



Methodist Independent Schools Trust

Serious Incident Reports

The Charity Commission (the **Commission**) expects charity trustees to notify it of any serious incident occurring within their charity. The Commission publishes guidance on reporting serious incidents, in which it defines them as "any serious incident that has resulted or could result in a significant loss of funds or a significant risk to a charity's property, work, beneficiaries or reputation." The Commission's guidance identifies certain categories of risk which it would expect always to be reported. It is also always necessary to report an incident that is required to be reported to another authority.

The Charity Commission has recently updated its guidance on Serious Incident Reporting (22/9/17) and Heads, Bursars, Governors, Trustees and MIST Executive Officers have been duly notified of this latest update. The updated Charity Commission guidance can be accessed [here](#).

Failure to report a serious incident may have two consequences:

1. If the incident is subsequently brought to the attention of the Commission, or the Commission identifies it as a serious incident on its own initiative, the Commission may be critical of the failure to report the incident, and this has the potential to colour any related interaction with it. Indeed, a failure to file a timely serious incident report may result in the Commission taking or escalating regulatory action against the charity trustees, the failure being an indication to the Commission that the trustees may not be fulfilling their duties properly.
2. In the Annual Return, charity trustees are required to confirm that there have been no unreported serious incidents in the period in question. In order to give this confirmation, charity trustees may need to file late reports in relation to previously unreported incidents (with the possible consequences referred to above).

Making a timely serious incident report gives charity trustees the opportunity to describe the incident in their own terms and demonstrate the proactive steps being taken to manage the incident, so that any initial regulatory assessment by the Commission is not based on information from a complainant or press reports. It is also likely to reassure the Commission that the charity trustees are aware of and acting on their duties and responsibilities.

Contents of any Serious Incident Report

A serious incident report should offer the Commission sufficient information to satisfy it that the charity trustees are managing the situation effectively. While the Commission is unlikely to express a view as to whether a particular course of action is correct, it will be reassured by evidence that the charity trustees are proactively managing the incident. We would suggest that any serious incident report includes the following information:

1. brief background to the incident and how it arose;
2. the reasons why it has been identified as a serious incident by the charity trustees which may cover:
 - 2.1 the potential for reputational damage arising from the incident;
 - 2.2 the potential for there to be an impact on the charity's assets, to include the



costs involved in addressing the incident and a possible loss in any fundraising income as a result; and

- 2.3 any risks to beneficiaries or others associated with the charity arising as a result of the incident.



3. the steps taken by the charity trustees to manage the incident to date, which are likely to include:
 - 3.1 communications to the charity's relevant stakeholders;
 - 3.2 obtaining specialist advice (eg legal; financial; public relations); and
 - 3.3 the governance arrangements put in place to manage the incident.

Whilst it would normally not be necessary to submit evidence or documents alongside the report itself, the Commission may request sight of these in future, which should be borne in mind when preparing minutes that report the discussion of the charity trustees and the factors taken into account in reaching decisions in relation to the matter.

Freedom of Information

The Charity Commission is subject to the Freedom of Information Act 2000 (**FOIA**). Charity trustees may wish to be aware that a serious incident report could potentially be disclosed if an FOIA request were made to the Charity Commission.

If the Charity Commission receives an FOIA request for the Report (or indeed any related information provided by the charity concerned), it will need to take its own decision about whether to disclose it under FOIA, without being unduly influenced by any third party who may be affected by disclosure (including the charity). Neither is there any legal requirement to consult the charity before responding to the request. However, in our experience the Commission does generally consult third parties in these circumstances, and takes any objections they may have seriously. It also provides assurances to charities about keeping serious incident reports confidential in its guidance to Trustees.

To strengthen its position here, charities may consider marking a serious incident report confidential, and ensure that the confidentiality of the Report is preserved internally by not disclosing it to any person who does not need to see it. The charity might also consider expressly asking the Commission to inform it about any related FOIA requests, and to give the charity an opportunity to make representations.

Serious incidents and MIST

The obligation to file serious incidents relating to MIST lies with the MIST Trustees. This means that they must have adequate guidelines and reporting mechanisms set out in the Governance Manual to enable them promptly to be made aware of incidents that may need to be reported. Since a number of categories of serious incidents (e.g. relating to safeguarding or media attention) are likely to arise within schools, it is critical that there are clear and well-understood lines of communication between Schools senior executives, School Governors, MIST Executives and MIST Trustees.

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Ref: SHM