

What's new at the Charity Commission?

Commission updates and broadens its safeguarding guidance



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During the past two years, the Charity Commission has had an increased focus on safeguarding and people protection. It expects that all charities – not just those charities working with children and vulnerable adults – will take reasonable steps to protect their staff, volunteers, beneficiaries and those they come into contact with.

In October 2019, the commission updated its safeguarding guidance *Safeguarding and protecting people for charities and trustees*. Despite no advance public consultation or fanfare, the revised guidance requires a number of key changes to safeguarding practices for charities.

First, there's now an even greater emphasis on the importance of safeguarding and protecting people from harm, with safeguarding described as 'a fundamental part of operating as a charity for the public benefit'. While this is not a great departure from previous guidance, the obligations on charities seem to be increasingly onerous.

For example, there's a new section on checking your charity's policies, procedures and practice. The latest iteration of the commission's guidance provides that all policies, procedures and practice must be checked and challenged to ensure they're fit for purpose. They should also be reviewed annually, if there is a serious incident, and/or if there are any changes to how the charity operates (such as the services it offers or the settings it operates in).

In addition, the commission's expectation is that every trustee should have clear oversight of how safeguarding and protecting people from harm are managed within their charity. The guidance stipulates that this means monitoring performance, not just in statistical form, but with qualitative reporting, and suggests that this might include reviewing a sample of past concerns, commissioning external reviews or inspections and/or site visits to carry out checks.

Secondly, there is greater focus on the role a charity's culture plays in safeguarding. The commission emphasises that all trustees must, in relation to their charity, make sure that 'protecting people from harm is central to its culture' and that it 'does not ignore harm or downplay failures'. The guidance now refers to both internal whistleblowing policies and the commission's own whistleblowing procedure for charity staff and volunteers.

Thirdly, the section on DBS checks has been expanded. It now emphasises that many posts are eligible for standard or enhanced level DBS checks, and provides that trustees should risk assess all roles to determine whether they are eligible for a check and that, where available, such checks should be undertaken. It further recommends that trustees consider asking DBS applicants to register with the DBS Update Service, or consider carrying out further DBS checks on a regular basis.

The guidance provides that a charity's partners should be made aware of the charity's safeguarding policies and indicates that this includes delivery partners, trading subsidiaries of the charity (including charity shops), organisations the charity funds, and connected charities.

Finally, the updated guidance signposts charities to additional resources, for example NCVO's guidance on safeguarding and Bond's governance guidance, both of which were prepared with input from Bates Wells.

FIND OUT MORE

The updated safeguarding guidance is at: <https://www.gov.uk/guidance/safeguarding-duties-for-charity-trustees>

See also this new online portal launched by the government to support charities handling safeguarding concerns or allegations – <https://safeguarding.culture.gov.uk>

New Charity Commission guidance on reporting serious incidents involving partner organisations



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In December 2019 the Charity Commission published new supplementary guidance on reporting serious incidents involving partner organisations. This includes an incident involving a charity's delivery partner, funding recipient or trading subsidiary, or indeed any organisation using a charity's brand.

The supplementary guidance elaborates on the existing serious incident reporting guidance, and sets out the commission's expectations for when a charity should report incidents involving partners. The supplementary guidance reiterates that trustees must make a serious incident report if an incident materially affects the charity, its staff, operations, finances and/or reputation.

Of note is that this guidance makes a distinction between three different scenarios:

1. An incident involving the charity's funds, brand, people or an activity that it funds or is responsible for;
2. An incident that does not involve a charity's funds, brand or people, but 'could have a significant impact on the charity' – for example, if it causes material reputational damage to the charity, raises material issues around due diligence on the partner, or is a trigger event in a funding agreement; and
3. An incident that does not involve the charity's funds, brand or people and 'has little or no impact on the charity'.

A report is more likely to be required for incidents falling within the first two categories, but this is always a decision for the trustees. A number of factors must be considered in each case – including the charity's relationship with the partner and the nature and severity of the incident.

This will likely remain a vexed area for charities to navigate, particularly because:

1. This guidance introduces a new focus on whether an incident impacts a

charity's 'brand'. This may be wider than the previous focus on reputation.

2. The second category has the potential to significantly widen the range of incidents that trustees must now consider.
3. There is a significant gap between an incident which 'could have a significant impact on the charity' (under the second category) and an incident which 'has little or no impact' (under the third category), creating a wide grey area.

Helpfully, the guidance clarifies that in a federated structure, if an incident happens in one local charity, the commission would generally only expect the local charity and the umbrella body to consider whether to report. Other members of the federation will not generally be expected to make a report. The umbrella body may need to submit a report, depending on the circumstances.

Ultimately, it is the responsibility of the trustees to determine whether an incident is sufficiently serious to report. We recommend that charities revisit their practices to ensure trustees are considering all relevant incidents involving partners, if and when they arise, and are documenting the reasons for decisions about whether to make a report about particular incidents or categories of incidents. If a decision is made to not report an incident, charities should keep good records of the rationale for that decision and be prepared to justify their approach to the commission if they are ever challenged on this.

FIND OUT MORE

The new supplementary guidance is at: <https://www.gov.uk/guidance/reporting-a-serious-incident-in-your-charity-when-it-involves-a-partner>. The main guidance is at: <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>