may have on improving the guidance*

The further comments cover the themes listed above.

Annex A Consultation – Charities that are connected with non-charitable organisations: maintaining your charity’s separation and independence

Survey and email respondents and roundtable participants

Survey and email respondents – organisations
Amnesty International UK Section Charitable Trust
Andrews Charitable Trust
Association of Charitable Foundations (ACF)
The Association of School and College Leaders Educational Development Trust
Bates Wells Braithwaite
Bid Services UK
Bircham Dyson Bell
Blue Cross
British Paralympic Association
C40 Cities UK
CareTech Charitable Foundation
Charity Finance Group
The Charity Law Association (CLA)
Charity Law & Policy Unit, The Liverpool Law School, Liverpool University
Charity Retail Association
China Fleet Country Club Lt
Chinnor and Princes Risborough Railway Association
The Churches’ Legislation Advisory Services
The Civic Stourport
The Civil Liberties Trust
Devonshires
Every-One
EYE Educational & Youth Enterprise
Futures, Advice, Skills and Employment Ltd
The Girls’ School Association
Halifax Opportunities Trust
Heathrow Community Fund
The Institute of Chartered Accountants in England and Wales (ICAEW)
Independent Schools Council
Institute of Chartered Secretaries and Administrators (ICSA)
The Law Society
Martin House
Masonic Charitable Foundation
The National Trust
The Nationwide Foundation
National Council for Voluntary Organisations (NCVO)
North Bank Forum for Voluntary Organisations Ltd
The Pink Place
The Sheppard Trust
Southsea Skatepark Company
SPORTA Sports and Recreation Trusts Association
Springhill Hospice

St Elizabeth's Centre
Trowers & Hamlins
Veale Wasborough Vizards
Virgin Money Foundation
Voluntary Action Leicester
Wales Council for Voluntary Action (WCVA)
Wates Family Enterprise Trust
We are IVE Ltd
Zurich Community Trust

We also received 3 survey responses from individuals and 3 by email.

Organisations we discussed the draft guidance with during the consultation period
Amnesty International UK Section Charitable Trust
The Association of Governing Bodies of Independent Schools
Association of Charitable Foundations (ACF)
Association of Colleges
Bates Wells Braithwaite
Bluespark consulting
Charity Finance Group
The Charity Law Association (CLA)
Charity Retail Association
Department for Education
Directory of Social Change
Friends of the Earth Trust
Greenpeace Environmental Trust
HMRC
Illuminate Governance
Independent Schools Council
Institute of Fundraising
London's Air Ambulance
National Council for Voluntary Organisations (NCVO)
National Union Students
Office of the Scottish Charity Regulator
Rosie Chapman Ltd
Withers
Womble Bond Dickinson