



Serious incident reporting and charity law update

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Agenda

- *Reporting Serious Incidents (SI)*
 - *Updated reporting regime*
- *Charity Law update*
 - *(Relatively) new rules on automatic disqualification of charity trustees*
 - *Draft guidance for charities that are connected with non-charitable organisations*
 - *Other updates*

Reporting Serious Incidents (SI)

Updated Charity Commission guidance – October 2018

- What?
- How?
- Other considerations:-
 - Data protection and confidentiality
 - Declaration in the annual return

Reporting SIs – the responsibility to report

- The need for prompt, full and frank disclosure to the Charity Commission
- Trustee responsibility
- What happened
- How are you dealing with it
- What steps have you already taken

What is a SI?

- Harm to your charity's beneficiaries, staff, volunteers or others who come into contact with your charity through its work
- Loss of your charity's money or assets
- Damage to your charity's property
- Harm to your charity's work or reputation

“Significant” - in the context of your charity, taking account of its staff, operations, finances and/or reputation

Main categories: Safeguarding, financial crimes, donations from an unknown/unverifiable source, suspicious financial activity, links to terrorism/extremism

How do you deal with a SI?

- Take immediate action to:
 - prevent or minimise any further harm, loss or damage
 - report it to the Commission as a serious incident (RSI@charitycommission.gov.uk)
 - report it to the police (and/or other relevant agencies) if you suspect a crime has been committed, and to any other regulators the charity is accountable to
 - plan what to say to your staff, volunteers, members, the public, the media and other stakeholders
 - review what happened and prevent it from happening again
- Report criminal activity (actual or alleged) to the relevant agencies

Reporting SIs – other considerations

Data Protection and confidentiality

- Commission may store and process information in order to further its statutory functions
- No guarantee that information provided will be kept confidential
- Tell the Commission if the information you provide (or wish to provide) is particularly sensitive or confidential

Reporting SIs – other considerations

Declaration in the annual return

- If annual income over £25,000 - sign a declaration confirming there were no SIs during the previous financial year
- Providing false information is an offence under section 60 ChA 2011

Charity Law update

- New rules on automatic disqualification of charity trustees (1st August 2018):-
 - Extension of list of circumstances for automatic disqualification
 - Charity trustees and Senior Managers
 - Applying for a waiver
- Draft guidance for charities that are connected with non-charitable organisations
- Other Charity Commission updates

New rules on automatic disqualification

List of circumstances

- Expanded significantly - includes matters such as:-
 - unspent convictions for bribery, terrorism and money laundering
 - certain other circumstances such as contempt of court
 - being on the sex offenders register

- Disqualifying reasons table

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731118/010818_Disqualification_Reasons_Table_v2.pdf

New rules on automatic disqualification

Charity trustees

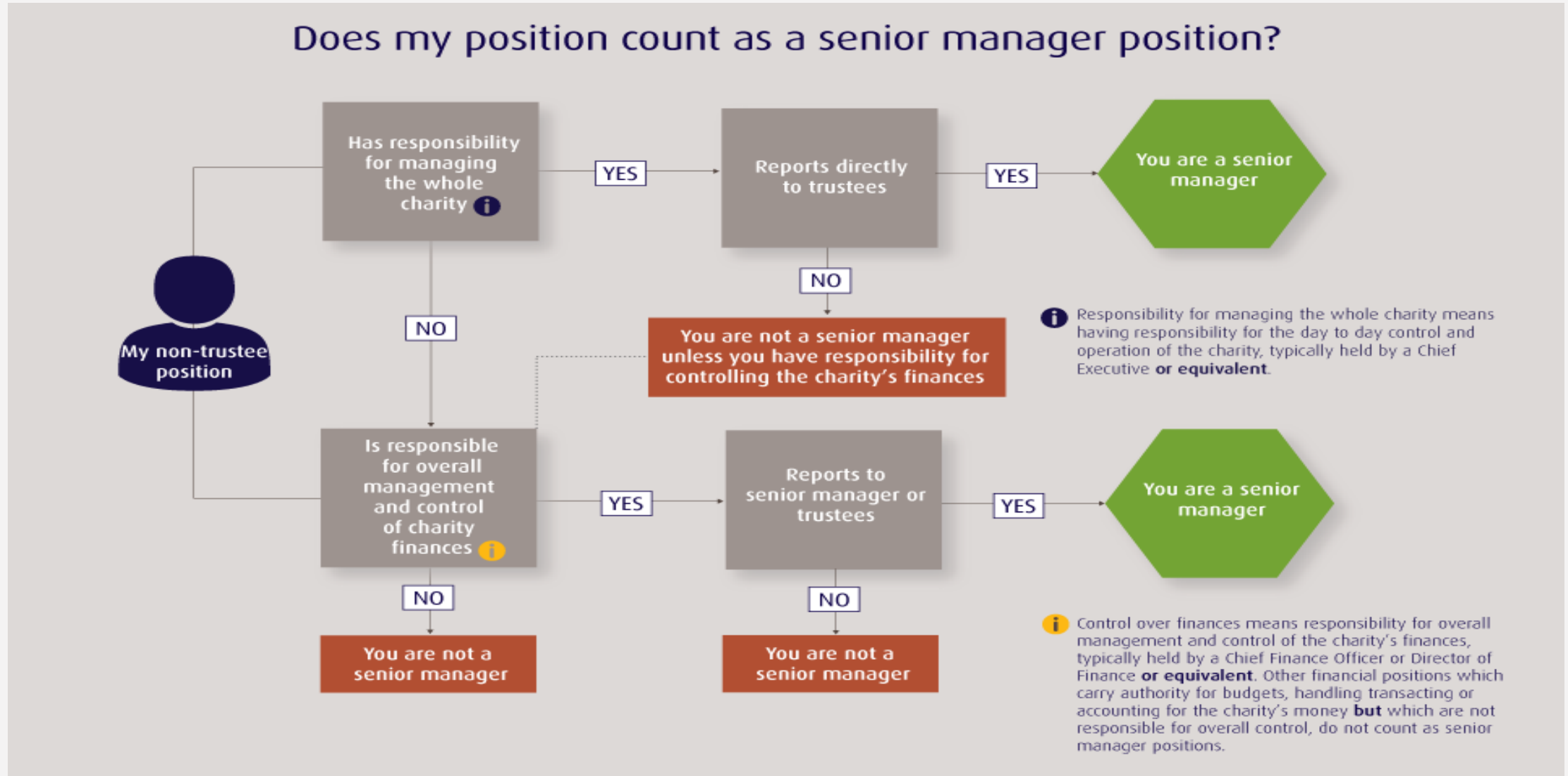
- A person responsible for governing a charity and directing how it is managed and run - having ultimate control (ChA 2011)
- Might be called something else e.g.
 - the board
 - management committee
 - governors
 - directors

New rules on automatic disqualification

Senior managers

- Chief Executive and Chief Finance Officer (or equivalent) positions
- It is the function (and not the title) of the position that matters
- Check which posts qualify as senior manager positions

Charity Commission flowchart



New rules on automatic disqualification

Waiver

- Apply to the Charity Commission for a waiver to bring the disqualification to an end (either for a named charity or charities, a class of charity or all charities)
- Detailed rules on when the Charity Commission can and cannot issue a waiver

New rules on automatic disqualification

Practical steps

- Check your recruitment provisions
 - Job applicant or potential new trustee to sign a suitable declaration BEFORE an appointment is made
- Check your existing positions
 - Has a trustee or senior manager become disqualified since their appointment?
 - Get fresh declarations signed at reasonable intervals
- Review contracts to ensure the charity is protected

New rules on automatic disqualification

Charity trustees

- Disqualified charity trustees should resign
- Check whether any resignation affects the charity's governance (e.g. minimum number of trustees, quorum etc.)

Senior managers

- Staff serving in a relevant senior manager position who are disqualified must not continue to act in that position
- Take legal advice concerning the on-going employment and other rights of the senior manager

Refer the disqualified individuals to the waiver process

Draft guidance for charities connected with non-charitable organisations

- Applies to a range of charities (e.g. those with trading subsidiaries, corporate foundations, LA spin-outs, groups of charities where the brand is owned by a lead charity)
- Duties and principles:-
 - Keep the charity separate
 - Make independent decisions
 - Be open and accountable
 - Manage the risks, review the relationship
 - Avoid conflicts of interest and loyalty
 - Personal benefits
 - Use written agreements/contracts

Other Charity Commission updates

- CC has published guidance on *How to Give Safely to Charities* – aimed at members of the public and potential donors
- Updated guidance on *Display of trustee legal names on the charity register* – apply for a dispensation if required
- Goodbye GSI: Charity Commission email addresses have changed from xxx@charitycommission.gsi.gov.uk to xxxx@charitycommission.gov.uk

Any questions



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