



## **New Notifiable Events reporting for Scottish Charities**

From 1<sup>st</sup> April 2016, the Office of the Scottish Regulator (OSCR), are requesting that Scottish charities to report on events which may threaten or have a significant impact on a charity or its assets.

The new requirement is part of OSCR's aim to promote public confidence in charities and their work.

OSCR's recently-published guidance on Notifiable Events can be found here:

[http://www.oscr.org.uk/media/2155/2016-03-15\\_guidance-for-notifiable-events\\_web-version.pdf](http://www.oscr.org.uk/media/2155/2016-03-15_guidance-for-notifiable-events_web-version.pdf)

### **What is a Notifiable Event?**

In short, a Notifiable Event is **any** event which has or may have a significant impact on your charity.

Within their Guidance, OSCR have given a list of the type of events which they would deem as 'Notifiable'. These include:

- Fraud and theft.
- Substantial financial loss. OSCR suggests that 'substantial' would represent 20% or more of the charity's income. A 'loss' can include the withdrawal of regular annual grant funding.
- Incidents of abuse or mistreatment of vulnerable beneficiaries.

- Not having enough Trustees to make a legal decision.
- The charity has been subject to a criminal investigation or an investigation by another regulator or agency; sanctions have been imposed, or concerns raised by another regulator or agency.
- Significant sums of money or other property have been donated to the charity from an unknown or unverified source. OSCR suggests a 'significant sum' to be £25,000 and over.
- Suspicions that the charity and/or its assets are being used to fund criminal activity (including terrorism).
- A Trustee is acting whilst disqualified.

### **Who should report a Notifiable Event and when?**

The Trustees, being those responsible for the overall control of the charity, are responsible for reporting a Notifiable Event to OSCR, as soon as possible. It is up to the Trustees to ascertain whether an event is significant or serious enough to be a 'Notifiable Event'. OSCR provides information within their Guidance of the level of severity which they would deem reportable.

It is worth mentioning here that auditors and independent financial examiners are under a duty to report on the activities or affairs of a charity where they encounter any matter which is likely to be of "material significance" to OSCR in carrying out its functions.

### **Should charities be doing anything now?**

YES. Risk management of your charity is now more important than ever.

Firstly, all Trustees, together with any volunteers and staff, need to be sufficiently informed so as to be able to identify a Notifiable Event when it occurs. Volunteers and staff need to be aware that these require to be reported to the Trustees as soon as they occur. The Trustees should consider introducing a Board Policy outlining the salient requirements.

Secondly, Trustees should be looking at identifying and reviewing all risks to the charity and should be considering what mechanisms are in place, or require to be in place, to help mitigate risks and prevent a Notifiable Event occurring.

Where a Notifiable Event has occurred, whether the charity needs to consider having a plan in place to deal with this.

Where a Notifiable Event is reported, OSCR will want to know:

1. what action has been taken
2. what further action will be taken to deal with the Notifiable Event
3. what Trustees plan to do in the future to mitigate against such a similar Notifiable Event occurring in the future

Therefore proper risk management is now more important than ever. Trustees should be ready to be fully accountable to OSCR in the event of a Notifiable Event occurring and be able to demonstrate that the mechanisms are in place to deal with issues quickly and effectively. Trustees will want to be comfortable that there was nothing more that could have been done to prevent the Notifiable Event occurring where in a position that they require to report to OSCR.

Trustees should be undertaking a Risk Assessment (or review the existing Risk Assessment) annually in order to identify and manage possible or probable risks, focusing in particularly (but not exclusively) on the 'events' listed above as provided by OSCR in their Guidance.

The outcomes of this may include:

- Introducing or reviewing Board Policies such as a Financial Control Policy to assist in the prevention of Theft and Fraud and tighten up on internal financial controls.
- If that charity is heavily reliant on Grant Funding or another main income stream, looking at identifying alternative funders or sources of income and possibly diversifying.

- Where there are vulnerable beneficiaries, ensuring that all staff, volunteers and (if applicable) Trustees have been through the necessary background and disclosure checks. Consider introducing a Vulnerable Beneficiary Policy and Statement of Practice and ensure regular staff and volunteer training.
- Undertaking a review of the charity's constitution to (1) ensure any quorum required to convene a Trustees' meeting is still relevant and can be adhered to; and (2) make sure all Trustees are aware of the voting requirements for different decisions and, where relevant, ensuring through succession planning that there is a sufficient number of Trustees both now and going forward to make a legal decision.
- Introducing a policy outlining what level of a donation from an unknown or unverifiable source would be deemed to be 'significant' in value, together and a series of steps to be followed in order to identify the source.
- Ensuring the Trustees adopt a 'culture of enquiry' in particular in relation to the finances of the charity, to include reviewing financial statements of the charity on a regular basis and, where the charity provides grants and donations, adopting a procedure to 'follow the funds' by way of requesting reports and other evidence from the recipient to ensure the funds have been expended for the original purpose and not for some other means.
- Asking new and existing Trustees to complete a Declaration of Eligibility confirming they are not disqualified as a Charity Trustee.

If you require any further information on Notifiable Events, would like assistance in undertaking an annual Risk Assessment process or have any other queries in relation to Charities and Charity Law in general, please contact one of our Solicitors who would be happy to advise you.

*Although carefully prepared, this Fact Sheet is intended as a guide only and is not intended to be comprehensive. Specific advice should be requested on individual situations.*

*This is one of a series of Fact Sheets by J & H Mitchell, W.S. Others can be found at*

[www.jandhmitchell.com](http://www.jandhmitchell.com)

*2016 edition*