

New obligations for charities registered in Scotland

The Scottish Charity Regulator is following the Charity Commission of England and Wales' path to more focused regulation. Of particular importance is the obligation from 1 April 2016 to report 'notifiable events'. Whilst there is no *legal* obligation to report, Scottish regulated charities may opt to report in the interests of working with (and staying on the right side of) their regulator.

The guidance stipulates that charities should report events which have, or threaten to have, a significant impact on the charity or its assets. A variety of incidents will require disclosure under the regime, including fraud, theft, substantial loss, abuse or mistreatment of vulnerable beneficiaries, investigation by the Police or some other regulatory agency, a disqualified trustee acting and other similar matters.

English and Welsh charities operating in Scotland will need to report 'notifiable events' as serious incidents to the Charity Commission, rather than the Scottish Regulator.

What is a notifiable event?

A notifiable event is an event which has a significant impact on a charity or its assets. What is significant will depend on the size and nature of the charity and it will be for trustees to judge whether an event should be reported to the Scottish Charity Regulator (OSCR).

OSCR has published some guidance to assist trustees with this decision, and advises that the following events will be treated as significant:

- any incident of fraud or theft;
- substantial financial loss (generally anything that represents 20% or more of the charity's income is considered substantial);
- incidents of abuse or mistreatment of vulnerable beneficiaries;
- lack of charity trustees to make a legal decision – i.e. a quorum cannot be met;
- any criminal investigation of which the charity is the subject;
- any investigation, sanctions or concerns by another regulator or agency;
- donations of significant sums of money or other property to the charity from an unknown or unverified source;
- any suspicions that the charity and/or its assets are being used to fund criminal activity (including terrorism); and
- a charity trustee acting while disqualified.

OSCR plans to add to its guidance as time goes on and notifiable events are reported to it.

Where the notifiable event is also a crime, a report should first be made to the Police and the crime reference number provided to OSCR. Unless the incident is a 'minor' incident, OSCR views all crimes as notifiable. As there is very limited guidance as to what constitutes a 'minor' event, charities should err on the side of caution when deciding whether to report an incident.

If the trustees have any doubt as to whether an event should be reported or not, they may wish to seek legal advice.

How to report notifiable events

If a notifiable event has taken place, it is the responsibility of the trustees to notify OSCR by [e-mailing them](#). OSCR recognises that trustees may need some time to deal with events but expects a report to be made as soon as practicable.

The notification e-mail should set out the following:

- what the event is;
- how it has or may have a serious impact on the charity;
- any action that has been taken in respect of the event;
- what further plans the trustees have in place to deal with the event; and
- what the trustees plan to do to mitigate against similar events occurring in the future.

The notification need not be set out in any prescribed format, but must include sufficient detail to enable OSCR to understand the event and decide whether it requires further investigation.

OSCR's approach

OSCR says it is asking charities to report notifiable events in order to prevent these types of events from occurring in the future and to encourage charities to deal with them better if they do occur. Its aim is to avoid the damage that serious events can do to the public's confidence in the charity sector more widely.

Once OSCR has been notified of an event, it will follow up with the trustees of the charity if it feels more information is needed. OSCR's view is that a well-managed incident is a reflection of a charity's good management rather than a problem, and in such cases it will not seek further clarification from the charity.

There is no legal requirement on charities registered with OSCR to report an event but OSCR has stated that it will be concerned if a charity has not reported a significant event. There is currently no suggestion that there will be any penalty for the trustees or the charity.

Dual registered charities

Where charities operate in England and Wales as well as Scotland, they must report notifiable events to the Charity Commission. The Charity Commission refers to 'notifiable events' as 'serious incidents'. There is no requirement to make a separate report to OSCR, as the Charity Commission will inform the OSCR of any incident.

While Charity Commission guidance on what will be considered to be a serious incident is broadly similar to that of the OSCR, the approach of the Charity Commission to reporting incidents is far more robust. The Charity Commission asks charities with an income of over £25,000 to declare in their Annual Report that all serious incidents in the last year have been reported. If the trustees are unable to make the declaration it will be deemed incomplete, and the trustees will have defaulted on their statutory requirement to provide an Annual Return. The trustees will also commit an offence if they give a false declaration to the Charity Commission.

If a potentially 'serious incident' occurs, the charity should carefully consider the position and possibly seek legal advice on whether and how best to report the incident. Trustees need to be aware that reporting incidents to the Commission gives rise to the potential risk of the Commission taking regulatory action. The Commission could issue regulatory guidance as a result of the report, in which case the charity would likely be anonymised. Alternatively, the

Commission could instigate a statutory inquiry into the charity, which would likely result in adverse publicity and reputational damage.

James Sinclair Taylor

Partner

+44 (0)20 8394 6480

James.Taylor@russell-cooke.co.uk

Megan Read

Trainee

+44 (0)20 8394 6410

Megan.Read@russell-cooke.co.uk

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