

Serious Incident Reporting to the Charity Commission

Church of England internal Guidance

Frequently Asked Questions

These FAQs have been produced jointly by the Legal Office and National Safeguarding Team following queries raised at the seminars in early February 2019. It is hoped that these FAQs will assist DBFs, PCCs and Religious Communities to implement the CofE internal Guidance on Reporting Serious Incidents. FAQs relating to the reporting of safeguarding Serious Incidents only are in Part 3.

The Charity Commission updated its guidance on 14 June 2019 which changed how all Serious Incidents are reported to it. All CofE internal Guidance has been updated to reflect the Charity Commission's changes, effective from 1 August 2019.

PART 1: SCOPE

A. Does the CofE internal Guidance relate to charities outside England?

No. The obligation to report all Serious Incidents to the Charity Commission only relates to DBFs, PCCs and Religious Communities in England, as the Charity Commission does not regulate charities outside England and Wales, such as those in the Isle of Man or the Channel Islands.

B. Does the CofE internal Guidance relate to Cathedrals?

No. The CofE internal Guidance only relates to DBFs, PCCs and Religious Communities. It does not include Cathedrals as they are not regulated by the Charity Commission. This includes Parish Church Cathedrals which, although they have a parish, do not have a PCC.

C. Does the CofE internal Guidance relate to Local Ecumenical Partnerships (LEPs)?

No. The CofE internal Guidance only relates to DBFs, PCCs and Religious Communities – it does not relate to LEPs, so LEPs do not need to pass a delegation under the CofE Internal Guidance. LEPs, are charities and so are required to report all Serious Incidents to the Charity Commission directly, in accordance with the Charity Commission's guidance which applies to all charities.

However, any PCC that is connected to an LEP will still need to report any safeguarding Serious Incidents in accordance with the CofE internal Guidance (and pass a suitable delegation), unless the trustees of that PCC consider that they have "cogent reasons" for not following the CofE internal Guidance to which, as House of Bishops' guidance, they must have "due regard". Such a PCC's trustees may consider they have "cogent reasons" for not following the CofE internal Guidance where separate arrangements are in place for safeguarding to be dealt with by the independent LEP charity.

D. Does the CofE internal Guidance relate to proprietary chapels and BMOs?

As the CofE internal Guidance only relates to PCCs, DBFs and Religious Communities, any other entities, such as proprietary chapels and BMOs which are not PCCs are not covered by the CofE internal Guidance and so need to report their own safeguarding serious incidents to the Charity Commission.

E. Are the CofE internal Guidance and templates available online?

Yes. All of the CofE internal Guidance, the safeguarding bulk reporting template for DBFs and related documents are available for download from the Parish Resources website at: <https://www.parishresources.org.uk/pccs/trusteeship/serious-incident-reporting/>.

F. When will there be a review of the CofE internal Guidance?

In response to feedback from attendees at the York seminar, some DSAs, the DSLG and Religious Community representatives, the timing for the proposed review of the CofE internal Guidance has been put back to spring 2020, to enable it to bed-in fully. The decision to delay the review also reflects feedback from some dioceses on how long it will take them to embed the CofE internal Guidance fully. Therefore, it is expected that the review will take place in the spring of 2020, once the new Guidance has been fully operational in all dioceses for a sufficient length of time for feedback to be provided.

The Legal Office and NST will consult the DSLG, some DSAs and representatives of Religious Communities in late 2019 on how the proposed Review will be undertaken.

PART 2: REPORTING - GENERAL

A. Is the requirement to report Serious Incidents to the Charity Commission new?

No. Charities have been required to report all Serious Incidents to the Charity Commission for some years. However, the Charity Commission has increased its emphasis and focus on this requirement in recent years and, as part of this, the Charity Commission has produced a number of significant updates to its guidance on what it expects charities to report to it as a Serious Incident and how they should be reported.

B. Do we need to review our files and report Serious Incidents from previous financial years which were not reported to the Charity Commission?

If you are a registered charity you must report any Serious Incidents, whether safeguarding or non-safeguarding, that your charity became aware of during the last financial year and have not been reported to the Charity Commission but should have been. You will need to do this so that your charity's trustees can make the declaration in the Charity Commission's annual return for the last financial year, to confirm that there are no Serious Incidents that the charity failed to report to the Charity Commission for the period covered by the annual return. You are not expected to review your files to identify and report Serious Incidents from previous financial years which were not reported to the Charity Commission.

If you are an excepted PCC (i.e. you are a charity but are not registered with the Charity Commission as your annual income is less than £100k) you should ensure that, from the start of this financial year, all Serious Incidents (both safeguarding and non-safeguarding) are reported to the Charity Commission in accordance with the CofE internal Guidance. You are not expected to review your files to identify and report Serious Incidents from previous financial years which were not reported to the Charity Commission.

C. Do PCCs report ALL serious incidents to the Charity Commission through their DBF?

No. PCCs only report safeguarding serious incidents through the DBF. PCCs should continue to report all non-safeguarding Serious Incidents directly to the Charity Commission in accordance with the CofE internal Guidance.

PART 3: DELEGATION AND REPORTING SAFEGUARDING SERIOUS INCIDENTS

A. Where does the ultimate responsibility sit for reporting safeguarding Serious Incidents to the Charity Commission?

The ultimate responsibility for reporting all safeguarding Serious Incidents to the Charity Commission sits with the trustees of the charity (DBF, PCC or Religious Community) in which the Serious Incident occurred. The CofE internal Guidance requires this responsibility to be delegated, either to the DSA and DS (if a PCC or a DBF), or to an appropriate person in the Religious Community.

The CofE internal Guidance makes it clear that trustees are expected to delegate formally their responsibility to report safeguarding Serious Incidents to the Charity Commission in accordance with the requirements in the CofE internal Guidance. This means that the delegation should set out clearly what the parameters of the delegated responsibility are, to enable the relevant trustees to maintain an appropriate degree of oversight of the reporting process in accordance with requirements in the delegation. Therefore, trustees need to be informed about the reporting of the most high-risk Serious Incidents, as well where a decision is taken by the DSA/DS that an incident reported to the DSA by the trustees as a serious incident does not in fact need to be reported to the Charity Commission, as it is not considered to be a Serious Incident for these purposes.

B. Can we amend the example template delegations?

Yes. The example template delegations are examples which DBFs, PCCs and Religious Communities can tailor to their charity as required, provided that the delegations in place reflect the requirements in the CofE internal Guidance. We are aware that some DBFs intend to amend the example PCC delegation template to reflect how the process will work in their diocese and provide guidance to PCCs in relation to this.

C. Does the DBF need to ensure that all PCCs in their diocese have passed a delegation resolution?

No. In an ideal world, all PCCs would pass a delegation resolution as soon as it is reasonably practicable to do so, such as at their next PCC meeting. However, if they have not yet passed a delegation resolution when the PCC needs to inform the DSA that a safeguarding Serious Incident has occurred in the PCC, a delegation resolution can be passed at that point.¹

D. Are DSAs and/or DSs liable for a decision that a safeguarding incident does NOT need to be reported to the Charity Commission as a Serious Incident on behalf of a PCC where this decision is later found to have been incorrect?

No. A DSA/DS would not incur any sort of personal liability or penalty if the DSA/DS decides, incorrectly, that an incident does not need to be reported to the Charity Commission as a safeguarding Serious Incident on behalf of a PCC. Ultimate responsibility for making the report remains with the PCC's trustees, which should be reflected in the terms of the delegation in place². The example template delegations for a PCC provide that, where a decision is taken by a DSA/DS that a safeguarding incident does NOT need to be reported to the Charity Commission as a Serious Incident on behalf of a PCC, that decision should be reported to the PCC's trustees, together with reasons for that decision, and recorded in writing. This will enable the PCC's trustees to demonstrate that they acted properly when approving the DSA's/DS's decision not to

¹ A PCC must pass a delegation resolution at a meeting. Once section M29 of the new Church Representation Rules comes into force on 1 January 2020, PCCs will be able to take decisions and pass resolutions by email.

² See response to Part 3, Question A, above.

report an incident to the Charity Commission. The PCC's trustees should always have the opportunity to consider, challenge and ratify a decision by a DSA/DS not to report an incident to the Charity Commission.

If a situation arises where the PCC's trustees consider that the DSA/DS's decision NOT to report a safeguarding incident to the Charity Commission is incorrect, they do not need to ratify that decision. Instead, the PCC's trustees may suspend the delegation and report that safeguarding Serious incident directly to the Charity Commission, on the basis that they believe they have cogent reasons for departing from the CofE internal Guidance, having had due regard to it.

E. Are the DSA/DS responsible for reporting a safeguarding Serious Incident to the Charity Commission on behalf of a PCC that has not informed the DSA of the incident?

No. The responsibility placed on the DS/DSA to report the incident flows from the Parish Safeguarding Officer ("PSO") having first informed the DSA about an alleged incident, in accordance with the CofE internal Guidance. Therefore, if a PCC does not comply with its obligations under the CofE internal Guidance to report a safeguarding Serious Incident to the DSA, the DSA/DS are not responsible for reporting an incident which they do not know about³.

F. When a DBF makes the declaration in the Charity Commission annual return, confirming it has reported any Serious Incidents for the period covered by the annual return, does this include any safeguarding Serious Incidents in PCCs?

No. When the DBF makes this declaration it only refers to those Serious Incidents (both safeguarding and otherwise) which need to be reported by the DBF in its own right.

G. Do DBFs have to bulk report appropriate safeguarding Serious Incidents?

No. Bulk reporting is an OPTION, not a requirement, which is available to reduce the administration involved with reporting for those DBFs who may find it helpful. If DBFs wish to bulk report safeguarding Serious Incidents, they must use the Charity Commission's bespoke DBF bulk reporting template⁴.

H. Do all the trustees need to be involved in decisions relating to reporting safeguarding Serious Incidents?

No. Although the ultimate responsibility for reporting safeguarding serious incidents to the Charity Commission sits with the charity's trustees, for reasons relating to confidentiality, many charities restrict information relating to safeguarding incidents to a smaller group of trustees only. For this reason, the example template delegation for PCCs includes suggested wording to facilitate the delegation of the oversight of the reporting safeguarding serious incidents to a more limited trustee group who have responsibility for safeguarding.

I. Can a DSA/DS report a safeguarding Serious Incident to the Charity Commission on behalf of a PCC's trustees, where the DSA has been informed about the allegation by a third party and the PCC is not aware of the allegation?

Yes, although some/all of the PCC's trustees will need to be informed about the incident. When information about a safeguarding allegation is received by a DSA, the first step is to manage the safeguarding risk in accordance with the appropriate policies. Reporting to the Charity Commission follows after. As part of addressing any safeguarding risk

³ NB: See also response to Part 3, Question I, below.

⁴This template can be downloaded from <https://www.churchofengland.org/safeguarding/promoting-safer-church/policy-practice-guidance>

identified in the PCC, the DSA will usually need to inform some or all of the PCC's trustees.

Where a DSA reports a safeguarding allegation to the police, even if the PCC's trustees cannot be informed about the nature of the allegation being investigated, or who the alleged perpetrator may be, the PCC's trustees can still be informed that: (i) a safeguarding allegation has been made; and (ii) the allegation is being investigated by the police. As any alleged Serious Incident reported to the police also needs to be reported to the Charity Commission, the PCC's trustees can authorise the DSA/DS to report the Serious Incident to the Charity Commission on their behalf, under the delegation.

PART 4: INFORMATION SHARING AND CONFIDENTIALITY

A. Can an alleged Serious Incident be reported to the Charity Commission when the Police do not permit the disclosure of any information relating to that incident?

Yes, but in a limited way. If you report an alleged Serious Incident to the police, you should liaise with the police when preparing the report of the Serious Incident to the Charity Commission, to check that the police approve the disclosure of the information to the Charity Commission. Where the police inform you that you must not disclose some (or any) information relating to the allegation to the Charity Commission at that point, you can report to the Charity Commission that:

- (i) an allegation about a Serious Incident has been made which has been reported to the police;
- (ii) the police are currently investigating the allegation (and provide the police reference number);
- (iii) the police have told the charity that it cannot disclose any details of the allegation to the Charity Commission at this point;
- (iv) once the police permit details to be disclosed to the Charity Commission (or if the police investigation into the allegation concludes that it was groundless), the charity will update the Charity Commission in a follow-up report; and
- (v) the charity trustees are taking appropriate steps to safeguard the charity's assets/beneficiaries in accordance with its policies and any advice given by the police.

B. Does data protection law permit the reporting of Serious Incidents to the Charity Commission and the sending of copies of those safeguarding Serious Incident reports to the NST?

Yes. We are confident that there is a legal basis⁵ to permit the sharing of the special category personal data in Serious Incident reports with both the Charity Commission and the NST.

In addition, charities should put suitable Privacy Notices in place which include safeguarding and reporting to statutory agencies and regulators on the list of purposes for which data may be shared⁶.

⁵ Articles 6(1)(c) and (e) GDPR. S.10 and Schedule 1, Part 2, Data Protection Act 2018.

⁶ If you do not yet have a Privacy Notice in place, there is a basic template Privacy Notice on the Parish Resources website which can be modified as required: <https://www.pariahresources.org.uk/gdpr/privacy/>

C. Does the Charity Commission disclose any of the confidential information in a Serious Incident report to third parties?

The Charity Commission explains at the end of its Guidance on reporting Serious Incidents⁷ that, whilst it appreciates that the information provided in a Serious Incident report may be confidential or sensitive, sharing that information may be necessary to further its statutory functions and, in some cases, it is required by law to do so. Where it is considered that a particular matter is very sensitive or confidential, or if a particular exemption applies, you may wish to inform the Charity Commission of this in the section of the report which enables you to “*provide any other relevant information*”.

D. What should a charity do if the alleged perpetrator of a Serious Incident is also a trustee or senior manager of another charity, or has a role in another charity?

It will depend on the factual matrix in each situation but the trustees of the charity in which an alleged serious incident occurs (Charity A) would not normally be able to inform the trustees of another charity (Charity B), even if the alleged perpetrator is involved in Charity B (although legal advice should be taken where the trustees of Charity A are unsure what is required of them). Should the alleged Serious Incident be reported to the police, the police may decide that it is necessary to inform other parties (which may include Charity B), and the police would do this themselves.

If you are aware that the alleged perpetrator is involved in other charities, you can provide this information to the Charity Commission in the “*provide any other relevant information*” section of your report, so that the Charity Commission is made aware of the situation and can decide whether it needs to take any protective action.

⁷ <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>