

A Trustee's Handbook

Consecrated Life

Guiding you along the journey



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FOREWORD

The concept of "charity" has existed in England and Wales – both in religious organisations and beyond – for far longer than the government has regulated the institutions which administer it. There have been differences of opinion as to what it means exactly — translators of the Bible have differed over whether "agape" should be rendered "charity" or "love" but they have agreed that the requirement to love others is a fundamental aspect of religious expression. Even this debate on translation shows the closeness of "charity" and "love" and therefore the esteem with which charity has been held in religious thought. Historically people may have disagreed on the precise meaning of charity, but this has not really mattered because doing it has always been far more important than defining it.

Nowadays, the law in England and Wales has set clear boundaries as to what a charity is. There are thirteen different types of charitable purpose set out in the Charities Act 2011. These include the advancement of religion, the advancement of education, the relief of poverty, the advancement of health and the saving of lives, the advancement of human rights and conflict resolution and more. Charities reach into every part of England and Wales, and often work internationally. They rely on generosity and, with the aim of preserving and protecting this, the Charity Commission was formed in 1853. Today our primary objective is to promote public trust and confidence in charities.

In speaking to a broad range of religious charities, with diverse views on what the purpose of human life is and of what spiritual authority we are responsible to, we might expect questioning on the validity of charity law and even of The Commission as a civil regulator. However, it is both positive and interesting that that this is not our experience. Nearly always the people we engage with in religious charities are clear that our legal expectations are entirely consistent with their understanding of higher truths. The belief that charitable donations should be protected to achieve as much positive change as possible, and categorically not mismanaged, unites people of different beliefs. It is great to hear so much support for this when people come together at multi-faith events.

It is trustees who have ultimate legal responsibility for the administration of their charities. Trustees have legal duties, and you will find more information about this in our guidance "The Essential Trustee", as well as a helpful summary within this book. These duties are not meant to be unduly burdensome, trustees

are expected to assess risk and take proportionate steps to mitigate them; more is expected where the risks are higher. Some things are absolute requirements, such as submitting accounts or serious incident reports. We recognise that people rarely become trustees because they particularly enjoy these things! It is the successful delivery of their work that they want to see: the people lifted out of poverty, the lives saved, the progress of their charity's students, the advancement of their mission.

However, we believe that these two things – effective legal compliance and effective delivery – go together very well and are in fact essential companions. This is borne out through all our experience at The Commission. The charities that have properly thought-out and enacted policies and procedures to protect their assets, reputation and beneficiaries, and which are appropriate to the work they undertake, are nearly always those who achieve the most for those beneficiaries. Working directly with charities, I get to see this end product first hand, and it is the best part of my job. Your beneficiaries see this too.

Being a trustee is always a very important role and it should also be enjoyable and rewarding. There is a lot of advice available to make it easier and you can find links and more information about this in the appendices. I very much hope you will be able to draw the clear connection between the technical and practical processes and the colourful, vibrant and life-changing difference you make.

Nick Donaldson

Head of Faith Charities Engagement
Charity Commission for England and Wales

Chapter 1

AN INTRODUCTION TO CHARITIES



When most religious entered religious life, it is unlikely they gave much thought to the prospect of having to be a charity trustee. It was unlikely to ever be part of the religious' vocation, and would certainly not have formed part of the individual's formation. However, nowadays many religious find themselves having to be charity trustees and there being an automatic assumption that they will know what the job entails.

This handbook aims to demystify some of the role and explain for your benefit the basics of what you need to know in order to do the job properly. But before we look at specific charity trustee duties, we have to go right back to the beginning.

Q. | SO WHY DO WE HAVE TO HAVE A CHARITY?

The more onerous running a charity becomes, the more likely you are to ask this question!

Under canon law, your institute is a juridic person, which is recognised as a "physical" entity in its own right, a bit like a limited company under English law.

Canon law provides in Canon 634§1 that the institute is "capable of acquiring, possessing, administering, and alienating temporal goods". It also provides in Canon 635§1, that the temporal goods are governed by Book V on the "Temporal Goods of the Church".

Canon law is very clear that the temporal goods of the Church are to be administered "independently from civil power" (Canon 1254§1) which would suggest that an institute does not need a charity and that it should be free of oversight from perhaps the Charity Commission.

However, the difficulty with this concept of "independence" is that English law does not recognise canon law as being legally enforceable. Therefore, as far as English law is concerned, the institute does not exist as an entity in its own right and cannot hold property or assets. In England and Wales, it is therefore necessary to actually ensure that the ownership of the institute's assets is recognised in some way that is compatible with civil law.

This is reinforced by Canon 1284§2 which provides that those administering temporal goods must “take care that the ownership of ecclesiastical goods is protected by civilly valid methods”. The canon goes on to provide in “three” that you must also “observe the prescripts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority, and especially be on guard so that no damage comes to the Church from the non-observance of civil laws”.

You therefore, as a matter of canon law, have to put in place some separate structure that is recognised in civil law, in order to protect your assets.

Q. | SO IS THE CHARITY THE SAME AS THE INSTITUTE?

No. Whatever structure you have set up in the past, will technically be a separate structure to your institute. You will therefore have a dual structure with the institute and its members on one side, and the structure holding the assets on the other.

The structure holding the assets will be holding those assets for a particular purpose, which will be to advance the works and mission of the institute and not for the benefit of the individual members of the institute.

Q. | BUT WHY DOES THIS CIVIL LAW STRUCTURE HAVE TO BE A CHARITY?

The answer is that any institution that meets certain criteria will be a charity whether it wants to or not (Section 1, Charities Act 2011). The relevant criteria are that it is:

- (a) An institution that is established for exclusively charitable purposes only; and
- (b) An institution which falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities

The key factor is that the institution must have been established for exclusively charitable purposes, to make this complicated, whether something is a charitable purpose involves looking at two elements (Section 2, Charities Act 2011):

- (1) The first element is that the purpose must be one that is recognised as charitable and falls within the purposes set out in the Charities Act 2011

There are 13 purposes set out in Section 3 of the Charities Act 2011. The most common purposes that are charitable which apply to many of your religious institute charities are the prevention of the relief of poverty, the advancement of education and/or the advancement of religion.

- (2) The second element is that the purpose must be one that is for the public benefit

This means that even if the purpose for which your institution exists falls within a recognised charitable purpose it will not be a charitable purpose unless it is beneficial to the community. It will also have to benefit sufficiently wide enough section of the public.

It used to be the case that there was a presumption that the advancement of religion, as a purpose, was for the public benefit. This presumption was removed by the Charities Act 2006 which provided that "it is not to be presumed that a purpose of a particular description is for the public benefit".

(It is worth noting that slightly different law applies in Scotland and Northern Ireland.)

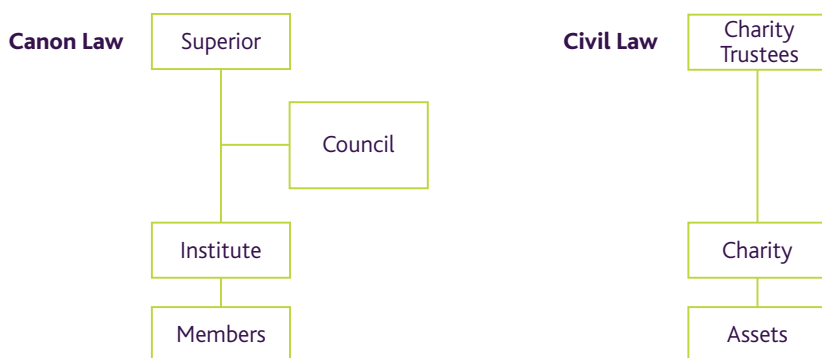
So, if an institution has charitable purposes and those purposes are for the public benefit, then the institution will be a charity. In terms of the structure you set up to hold your assets, this will almost certainly be for charitable purposes and those purposes will be for the benefit of the community as a whole.

If the institution is a charity, then it must register. Section 30 of the Charities Act 2011 provides that "every charity must be registered in the register" maintained by the Charity Commission. The only exception to this is certain charities that have been exempted from registration, certain charities that have

been excepted by an institute of the Charity Commission (certain churches etc.) or any charity whose income in a 12 month period does not currently exceed £5,000 (this being a rolling criteria).

As a result, because of the way your assets are being held for furthering the religious works of your institute, you have no option but to be a charity.

Q. | SO WHAT DOES THIS STRUCTURE LOOK LIKE?

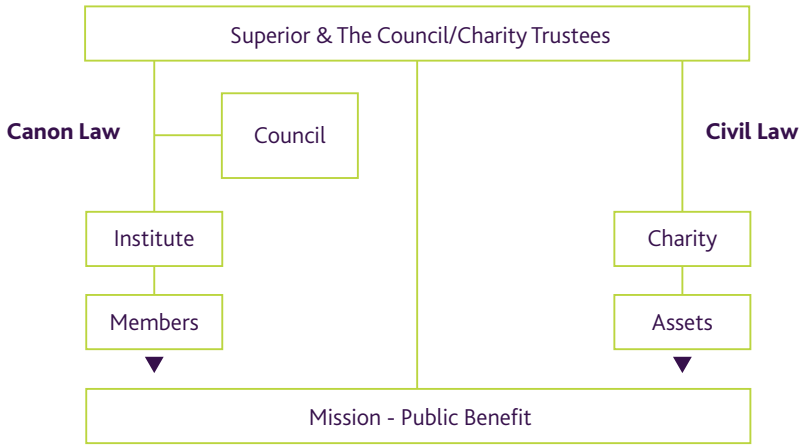


You have the institute governed by the superior and their council, which operates in accordance with canon law and the constitutions of the institute.

You also have the charity, which is governed by the charity trustees and has to operate in accordance with civil law. The members of the institute are not members of the charity.

Under canon law, the superior is the ultimate authority as far as the institute is concerned and the institute governed by the superior and in accordance with their wishes. Under civil law, the charity is governed by the trustees and it is the trustees who must decide how it operates. Sometimes the interests of the charity and the interests of the institute will differ and, on these occasions, tensions can arise.

The two separate sides however, often come together, and the separation gets forgotten.



Q. | SO WHAT STRUCTURE DOES OUR CHARITY USE?

There are essentially three types of structure that can be used for a charity:

- A charitable trust
- A company limited by guarantee; or
- A charitable incorporated organisation or CIO

Q. | WHAT IS A CHARITABLE TRUST?

Most charities associated with religious institutes were originally established as charitable trusts, under the terms of a governing trust deed. A trust is an agreement between two or more people where they (the charity trustees) declare that they will hold certain property on trust to be used for specific charitable purposes that are set out in the written trust deed.

The outgoing trustees and the new trustees have to execute a deed of appointment and retirement to appoint any new trustees.

There are two distinct drawbacks of the trust arrangement:

- Firstly, the trust/charity does not have its own legal identity. It is not a recognisable object or person in its own right. This means that the charity trustees are personally liable for any debts incurred by the charity which the charity is unable to meet from its own resources. While they may not appear to be a significant issue for individuals who have taken a vow of poverty, it can be more of an issue for lay trustees who would not want to risk the possibility of becoming bankrupt
- Secondly, the trust/charity cannot hold property such as land or investments in its own name. All property therefore has to be held in the name of the individual trustees. As a result, every time the trustees change it is necessary to update any relevant registrations (e.g. at the Land Registry)

Q. | WHAT IS A "PART 12" INCORPORATED BODY?

Many religious institutes have in the past, applied to the Charity Commission for a "certificate of incorporation" of their trustee body. Essentially this means that the trustees of the charitable trust are able to act as a corporate body in their own right, usually with a seal that is used for executing documents. If the trustees have been recognised as a corporate body in this way then:

- Any property which belongs to the charity can be registered in the name of the corporate body, so that future changes in trustees do not need to be updated on the title registrations
- The trustees can sue and be sued, and enter into contracts in the name of the corporate body by applying the seal, which does not require all trustees to be present; and
- When trustees change it may not be necessary to actually complete deeds of appointment and retirement, depending upon how the certificate of incorporation is worded

However, it is important to understand that this is essentially just an administrative simplification. It does not provide the individual trustees with any form of limited liability protection.

Q. | WHAT IS A COMPANY LIMITED BY GUARANTEE?

A charity that is a company limited by guarantee, will be a limited company that has been formed by its members. The members of the company all agree to contribute a nominal account (usually £1 or £10) towards the debts of the company should it go into liquidation. The company's articles of association are usually drafted so that the members of the company are unable to withdraw any value from the company for their own benefit. A limited company exists as an entity in its own right.

If your charity is set up as a company limited by guarantee then:

- The members of the company will appoint the directors, who are referred to as the charity trustees. Often in a religious institute charity the company will only have one member, which will be the superior of provincial superior. The sole member will then appoint and remove the directors of the company
- The assets of the charity will be registered in the name of the company
- When new directors are appointed their details are updated in the company's registers and the appropriate paperwork filed at Companies House
- The company can enter into commercial contracts in its own name. Normally one director can sign a contract on behalf of the company, aside from the case of a deed where two directors may be needed
- The company will be liable for any debts arising out of contracts. The directors would normally only be personally liable if they have acted in some manner that is wrongful or fraudulent when entering into the contract

Q. | WHAT IS A CIO?

A CIO is very much like a limited company, the main difference being that the entity does not have to be registered with Companies House and is only registered with the Charity Commission.

Like a limited company a CIO has members and charity trustees. In most religious institute CIO's you will often find that there is only one sole member, the superior or provincial superior, who will then be responsible for appointing or removing trustees.

Q. | SO WHO RUNS THE CHARITY?

Whatever the structure, the people responsible for running the charity and making the strategic decisions, are the charity trustees.

LAY TRUSTEES AND INDUCTION TRAINING



INTRODUCTION

As a result of a decline in the number of religious in active ministry some institutes are faced with the problem that there are fewer individuals willing and able to act as charity trustees. At the same time the mission for which the institute was established has very likely not gone away and the obligations and burden on charity trustees is increasing as they have to be aware of and comply with ever-changing and increasing regulatory requirements.

Q. | DO WE HAVE TO HAVE LAY TRUSTEES?

The Charity Commission's view is that *"to operate effectively, a trustee board needs a diverse mix of skills, backgrounds and experience. As well as professional skills such as financial, legal and management, a charity will benefit from people: with varied life experiences and perspectives; who represent the stakeholders it works with; and/or with an understanding of governance and the ability to think strategically"*.

The religious may well be qualified in all or many of these skill sets, but that is not always the case and as fewer religious have the time or sometimes the willingness to commit to the management of the charity, the institute may need to consider other ways to introduce the necessary diverse range of skills into the management team. The charity trustees have a joint responsibility to take forward the work of the charity and they cannot simply rely on one individual who has the necessary energy and enthusiasm to do all the work on their behalf.

In addition, charity trustees also need to consider not just the current day demands and issues, but the longer term requirements. With every organisation there is a need to plan for the future, to plan for change, and one of the most important issues is to ensure continuity in the management of the charity.

Charities, secular and religious, and institutes have one key principle in common, they encapsulate the past, present and future. They are not about simply reaping the rewards of activity today, but are building upon the foundations of an organisation that will continue to carry out its purposes long after the current participants are gone. The charity trustees are often described as merely the stewards of the charity's assets for a finite period of time.

Given the stewardship nature of the role, it is important that the charity trustees have a degree of continuity and that changes are made gradually and if possible, over a long period of time.

When appointing charity trustees, usually through the superior, the institute, needs to consider not just the next term of office (often four or five years) but how the charity will continue after that date. It is important to consider whether those charity trustees currently serving or being appointed will be in a position to serve another term of office to ensure continuity. Furthermore, as institutes consider restructure and future needs, they need to ensure that suitable individuals are on hand to implement those long-term plans.

For each institute the pace of change is different and a matter of personal preference and resources. The close relationship between the charity and the institute often means that the charity is seen as part of the “family”. The thought of allowing “outsiders” into the management of the family is for some, unthinkable. However, there remains a need to balance appropriate skills on the trustee body.

In July 2012, the San Francisco Auxiliary Bishop Robert McElroy in discussing the issue of introducing lay trustees in US Catholic Schools took the view that charity trustees often fall into the pitfall of: *“Treating the mission as an artefact that ceases to be living and renewable. While acknowledging the inheritance of great traditions, the mission cannot remain rooted in the last century.”*

A much more positive view was put forward by Mary Reynolds RSM in addressing CORI in 2005: *“Religious congregations do not envisage the handing over of trusteeship ... as a “closing down” but rather the passing on of something that they have pioneered and developed. The handing over, which is likely to be a gradual process rather than a one-off event is full of opportunity for empowerment and partnership. To engage with the future lay trustees in developing a theological foundation for trusteeship, to co-devise ... the canonical and legal structures that allow them to assume public trust of ... their responsibility ... is an exciting and enriching project. This is a time when congregations can be heroically generative as they transition their legacy to new forms and empower and trust others to bring it forward.”*

Q. | WHAT ARE LAY TRUSTEES?

Institutes considering introducing non-member charity trustees often refer to taking on “lay trustees” but it is important to understand, at the outset, what is meant by the term “lay trustees”.

Under canon law, Canon 96 provides that *“by baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition”*. Canon 204§1 goes on to provide that such individuals form the “Christian faithful” and, in accordance with Canon 205 those who are in “full communion” with the Church are those who accept the three bonds of *“the profession of faith, the sacraments, and ecclesiastical governance”*.

The term “lay people” is introduced by Canon 207§1 which provides that *“by divine institution, there are among the Christian faithful in the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons”*.

While this does not provide a definition of the “laity” or “lay people”, it is clear that the term is widely understood within the Church as applying to individuals who are in full communion with the Church and, as a consequence, are bound by the provisions of canon law insofar as these apply to the Christian faithful.

However, when we talk about lay trustees, we need to make it clear that we are not necessarily referring to trustees who are appointed from amongst the laity. While there will be many good reasons for appointing individuals who are, at the very least, members of the Christian faithful, they do not need to be members of the laity (as understood in canon law).

We therefore define the term lay trustee as being a much wider group of individuals, in essence any individual who is not a member of the institute associated with the charity (i.e. outsiders to the institute). Our definition of lay trustee could, therefore, actually include members of other religious institutes and clerics as well as non-Catholics.

Q. | IS THE APPOINTMENT OF LAY TRUSTEES NOT CONTRARY TO CANON LAW?

It has been suggested occasionally that appointing lay trustees to administer “ecclesiastical goods” is against canon law, this is not correct. Canon law acknowledges that lay people may be involved in such administration and provides in Canon 1282 that *“All clerics or lay people who take part in the administration of ecclesiastical goods by a legitimate title are bound to fulfil their functions in the name of the Church according to the norm of law”*. As a result, any lay trustee who is appointed who is Catholic will in fact be bound by the provisions of canon law in relation to the assets of the charity in the same way as any member of the institute.

Given the nature of the charity, and its role in furthering the Roman Catholic religion, at civil law there is also a principle that arguably requires the charity trustees to be members of the Roman Catholic Church. In practice, it has generally been provided that a simple majority of the charity trustees (i.e. members of the institute and lay trustees) should be Roman Catholics.

It is, however, necessary to consider whether the appointment of lay trustees is consistent with the institute’s canonical statutes and, if not, the statutes would need to be amended. For example, the statutes may stipulate that all trustees must be members of the institute, in which case this provision would need to be amended.

Q. | WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF APPOINTING LAY TRUSTEES?

The reality for many institutes is that the future of their charity will eventually depend upon the successful introduction of lay trustees and the new skills and energy that they are able to offer.

The advantages of having lay trustees might be:

- New individuals bring with them an infusion of new ideas and constructive criticism
- They bring with them the outsider’s objective perspective on the future of the charity

- They can contribute a wide range of skills beyond those found within the members of the institute (for example legal skills, accountancy and financial planning skills, management consultancy and investment skills)
- They can provide longer term continuity

However, there might be disadvantages of having lay trustees:

- They may seek to overturn the established institute of events, particularly making it difficult for the institute to fund religious activities or training which they might consider peripheral to the charity's mission
- They may fail to understand the distinction between the charity and the institute and/or seek to interfere in the life of the institute and its internal governance
- They may have a different sense of purpose or mission to the institute
- They may not be sympathetic to the needs and challenges of religious life
- They are not members of the "family" who have grown together as members of the institute and therefore will not have picked up subconsciously the deep knowledge of the institute, its people and its purpose

It is therefore important to ensure that the mechanism used to appoint lay trustees provides for:

- The views of the religious to be taken into account and afforded the dignity they deserve
- The catholic nature and ethos of the charity to be preserved and remain a lasting legacy
- Changes that are consistent with the principles of canon law

Q. | ARE THERE ANY ALTERNATIVES TO APPOINTING LAY TRUSTEES?

We appreciate that appointing lay trustees is often seen as a last resort, something to be avoided at all costs. We understand that view and, as we have said above, it is a very personal decision for all involved.

Depending upon the enthusiasm and vitality of the members of the institute, it may not be necessary to consider appointment of lay trustees yet or at all. An alternative solution may be to find appropriate ways to reduce the burden of the charity trustees by involving others in the day-to-day administration of the charity. In particular:

- The charity might consider creating a senior management team of individuals appointed to executive positions. For example, it may be appropriate to appoint a director of care to oversee the operation of the charity's care homes as opposed to requiring this activity to be handled by a charity trustee. The director of care could then report directly to the charity trustees
- The charity trustees might draw on the expertise and strategic guidance of their professional advisors and others with relevant experience. Rather than just relying on their advisors to answer specific one-off questions, advisors could be invited to take part in charity trustee meetings and provide strategic advice on the direction of the charity
- External consultants could be retained to advise on specific areas or projects where the charity trustees feel they are lacking in expertise (for example the appointment of a health and safety consultant to advise on preparation of appropriate policies)
- In some cases we are aware that institutes have set up a separate branch that is a secular institute for lay people. These are sometimes described as a "third order" or "tertiaries". The members of the third order live the charism of the institute and follow a profession of promises that are appropriate for their own personal state in life. Where such a third order exists, members of that third order would potentially be suitable candidates for appointment as lay trustees
- A candidate for the role of lay trustee could be "road tested" by being appointed a member of one of the charity's key committees

Q. | HOW DO WE FIND THE RIGHT PERSON TO BE A LAY TRUSTEE?

A lay person, with the best will in the world will not understand the institute's way of life or its motivation and vision as well as a member of the institute. Consideration might, therefore, be given to appointing someone that has known the institute for a period of time and shares its values – possibly an associate or similar.

Before inviting someone to become a trustee, it might be useful to invite them along to a couple of trustee meetings as an observer in the first instance or as a member of a committee such as finance & general purposes or fundraising. This could give existing trustees the opportunity to see how they behave and react in meetings and also gives the candidate an opportunity to decide on whether they want to take up the role as trustee. It often pays to be cautious in this way. People are often very different in formal meetings compared to how they seem in an informal or social setting.

Q. | HOW DO WE PREVENT THE LAY TRUSTEE FROM FEELING LIKE AN OUTSIDER?

There is a danger that a lay trustee will always feel like an outsider. As members of the institute, the member trustees will meet informally and inevitably discuss matters that may later come up at trustee meetings. Hence the lay person will be at a disadvantage as matters may have been mulled over long before they are raised with them. Crucially there will be a need to ensure that the lay person has all the necessary information they need to enable them to carry out their responsibilities as a trustee. They are not there simply to rubber stamp decisions already taken in principle or to make decisions based on only half the facts.

There needs to be a process for keeping the lay trustee informed and knowing where to draw the line between what they are entitled to know, because they have responsibilities as a charity trustee, and what they need not know because the issues are in respect to the wider institute. Inevitably, this means that trustee meetings have to become far more formal and agendas have to be clear about what is being discussed and what decisions are being made, though that would not be a bad outcome in our view.

Q. | DO WE NEED TO MAKE ANY CONSTITUTIONAL CHANGES TO PERMIT LAY TRUSTEES?

In some cases the charity's constitutions will provide that all charity trustees must be members of the institute. If this is the case, then it will be necessary to make the appropriate changes to the charity's constitutions to remove this qualification before any appointment takes place. This is unlikely to require the approval of the Charity Commission.

It will also be necessary to consider whether other administrative provisions should be added to the charity's constitution to preserve the link with the institute and to ensure good governance. In particular:

- It might be appropriate to include a restriction providing that at all times a majority of the charity trustees must be members of the institute. Careful thought will need to be given as to whether this restriction is appropriate, depending upon the reason for appointing lay trustees, because it could have the unfortunate effect of limiting the number of lay trustees who could actually be appointed as the number of members of the institute diminishes or even suggest that lay trustees are "2nd class citizens". However, as discussed above, it will be necessary to ensure that a majority of the charity trustees (i.e. members of the institute and lay trustees) are Roman Catholic and so an appropriate provision may need to be included to provide for this
- As the lay trustees' terms of office will not be linked to any dual role on the council, it would be sensible for the lay trustees to serve for a fixed term of office, e.g. three or four years. This avoids the embarrassment of the superior having to ask the lay trustee to stand down after a period of time. Provision should then be made to enable them to be reappointed at the end of that term of office and, if so, thought should be given to have many continuous terms they can serve (e.g. maybe two or three terms followed by a fixed period of say 12 months before they can be reappointed). In order to preserve continuity, it may be appropriate to consider staggering the terms of office of any lay trustees so that they do not end at the same time as the terms of office of the charity trustees who are members of the council
- The quorum provisions for a charity trustees meeting should be reviewed and, if appropriate, include a minimum number of charity trustees who are members of the institute, although again this raises the same issues as discussed above

- Most charities have a standing delegated authority to enable any two trustees to execute documents on behalf of the charity. Consideration will need to be given as to whether this authority remains appropriate or whether it should be stipulated that one of the two charity trustees must be a member of the institute or the superior
- Given that the lay trustee will not always be on hand as readily as a member of the institute living in or easily able to get to a community house, it may be appropriate to consider making provision for the number of charity trustee meetings that will be held each year and arrangements for how notice of these meetings will be given. It may also be advisable to update the charity's constitutions to consider making provision for meetings to be held by electronic means (conference call or audio/visual) as opposed to always having to be face-to-face meetings

It is also necessary for the institute to reflect that the lay trustees are not part of the institute and that the charity trustees are not the council. The institute will still need to have a properly constituted council in accordance with canon law and the institute's constitutions and the council would need to be careful to avoid taking decisions on the charity's behalf and expecting the lay trustees to follow suit.

Q. | WHAT SORT OF INDUCTION TRAINING SHOULD WE GIVE LAY TRUSTEES?

The lay person will need two types of training. Firstly, they will need to get to know the charity, the institute and its work, its values and its people. This means that they will need to devote time to visiting, talking to members etc. Secondly, they will need to understand their legal responsibilities and so a form of trustee training may be advisable. This is always a good idea for all new trustees – whether they are lay people or religious.

It might also be a sensible idea to provide a written summary of the duties of the charity trustees and what is expected of them in some form of job description. This serves to remind both religious and lay trustees what is expected of them.

It is very important to ensure that the individuals who are appointed as lay trustees understand the ethos and work of the institute. We would suggest an appropriate "welcome note" from the superior and that they be given a full

induction by the charity trustees and if possible by the superior which explains the link between the institute and the charity and the history of the two organisations.

It is sensible that the induction makes clear to the lay trustee the parameters of their role as charity trustees and the demarcation between the charity and the institute. It may also be appropriate to explain that there will be a distinction between meetings of the council to consider matters pertinent to the institute and meetings of the charity trustees. Where possible these should be dealt with as separate meetings.

As part of any induction the lay trustees should be given:



Copies of the charity's constitutional documents in civil law (but there is no need to provide copies of the institute's canonical constitutions)



A copy of the document appointing them as a charity trustee – this could be as simple as a letter from the superior or might, depending on the charity's constitution, be one or more formal legal documents



A note of their terms of office



Information about the role of a trustee, we would recommend a copy of the Charity Commission's publication "*The Essential Trustee: What you need to know*"



Details of the charity's insurance arrangements and, in particular, any trustee or officer's insurance

Checklist for a welcome letter to lay trustees

The institute

- Explain the history behind the institute and its founder
- Explain the key ethos and mission of the institute
- Explain that canonical governance structure and the role of the superior and council

The charity framework

- Detail the charity's governing documents and include copies
- Explain the structure of the charity (e.g. is it a CIO, charitable trust or company)
- Explain if the trustees are a Part 12 incorporated body
- Explain the objects of the charity and how the charity is established to hold the assets that provide for the members of the institute
- Explain the relationship between the charity and the institute
- Enclose a copy of the charity's most recent accounts
- Enclose a list of the charity's properties

Appointment as trustee

- Confirm how the individual has been appointed and provide a copy of the document
- Ask the individual to complete a trustee declaration form in the Charity Commission approved format
- Ask for certified copies of passports and other forms of identification that will be needed to provide to banks, investment advisors and solicitors etc.

Terms of appointment

- Explain the terms of the appointment, i.e. the length of the appointment. If the charity's governing document does not have specific terms of office, consider whether it is appropriate to suggest that the individual's term of office will be reviewed after three years
- Explain what the time commitment will be, how many meetings will you have each year and when will these normally be held. Be clear about the fact that if, for example, the individual misses several consecutive meetings you may consider it appropriate to ask them to step down as a trustee
- Explain the process for ensuring that relevant items are included on any agenda for a trustee meeting
- Explain how the individual will be kept updated on the affairs of the institute

Trustee duties and liabilities

- Explain the duties and responsibilities of a charity trustee, perhaps by enclosing and referring to a copy of the Charity Commission's publication, CC3 (The Essential Trustee, recommended reading can be found in Appendix D)
- Explain the extent to which it will be possible for the individual to claim expenses for out of pocket expenditure
- Confirm what insurance is in place for the benefit of trustees

Conclusion

- Thank the individual for starting on this journey with the institute
- Make it clear that being a trustee is a daunting prospect for anyone, and that they should feel free to ask queries and to seek support and guidance at any time

TRUSTEE DUTIES



We lay out in this chapter the basic questions to ask as a new, or would be, trustee, and the duties you will need to comply with.

Q. | WHAT IS THE CHARITY'S LEGAL STRUCTURE?

One of the first things you need to know is: "What is the legal structure of the charity you are looking at?" This is because the answer to many other questions will be affected by this. We have provided more detail on the possible structures in chapter one.

Once you have established what type of charity it is, you will need to obtain copies of all governing documents. If you cannot find the original papers to copy, check with your solicitors as they may hold them, or other professional advisers, as they may have copies. Alternatively it is usually possible to get copies of governing documents for a charity registered in England and Wales from the Charity Commission, or of a company from Companies House. Make sure that if you amend your governing document you keep copies of any amendments, and keep your original documents safely away from fire, flood and theft etc. Also make sure that every trustee has a copy of the primary governing documents.

Q. | WHAT ARE THE CHARITY'S OBJECTS? AND WHY IS IT IMPORTANT TO KNOW?

The objects of the charity are the clause(s) in the governing document which state what the trustees should apply the charity's funds for. In more modern charities these clauses will usually appear within the first four clauses of the governing document. However in older trust deeds they may be buried half way through the deed and in some cases you may require specialist legal help to identify them.

However many catholic religious charities are set up with objects similar to these:

"For such charitable purposes which advance the religious and other charitable work of the institute as the trustees with the approval of the superior shall from time to time think fit."

While there are many variations on this, the main ones include the addition of restrictions only allowing funds to be spent in a particular geographical area (like “England & Wales” or “Liverpool” etc.); or limits on what the funds can be spent on (like nurseries for poor children, and homes for the infirm).

As a trustee you need to be familiar with these objects, because the charity’s funds can only be spent on activities which fall within them. If the objects no longer reflect what the charity wishes to do, then it would be prudent to consider formally changing the objects, rather than risk applying funds outside of them. If funds are applied outside the objects this is a breach of trust by the trustees which might result in an action for repayment of the funds or, a worst case scenario where the trustees in question are struck off.

Q. | DO YOU KNOW THE CHARITY’S PRIMARY REGULATORS?

Is the charity registered with Companies House/Charity Commission/ Office of the Scottish Charity Regulator(OSCR)/Her Majesty’s Revenue and Customs (HMRC)?

Companies House

If your charity is set up as a company limited by guarantee under the laws of England and Wales it will be registered with Companies House. You can check to see if the name of your charity is on the register at:

<https://www.gov.uk/government/organisations/companies-house>

(Every such company has a unique company number, which if you don’t have it can also be found on the register.)

You will need to make sure that compliant accounts and annual return/ confirmation statement are filed annually, and that you are complying with the requirements to notify them every time a director (trustee) is appointed or steps down etc. Companies House has a helpful guidance note available to download which covers the main events that will require filings to be made with them: “Life of a company part 2: event driven filings”.

<https://www.gov.uk/government/publications/life-of-a-company-event-driven-filings/life-of-a-company-part-2-event-driven-filings>

It is also a legal requirement for all companies to keep statutory books, either in hard copy, electronic form, or more recently, online at Companies House. It is one of the duties of a director (trustee) to make sure that these books are kept up to date, and members of the public do have a right to ask to view them.

If as part of your structure you have a company registered abroad, you will need to take legal advice from that country as to what the filing and compliance requirements are.

Charity Commission

If your charity is set up as a charitable incorporated organisation you will automatically be registered with the Charity Commission. However if your charity is set up as a trust, or a company, your charity will have had to have been separately registered with the Charity Commission. If you are unsure whether or not your charity is registered you can check the register on the Charity Commission's website at: <https://apps.charitycommission.gov.uk/showcharity/registerofcharities/RegisterHomePage.aspx>

If you are unsure about whether your charity should be registered please seek separate legal advice. As a general rule if your charity is based in England and Wales and has over £5,000 income per year it is registerable.

If you are registered with the Charity Commission you will need to file an annual report and accounts, and keep The Commission updated with any changes to trustees.

If your charity operates in Scotland, Northern Ireland or Ireland you may need to be registered separately in these jurisdictions. Details of their websites below:

Office of the Scottish Charity Regulator (Scotland):

www.oscr.org.uk

The Charity Commission Northern Ireland (N Ireland):

www.charitycommissionni.org.uk

An Rialálái Carthanas/Charities Regulator (N Ireland):
www.charitiesregulatoryauthority.ie

If you are unsure whether you need to be registered please seek separate legal advice.

Her Majesty's Revenue and Customs (HMRC)

Your charity will need to be registered with HMRC if it wishes to claim any charitable tax reliefs. HMRC has a duty of confidentiality to all those who apply to it, so there is no public register. If you are unsure whether or not you are registered you will need to contact them directly. Their charity helpline details are available at: <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/charities-and-community-amateur-sports-clubs-cascs>

Depending on what activities your charity is carrying out you may also need to be registered with other entities. For example, those running care facilities will need to be registered with the Care Quality Commission (CQC): <http://www.cqc.org.uk>; if you handle personal data with the Information Commissioner's Office (ICO): <https://ico.org.uk> etc.

Q. | WHO ARE THE CHARITY TRUSTEES?

Section 177 of the Charities Act 2011 defines the charity trustees as: "the persons having the general control and management of the administration of a charity". In the structures laid out (see previous chapters for more details) the charity trustees are normally:

- (a) **Charitable trust** – the trustees (if there is a distinction between managing and custodian trustees, the charity trustees will be the managing trustees)
- (b) **Charitable company limited by guarantee** – those who hold the role of directors
- (c) **Charitable incorporated organisation** – the charity trustees

However if you have other figures within your organisation who start to direct the management and administration of the charity they can also be held to account as charity trustees, which is why it is important to be clear who is doing what, a point reinforced by the Charity Commission in some of its earlier guidance to faith charities:

"In addition to trustees, a wide range of people are often involved in running a charity. In a faith-based charity, these can include paid staff, religious leaders, volunteers and members. It is vital that all groups and individuals have a clear understanding of their respective roles. It is the trustees who retain ultimate responsibility and authority."

Faith in Good Governance: Charity Commission (November 2009)

Q. | CAN ANYONE BE A CHARITY TRUSTEE?

The key qualities of a charity trustee are:

1. Not barred from acting (see below)
2. Understanding of structure & objects
3. Able to take advice and aware of need for compliance with regulators etc.
4. Careful, prudent and trustworthy
5. Capable of asking difficult questions
6. Capable of challenging others if required, but capable of working collectively
7. Willing to accept the role!

A person cannot be a trustee of a charity if he/she ticks yes to any of the categories that follow and is therefore barred from acting. However, there are some circumstances where the Charity Commission may grant a waiver.

	ELIGIBILITY	YES/NO
1	Under 16 years old (if a trustee of CIO or Company)	
2	Under 18 years old (if a trustee of a Trust)	
3	<p>Disqualified under the charities act from acting:</p> <ul style="list-style-type: none"> • Unspent conviction of any offence involving dishonesty or deception • Undischarged bankrupt, or subject to a sequestration of their estate which has not been discharged, or they are the subject of a bankruptcy restrictions order, or an interim order, or a bankruptcy restrictions undertaking has effect, (except that there is no disqualification if the charity concerned is a company and leave has been granted under s11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts) for the person to act as director of the charity (s180)) • Undischarged composition or arrangement with, or granted a trust deed for, that person's creditors. Removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court, on the ground of any misconduct or mismanagement in the administration of the charity, for which the person was responsible, or which the person knew of and failed to take any reasonable step to oppose, or which the person's conduct contributed to or facilitated • Removed from being concerned in the management or control of any body by the Court of Session in Scotland 	

	ELIGIBILITY	YES/NO
	<ul style="list-style-type: none"> • Subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) order 2002 (SI 2002/3150 (N.I.4)); or an order made under s.429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order), except that there is no disqualification under this paragraph if leave has been granted for him or her to act as director of the charity (s180 of the 2011 Act) • The person is subject to a moratorium period under a debt relief order under Part 7A of the Insolvency Act 1986; or a debt relief restrictions order or interim order under Schedule 4ZB to that Act <p>[Please note there are more offences waiting to be implemented by The Charities (Protection and Social Investment) Act 2016]</p>	
4	Barred by the Disclosure and Barring Service (DBS) from specified kinds of work involving contact with children or vulnerable adults (if the trusteeship involves working with these groups)	
5	<p>If the charity is to claim tax reliefs trustees will also need to qualify under HMRC’s “Fit and Proper Person” test:</p> <p>https://www.gov.uk/government/publications/charities-fit-and-proper-persons-test/guidance-on-the-fit-and-proper-persons-test</p>	

The Charity Commission have an online register of removed trustees which provides details of anyone who has been removed as a trustee by the High court or the Charity Commission, which you can check online (see website details in the appendices)

<http://forms.charitycommission.gov.uk/about-charities/register-of-removed-trustees>

The Charity Commission recommends that all new trustees should be asked to complete a declaration of eligibility and responsibility form (there is a similar one for OSCR. These can be found in our appendices.):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/581249/Trustee_declaration.pdf

Furthermore, HMRC recommends that where a charity claims tax reliefs, all the charity trustees should sign up to their model declaration:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/392977/model-dec-ff-persons.pdf

While there is overlap between these forms, it is recommended that you have all which are relevant completed and hold them on file, as they offer some protection to the charity (showing that they asked the questions) should any convictions etc. later come to light.

Q. | HOW IS A TRUSTEE LEGALLY APPOINTED?

It is crucial that all new trustees are legally appointed and all retiring trustees are legally removed. This is because if they are not there can be uncertainty over who is in charge, how assets are held (particularly in trusts), and important decisions taken could be invalid.

The first step is to look at your governing document and see if it contains provisions as to how to appoint and remove trustees. We explore some of the more common structures for catholic religious charities on the next few pages:

(a) Charitable trust

As we have explored above, one of the key differences between a trust and a company or CIO, is that a trust's assets have to be held in the names of individuals on behalf of the trust. Assets are normally held by either the trust's current managing trustees, or an appointed custodian trustee, or another body (for example an incorporated trustee body (see chapter 1)) on behalf of the trust.

This means that when new trustees are appointed and old ones retire it is important to check that the assets are transferred into the new names. This is particularly important with land, shares and other investments.

Usually there will be a named office holder the "appointor" with the power of appointment and removal, often "the superior general". The relevant clause of the governing document may also specify how appointments are to be made (e.g. by memorandum or deed). If the governing document is silent then you will need to rely on provisions of the Trustee Act.

If you have this structure on its own, trustees will usually be appointed and retired by deeds which apart from removing and appointing trustees will also act to transfer ownership of the charity's assets from one set of trustees to the next.

An alternative is to have stated that the trustees are "The superior general and general council (or other named officials) ex officio". This means that once a person takes on one of these offices, they automatically become a trustee, and once they cease to hold such an office they are automatically removed. However this is more common in combination with an incorporated trustee body (see next page) in which the assets are vested. If you don't have an incorporated body you will need to transfer the assets as above from one set of trustees to the next.

Incorporated trustee body. If your charity has a certificate of incorporation its assets should be held in the incorporated name.

It is prudent to check the process with your legal advisers to make sure that you have the right paperwork for your particular trust, and make sure that the charity maintains control of all its assets. You may also need to update your investment advisers or the land registry of any changes when they occur in

order to make sure that the trust's assets are not lost. If you are concerned that your assets may not be held in the correct names we would recommend that you seek legal advice about how to rectify this situation as soon as possible, because if you need to sell any assets you will first need to demonstrate that your charity owns them.

(b) Charitable company limited by guarantee

As the assets will be held in the name of the company, appointments and retirement do not also need to pass the assets from one set of trustees to another. As the trustees are also normally the directors of the company you will need to comply with the filing requirements under company law. If the trustees are also the members of the company you will need to update any necessary paperwork for this too.

There may be a named appointor as with a trust, or the appointment may be made by the member(s) of the company or by the trustees. There may be ex-officio trustees. You will need to check the particular process in the memorandum and articles of association, and hold any meetings which may be necessary. Remember to keep clear minutes in line with the governing document, as evidence of appointment at a meeting.

Once appointed or removed you will need to file the appropriate forms with Companies House (AP01 for appointment and TR01 for removal), and update the company's register of directors (trustees), and members if necessary.

(c) Charitable incorporated organisation

As the assets will be held in the name of the CIO, newly appointed and setting trustees' retirements do not also need to pass the assets from one to another. If the trustees are also the members of the CIO you will also need to update any necessary paperwork for this too.

There may be a named appointor as with a trust, or the appointment may be made by the member(s) of the CIO or by the trustees, or there may be ex-officio trustees. You will need to check the particular process in the Constitution and hold any meetings which may be necessary.

Once appointed or removed you will need to update the CIO's register of charity trustees, and members if necessary.

Also if there is a requirement for a third party to give their consent before a trustee can be appointed, make sure you have this in writing and keep a copy.

In every case, once trustees are appointed or removed you will also need to update the Charity Commission or any other regulator that requires it, and update bank mandates etc.

Q. | WHAT ARE A TRUSTEE'S MAIN DUTIES?

The Charity Commission publishes the Essential Trustee, which draws together what they see as the six main duties of charity trustees. All trustees are expected to read this document. Trustees should also make sure that they review other relevant guidance published by the Charity Commission and other regulators they are subject to, and if necessary seek professional advice.

1. Ensure your charity is carrying out its purposes for the public benefit

It is a legal requirement for all charities to demonstrate they provide a benefit to the public.

The Charities Act 2011 also requires trustees to "have regard" for the Charity Commission's public benefit guidance "when exercising any powers or duties to which the guidance is relevant".

<https://www.gov.uk/government/collections/charitable-purposes-and-public-benefit>

The Charities (Accounts and Reports) Regulations 2008 requires trustees to confirm that they have done so in their annual report.

The Charity Commission have stated in their guidance that public benefit is knowing about the following:

- What the charity is set up to achieve - this is known as the charity's 'purpose'

- How the charity's purpose is beneficial - this is the "benefit aspect" of public benefit
- How the charity's purpose benefits the public or a sufficient section of the public - this is the "public aspect" of public benefit
- How the trustees will carry out the charity's purpose for the public benefit - this is what is known as 'furthering' the charity's purpose for the public benefit

The first bullet point – is something we have explored in depth (see previous sections). A charity's purposes are laid out in their objects clause.

The second bullet point – You will need to be able to explain how what you do benefits people/makes a difference.

The third bullet point – You will need to make sure that your services are open to a sufficiently large section of the public to qualify, and if fees are charged that appropriate concessions are in place. It would also be prudent to keep records of who you help and how in order to be able to justify your claims if asked. Keeping such records will also provide you with data to assist in improving or targeting your services better.

The fourth bullet point – This is where you lay out the trustees vision for the charity, their mission statement. This is your plan of what you propose to do within the charity's objects.

2. Comply with the charity's governing document and the law

Governing document

If you have been through and answered the questions above you will now have copies of your governing document. One of the main requirements of being a trustee is that you read and follow your governing document. If you do not follow what is written in the charity's governing document, as a trustee you will be in breach of trust and potentially liable to the charity for anything done outside the scope of the governing document.

Usually governing documents should contain the following as a minimum:

- (a) Statement of the objects
- (b) List of the powers available to the trustees (these are usually, either clearly itemised in one clause; merged into the objects; or split between two clauses)
- (c) Administrative regulations on how to appoint and remove trustees, hold meetings/take decisions
- (d) Provisions on membership (if a company or association CIO)
- (e) Statement of permissible trustee benefits (although this is now a requirement in new governing documents, it may not appear in old deeds)
- (f) Statement of where the charity's funds can be applied if the charity is closed down

For trusts in particular provisions covering how the trust deed may be altered are also useful

If your governing documents do not contain clear instructions on the above you may wish to consider revising them so that they do. Also if you can no longer meet the requirements of your governing document (for example if you can't find eight trustees any more) we would recommend that you consider amending the document to make it easier to operate, rather than opt to continue in breach of them. If you do decide to change your governing document we would recommend you seek legal advice on the process to make sure that the changes are valid (as some changes will need prior Charity Commission consent), and any changes will need to be filed with the Charity Commission (or other regulator) and Companies House (if a company).

Legal compliance

If your charity is registered with the Charity Commission or another regulator you must comply with their filing requirements. For the Charity Commission, you do this is by filing an annual return (or update depending on size), and complying with any accounting and reporting requirements. Failure to file on time is a breach of your duty as a trustee. It is also recorded on the Charity Commission register which the public can access, and so could affect their faith in the charity's ability to manage itself. The Charity Commission has investigated various classes of charities who have filed late, and if any of your filings are not up to date, the Charity Commission will as a minimum refuse to

deal with any other requests the charity may submit to them, which can hold up urgent consent applications.

You must also comply with the relevant law applicable to the sectors in which you operate.

3. Act in your charity's best interests

Make sure you stay within your charity's objects

Trustees must always act in the best interests of their charity's objects in every decision they make. As the Charity Commission rightly points out this is not about serving the personal interests of trustees, beneficiaries etc.

It is one of the trustees' key roles to set the charity's direction for the year(s) ahead within the parameters of the objects. As religious institute charities often have fairly wide objects, problems usually only arise when either trustees do not read the objects and miss a geographical restriction (sending funds to Ireland when they can only operate in England and Wales) or when funds start off being granted to another charity for a specific project (for example providing clean water in Sudan), but over the years the original project restriction is forgotten and a general grant starts to be paid to other charities whose objects could include for example the promotion of the Islamic faith. By accident the trustees in this example could have strayed outside their objects. So when starting a project or reviewing an old one, always check your objects first.

Make informed decisions

Remember "It's your decision" as trustees. While you may take advice from those outside the trustee board, ultimately it is the trustees' responsibility to weigh up the pros and cons and come to a decision they are happy with. Below is a list of key points to consider when making a decision on how to apply the charity's funds, and remember to always ask questions when you don't know the answer and not stop until you are satisfied with the information you get:

- (a) Are you acting within your objects and powers?
(check your governing document)
- (b) Are you making best use of resources?
- (c) Has a rigorous business case been made?

- (d) Do not let your heart rule your head
- (e) What advice – internal and/or external is necessary?
- (f) Have any compliance requirements been met (for example when disposing of land or borrowing money have you complied with the Charities Act 2011 requirements?) If you don't know, take advice
- (g) Have all relevant factors been considered and all irrelevant factors discarded?
- (h) What is the exit strategy?
- (i) Is there a robust monitoring framework?

Trustees have a duty to act collectively. So if a trustee disagrees with a proposal they should have their view minuted, but if the trustees' then pass the proposal, all of them are under a duty to support it as trustees have "Cabinet Responsibility". If a trustee cannot support it, he or she should consider stepping down from the charity.

Avoid personal benefit to trustees (or persons connected to them)

As a basic rule a trustee should not personally benefit (whether directly or indirectly) from the charity of which he or she is a trustee. However there are exceptions to this rule:

- (a) If the benefit is expressly authorised by the charity's governing document (for example where a priest is housed by the charity but is also required to be a trustee)
- (b) The Charity Commission has given express consent. This may be needed for example where the trustees consider it necessary to assist a trustee's relative charitable funds during a time of need
- (c) While it is currently accepted by the Charity Commission that members of a religious institute can be housed and fed by their institute charity and still be trustees, as they have taken a vow of poverty to pursue charitable work and they give any earnings to the charity, this is occasionally challenged by the wider public, and commission staff. If the institute charity is structured as a company this needs to be allowed for in the company's governing document to comply with the companies act requirements. It should also as best practice be included in governing documents of trusts and CIOs

Managing conflicts of interest

Q. | HOW DO YOU IDENTIFY CONFLICTS OF INTEREST?

The Charity Commission defines a conflict of interest as:

“...any situation in which a trustee’s personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity”

(Conflicts of Interest: a guide for charity trustees: Charity Commission (May 2014)

<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>

Conflict may take many forms:

- (a) Direct financial gain to a trustee. For example where a trustee wishes to leave a religious institute and the board are being asked to agree on any parting gift
- (b) Indirect financial gain. For example where a trustee’s brother approached the charity he/she was a trustee of asking for a grant
- (c) Other material benefit, direct or indirect. For example where the trustees are setting the level of funds to be spent on improving the house a trustee is living in; or the charity provides services to a person connected to a trustee
- (d) Conflict of loyalties or responsibilities. For example where a trustee is also a trustee of another charity which is applying for funding to the first charity. While giving the funding may be within the objects of both charities and beneficial, the trustee who sits on both boards cannot be (or at the very least cannot be seen to be) impartial

In any of these situations if the conflicted trustee stays in the decision making process and the funds are granted, then the decision is open to criticism for bias or favouritism and direct or indirect personal benefit to the trustee (even if the

trustee tried to act impartially).

It has long since been considered undesirable for a trustee to bring their personal interests into consideration when dealing with their duties as trustees. This is because of the risk that this would ultimately lead to the beneficiaries of the charity being disadvantaged. A nineteenth century Judge puts it succinctly below:

".....human nature being what it is, there is danger, [where interest and duty conflict], of the person holding a fiduciary position [i.e. the trustee] being swayed by interest rather than duty, and thus prejudicing those whom he was bound to protect."

Lord Herschell *Bray V Ford* [1896]

Q. | HOW DO YOU MANAGE A CONFLICT OF INTEREST?

You will need to follow any procedures in your governing document, and comply with the Charity Commission's guidance. Also if the charity is structured as a company you will need to make sure you are complying with the Companies Act requirements as well. But as a general rule there are three basic steps:

Declare the conflict to the other trustees

- Effective management relies on full disclosure:
 - Allocate responsibility to co-ordinate
 - Put in place a conflicts policy
 - Have internal/external training as needed
- Make this the first point on every meeting agenda
- Monitor whether any conflicts arise during meetings

Document the conflict

- Declaration form
- Conflicts register
- Minutes

Depart from the meeting when you are conflicted

While in some circumstances the charity's governing document may allow a trustee to remain in the meeting in which he/she has a conflict, if in doubt, best practice is to step out of the meeting and not influence or take part in the decision. If to do this would leave your meeting inquorate, and there is no alternative route in the governing document you will usually need to obtain Charity Commission consent to the conflict.

- Withdrawal:
 - The conflicted trustee should not as a general rule be part of the quorum/discussion/vote on a matter on which they are conflicted (unless approved under the governing document or a standing order)
 - Absence from room (as this means no pressure could be brought to bear on the remaining trustees)

4. Manage your charity's resources responsibly

The first step trustees need to take is to obtain an overview of the charity's assets and liabilities.

As we have discussed above it is important to make sure that any assets of the charity are held in the correct names on behalf of the charity, and can therefore be dealt with when needed without having to rectify problems with ownership first.

It is then important to have an investment and property management plan to make sure that your assets are working as well as they can for the benefit of the charity. As part of this you will need to consider your short, medium and long term goals for the charity in order that you can develop with your investment and property advisers the right strategy for you, to deliver funds when you need them. You may need to take legal advice on disposal of land etc.

Once you have ascertained what the charity owns you can then set the charity's mission and decide what activities you wish to pursue.

In very basic terms when you first consider a project you will need to assess the staff time, funds and assets needed to deliver it, and any associated risks and make sure you set a budget for it. You will then need to make sure that any powers delegated to staff to run the project are properly delegated and monitored and that the outcomes of the project are monitored and recorded so that you can assess later on how effective your project was. It is also always prudent to ask up front how you might exit a project if things go wrong. If you are considering a complex project it is generally helpful to consult professional advisers early on to minimise the risk of missing something technical which could later add significantly to the time and cost of the project. It is also worth checking whether you might need consent under canon law to a large project. It is also the trustees responsibility to manage the staff and volunteers of the charity.

5. Act with reasonable skill and care

Legislation requires trustees to act with reasonable skill and care when carrying out their duties. There is a slight variation in the duty depending on what kind of charity you are a trustee of. We lay out a brief overview of the legislation below:

Trustee Act 2000 (applies to trusts)

Trustees must exercise such care and skill as is reasonable in the circumstances, having regard in particular:

- (a) To any special knowledge or experience the trustee has or holds themselves out as having; and
- (b) If the trustee is acting in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession

Companies Act 2006 (applies to companies)

Directors must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience to be reasonably expected of them and that which they actually have.

Charities Act 2011 (applies to CIOs)

Each charity trustee of a CIO must:

Act in good faith, in the way most likely to further the purposes of the CIO; and

Exercise such care and skill as is reasonable in the circumstances, having regard in particular:

- (a) To any special knowledge or experience that the charity trustee has or purports to have; and
- (b) If the charity trustee acts as such in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession

Trustees should also check their governing document for any additional requirements.

Be prudent!

Alongside the duty to exercise reasonable skill and care, trustees are also expected to act as an "...ordinary prudent man of business acting in the management of his own affairs" *Speight v Gaunt* 1883. Prudence is the key word here, and is an old fashioned virtue. It is defined by the Oxford English Dictionary as "The ability to recognize and follow the most suitable or sensible course of action; good sense in practical or financial affairs; discretion, circumspection, caution." While the case is old, the law is unchanged, the thing to remember is that trustees are not supposed to act recklessly!

If at any point you feel that you do not have enough information to exercise "reasonable care" or make a "prudent decision" then you may need to ask more questions, and/or obtain professional advice. Obtaining professional advice can not only provide you with the information you need but can also help you demonstrate that you have acted prudently by seeking the advice in the first place. It is important therefore to cross refer to the advice you have had in your meeting minutes.

As a general rule trustees should:

- Avoid undertaking activities that might place the charity's property, funds, assets or reputation at undue risk
- Ensure that the charity is and will remain solvent
- Ask questions/take appropriate advice/document decisions

The Charity Commission has guidance on decision making:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583855/CC27_new.pdf

6. Ensure your charity is accountable

The Charity Commission split this section of their guidance into three main areas:

- (a) Compliance with your accounting and reporting requirements
- (b) Accountability to your members, beneficiaries, supporters, funders etc.

Unfortunately perception is often everything, and so it is important to maintain a dialogue with those who have the most personally invested in your charity, in order to help manage expectations and be well informed of any potential shifts in attitude.

Members

Often a religious institute charity has no large legal membership, its legal members (if it has any apart from the trustees) frequently being the superior alone or with his or her council. However it would seem prudent to keep a dialogue with the members of the institute to update them on the activities of the charity, particularly as it is usually the members of the institute who set the charitable mission of the institute, which then informs the charitable mission of the charity, so they need to know what activities are working on the ground and what are not. Also under canon law the superior and council will be held accountable for their actions.

Beneficiaries

Keeping a dialogue with beneficiaries of the charity can help to improve services and resolve complaints. It is crucial for every charity to have a complaints policy which staff can direct beneficiaries to and which provides a framework for how complaints should be handled.

Supporters/Funders

If you have external funders they may have placed restrictions on how their money can be spent, for example they may want financial updates, reports and site visits. It is important to keep a record of these requirements as well as to make sure that any funds ring-fenced for a particular project are accounted for accordingly and not accidentally spent as general funds.

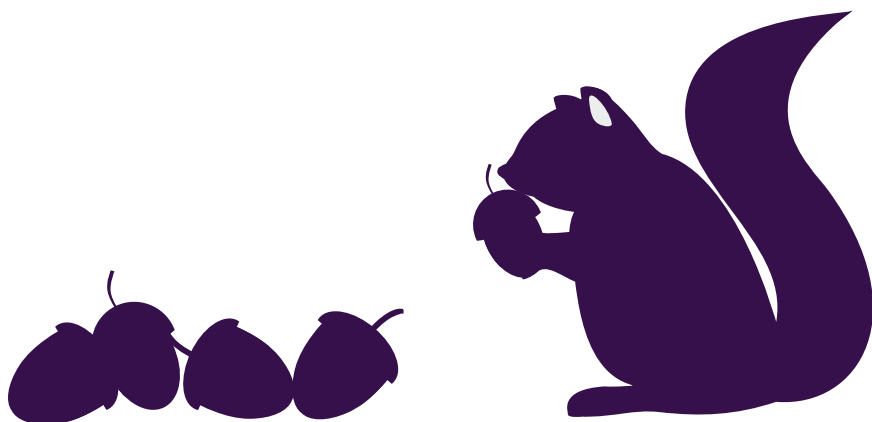
- (c) Making sure any power you delegate is properly managed and monitored.

When trustees delegate any of their power to one of their number, a committee, or officers of the charity it is important that the parameters of this delegation are laid out clearly. This should, as a minimum, include placing caps on the amount one individual can spend without going back to the trustees; clear guidelines on when reports should be made to the trustees and what level of detail is required in those reports.

Ultimately the trustees remain responsible, and you should be comfortable that you have enough information to know what is going on in the charity, and are able to step in if needed. It is crucial in this process that trustees are able to hold employees to account and ask probing questions.

CHAPTER 4

FINANCIAL MANAGEMENT



INTRODUCTION

Traditionally religious institutes have been “asset rich, cash poor”. Much of their wealth has been tied up in large buildings that were used either as convents, monasteries or properties in which to house religious, or as properties to accommodate traditional works such as schools, care homes and health projects. Over the past two decades the age profile of many religious institutes in Great Britain has led to a need to reassess the strategy and direction of the institute’s work and its needs in terms of resources (including property).

For many, such detailed strategic questions and related discussions continue – the answers will be different for each religious institute and will be informed, in part, by the type of work traditionally carried out by the institute in Great Britain, its specific age profile, its geographic location and whether or not the institute in Great Britain is part of a larger international institute. What is clear is that there are no magic answers or solutions. Detailed discernment and communication across the institute will be essential to help determine the path ahead in terms of mission and in terms of caring for older members. The tools which will help with this are good governance and financial planning.

The aim of this and the next few chapters is to look at financial matters in more detail. In particular, the role of financial management and budgeting and the derivation of robust reserves policies to help assess the real financial position of the institute. Having done this, for many institutes, the need to retain investments over the next few years will be key and so we will explore the key aspects to good governance in respect to investment portfolios. While for many the income generated by portfolios will be essential to the care and upkeep of the members of the institute in Great Britain, for some it will become clear that the funds are in excess of longer term needs and so we will consider the question of donating funds to others (including the wider institute) and grant making more generally.

In this chapter we begin by looking at the requirements for religious institute charities to maintain accounting records and produce annual accounts, accompanied by a trustees’ report, in order to meet the legal requirements of the Charities Act 2011. After considering briefly what those statutory accounts should comprise, we then move on to financial planning for the future and the need to ensure that the charity has the resources needed to meet its future obligations and enable the members to pursue the missions to which they have committed.

Q. | WHAT IS THE ROLE OF THE PROVINCIAL BURSAR?

A common question asked (partly because of the age profile of the members of religious institutes and partly because no one enjoys the finance side!) is, do we need a provincial bursar and, if so, what is their role? The response often given by the writer to this question is “Would you expect a company to have a finance director?” The answer is “yes”. A provincial bursar is the finance director or treasurer of the religious institute charity. Every religious institute charity needs one!

While these days much of the day-to-day work of the bursary can and probably is carried out by lay staff, there is a need to ensure that wherever possible a member of the institute is appointed provincial bursar. The bursar will be privy to confidential and sensitive information and so it is important that he or she is trusted by the members of the institute. Ideally, the bursar should be a trustee as every decision taken by trustees will ultimately have a financial implication. If the bursar is not a trustee, it is suggested that the bursar should be in attendance at trustees’ meetings.

The responsibility of trustees for the running of the charity is joint and several but the role of the bursar is to take the lead on behalf of the trustees in ensuring that the charity is well managed financially. The bursar will normally have responsibility for all areas of finance under the direction of the trustees, even if some are delegated to others such as book-keepers, payroll clerks, property specialists and so on – many of whom may be lay people.

The responsibility includes:

- The maintenance of the charity’s books of account and arranging for the preparation of the annual statutory accounts and their audit or independent examination
- Liaising with bankers and overseeing the management of the charity’s bank accounts and banking arrangements
- Liaising with investment managers and overseeing the performance of the charity’s investments and its investment policy
- Ensuring that there is an effective system of internal control, including authorisation of expenditure, cheque/electronic banking signatories and the limits that may apply, oversight and authorisation of payroll, etc.
- Preparing an annual budget of income and expenditure and of capital expenditure

- Preparing a long term financial plan or projection estimating future income, expenditure and capital investment and assessing future financial needs
- Reporting to the other trustees on financial progress, the financial implications of specific proposed or actual decisions and the impact on budgets and long term projections
- Ensuring that properties are properly maintained and repaired and liaising with insurers regarding the insurance of all land and buildings and other assets (including motor vehicle fleets)
- Overseeing financial procedures and controls generally

The above is a brief listing. Below, you will find an outline “job description” for a provincial bursar which provides further details of the role.

Job description for a provincial bursar

Accounts and finance

- Collection of salary, pension and social security income, including monitoring the sisters’ entitlement to such benefits; ensuring that other income to which the institute is entitled is received
- Maintenance of the accounting records of the provincial fund
- Assisting community bursars with the maintenance of their accounting records
- Reviewing and checking financial returns submitted to the institute by the community bursars
- Liaising with the financial directors of the institute’s foundations and reviewing the budgets and financial management information of these foundations; this involves an appreciation of their financial systems and accounts
- Monitoring the finances of the institute’s homes for the elderly
- Forming and monitoring the institute’s purchasing policy in areas such as motor cars, equipment, utilities etc.

- Preparation and monitoring budgets for the institute and communities
- Having an overall appreciation of the requirements of charity Statement of Recommended Practice for charity Accounts (SORP)
- Ensuring sound financial controls exist throughout the institute
- Preparing the records for audit and liaising with the auditors
- Financial reporting as necessary to the generalate

Legal

- Having an appreciation of the charity's trust deed and how charities are governed in the UK, including an understanding of the role of the Charity Commission
- Understanding the institute's own rules and regulations, which differ from those under civil law
- Having a general awareness of the laws and regulations affecting the institute and its works

Property

- Overall responsibility for property maintenance, including liaison with the institute's legal and property professional advisers
- Supervision of the disposal, acquisition and refurbishment of property

Banking

- Monitoring the institute's banking arrangements and liaising with its bankers
- Ensuring that surplus funds are invested in interest bearing accounts and optimising the amount of such interest

Insurance

- Overall responsibility for property, motor, public liability, employer's liability and all risks insurance
- Liaising with the institute's insurance advisors

Job description for a provincial bursar (continued)

Employment

- Awareness of employment legislation, including PAYE and national insurance
- Assisting communities with employment issues
- Responsibility for staff employed in the generalate of the provincial house and its staffing in general

Fundraising

- General awareness of fundraising rules and regulations as affecting the institute and the foundations
- Monitoring the results of fundraising at the foundations

Investments

- Monitoring the level of resources that are invested and anticipating any changes in those levels
- Awareness of the implications of the institute's investment policy
- Supervision of the institute's investment portfolio and liaising with the charity's investment advisers and fund managers

Other

- Monitoring the congregation's risk management procedures
- Monitoring the trustees' reserves policy and how the level of the congregation's actual reserves compare with that policy
- Supervising the congregation's health and safety policy and its implementation
- Ensuring overall security of the congregation's assets
- Assistance with longer term strategic planning
- Reporting and providing guidance to the provincial council and trustees on all financial matters, particularly budgets, internal controls, and helping ensure that financial strategies are achieved
- (Possibly) acting as clerk to the trustees

Q. | WHAT ARE THE ESSENTIALS OF GOOD FINANCIAL MANAGEMENT?

In the past 25 years, the charity sector as a whole has come under tighter scrutiny and has become increasingly regulated. Religious institute charities are not immune from this additional "red tape". Requirements for financial management can be found in the charities acts, the companies acts (for those charities that are also companies), statutory regulations, the guidance set out by the Charity Commission and other regulators in the countries of the United Kingdom, the accounting requirements set out in Accounting and Reporting by Charities: Statement of Recommended Practice (SORP) and so on.

It has become common practice to outsource a number of aspects of the bursary function – payroll and investment management are two common examples. However, it is essential that trustees continue to control the services provided by such organisations and procedures need to be put in place to establish objectives and then to monitor and report on the service provision.

In exercising control over their charity's affairs, the trustees of religious institute charities must act reasonably and prudently in all financial matters. Their fiduciary duties may be summarised as ensuring that their charity:

- Obtains all the income that is due to it, including exercising proper control over, and accounting for, all funds raised by the charity or in its name
- Applies its income and assets for the purposes set out in its governing document
- Safeguards its assets
- Takes proper account for its liabilities
- Ensures that it has adequate financial resources to meet its liabilities, including the long term care of the members of the institute for the remainder of their lives; and
- Fulfils its statutory obligations regarding the production and filing of annual accounts, trustees' reports and annual returns etc.

Risk management is dealt with elsewhere in this book. However, financial management includes the need to consider financial risks i.e. those risks arising out of failures of budgetary control and financial reporting, the lack of an appropriate reserves policy, cash flow problems, failure to collect monies due or to carry out proper due diligence on suppliers of goods and services,

inappropriate investment policies, fraud and error, etc. To minimise financial risk, the trustees of religious institute charities should:

- Keep reliable books and records i.e. “proper books of account”
- Maintain an affective system of internal control including proper delegation and segregation of duties, authorisation and approval, the employment of properly qualified staff and advisers, budgetary processes, payroll procedures, controls over purchases and expenditure, controls over the collection of all income due, and so on
- Maintain adequate reserves to ensure long term commitments can be met
- Control and safeguard the charity’s assets including property (through a detailed maintenance programme) and investments (through good investment policies and the appointment of trusted advisers)
- Comply with all relevant laws and regulations; and
- Carry adequate and appropriate insurance

Q. | WHAT IS MEANT BY “PROPER BOOKS OF ACCOUNTS”?

Section 130 of the Charities Act 2011 (or the relevant section of the Companies Act 2006 for incorporated charities) requires accounting records to identify and explain a charity’s transactions, to disclose at any time, with reasonable accuracy, the financial position of the charity at that time and to enable annual accounts to be prepared. The records must show details of all monies received and all monies expended as well as the assets and the liabilities of the charity.

In the case of a religious institute charity, the records apply not simply to the provincial fund but to the entire institute including individual communities and to members who live alone.

While a few of the smaller religious institute charities may continue to maintain manual accounting records, most will now use computerised accounting packages at provincial fund level - such as Sage, Xero, and so on. At community level records will vary between manual, Excel spreadsheets and the use of similar packages as those used at provincial fund level.

At its most basic, the charity should contain records of all transactions that pass through its bank accounts analysing the transactions between specific

headings and recording the date of the transaction, the name of the payee, a general description of the payment, cheque or bank payment reference number, invoice number and the amount of the transaction. All expenditure should be supported by invoices or other explanatory documents and should be cross referenced to the accounting system. Similarly, cross referenced information should be retained to support all income including, for example, annual letters from the Department of Work and Pensions or the Teachers' Pensions Agency setting out pension payments for the year ahead.

Similarly, where cash floats are used, there should be records of the cash expended from them.

Bank records should be reconciled back to bank statements on a monthly basis, whereas cash records should be reconciled at least monthly to the actual cash held.

Q. | DO WE REALLY NEED TO OPERATE A FULL SYSTEM OF FINANCIAL AND INTERNAL CONTROL?

All charities need to operate financial and internal control systems comprising those policies and procedures that support the efficient and effective operation of the charity. The system should enable the charity to respond to any significant risk including operations, finance and compliance to name a few.

The resources that charity trustees are asked to steward are not their individual personal assets, they are the assets of their institutes. They have been accumulated by current and past generations to enable the institute to discharge its apostolate. The function of the trustees of a religious institute charity is one of stewardship, and by that stewardship they will enable their institute to carry on its mission not just today but also into the future. Within that role the charity's trustees have a duty to utilise whatever facilities are available to them to ensure that those resources are protected or even enhanced, not for their own sake but for the use to which they will ultimately be put.

Financial and internal controls are essential means of protecting the institute's assets as they are resources but, equally important, they are there to protect individuals – both members and employees. Controls protect them from the risk of making errors but also from the accusation of fraud.

It is a sad fact of life that fraud has increased over recent years. Religious institutes have tended traditionally to think of themselves as exempt from the risk of fraud and other related errors. Recent cases have proven that this is not the case. A significant proportion of fraud on charities is perpetrated by people known by the charity such as employees or volunteers. One of the frequent aspects of fraud is that its perpetrators are often people who are generally regarded as honest. Most such fraud is opportunistic. The person sees a weakness in the system and takes advantage of it. It is often committed because the individual concerned is under some outside pressure.

One of the easiest means of prevention is by implementing good internal and management controls. This all sounds very grand but it is really no more than applying basic common sense.

The Charity Commission publishes guidance for charities on internal controls – CC8 – which also includes a helpful checklist for charities to assess their own control systems. Good financial control centres around the principles of delegation, authorisation and supervision, the segregation of duties and the employment of properly qualified staff and advisers. Trustees should have a written policy relating to internal financial controls including setting out cheque and payment signatories, the limits to be applied, credit and debit care control and cash handling procedures.

Trustees may not be able to oversee personally all of the various checks and controls but they should always be aware that while they can delegate functions, they cannot delegate responsibility. Consequently, trustees must ensure that they check that controls over delegation are working properly. Functions should be separated to avoid a single person initiating, processing and recording a transaction. For example, those who prepare the payroll should not have the ability to transfer funds into employees' bank accounts. Wherever possible, two trustees should sign all cheques and authorise all online payments. Where this is not possible, there should be levels of authorisation in place and limits on certain individual's authority. Trustees should also accept that they need access to professional advisers who understand their charity and who are able to offer specialist advice. While such advice will incur fees, often the fee will be significantly lower than the cost of doing something wrong because advice was not sought!

On the next page we set out some of the basic controls that institutes should be looking at both to prevent fraud and to ensure the risk of innocent error

which might lead to the loss of funds is avoided. There are four areas which provide ample opportunity for the operation of simple controls. They are banking arrangements including payment by cheque, payroll, IT and overseas payment.

Common sense internal controls

Cash at bank and petty cash

- Ensure that the trustees are the only people who can authorise the opening or closing of bank accounts. The possibility of unauthorised bank accounts being opened and used to siphon off money has been reduced by the Banking Acts but not eliminated altogether. In some cases individual members of an institute have been known to open bank accounts without the trustees (or provincial council) being aware of it! If they can do it, so can employees
- Ensure that all monies received are banked promptly and that no money is used to “feed” petty cash
- Ensure that all cheques over a certain amount (say £1,000 maximum) require two signatories. Similarly, the bankers mandate should be drawn up to ensure that all significant cheques (say over £10,000) have two signatures, one of whom should be a trustee
- Never sign blank cheques
- Never sign a cheque without demanding to see the supporting documentation to which the payment relates e.g. the invoice, etc.
- Keep all cheque books under lock and key and check new cheque books when you receive them to make sure all cheques are there
- Encourage people making regular or unsolicited payments into the institute's bank accounts to do so by banker's order
- Similarly, consider whether you could make more payments electronically by BACS, standing order or direct debit
- Think about the amount of cash you need to keep on your premises. It can be horrifying to see the amount some institutes retain

Payroll

- Remember if you pay someone more than £100 per annum and that person is not working for a company or cannot prove to you that they

are self employed you should be processing their pay through a payroll and, if appropriate, deducting PAYE and NIC. If you fail to do this, HMRC will be require you to pay over all the PAYE and NI that The Revenue have lost not only for the current year but for the preceding years as well. You will also have to pay interest on these amounts and penalties on top. It is very unlikely that you will be able to recover these amounts from the employees concerned - it will be a direct cost to the institute

- Check references. Never rely purely on a written reference - they can be forged. A telephone call to a named referee may help. It will confirm that the referee is bone fide and they may well say things over the phone which they would be unwilling to put in writing
- There have been wholesale changes to the controls over immigration in the past few years. It is a criminal offence to employ someone who is not in this country legally. Relevant documents should be checked for all employees and potential employees - checking for only those who look or sound foreign could mean that you are contravening the law which could now result in a prison sentence
- Ensure someone in authority, and certainly not the person responsible for preparing the payroll, reviews the payroll before it is paid. This review should be evidenced by that person signing the payroll. When reviewing the payroll they should look for bogus employees, duplicate names and unusual or large payments. Many charities have lost money by finding that they have been paying someone who doesn't work for them or that they are paying an employee excessive amounts as a result of that employee deliberately overstating their hours on a timesheet
- Ensure annual pay rates are properly authorised by the trustees each year
- Wherever possible insist that employees are paid via the banking system rather than in cash or by cheque

IT controls

- Take regular back-ups of all data. This includes financial data, databases, correspondence, registers etc. In fact, everything. These backups should be stored off site to avoid them being destroyed in any disaster
- Take a back up each day
- Have a separate back up disk for each day of the week
- Take at least two weekly backups and store one off site. Again use a different back up disk for alternative weeks

- Test your back ups
- Ensure that your computer systems have access and password security. Different levels of password security may need to be set up for different parts of programmes. For example, you would not want everyone who could input receipts and payments into your accounting records to have access to the bank reconciliation option or the payroll for security reasons. Such security measures also prevent people accessing data and corrupting or destroying it
- Ensure you have adequate maintenance cover for both your computer hardware and your computer software
- Ensure that your computer equipment is adequately insured and that you have the ability to obtain replacement equipment and programmes very quickly if disaster should befall
- Ensure you have guidelines to ensure employees, members of your congregation etc. Cannot load/download programmes, or external data, onto your computer systems without checking the disks for viruses first

Overseas issues

- We still hear of individuals who are “taken in” by letters or emails from people informing you that you have won some money or that they are holding money that is destined for you – perhaps from a legacy – but they need funds from you first so that they can finance the various legal costs. Most such correspondence is asking for your bank details or requesting a cheque from you. Never, ever give your bank details to someone via an email – your bank will never ask you to confirm your banking details in this way nor would an organisation such as HMRC
- When you transfer monies abroad you are under a duty to ensure that the funds are applied for purposes consistent with the objectives set out in your charity’s governing document. Thus you should always receive some form of receipt acknowledging receipt of the monies and a brief report confirming how the funds will be or have been utilised. This is just as important when you are sending monies to your generalate to as when you are sending monies to missions in countries such as Zimbabwe, Sudan, etc. Failure to do this may lead to HMRC imposing a tax charge on you

Q. | SHOULD TRUSTEES' MEETING MINUTES RECORD KEY FINANCIAL DECISIONS?

A key means of ensuring the protection of the resources and assets of the institute is to be very disciplined about keeping meaningful minutes of the meetings of the charity trustees. Such minutes also serve to protect the charity trustees and provide essential future reference.

Below is an aide-memoire of the issues that should be referred to in the minutes of meetings of the religious institute charity's trustees, all of which have a financial implication – either directly or indirectly:

Items to be included in charity minutes

- Property transactions i.e. purchases and sales
- Property leases and new rental agreements
- Authorisation of major expenditure on a property – e.g. Refurbishment, major repair work, etc.
- Approval of the annual accounts and approval of budgets
- Risk management considerations including the annual review of the charity's risk register
- Meetings with investment managers
- Meetings with bankers
- Major purchase of new equipment e.g. large domestic items, computer equipment, etc.
- Consideration and approval/rejection of a request to transfer monies to the institute's generalate or other provinces or overseas missions together with details of the terms of any such payments and how the use of the monies is to be monitored
- Authorisation of other material donations or grants to UK charities
- Changes to banking arrangements including changes to bank mandates
- Legal issues arising
- Members leaving the institute
- Employment issues including disputes

- Pay reviews and the approval of annual/other pay rises and key promotions
- Other disputes e.g. property, boundary, etc.
- Health and safety considerations and the results of inspections
- Meetings with regulators including the Care Quality Commission, Ofsted, etc. and the result of inspections
- Appointment of senior officers and employees
- Changes to trustees

Q. | WHAT IS THE KEY TO EFFECTIVE FINANCIAL PLANNING?

The key to good forward financial planning is to have a clear view of the institute's circumstances, its needs, its wants, and the priorities it attaches to each of those objectives. This will give a framework on which to base decisions, both in the short term and in the long term, and so enable the institute to achieve its mission. In order to build up a meaningful financial plan it is necessary to work through the following stages:

- Identify and prioritise the institute's objectives i.e. its future ministry
- Assess what resources the institute has available to commit towards achieving those objectives; and
- Consider the factors that will influence how the institute meets those objectives

Financial planning is a tool – it must not become the “tail that wags the dog”.

Q. | WHAT ARE THE ISSUES TO BE CONSIDERED WHEN CONSIDERING THE MINISTRY OF THE INSTITUTE IN THE YEARS AHEAD?

When considering the ministry of the institute in the years ahead there are a number of considerations to bear in mind:

- Many institutes in the UK will be charities and as such have to continue to demonstrate that their aims and work are for the public benefit. This should not be a problem for the vast majority. Case law has established that the institute's own members are bona fide beneficiaries of the charity and hence in caring for them the institute is providing a form of public

benefit. Public benefit will also be demonstrated through members of the institute continuing to provide social and pastoral work within local communities and through the provision of charitable donations – either to the institute’s missions overseas, including its generalate, or to other charitable organisations

- Traditionally, institutes have been responsible for some very important charitable works or missions such as schools, hospitals and homes. Many have already given consideration to the future of these institutions and will have made decisions and taken action regarding them already. They are often the works that will form part of the institute’s lasting legacy and so in many cases their future will need to be safeguarded and the institute may retain some involvement even if only at a governance level
- Having thought about the future of traditional major works, it is important also to give consideration to the future work of the members of the institute. In most cases this will be some form of what might generally be described as social and pastoral work. What type of work members are going to become involved in going forward is important as this may impact on training requirements and determine where the member needs to be located and hence will have implications for the institute’s future property needs
- Inevitably, some members of the institute will need care as they grow older and this is likely to have significant implications for the institute’s finances going forward. Decisions such as, how you intend to care for your elderly and where, need forward planning and different options may need to be investigated with a view to deciding on what is best for the individual concerned and the institute. For example, care might be provided in the institute’s own communities, in care homes (managed by the institute, lay people or specialist charities that take responsibility for managing care homes in return for a management fee) or in homes operated by other organisations (including religious)
- All of these options have different implications for staffing, housing needs and ultimately the institute’s finances. The cost should not be under-estimated!
- Some institutes in the years ahead will be in the fortunate position of having excess funds as properties are sold. One of the decisions that needs to be taken is whether those funds are to be donated to other organisations such as other charities or to the institute’s own work overseas. There are both governance and financial implications to these two options. It may be that there is no desire to give funds to other

bodies but that instead the institute and its charity wish to use the funds in another way – perhaps through grant making. A detailed checklist of questions that religious institutes should be asking themselves when carrying out any form of financial planning exercise, particularly long term financial planning, is shown below:

A financial planning checklist

Property issues

Any form of forward planning must involve a detailed consideration of property needs. One of the main sources of inward cash flow for many institutes over the next decade may be the proceeds from the sale of properties. Some such proceeds will need to be reinvested into property but some will be available to increase investment levels. In most cases, because property will be such an important asset for many institutes, the need to give careful thought regarding the institute's future property strategy is of paramount importance and now is the time to be doing just that. Ideally institute's should carry out a review of their property needs regularly – at least every five years. As property markets begin to recover, the institute will want to be in a position of knowing exactly what its strategy is so that it may implement decisions at the best possible time.

Such a review will involve assessing the state of existing properties and future property needs. It will involve asking a number of questions, including but not necessarily limited to the following:

- ① What major repair and/or refurbishment work is required to existing properties in the next few years?
- ② Will any extensions or major building projects be undertaken? If so, have proper costings been obtained making allowance for all known costs including any VAT payable? Has professional advice been sought? (It may, for example, be possible in the case of a "new build" to use a separate legal entity called a "design and build" company to construct the property and hence obtain VAT relief on professional fees in addition to build costs)

- Is there a need for a rolling programme of work that is of a periodic nature such as external and internal painting and decorating?
- Are the properties occupied by the institute currently suitable for future needs given the increasing age profile of members?
- Will major modifications be needed to facilitate the needs of increasingly older occupants? For example, new specialist furniture such as orthopaedic beds, chairs, specialist baths, stair-lifts, other lifting equipment, etc.?
- Where property is to be purchased, have legal advisers and property advisers been appointed and briefed to ensure that all appropriate searches, surveys etc. are carried out? Have their fees been budgeted for?
- Will new purchases or major property work require planning permission? Will this be obtainable with ease or does lengthy preparatory work need to be undertaken including detailed discussions with planners and local councils?
- Will new property purchases lead to the need to purchase significant amounts of new furniture and fittings?
- Will any properties be sold in the next few years? The likelihood that such properties will be able to be sold quickly and with relative ease should be considered. For example, are the properties registered with the land registry or subject to restrictive covenants? If so, then perhaps now is the time to be talking to legal advisers about the possibility of getting them removed. The proceeds from the sale of an institutional type property are likely to be higher if the property can be developed – what is the likely attitude of the local planning authority, and of neighbours(!), to any application likely to be?
- If houses are to be sold, will this necessitate moving members to other houses? Is this feasible? How will it be received by the members involved?
- Will it be easy to sell properties that have been closed or will there be a period when such properties will need to be secured and certain expenses will have to be paid? How much will these total? Should the property be rented out for a short period while issues are resolved or leave it empty?
- Where sales are contemplated have professional advisers been

briefed adequately to ensure that the charity trustees meet all of their obligations to obtain advice and written the reports in accordance with the Charities Act 2011 to enable them to dispose of the property?

- Will properties need to be rented in the future? Will a formal lease be needed or will the let be such that a licence to occupy will suffice? How long will any formal leases need to be for? Has provision been built in to ensure that any formal licence or lease is reviewed by a property surveyor or legal adviser to ensure that they are not onerous?

Care for the elderly

The age profile of members of institutes brings with it a number of specialist concerns, many of which have a financial impact:

- Will members of the institute require specialist care in the future necessitating the employment of nursing staff, specialist furniture and equipment, etc.?
- Will housing requirements change? Will existing houses need to be adapted, new houses purchased?
- Will elderly members requiring nursing care be cared for by the institute or will they be moved to a specialist nursing care home?
- Has allowance been made for the fact that certain costs will inevitably increase as members become older e.g. medical expenses, light and heat costs, etc.?

Staff and employment costs

As members of the institute become older, the need to employ lay staff will increase. Lay staff will be needed in a nursing, domestic and administrative function. Salaries will need to be included in any financial forecast together with the associated costs such as employer's national insurance and pension contributions.

Car and travel expenses

Often the institute will spend considerable amounts of money on motor vehicle fleets. The following questions need to be asked:

- Are the existing cars now of an age where expenditure on repairs etc. can be expected to rise?
- Will members currently needing cars need them in the future?
- Will members not currently in need of a car need one in future?
- Will the type of car needed in future be different to that currently used?

Salaries, pensions receivable and other income

As members of the institute grow older, the number of members earning salaries will decline and such income will decrease. Often the income will be replaced by pensions but these usually will be much smaller.

When forecasting future income, a number of factors need to be taken into account and a number of questions asked:

- Will any members of the institute who are earning salaries or receiving stipends at present need to give up work in the near future to carry out an administrative role within the institute?
- Has a detailed analysis been done showing the number of members reaching retirement age in the next few years, showing the timing of such retirements and their impact on income levels?
- Have voluntary national insurance contributions been paid for all members to ensure their entitlement to a state pension?
- Will lump sum pensions be received in the near future? If so, has thought been given to what will happen with these sums?
- Has thought been given to the value of pensions that might be lost over the next few years because of deaths? Often these will be the larger pensions
- Has a contingency been built in to future projections to try and take account of the uncertainty surrounding state pension levels? It should be assumed that state pensions will fall in real terms in the future

When forecasting future income, thought needs also to be given to the reliance of the institute on investment income and interest receivable and the sensitivity to interest rate changes and stock market volatility.

Also bear in mind that as income declines and expenditure increases, a vicious circle starts because cash at bank and investment levels will be reduced and so exacerbate the decline in the income derived from such assets.

Cash management

It is a fundamental requirement of charity law that the charity trustees maximise the return on any asset while not exposing it to undue risk. Good cash management is essential, therefore, an institute should ask:

- ① Are maximum returns being achieved on money held at the bank? For example, are your monies in the best possible type of account? Is only a minimum amount held in current accounts? Rather than simple deposit accounts, could some of the money be put into term deposit accounts or treasury accounts for a period of 30 days, three months, six months or longer?
- ① Are unnecessary bank charges being incurred?
- ① Have these been discussed with the bank manager?
- ① Has consideration been given to a centralised banking system?
- ① Should some of the money held in bank accounts be invested?

Investments

If the institute is unlikely to need to access cash over the longer term then consideration should be given to the return that may be achieved from that cash having regard also for the potential risk associated with any investment. In respect to those monies not required immediately but needed in the medium term (say less than five years) then advice should be sought on whether such cash might be placed on term deposits that provide security but give rise to a return greater than might be obtained from simply holding the funds in a current account or simple instant access deposit account. Where monies are unlikely to be needed in the longer term other than to generate income, advice should be sought on whether such funds should be invested in listed investments, for example. Before doing so, the institute might give thought to the following:

- What you want from your investments – do you need the income or can you afford to receive less income but perhaps concentrate on ensuring the long term capital growth of your portfolio. Now is the time to think about your investment policy and ensure it meets your needs
- When did you last meet with your investment managers? If investments are one of your institute’s key assets you should be talking to them quarterly, being open with them and asking their advice. The quality of that advice will depend on what you tell them about your future plans and needs. It is essential that investment managers understand your needs and that they are in a position to act in your best interests at all times. But in order to do this, investment managers need to understand your circumstances if they are to help you to make the right decisions over the next few years
- Will there come a time when you need to realise investments because you will need the cash – have you worked out when this is likely to be? Have you told your investment managers?

Q. | IN THE YEARS AHEAD THE KEY FINANCIAL COMMITMENT FOR RELIGIOUS INSTITUTES WILL BE THE COST OF CARING FOR THEIR OWN MEMBERS. WHAT ARE THE KEY FINANCIAL IMPLICATIONS ASSOCIATED WITH CARING FOR OLDER AND FRAIL MEMBERS?

It is clear that most religious institutes in Great Britain are faced with the problem that their members are becoming increasingly older and few new vocations are arising. It is clear also that the cost of care is rising and will continue to do so. The most significant financial commitment that most religious institute charities have at the current time is that of ensuring they are able to care for and look after their members for the remainder of their lives. This commitment is impossible to predict accurately although certain assumptions can be made to help quantify the potential liability. The existence of such a commitment is the aspect that separates religious institute charities from almost all other types of charity and it is the reason why most religious institute charities should have a very carefully drafted reserves policy (see later in this chapter).

As people become older they increasingly need more care and assistance, both in helping them with general domestic chores that they would previously

have carried out themselves and (in some cases) in the provision of nursing and intensive medical care. In the past, there was a general acceptance that such care would be provided by younger members of the institute and would, in the main, be available without the need for the aged member to move to a residential or care establishment. Unfortunately, the age profile of most institutes means that this traditional pattern is now almost impossible and religious institutes have to look to employing help, "buying in" care, developing their own specialist care units, or (reluctantly) seeking places for members in care homes operated by other charities, companies or the state.

While there are important financial implications associated with caring for aged members, it is essential not to lose sight of the crucial emotional issues that must inform any decision and other related considerations that should not be forgotten such as:

- Where do members wish to live in their later years?
- How do members want to be cared for?
- If members wish to be cared for by the institute, is this possible in all situations? For example, does the institute have the facilities and the personnel/staff to enable this? Will care within the institute be possible if dementia care is needed and issues such as security, stress on carers, safety considerations, specialist care, etc. are required?
- Has each member of the institute signed a Will?
- Have relatives and friends been consulted as to a member's care needs, his/her wishes on death, and so on?
- Is it clear what will happen to any property or other assets being administered by the institute on behalf of a member in the case of serious illness and/or death?

The impact of the changes to the age profile of religious institutes coupled with the changes that have occurred in the cost and funding of care in the United Kingdom have been significant. The cost of care for the aged and frail is extremely expensive (particularly if nursing or specialist dementia care is needed) and considerable resources are needed if it is to be provided to an appropriate level and quality. Such resources can come from the institute itself, the state or a mixture of the two. However, it is very probable that in the years ahead the ability to obtain funding from the state will become more difficult with thresholds for care funding being pushed higher and higher for all members of the public including religious. Therefore, it is essential that proper

financial planning has been done so that when the time comes and additional help is needed by members of institutes, those charged with the stewardship of the institutes are aware fully of how this is to be provided and financed.

A few statistics help to illustrate the issues faced by institutes in Great Britain in respect to caring for older members:



80-85

The age profile of members has risen with the average age now often between 80 and 85 depending on the institute



86.7

The average life expectancy of a female born in 2014 in London is 86.7 years compared to 83.3 years for UK males. By 2025 it is expected that these ages may have risen by as much as a further ten years. The figures contrast with 49 years and 45 years for women and men respectively in 1901



A notable percentage of those over the age of 75 need long term care of some sort



Care and nursing costs have risen greatly in the past two decades at amounts over and above the rise in the Retail Prices Index



Some older members of religious institutes have had no national insurance contributions made on their behalf and as such they are not entitled to a full, or any, state pension



The basic state pension for 2016/17 is £122.30 per week or £6,360 per annum



The funding for state or public healthcare provision is inadequate and disjointed with different decisions being made in different parts of the country and with different rules in England, Wales and Scotland. The recommendations of the Dilnot Report published in 2012 have not been implemented by government and it is unlikely that we will see significant change in the remainder of this decade. The Dilnot recommendations while addressing the future funding of care have been severely questioned by those working in the care industry, many of whom have concerns as to whether they will result in a general lowering of standards



The average cost of looking after a member of a religious institute who is fit and healthy is between £15,000 pa and £25,000 pa depending on circumstances



The average cost of providing care in a residential home now exceeds £35,000 per year and nursing care homes now typically charge in excess of £55,000 per year with costs rising still further for specialist dementia care – in some cases in London and the South East costs can be as high as £80,000 plus



To provide £20,000 per annum for a sister of 70 years for the rest of her anticipated life requires a typical investment of approximately £250,000. Hence, to provide for 25 such sisters would require a typical investment of £6.25 million



To provide income of £55,000 per annum for a sister of 78 for the rest of her life requires a typical investment of approximately £500,000. Hence, to provide for 10 such sisters would require a typical investment of £5 million

The above statistics serve only to emphasise the importance of financial planning referred to earlier in this chapter. The following action plan is recommended when planning the costs of caring for older members:

- Complete the financial planning checklist set out in this chapter

- Carry out a detailed review of the institute's property portfolio and access future needs and their financial implications
- Prepare a projection of salary and pension income taking into account known retirements and projected death rates
- Give serious consideration to "earmarking" or designating resources in a retirement fund to provide for future needs

Q. | WHAT ARE THE FINANCIAL IMPLICATIONS WE HAVE TO CONSIDER WHEN FORMULATING A RESERVES POLICY?

In answering this question, it is first important to understand what is meant by a reserves policy and the purpose of such a statement.

Most charities, including religious institute charities, are very aware of the need to secure their financial viability beyond the immediate future. In order to provide for the members of the institute and their care, in order to provide ongoing charitable work and activities including general social and pastoral ministry, religious institute charities must be able to absorb the occasional set back and plan for the future. Many such charities provide for this by setting funds aside i.e. by not spending all the funds that are available to them at any point in time. In other words, trustees "reserve" some of the charity's funds available to them for future needs and commitments.

Over the past decade or so, there has been much discussion about the level of charity reserves – the public and the media have become concerned at times that certain charities are simply not expending sufficient amounts of the money entrusted to them and might be deemed to be accumulating or "hoarding" monies. The debate began several years ago when charities such as Guide Dogs for the Blind and Royal National Lifeboat institute found themselves having to justify the resources they had available to them but which they were not utilising despite fundraising for more income. In more recent times, the austerity cuts and economic conditions have forced many charities to severely cut back on spending in order to ensure they had the funds required in line with their reserves policies so that they did not get into danger of insolvency. The recent Kid's Company case has also led to questions being asked about how realistic charities are being in assessing the funds they need to hold back in order to meet day-to-day needs and provide for that "rainy day".

The only sensible way for charities generally to counter criticism about reserve levels is for them to justify and explain their reserves positions. While this is no different for religious institute charities, such charities are rarely understood by the public in the same way as other mainstream charities and so that need for explanation becomes even more important.

All charities, including religious institute charities, benefit from public monies – particularly because their income and gains if applied for charitable purposes are not subjected to direct tax. The public is entitled to be reassured that any charity, including a religious institute charity, has good reason for holding reserves and to know what those reasons are.

The term “reserves” is not one that is always understood. The term “free reserves” is defined by the Charity Commission as “That part of a charity’s income funds that is freely available for its general purposes”. In simplistic terms, when applied to a religious institute charity, one way of defining free reserves is, the total of all income given to the charity in the past which has not been spent or committed, which is not subject to restrictions on its use because of stipulations laid down by the person or organisation giving the money, which is not tied up in land, buildings, cars or other furniture and equipment, or which has not been set aside for a specific purpose by the trustees themselves.

As a result, the trustees’ report of a charity should contain a review of its reserves. This should:

- State the amount of the total funds the charity holds at the end of the reporting period
- Identify the amount of any funds which are restricted and not available for the general purposes of the charity at the end of the reporting period (e.g. mission funds)
- Identify and explain any material amounts which have been designated or otherwise committed as at the end of the reporting period (this should include amounts set aside for the future care of members)
- Indicate the likely timing of the expenditure of any material amounts designated or otherwise committed at the end of the reporting period (e.g. over the remaining life of the members)
- Identify the amount of any fund that can only be realised by disposing of tangible fixed assets or programme related investments (i.e. the amounts represented by land, buildings, cars, furniture and equipment)

- State the amount of “free reserves” that the charity holds at the end of the reporting period after making allowance for any restricted funds, and the amount of designations, commitments (not provided for as a liability in the accounts) or the carrying value of functional assets that are held; and
- Compare the amount of the reserves with the charity’s reserves policy and explain, where relevant, what steps the charity is taking to bring the amount of reserves it holds into line with the reserves identified by the trustees as appropriate given their plans for the future activities of the charity i.e. their reserves policy

Ascertaining the appropriate level of reserves for your religious institute charity will require that the trustees give very careful consideration to their future plans, the impact of those plans on the charity’s finances and, in particular, the need to have sufficient funds to provide for the long term care of all members of the institute. This will require the trustees to consider the age profile of members, their personal needs, their ministry, and the consequent property needs etc. In short, before a religious institute charity can begin to formulate a reserves policy, the trustees need to have given thought to the financial planning checklist set out earlier in this chapter and the long term potential care needs for the members.

For religious institute charities, the key decisions regarding reserves are not the level of their charity’s free reserves but the level of funds set aside or designated for specific purposes to meet long term commitments. In the case of many religious institute charities, the level of designated funds required will be very significant.

Before looking at how a religious institute charity can justify its reserves, it is important to consider what the law says about charities and their reserves. There is no specific rule about the amount or proportion of a charity’s income funds which it must hold as free reserves. Every charity’s reserves policy will be different. A charity with very few commitments may be able to survive with a policy of having three months’ expenditure in reserve whereas a complex charity with commitments in respect to property, staff and beneficiaries may require several years’ expenditure in reserve. It is the writer’s opinion that most religious institute charities will fall in to this latter category.

Trustees are under a legal duty to apply, or spend, charity funds within a reasonable time of receiving them. If funds are not going to be applied in this way then trustees have to rely on explicit powers within their governing

document allowing them to accumulate income or they must rely on implied powers. Explicit powers enabling trustees to accumulate income are not very common. Implicit powers enable trustees to set aside income for future application provided it can be justified and provided if in the view of the trustees, it is necessary for the best interests of the charity. Holding on to income funds without justification may be deemed a breach of trust.

A religious institute charity can only formulate a reserves policy after carrying out a realistic assessment of the current and future needs of the members and the wider congregation's expectations of it based on all known facts. In doing this several things need to be taken into account including:

- Forecasts of future income
- Forecasts of future expenditure; and
- Future commitments

In assessing these areas, trustees should take into account the need to keep operating should the charity suffer a temporary loss of income or find its work disrupted in other ways. The trustees must also take into account the need to update properties and facilities, invest in IT and the need to be able to withstand any adverse events that can be reasonably foreseen.

These aspects are best considered using a financial planning checklist such as those set out earlier in this chapter. The assessment of future commitments needs also to be considered in the light of the statistics and data set out above in connection with the care of members.

The reserves policy itself should be in writing and cover as a minimum:

- The reasons why the charity needs reserves
- What level (or range) of reserves the trustees believe the charity needs
- What steps the charity is taking to establish or maintain reserves at the agreed level (or range); and
- Arrangements for monitoring and reviewing the policy

For many religious institute charities, the resultant reserves policy will indicate that there is a need to designate or set aside significant monies for the future care of their own members. Where resources are such that the above considerations indicate that the charity's reserves are more than adequate

to meet this future cost, trustees should consider also the charity's moral obligations to the wider institute. It may be that at some point in the future monies not required in the United Kingdom may be required to make grants to the international institute. Or, perhaps there may be a desire to set funds aside to finance grant making activity to other UK charities via a grant making programme (see chapter five).

The reserves policy for a religious institute charity and the comparison of that policy with the actual financial position of the charity may be something along the following lines:

Reserves policy and financial position

Reserves policy

The charity supports a diverse range of activities enabling the work of individual members of the institute here in the United Kingdom, providing care and support for the members of the institute in their daily lives, and providing financial assistance to the international institute and its overseas missions. The trustees have examined the requirement for free reserves i.e. those unrestricted funds not invested in tangible fixed assets, designated for specific purposes or otherwise committed. The trustees consider that, given the nature of the charity's work, the level of free reserves should approximate to between nine and 15 months' expenditure. The trustees are of the opinion that this provides sufficient flexibility to cover temporary shortfalls in incoming resources due to timing differences in income flows, adequate working capital to cover core costs, and will allow the charity to cope and respond to unforeseen emergencies while specific action plans are implemented.

Financial position

The balance sheet shows total reserves of £32,895,842.

£17,800,000 represents a retirement reserve designated to provide for sisters as they increase in age. The value of the fund has been calculated using actuarial principles to provide for the institute's sisters, but is not meant to guarantee sufficient resources. It is merely an estimate designed to recognise, and make some provision for, the financial undertaking implicit in the relationship between a religious congregation and its members. It has been calculated using life expectancy projections published by the Office for National Statistics and

is based on the need to provide £15,000 per annum for sisters over 65 years of age and, because of the greater health needs, £35,000 per annum for sisters over 75 years of age and £55,000 for those over the age of 85 years.

Following the disposal of a substantial freehold property in the north west of England, the trustees have set aside a total of £5,000,000 in a "Financing and Institutional Fund" at 31 December 2016. While much work has to be done on deciding exactly how these funds are to be applied, the broad intention of the trustees is to use them to finance the work of the sisters for the mission of serving refugees, asylum seekers and homeless people, in the United Kingdom. Ministering to the homeless has long been a focus for the institute. While a large proportion of the money has been invested with a view to generating income to apply as grants to be made to organisations working in this arena each year, it is anticipated also that some of the money may be applied directly to the provision of assistance to the homeless by the sisters in individual projects managed at community level.

The tangible fixed assets fund totals £6,978,211 and is represented by tangible fixed assets used to support the work of the sisters including the properties in which they live and from which their work is coordinated.

Restricted funds of £236,823 are held for specific purposes as detailed in note 17 to the attached accounts with the majority to be applied towards the institute's missions in the developing world.

Funds which are available to support the work of the sisters in the future i.e. free reserves are those shown on the balance sheet as general funds and total £2,880,808. These free reserves fall within the parameters of the charity's reserves policy set out above.

The free reserves are considered adequate when viewed in the light of the commitment to fund the running costs of a care home for older and frail sisters, the charity's annual expenditure and the increasing age profile of the members of the institute. There is also a lack of new vocations and therefore no prospect of increased income in the future. There are only modest resources remaining to look after the ever-growing number of sisters needing increasing, and increasingly expensive, residential and nursing care.

The financial position of the charity, and the reserves policy itself, are subject to review by the trustees on an annual basis at least.

GRANT MAKING



INTRODUCTION

Grant making may seem an unusual topic to be discussing in relation to religious institutes but it is something that will become more and more relevant for religious institutes and their related charities as time goes by.

Many religious institute charities will not regard themselves as grant making entities at the present time but all make donations to other charities and of course many transfer funds to their own institute – either via their generalate or to other institutes and works overseas. The distinction between a grant and a donation is in many ways academic. Thus, the contents of this chapter apply to most religious institutes and their charities right now. Undoubtedly, they will become more relevant over the next decade.

Therefore, this chapter looks at the processes and systems that ought, to some extent, to be in place today in respect to transfers of funds by religious institutes to their generalate and other institutes and to other charities but which will become essential as grant giving or donation giving becomes more prevalent.

Q. | WHY WILL GRANT MAKING BECOME MORE IMPORTANT TO RELIGIOUS INSTITUTES?

Most religious institutes conduct their affairs in the UK through a charity – for many this will be a charitable trust but, as time goes by, for more and more it will be through a charitable company or a charitable incorporated organisation (CIO).

Regardless, the responsibilities of those who are trustees will be the same and may be summarised as follows:

- To apply their charity's assets for charitable purposes
- To have a clearly defined strategy for achieving the charity's purposes
 - What is the institute's long term vision in the UK?
 - How do the trustees visualise the religious institute's future ministry in the UK?
 - What funds will be needed to make the vision a reality?

- To ensure public benefit is provided
- To ensure income is not accumulated by the charity unnecessarily
- To safeguard the charity's assets

The key responsibility of the trustees is to ensure that the charity's assets are applied for charitable purposes as defined by civil law here in the UK.

The principal obligation of the charity's trustees is to the institute's own members here in the UK – all of whom have dedicated their lives to the institute and its work. The assets of the charity have to be used to ensure that the members in this country are cared for and that their individual ministry and that of the institute in this country continues. The members of the institute here in the UK are bona fide beneficiaries of the charity and that has long been established in case law.

However, as the age profile of the members increases and, inevitably, numbers decline there is a need to consider the nature and reality of the future ministry of individual members and that of the institute more generally.

One of the most fundamental questions for all religious institutes to be asking at the current time is "where do we want to be in five or ten years' time?". In other words, what is the medium to long term ambition for the institute here in the UK? Other than caring for members of the institute, what will the long term ministry of the charity be and how will it apply its assets to demonstrate charitable purpose and public benefit? It is the task of the charity's trustees and the institute's leaders and bursars today to give serious thought to this and to define the future strategy of the religious institute charity.

In doing this, there is a need to strike a balance which is not easy – it is the balance between ensuring that the charity has sufficient funds to care for the members of the religious institute in the UK, many of whom may need expensive nursing care, and between ensuring that the charity's trustees are able to demonstrate that the charity's assets are being used and not simply accumulated.

It is a fine balance between being prudent and safeguarding the charity's assets and between ensuring that they are used for charitable purposes and not hoarded unnecessarily.

Q. | HOW MIGHT RELIGIOUS INSTITUTES AND CHARITY TRUSTEES RE-ASSESS HOW BEST TO PURSUE THE MISSION AND OBJECTIVES TO WHICH THEY HAVE COMMITTED THEMSELVES?

There are no magic answers to the questions charity trustees need to be asking – the solutions will be different for each religious institute. They can only be answered by the charity trustees and the members of the institute. What is essential is that this process needs collaboration by all members – communication and discernment are essential. This is something most religious institutes have been doing for a number of years – both at provincial and at general chapters and it is gaining in its importance and urgency. At such meetings, many things are discussed but ultimately it is all about deciding on the religious institute's strategy in the UK and further afield, not just for the next three to six years but beyond. The tools that help religious institutes achieve such a strategy are good governance and financial planning. Inevitably, this will involve looking at practical aspects such as the future work of individual members, the geographical locations where members will be based and the wider property implications, and the future governance requirements such as who will serve as trustees in the years ahead etc.

For the purpose of this chapter it has been assumed that those more practical areas have been considered and decisions have been made and plans are beginning to be implemented. This chapter concentrates on the ultimate charitable work of the religious institute charity – on the bigger picture – its strategy and future ministry.

Q. | WHAT IS MEANT BY STRATEGY AND FUTURE MINISTRY?

Strategy means deciding on your destination and how you will reach it: it means thinking about your future work and your "legacy". Institutional works are reducing and/or being handed over to lay control often by setting up new charities. The pastoral and social work of individual members will continue but there may be changes to the type of work, locations and other implications such as training needs and there is a real need to think about the future care of members: how, where and by whom?

The long term strategy of the charity means thinking about the future work of the charity and the religious institute's "legacy" here in the UK – what does it want to be remembered for should there ever come a point when there are

no active members in this country? How does the religious institute wish the work that it has established over the decades and centuries here in the UK to continue?

Traditionally, religious institutes have been responsible for some very important charitable works or missions such as schools, hospitals and homes. Many have already given a lot of consideration to the future of these institutions and will have made decisions and taken action regarding them already. It is these works that will form part of the institute's lasting legacy and so in many cases there will be a real desire to safeguard their future and retain some involvement in them for as long as possible, if only at a governance level. Different religious institutes will have dealt with such works in different ways.

A small number of religious institutes will have closed their institutions. Others will have gone through a process of hiring more and more lay people, creating a cadre of staff who have assimilated the charism and ethos of the institute. Gradually, however, this process has led either to the sale of the works to commercial or charitable operators as going concerns or, more often, to the legal separation of the school, home or hospital from the religious institute charity by "hiving" it off to a separate charity in which the laity take part in management and governance and, to some extent, the religious institute retains influence over the charism of the institution.

Having thought about the future of institutions, it is important for religious institutes and the trustees of the religious institute charity to give thought also to the future work of the members of the institute. In most cases this will be what might generally be described as social and pastoral work. What type of work members are going to become involved in is important as this may impact on training requirements and, depending on where the work is to be carried out, it may have implications for future property requirements.

Inevitably, some members of the institute will need care as they grow older and this is likely to have a significant impact on the finances of the institute and its associated charity going forward. Decisions such as to care for elderly members and where such care will be provided need forward planning. There will be a need to investigate the different options and decide on what is best for the charity and for the individuals concerned. Will they be cared for in their own communities, in care homes – either owned and managed by the institute or by specialist charities, or operated by other religious or by independent organisations both charitable and commercial? All of these options will

have different implications for staffing, housing needs and ultimately for the institute's and charity's finances.

But, given all of that, the long term financial projections prepared for religious institute clients suggest that at some point decisions will need to be taken about what else to do with the charity's assets. For some religious institutes, this decision is becoming more pressing as valuable property assets are sold because they are no longer required. Decisions need to be taken regarding what is to be done with the disposal proceeds and excess funds. Charity trustees may decide that they wish to donate excess funds to other organisations such as charities or to your own institute's missions overseas. In other words, become more involved in grant making.

Q. | WHY IS GRANT MAKING BECOMING MORE RELEVANT TO RELIGIOUS INSTITUTES AND THEIR CHARITABLE WORK IN THIS COUNTRY?

Many religious institutes used to be "asset rich but cash poor". They needed properties in which their members could live and properties in which their works could be carried out. The decline in members has meant that the need for properties has now both changed with more standard, modern residential properties or houses being needed with, in some cases, moves from community living to single dwelling properties. Similarly, the transfer of properties to independent charities has meant that large institutional properties are now being leased or sold to such organisations. The impact of all of this is that assets that once comprised bricks and mortar are being replaced with cash and/or investment assets.

There are few or no new vocations for institutes in the UK and the average age of members in the UK is increasing – it is now early eighties – and the number of members is falling. As a charity, the religious institute in the UK has to be seen to be using its funds for charitable purposes to satisfy the requirements of both the Charity Commission and HM Revenue and Customs (HMRC). While it is undeniable that significant sums of money will be needed in the years ahead to look after the living and care needs of members, some religious institutes now have or will have amounts in excess of their care and traditional pastoral needs and will need to consider new ways of achieving their mission. This is where grant making becomes relevant.

Q. | WHAT IS MEANT BY GRANT MAKING?

Grant making is the payment of a voluntary contribution by the religious institute charity to another person or another organisation, including the institute's generalate or an overseas province of the institute.

A GRANT = A DONATION = A CONTRIBUTION

A grant/donation can be made to:

- Another charity or an organisation that will use the monies for a charitable purpose
- The institute's generalate
- Another province of the institute
- An individual

If the religious institute's charity is going to start to give away serious amounts of money each year it needs to do it in a planned and considered way otherwise it will end in, at best, a bit of a mess (which is not ideal) and, at worst, with questions being asked by both the Charity Commission and HMRC (which is far from ideal and a bit of a disaster!).

One of the first things that charity trustees need to do once they have decided to give donations and/or grants is to sit down and formulate a grant making policy.

Q. | WHAT IS A GRANT MAKING POLICY?

In essence a grant making policy is a summary of the following:

- How much the charity trustees wish to give away each year?
- What causes/missions the charity trustees wish to support and how?
 - The causes supported must be consistent with the objects of the religious institute charity

- Whether the charity wishes to fund capital projects (e.g. buildings or infrastructure projects) or income/revenue projects (or both?)
 - Whether the charity wishes to give one off grants or multi year grants – perhaps committing to grants over a three or five year period?
 - Whether the charity wishes to fund specific projects i.e. make restricted grants or fund core services and so make unrestricted grants?
- Do the charity trustees wish to identify recipients or do they wish to invite applications?
 - How often will the charity trustees make grant decisions?

Q. | WHAT ARE THE VARIOUS STAGES TO GRANT MAKING ACTIVITY?

Essentially, the various stages may be broken down as follows:



An applicant submits an application completed using guidelines set down by the charity trustees



The charity trustees carry out an initial assessment of the application form and any supporting information



Provided the application form passes the initial assessment, the charity trustees begin further due diligence on the application and the applicant



The charity trustees make a decision as to whether or not to award a grant, setting out the amount and any conditions to be met by the applicant either immediately prior to payment or in the future, possibly prior to subsequent instalments being paid



The charity trustees continue to monitor the usage of the grant and the fulfilment of conditions



Payments are properly administered



Recording of decisions, progress and monitoring results

Q. | CAN WE GIVE OUR MONIES TO ANYONE?

It is important to remember that the causes a charity may support have to be consistent with its charitable objectives – trustees cannot simply support anything that they as individuals think is a worthy cause. The charity’s money has to be given to causes that are consistent with its charitable objects as set out in its governing document.

Most religious institute charities have fairly widely drawn objects but between institutes there are subtle differences. For example, a charitable object to support and further the Christian religion is wider and hence more flexible than one to further the Roman Catholic faith. Although not essential, it is important also to think about the way in which your institute has traditionally furthered its objects. For example, there might be a greater expectation and acceptance of a missionary institute giving funds overseas than an institute that has focussed on education here in the UK where there may be greater expectation and acceptance that the funds will be applied towards educational projects here at home. Ultimately, it is for the charity’s trustees to justify that funds are being applied in accordance with the charity’s charitable objects so it is something that should be given careful consideration. Let us just consider a few examples and the issues they might pose which would need to be addressed in any justification by the trustees to give a donation or grant.

- An application is received for a grant towards the operation of a healthcare clinic to cover general running costs including salaries. As part of their enquiries, the charity trustees would need to gain a better understanding of the activities at the clinic and the type of healthcare services provided. For example, does the clinic engage in activities associated with gene therapy, stem cell research, abortion, IVF for same sex couples, etc. The charity trustees may also wish to gain a better appreciation of the type of client assisted – are procedures carried out for clinical purposes or cosmetic purposes, are those using the clinic expected to pay full fees or are they subsidised in some way? The outcome of such enquiries will help inform the charity trustees as to whether or not they can or wish to make a grant.
- An application is received from an organisation that wishes to campaign against potential fracking activity in a specific area of the country. With such an application, the trustees need to consider whether the organisation is politically motivated and whether there is a risk that the charity's funds might be deemed to be assisting with political campaigning. There may be wider implications for the charity's reputation to give thought to; the relationship between the furtherance of the Christian faith and the perceived protection of the environment would need to be justified and this may be an example of where the traditional work and charism of the institute may be relevant.
- An application is received from an organisation working with refugees and asylum seekers – while this application may be appealing at first glance because of its apparent support for an humanitarian cause, it will be essential for the charity trustees to gain a better understanding of how the applicant works, the type of individuals assisted and the nature of such assistance so that the charity trustees may satisfy themselves that there are no suggestions that immigration laws and regulations are being breached.

Q. | DO WE NEED AN APPLICATION FORM?

It is not uncommon for charity trustees to believe, especially in the early stages of any grant making activity, that they will be able to identify organisations to give grants to. However, it often becomes very apparent after just a short time that this is not the case without some form of publicity about their grant making policy. Publicising the charity's grant making enables a

significantly broader base of applicants to be identified and ensures fairness and transparency. However, to enable all applicants for funding to be judged on an equal basis and to ensure that the charity trustees are in receipt of all the information and that the information is presented to them in a consistent manner, an application form is essential.

Application forms will vary and it would be sensible for trustees of any charity aspiring to commence a grant making activity to obtain examples of those used by other charities. This is often preferable to starting with a clean sheet of paper and trying to design something from scratch. Form design is highly skilled and it is sometimes revealing to learn the many different ways in which an apparently clear request for a simple piece of information can be interpreted by our fellow human beings! Once an application form has been designed, it is sensible to test it out on a number of willing volunteers before using it properly – at least in this way any obvious flaws will become apparent!

An application form may be paper based or it may be electronic and available online via the charity's website etc. Regardless of the design, there are a number of key pieces of information which should be requested via the application form:

- Name of applicant, address, charity and company registration numbers
- Name of principal contacts and their roles in the organisation
- An explanation of why funding is being sought
- Details of project including budgets, plans, other sources of finance, location
- Timescale
- Latest statutory accounts to be appended
- Financial information
- Referees

In addition, the guidelines or notes accompanying the application form should set out as clearly as possible the criteria against which any application will be judged. This information is essential to ensure that where possible the charity is not

inundated with applications that are simply not suitable or able to be considered. The guidelines should also make clear the mandatory information needed if the application is to be processed, the next stages and an indication of the time that may elapse between the application being received and a decision being made.

While an application form assists with fairness and transparency, charity trustees should remember that this works in both directions – an applicant that trustees turn down may well ask for feedback and an explanation of why they were not successful.

Even if not inviting applications, it is worth devising your own internal form on which you record much of the information you would expect on an application form about those you are considering giving money to. This will enable you to have all information to hand and make judgements between different projects or charities.

Q. | WHAT IS MEANT BY THE INITIAL ASSESSMENT OF THE APPLICATION?

When an application is received, it is sensible to carry out some initial basic checks on the information contained therein and so avoid unnecessary delays and the danger of processing the application only to discover at a later date that some crucial information is missing. The types of check to consider at this stage are as follows:

- Has the application form been completed fully?
- Does the application meet the criteria set out by the charity for the types or causes it will support?
- Does the application meet any other eligibility criteria set out by the charity?
- Do you have the necessary supplementary information?
- Has a set of accounts been provided?
- Does the application warrant further assessment and due diligence?

Although not essential, it is often helpful to develop a form of checklist of questions to be answered when carrying out the initial assessment of the application. The checklist can then be completed and attached to the application form.

At this stage of the process, those applications that clearly do not meet the charity's criteria may be rejected and a letter sent to the applicant explaining why the application has not been considered further. Also at this stage, it is appropriate to write to those applicants that appear to meet the criteria set but which have either not completed the form fully or given all the information needed. While waiting for the further details, their applications may be held in a pending file.

Q. | IS FURTHER DUE DILIGENCE REQUIRED?

Other than for extremely small grants, it is unlikely that an award of a grant will be made after only an initial assessment. Further due diligence will be required although the exact amount needed will depend on the funds being applied for, the project seeking funding and the complexity of the funding requested. Examples of the types of due diligence that may be needed before a decision can be made include:

- Researching the applicant. This may take various forms such as a detailed review of the applicant's website and other information available publicly – including information held by both the Charity Commission and Companies House (if the applicant is a company). It may also include carrying out various internet searches for information about the applicant
- Reviewing the applicant's accounts and the documentation provided to support the project. In some cases, the charity's trustees may need to involve others such as their accountant or finance team
- Specialist advice may need to be sought– this may be the case, for example, if the applicant seeking funding is overseas or involves a complex construction project where the advice of someone with property expertise may be helpful
- Taking up references – in writing but with a follow up telephone call if this were felt to be helpful
- Interviewing the applicant
- Visiting the project and meeting those involved
- Recording and summarising the results of all the due diligence

Q. | ARE THERE ASPECTS OF THE DECISION THAT NEED FURTHER THOUGHT AND SHOULD THE DECISION BE RECORDED?

Once the due diligence has been completed, all of the results should be summarised for discussion by the charity's trustees. It may be that further questions are raised or it may be that following discussion a decision can be made.

If a decision is made not to award a grant, the applicant should be informed and be provided with a brief explanation of why a grant will not be awarded.

On the other hand, if a decision is made to award a grant then the charity trustees should consider any terms and any conditions to be imposed – for example, that the grant will be awarded in instalments with each instalment only paid after the receipt of a satisfactory progress report; any restrictions and conditions of use - for example, that the funding is to be used for a very specific purpose such as the payment of a named member of staff; the nature and frequency of feedback and reports; and any deadlines to be imposed for using the funding.

The awarding of the grant and the conditions under which it is given should be set out in writing and a form of contract devised between the charity and the successful applicant. Before any monies are given, the successful applicant should be asked to acknowledge, in writing, their agreement to the terms and conditions by signing and returning to the charity a copy of the offer letter confirming the terms and conditions that apply.

One final issue the charity trustees might consider at this stage is whether or not they require that there is any formal acknowledgement of the support their charity has given or will be giving – for example, an acknowledgement of the charity's grant in the recipient's annual report and accounts or (perhaps in the case of a substantial grant to assist with the construction of a building) a plaque.

It is essential that the formal discussion about the application and the decision of the charity trustees are recorded in minutes of the relevant meetings. As always, such minutes should not be a verbatim recording of all aspects debated but nor should they be simply a record that a decision was made to award a grant. The minutes should be sufficient to enable an understanding of the issues discussed, the questions asked and resolved and the basis on which the decision was made in addition to the decision itself.

Q. | IS THAT THE END OF THE MATTER OR DO WE NEED TO MONITOR HOW THE FUNDS ARE SPENT?

For very small grants given without conditions being attached, the process may stop at this point. However, for grants of any size or where conditions were applied, the charity trustees have an obligation to ensure that their charity's monies are being used by the intended recipient for the purpose intended and in a manner consistent with the charity's objectives and ethos. Such continued monitoring may include some or all of the following:

- Regular reports from the grant recipient and/or specialists
 - Narrative
 - Financial
 - Specialist progress reports – for example, from surveyors in the case of construction projects
- Interviews/meetings with the recipients
- Site visits to the projects being funded – especially in the case of large donations/grants and capital projects
- Confirmation of compliance with conditions imposed

Where concerns are raised as a result of the monitoring activity, the charity trustees must be prepared to cease or postpone the charity's funding until such time that they are happy that the charity's funds are being used in an appropriate way consistent with the original terms and conditions of the grant.

The monitoring of projects and the use of grants by recipients is another example of where a carefully designed checklist can ensure consistency, proper recording and fairness and transparency at all stages.

Regular reports are essential for all but the smallest grants.

Q. | WHAT RECORDS DO WE NEED TO KEEP?

As a minimum the following needs to be kept in respect to grants and the decisions made:

- Detailed minutes
- Applicants' files
 - Application form
 - Supporting information
 - Record of due diligence
 - Monitoring reports
 - Records of monitoring assessments – initial and ongoing
- Payments made
 - One off
 - Instalments
 - Payments should be made in all instances by bank transfer/ electronic payment

The records maintained need to be organised and methodical – grant making records cannot be maintained in an ad hoc way unless only a very small number of grants are being made.

Religious institute charities should not underestimate the amount of time needed to implement and then administer a grant making programme. As the programme develops it will be necessary to consider the employment of a grants administrator to assist with the administration, the due diligence, the communication with applicants and recipients and the monitoring and recording. It may also be advisable to take some of the strain away from the charity trustees by appointing a grants committee. Such a committee may comprise representatives from the trustees but also other members of the institute and lay people.

Q. | CAN GRANTS BE MADE TO ORGANISATIONS WITH WHICH CHARITY TRUSTEES OR MEMBERS OF THE INSTITUTE ARE INVOLVED?

On occasion, the charity may be asked to consider a grant for an organisation for which one of the members of the institute works or volunteers. This is understandable and, provided certain safeguards are employed, there is no reason why a grant should not be considered. The two important aspects to

ensure are covered are:

- The application should be treated in exactly the same way as any other grant application being shown no more favourable or less favourable treatment because of the association. The manner in which the application is discussed, the information sought etc. should be consistent with all other applications
- Where the individual member of the institute who is associated with the applicant would normally be involved in the grant making process, that individual should declare an interest, remove themselves from the process and the fact that they have done so should be recorded. For more information about conflicts of interest and how to deal with them, please see chapter three

Q. | DOES THIS THEORY APPLY SHOULD WE BE ASKED FOR MONEY BY THE GENERALATE?

The trustees of the charity have certain responsibilities and duties in respect to any request by the institute's generalate (or any other part of the institute) for the transfer of monies from the English charity to fund the generalate or overseas projects.

One of the key aspects to remember when considering any such request is that for the purposes of English civil law the English charity is legally separate and distinct from the institute. The charity and its trustees must comply with English charity law at all times. The law requires charity trustees to take responsibility for the stewardship of the charity's assets, to protect those assets and apply them only for purposes consistent with the charity's objectives as set out in its governing document. This responsibility is onerous and is strongly policed by both the Charity Commission and HM Revenue and Customs (HMRC).

When taking decisions as to the application of the charity's resources and assets (including cash and investments), the trustees must always consider and act in a way that is in the best interests of the charity and the fact that they have done so must be transparent. While the interests of the charity and those of the overall institute may be consistent in most instances, this may not always be the case – the trustees here in England may be of the view that the charity's funds are needed for the long term security and care of the members and their work here, at least for the foreseeable future. The manner in which

any transactions with the generalate are carried out and the control over those transactions must reside with the charity trustees.

Thus, while the trustees of the English charity may receive requests from the institute's generalate or other parts of the institute to pool funds or transfer funds, ultimately the decision as to whether to accede to this request rests with the trustees and can only be agreed to if it is in the best interests of the charity.

Requests may be divided into those that are for relatively small amounts – possibly to cover the administrative expenses of the generalate – and requests for larger amounts which are often to fund projects overseas – in both developed and in developing countries or, for example, to facilitate the building of novitiates in developed countries which will be used principally for the formation of members from the developing world.

Those requests for funding of the administrative expenses of the generalate or for relatively small amounts will be easier to deal with. However, the principle of considering whether the payment is in the best interests of the charity, recording agreement to make the transfer in the charity's minutes and deciding how the use of the funds will be monitored still apply.

Q. | WHAT IF THE CHARITY IS ASKED TO FUND A CAPITAL PROJECT BY ONE OF THE INSTITUTE'S OVERSEAS PROVINCES OR BY A UK CHARITY?

In considering any request for larger or specific project funding, the trustees of the English charity should:

- Request a written formal request for funding from the generalate. At the very least this should set out details of the project to be funded or the expenditure to be met from the funding. This needs to be detailed and ideally should include sufficient information to enable the trustees to understand the scope of the project, the longer term plans and future of the project to be funded and the risks associated with it.

For example, if the monies were required for a capital project such as the building of a school, the application might include:

1. Confirmation that the land on which the building is to be constructed belongs to the institute or is subject to a long lease with details of any

risks etc. that may result in it being confiscated or alienated at some future date

2. Details of legal and property advice received locally
3. Detailed plans of the building
4. The costing for the building programme including any local taxes
5. The timetable for the building project
6. Who will be responsible for the building project and confirmation that the contractors and advisers are reputable and that references have been taken up
7. How the planning and construction will be project managed and controlled
8. How the use of the building will be funded in the long term i.e. will the operation of the school be financially viable – either through the payment of fees or through confirmed funding.

In addition, the request should stipulate:

1. The timing of when monies will be needed
2. How the expenditure of the monies is to be monitored and controlled
3. How the English charity will be kept informed of progress and be given an account of the way in which the monies have been spent

- Meet as trustees to consider the request and discuss the project in the light of the charity's objects, the risks associated with the project including any potential concerns about the stability of or the political situation in the country that may receive the funds. The trustees should agree on any further information they need to request before a decision can be made.

If the project is not consistent with the charity's objects then the application must be refused. In reality this is unlikely to be the case because of the fact that the charity's objects clause is widely drawn – however, this should not simply be assumed. The trustees must consider also the current and future obligations of the charity such as long term care for the older sisters here in the UK and the continuation of the charity's and/or institute's ministry in this country. At this point, it may be that the trustees feel that the resources available to the charity are already committed for the time being and so funds are not available and hence the request should again be refused. Alternatively, it may be that the

trustees do decide to make funds available – either in full or in part (because monies are limited) – and that funding will be made available but subject to certain conditions. This discussion needs to take place in a formal trustees' meeting and be fully minuted.

If the trustees do decide to fund the project – either in full or in part – they then need to consider the following and communicate it in writing to the generalate or that part of the institute applying for funds:

- How much funding are they prepared to give. Often it is preferable when dealing with requests for significant funding to agree only to make on-account payments as the project progresses – possibly to cover the following month's projected expenditure - and to make them based on progress reports and some form of account of the monies spent to date. It would not usually be in the charity's best interest to transfer significant monies at the commencement of a project or before a project is even ready to commence. This is because the funds may not be secure and because, if the project were to be abandoned for any reason after the funds had been transferred, it may not be possible to repatriate the monies back to England
- How the use of the funding is to be monitored i.e. what type of reports are required to satisfy the trustees that the monies are being applied for the purpose intended and that the project is being properly managed and in accordance with a budget. Such monitoring may take the form of narrative reports, photographs, accounts or a mixture of all three. The trustees need to make clear that where reports do not prove satisfactory, they reserve the right to decline further instalments until their concerns have been addressed
- A written offer of funding should be made to the generalate and a request made that the generalate formally confirm that it accepts any conditions imposed
- Thereafter, the funding may be made but the terms agreed should be adhered to strictly and enforced by the charity trustees. Ideally minutes should record the fact and how and when the project and its funding is being monitored etc.

Q. | WHAT ARE THE KEY CONSIDERATIONS IF WE ARE ASKED FOR REVENUE FUNDING FROM A UK CHARITY?

Let us assume a situation where the charity is responding to an application to

fund the salary of the retreat director of a spirituality centre in the south west of England. Here the key areas to explore as part of the due diligence on the application would include:

- Obtaining a better understanding of the nature of the spirituality centre, its objectives and its activities
- Ascertaining its financial position through its latest statutory and management accounts and assessing its financial stability by asking to see financial projections and budgets
- Requesting information of other organisations that currently fund the post or which have been asked for funding
- Understanding the role of the person for whom funding is being requested – for example, by seeking a copy of their job description
- Seeking information about plans for the role should the charity fund it for a period of time - what happens when the charity's funding ceases?
- Meeting the individual and visiting the centre

Q. | CAN WE MAKE GRANTS TO INDIVIDUALS?

Religious institute charities do, and can make grants to individuals. In most cases, most of the above processes and considerations will apply. Additional things to consider are:

- Whether the charity wishes to make grants to individuals for specific purposes only – for example, funding a gap year spent overseas assisting in areas of poverty or need
- The reasons for which funding will be awarded and whether it should be limited to specific age groups
- The financial limits to be placed on such funding and financial checks/ means tests to be carried out as part of the charity's due diligence
- Whether a request should be made that the application is made via a third party or an organisation such as a school, university or church
- The nature of the reporting process

CONCLUSION

In conclusion, it is essential that the trustees of the religious institute charity are strong and stand up for what is right for the charity. To do otherwise may put the charity's assets in jeopardy. If the Charity Commission, for example, were to become concerned that the charity's assets were being used inappropriately, The Commission does have the power to appoint new trustees or to confiscate the charity's assets and pass them in to the hands of an administrator or another charity in order to safeguard them. In addition, HMRC has the right to demand details of how the charity's funds are being applied both here in the UK and in overseas countries and, unless it is clear that the funds are being used for charitable purposes and their use properly monitored by the charity, HMRC has the right to restrict the charity's tax exemptions and tax the funds transferred.

INVESTMENTS



INTRODUCTION

Traditionally, many religious institute charities have held listed investments – essentially to further their charitable aims by producing an income to support the work of the charity for example. While charities may invest in a number of ways in order to achieve their aims, there are specific legal duties and decisions attached to each. Trustees need to ensure that they are aware of the relevant issues and have considered them, taken advice and made the appropriate decisions. This chapter concentrates on financial investment by religious institute charities i.e. investment in listed investments. However, many of the principles about the need to take advice apply equally to investment in property and other types of investment.

As noted above, religious institute charities like all charities have to comply with certain legal requirements and duties when investing their charity's assets for a financial return. Trustees must know and act within their charity's powers, exercise care and skill when making investment decisions, select investments that are right for the charity, take advice, follow certain legal requirements if appointing investment managers, review investments from time to time and explain their investment policy.

Q. | WHAT IS MEANT BY A FINANCIAL INVESTMENT?

The purpose of a financial investment is to yield the best financial return within the level of risk considered to be acceptable and which can be spent on the charity's aims.

Q. | WHAT SHOULD AN INVESTMENT POLICY COVER?

A religious institute charity's investment policy should set out in writing what its investment objectives are and how it intends to achieve them, its attitude to risk, how much money is available to invest, when the money will be available and future liquidity needs, the types of investment it wants to make including ethical considerations, who is to make relevant decisions, how performance will be monitored and the charity's reporting requirements.

Q. | WHAT ARE TRUSTEES' RESPONSIBILITIES WHEN MAKING INVESTMENT DECISIONS?

Trustees retain overall responsibility for the investment of their charity's funds. In practice, trustees will usually decide to delegate day to day decisions about investments to a qualified third party (see below).

When investing their charity's funds, trustees must use skills and knowledge that is reasonable in the circumstances. This is often referred to as the "duty of care". This will vary for individual trustees. For example, a trustee who has investment experience (possibly as a result of their professional training or their role elsewhere) will be deemed to have greater skills and experience than a fellow trustee who may never have had a need to consider financial investment. The trustees with the relevant experience will be deemed to owe a greater duty of care.

The role of trustees involves:

- Considering how appropriate an investment is for the charity
- Considering the need to diversify investments by owning investments in a number of different companies
- Taking advice. The Trustee Act requires trustees to take and consider advice from someone who is experienced in investment matters before making investments and when reviewing them, unless the trustees have good cause for not doing so – possibly because there are experienced investment professionals within the trustee body for example
- Reviewing the investments and the investment manager from time to time

Q. | CAN WE MAKE FINANCIAL INVESTMENTS?

Generally the answer is "yes". In order to act within the law, trustees must know and act within their charity's powers to invest. A charity's specific powers of investment will depend on its legal form.

Most unincorporated charities have a general power of investment set out in Section 15 of the Trustee Act 2000 which allows the charity to invest in any asset that is specifically intended to maintain and increase its value and/or

produce an income. It requires charity trustees to invest their charity's monies as they would if assets were absolutely their assets.

The investment powers of charities which are companies or charitable incorporated organisations (CIO's) will be set out in their constitution and are usually very similar to the general power to invest for unincorporated charities.

Q. | CAN A CHARITY DECIDE TO MAKE "ETHICAL" INVESTMENTS?

The trustees of any charity can decide to invest ethically even if it means the investment might provide a lower rate of return than an alternative investment. Ethical investment means investing in a way that reflects a charity's values and ethos and does not run counter to its aims. This is an aspect that is often of crucial importance to religious institute charities.

However, a charity's trustees must be able to justify why it is in the charity's best interests to invest in this way. This is not always something that religious institute charity trustees carry out as robustly as they should.

The law permits the following reasons for investing ethically:

- A particular investment conflicts with the aims of the charity. For example, a religious institute charity would be justified in deciding not to invest in certain pharmaceutical companies where those companies were manufacturing drugs that were used as contraception, in the performance of abortions or in facilitating euthanasia (i.e. drugs that were in contravention of the sanctity of life)
- A charity may lose supporters or beneficiaries if it does not invest ethically. One of the high profile examples of this in recent years was Comic Relief – a charity supporting projects assisting the poorest across the globe which was found to have been investing in companies which failed to demonstrate good corporate social responsibility. Similarly, the Church of England was found to be holding investments in Wonga at the same time as criticising payday loan companies
- There is no financial detriment to the charity in deciding not to invest in a particular company and/or sector

Therefore, there must be clear reasons why certain companies or sectors are excluded and, ideally, these should be clearly considered and documented by the trustees. Trustees should evaluate the impact of any exclusion on potential returns and balance the risk of lower returns with the risk of alienating the charity's supporters and/or donors or damaging the charity's reputation.

Such an assessment cannot be an exact calculation – it is an evaluation but one that must be carried out from the point of view of the charity rather than the views and ideologies of individual trustees.

Q. | WHAT SORT OF APPROACH CAN BE TAKEN WHEN APPLYING AN ETHICAL POLICY?

Essentially, there are three ways of screening investments when applying an ethical investment policy:

- Negative screening. This is where a charity decides not to invest in specific companies or specific sectors. For example, a religious institute charity may decide not to invest in certain pharmaceutical companies or in companies with poor environmental or human rights records which operate in countries in which the religious institute is operating
- Positive screening. This is where a charity positively invests in companies or sectors which reflect a charity's values in areas such as environmental protection; health, human rights; or in companies that demonstrate good corporate social responsibility and governance. For example, religious institute charities with missions in parts of the developing world may decide to invest in retail companies that have shown consistently that they actively monitor and do not use manufacturers that have a poor record of working conditions and treatment of workers
- Stakeholder activism. This is where a charity deliberately invests in a company that it does not approve of in order to use the voting rights to attend an AGM and attempt to influence the company's policies to better reflect the charity's values and ethos

Q. | HOW DO WE SET OUR INVESTMENT OBJECTIVES?

Charity trustees should be clear about exactly what their charity is trying to achieve by investing its funds. These objectives will be different for each charity depending on its aims, its operating model, its timescale for achieving a return and the resources available to it for investment.

The objectives may be to preserve capital, generate income or a mixture of both.

The objectives will be influenced in part by a consideration of the balance between meeting the needs of the charity's beneficiaries today with the need to meet future needs. This will be a key consideration for religious institute charities most of which have a specific commitment to look after the members of the institute for the rest of their lives. This commitment, which is often difficult to quantify accurately for obvious reasons, differentiates religious institute charities from "mainstream" charities where such commitments do not exist in the same way. It also means that investment objectives may change in a subtle manner as the age profile of members increases with the need to grow capital giving way to a need to generate income and retain capital value – in a similar way to a pension fund.

Other influences on objectives will be the level of income generated from sources other than investments, future spending commitments, the level of restricted funds that have to be used for a specific purpose such as being transferred to another missionary country in due course and the probability of unplanned events that might impact on the charity.

In formulating investment objectives, the trustees need to be able to identify funds that need to be immediately available, funds that can be invested but only for a relatively short period of time, monies that may be invested for the longer term, and monies that are available if needed in an emergency or "on a rainy day".

Q. | WHAT RISKS SHOULD CHARITY TRUSTEES CONSIDER WHEN INVESTING FUNDS?

Risk is part of the investment process and there are a number of risks that trustees should take into account. Importantly, trustees need to consider the

appropriate level of risk they want for their charity or which they feel able to accept. This consideration is part of the trustees' duty of care – they must be satisfied that the overall level of risk taking is right for their charity and its beneficiaries. In the case of a religious institute charity this will be after considering the position of the charity and its finances here in the UK but it may also be with a view to the needs of the wider institute internationally.

Risk taking is essential in most activity so investing a charity's funds is not about avoiding risk but recognising and managing it.

The aim is to ensure that if a loss materialises, the religious institute charity has properly identified and considered its management and so will be better protected.

Investment risk might result in a financial loss but it could result in a loss of reputation – perhaps because the charity has invested in an unpopular or discredited company (the example of the Church of England and Wonga cited previously is relevant here!)

The level of risk that might be deemed acceptable will depend, in part, on the length of the period for which the funds are to be invested. Funds that are to be invested for the short or medium term will normally be invested in a relatively low risk manner as trustees will want to avoid sudden drops in capital. This aspect will be less of an issue for funds that are to be invested for the long term.

There are different types of risk to be considered and weighed up. The common types of risk are:

- Capital risk – i.e. the risk of loss of capital. All investments involve some degree of risk and all investment professionals will point out that investment values can go down as well as up! Generally speaking risk and return are inextricably linked - it is normally the case that the more risky the investment, the higher the potential return but also the higher the risk of loss. Therefore, balancing the level of risk and return within a portfolio is important
- Volatility risk – i.e. the risk of movements in the price of an asset (eg. share prices). Some investments are more volatile than others while some types of asset move in opposite directions – so when one investment falls, another increases. This type of risk, therefore, is often best managed through ensuring a diversified portfolio

- Liquidity risk- i.e. the risk that funds are needed to be converted in to cash at short notice. Some types of investment are inevitably less liquid than others. The obvious example is where a charity's money has been used to purchase property which will take time to market and sell. This type of risk is managed by considering carefully the characteristics of different investments
- Market risk. There are different types of market risk including inflation; interest rates; exchange rates; regulatory and governance risk (especially in certain overseas countries) etc.

The key strategy to be followed by charity trustees is to review the charity's overall financial position and to consider how they should be using their charity's assets to achieve its long term objectives. This will involve considering different time horizons, the charity's financial commitments as well as income requirements. For religious institute charities, financial commitments will be high in terms of looking after the members of the institute for the remainder of their lives. Chapter four sets out illustrations of the type of funding that may be needed over the medium to longer term simply to meet the cost of care for older and frail members. The tension that exists between the need to generate income today to meet increasing costs and the need to retain capital value is not an easy one to manage – especially as the time horizon cannot be identified accurately and may in some cases be a period of up to 30 years or more. This aspect needs a proper understanding by the charity's trustees and by the charity's investment managers. As noted above, the art of managing the investments of a religious institute charity is more akin to managing the investments of a pension fund than those of a "mainstream" charity. Despite this, care is needed to ensure that short and medium term financial needs have been quantified and that an appropriate investment strategy adopted – the last thing any charity wants to be is a "forced seller" – the aim has to be to invest low, sell high.

Religious institute charity trustees may wish to refer to chapter four where we discuss the need for financial planning, set out some of the key questions to be asked and highlight the cost of care. This will help inform the responses to the following questions that need to be asked when considering investment strategy and how it relates to investment risk:

- The charity's immediate needs (next 12 to 24 months) – the cash that needs to be easily accessible and sufficient to meet requirements
- The charity's future spending commitments (next three to five years) – the

charity will need to have cash to meet such needs when they materialise

- The restricted funds held by the charity – there will be limitations on how the funds can be used and probably an expectation that they will be needed sooner rather than later
- Long term objectives (after five years) – funds needed for the future care of older and frail members of the institute but possibly also to fund new projects and initiatives, some of which will be managed by members of the wider institute in overseas countries
- Past patterns of expenditure are often an indication of future trends
- Unplanned or uncertain events including economic factors such as impact of inflation or changes in interest rates or government policy (Brexit)

It is imperative before making any major investment decision that the trustees have quantified the funds that need to be available instantly, those that are needed in the short term, those the trustees can afford to tie up for longer periods and those that should be used to react to unplanned events.

Q. | WHAT TYPES OF INVESTMENT WOULD BE DEEMED FINANCIAL INVESTMENTS?

Financial investments come in many guises and will include:

- Cash deposits, shares in listed companies (equities)
- Interest bearing loans to companies or government (bonds or gilts)
- Buildings or land
- Common investment funds or charity authorised investment funds (FCA regulated and VAT exempt) and pooled investments.
- Private equity
- Hedge funds
- Commodities
- Derivatives

Financial investments may be traded in the UK or globally and may be in assets that are located in the UK or globally

It would not be unusual for most charity portfolios to include a mixture of some or all of the above. Trustees and/or their investment advisers will need to consider how suitable each type is for their charity together with the need to have a mix of investment types to protect against volatility and reduce risk of loss. They may also wish to consider ethical requirements (see previous).

Q. | CAN WE DELEGATE INVESTMENT DECISIONS AND USE THE SERVICES OF A PROFESSIONAL INVESTMENT MANAGER?

As noted above, investment management is one area where the law expects charity trustees to seek advice unless they can justify that they have the required skills and expertise amongst their number to take investment decisions without seeking professional advice.

Regardless, however, trustees must always remember that they retain overall control of decision making and have complied with their duties. In order to assist with this, some religious institute charities have established investment sub-committees comprising a number of trustees but also external advisers who may assist with the assessment of the charity's investment performance and that of its investment managers. Where such sub-committees are established, it is important that there are clear terms of reference.

Most religious institute charities will employ the services of a professional investment manager to manage their investments. Professional investment managers may be used simply as stockbrokers to advise on stock selection etc. or they may be given certain powers to make decisions about the investments on behalf of the religious institute charity i.e. discretionary investment managers. In many cases, the latter will be the scenario.

Where an investment manager manages the charity's investments there must be:

- A written agreement or contract – this will be the case whether the service is discretionary or advisory
- An investment policy clarifying the responsibilities and remit of the manager. The manager must select investments in line with such instructions unless there is good reason not to do so. The preparation of this policy cannot be delegated to the investment manager but it would be usual for the trustees to prepare it in consultation with them

Even when using a manager, the trustees must always remain responsible for:

- Setting out and reviewing their charity's policy on a regular basis
- Deciding whether and on what terms to delegate management to the manager
- Reviewing the suitability and performance of the managers on a regular basis

The trustees must make sure they understand the investment manager's charges. These can be complex and take many forms – with more than one type of fee being charged. The most usual types include a management fee, commission on transactions, charges related to pooled funds, administrative fees, performance fees (percentage of fund) bank interest deductions, custody fees, and third party fees – including those for research (for example in to ethical issues). Trustees should consider also whether the fees will be subject to VAT and factor that in to the total cost as most religious institute charities will not be able to recover this.

Q. | HOW DO TRUSTEES ASSESS THE PERFORMANCE OF THEIR CHARITY'S INVESTMENTS?

Trustees must keep the portfolio under regular review and consider:

- How the investments are performing with reference to target returns eg. benchmarks against which the investments and the investment managers can be judged over time. If funds are underperforming the trustees should seek to understand why. Similarly, if investments are over performing on a consistent basis, this may not always be a good thing! It may indicate, for example, that the charity is taking too much risk or that it is measuring performance against the wrong benchmarks
- The overall service provided by the manager – the terms on which the service is provided, how well they are performing, their compliance with the written policy supplied to them and, importantly, the relationship. With a religious institute charity this last point should not be trivialised – if an investment manager is going to perform to a high level and really work in the charity's best interests, it is crucial that the religious institute charity's trustees feel able to confide in those managers about future plans – immediate and longer term, their financial and strategic concerns and the long term intentions

Q. | CAN WE INVEST IN CASH?

The answer is “yes” and in some situations this may be appropriate especially if the funds are going to be required in the immediate to short/medium term. However, if the decision is taken to hold money in the form of cash this does not excuse trustees from preparing a written investment policy justifying this decision. Such a written policy should include reference to:

- How long the money is to be deposited
- The maximum amount that may be held with one institution
- The acceptable rates of interest
- The required timing of interest payments
- Access conditions
- The charity’s ethical stance
- The charity’s attitude to credit risk generally
- Consideration of whether there is protection for the deposits (see the FSCS website)
- The consideration and need for professional advice
- The frequency for reviewing the policy

Q. | IF WE HAVE FINANCIAL INVESTMENTS, WHAT INFORMATION NEEDS TO BE GIVEN IN OUR TRUSTEES’ REPORT?

The trustees’ report of a charity should set out the name and address of the charity’s investment managers where relevant. In addition, it should include:

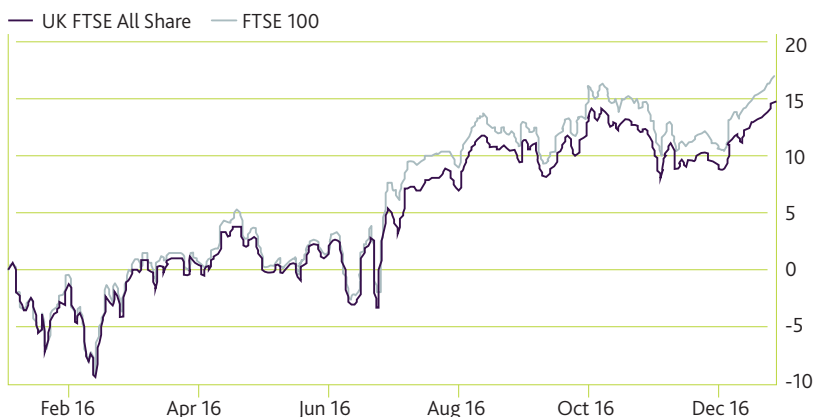
- An outline of the charity’s investment powers and any restrictions set out in the charity’s governing document
- An outline of the charity’s investment policy including details of any ethical considerations built into that policy; and
- A statement about the performance of the charity’s investments during the period and whether that performance has been in line with expectation given the charity’s policy. Where performance has been poor, it would be normal to give some form of explanation for this and any actions taken as a consequence

The following are examples taken from the trustees’ reports of religious institute charities illustrating the above requirements:

Example – trustees’ report disclosure

Investment policy

The charity had a portfolio of listed investments with a market value of £77.4 million at 31 December 2016 (2015 - £70.1 million). During 2016 the investments were managed by BlackRock Investment Management (UK) Limited, a company which operated within specific guidelines that are set out and regularly reviewed by the trustees. The capital growth they achieved on our behalf reflected favourable market conditions illustrated in the graph below. At present the guidelines include an ethical policy precluding investment in any company which, after reasonable enquiry, clearly has significant profits from an activity which is contrary to the objectives of the Christian church.



There are no restrictions on the charity’s power to invest. The investment strategy is set by the trustees and takes into account income requirements, the risk profile and the investment manager’s view of the market prospects in the medium term.

The overall investment objectives are to maximise total return through a diversified portfolio while providing a level of income advised by the trustees from time to time.

The performance of the portfolio and the charity’s investment strategy are reviewed by the trustees and their Finance Advisory Committee (FAC) who meet with the investment managers every three months.

Investment performance

The charity's listed investment portfolio, managed by BlackRock Investment Management (UK) Limited had a market value of £76.4 million (2015 - £70.1 million), and represents the funds available to care for members of the congregation in later life, the overseas projects fund and part of the general funds.

The investment managers continued to invest in accordance with the trustees' investment policy set out earlier in this report. Further details of the investment portfolio are provided in note 12 to the attached accounts.

In addition to listed investments, the charity has certain properties which have now been classified as investment properties. Surplus to immediate needs, these houses are rented out to generate rental income.

Example – trustees' report disclosure (a detailed policy including significant detail re: ethical considerations)

Policy - listed investments

The charity has a portfolio of listed investments with a market value of approximately £30 million.

The listed investments are managed by The Charities Property Fund, Hermes Investment Management Limited, Kames Capital, Eden Tree Investment Managers, Foreign and Colonial Investment Managers and Epworth Investment Management Limited, all of whom operate within specific guidelines which are set out and regularly reviewed by the trustees.

There are no restrictions on the charity's power to invest.

The trustees have set ethical restrictions on where their funds are invested.

The Catholic faith reveres the sanctity of life and therefore no investment is allowed in those companies:

- Whose activities include direct participation in or support of the wilful taking of life, including **abortion** and **euthanasia**. Direct participation in abortion may include, but not be limited to, companies involved in the manufacture of abortifacients and publicly held healthcare companies that perform abortions
- That manufacture **contraceptives** or derive greater than 10% of their reported annual revenue from the sale of contraceptives, even if they do not manufacture them
- That engage in **scientific research on human foetuses** or embryos that (1) results in the end of pre-natal human life; (2) makes use of tissue derived from abortions or other life-ending activities; or (three) violates the dignity of a developing person. Specific activities covered by the policy will include:
 - Embryonic stem cell research
 - Foetal tissue research or stem cell research derived from embryos
 - Human cloning
 - That derive any turnover from the production of tobacco or tobacco products

The beneficiaries of the charity are those who are experiencing poverty in the world today. Therefore, the charity will not invest in those companies that contribute to poverty such as those:

- That operate/own casinos or gambling arcades, or derive more than 10% of their reported annual revenue from gambling activities
- Whose policies are found to be discriminatory against women
- Who operate in Category A countries (as defined by Ethical Investment Research Services/Freedom House) but have provided no evidence of policies to manage human rights issues
- That generate more than 10% of their reported revenue from military weapons production or sales
- That are directly involved in the manufacture, sale, or use of anti-personnel **landmines**, or the development of weapons inconsistent with Catholic teaching on war (e.g. biological and chemical weapons, arms

designed or regarded as first-strike nuclear weapons, indiscriminate weapons of mass destruction, etc.)

- That derive any of their reported revenue from products or services intended exclusively to appeal to a prurient interest in sex or to incite sexual excitement (pornography)
- Whose policies are found to be racially discriminatory against people of varied ethnic and racial backgrounds
- Whose policies are found to be exploitative of their labour, especially with respect to human trafficking, poor treatment of labour, poor working conditions, and remuneration below the minimum wage

On a more positive note, the trustees try to invest in environmentally friendly and positive philanthropic activities.

The investment strategy is set by the trustees and takes into account income requirements, the risk profile and the investment managers' views of the market prospects in the medium term. The overall investment policy is to maximise total return through a diversified portfolio, aiming to provide the level of income advised by the trustees and, at the same time, with a view to ensuring that the real capital value of the fund does not fall over any five year period.

The trustees, or representatives of the trustees, meet with the investment managers four times a year to review the performance of the portfolio and the investment strategy.

The performance of the charity's listed investments improved during the year as a result of rallies in most of the world stock markets. The trustees consider that the performance demanded by their investment policy will continue to be achieved in the medium to long term.

Investment performance

During the year the charity's listed investments achieved an income yield of 3.27% (2015 – 3.44%). The investments increased in value and the capital yield for the year was 4.86% (2015 – 0.88%). At the end of the year the charity's portfolio of listed investments comprised 54% (2015 – 54%) UK equity unit trusts, 32% (2015 – 31%) UK fixed interest unit trusts and 14% (2015 – 15%) UK property unit trusts. Throughout the year the trustees have continued to liaise closely with the charity's investment advisers and seek their advice.

Chapter 7

PROPERTY



INTRODUCTION

One of the numerous issues that trustees of religious institute charities come to deal with – and one that they may not have come across much before – is property. This chapter tries to give some simple introductory steers as to how this area of interest for trustees operates in law and practice and also tries to pick out one or two areas of particular interest, from our experience of supporting religious institutes with their property matters.

Q. | WHY IS THIS IMPORTANT?

As well as being an area that will be less familiar to trustees in most cases, there are other factors that often make property especially significant.

- It is very often critical for the operational delivery of the religious institute's mission: location can really matter. The quality of buildings can also really matter
- Land in this country, is generally speaking, a high value asset and can form a disproportionate amount of the balance sheet of a number of religious institute charities
- Land and buildings can also be expensive and have a significant effect on the income and expense side of the charity's accounts
- The expression "property" covers a wider ranging of potential property types and legal contexts, calling on different skills and approaches
- The variety of property types also draws in a wide range of legal frameworks, which can make the legal context for property quite complex

Q. | WHAT DO WE MEAN BY "PROPERTY"?

There is a lot of jargon that trustees will start hearing:

In basic terms the expression "property" itself is usually used when talking about both land and buildings, - and the law usually makes the land include any building on it, but even this can be confusing on occasion.

As well as simply a question of buying/selling/leasing/managing land and buildings, "property" (or "estates" as it is sometimes described) also addresses related questions of construction; planning; highways; environmental; health and safety and other matters.

As well as the more familiar freeholds and leaseholds (though leases come in a whole host of different types) the trustee will come across the distinctions of licences; easements; restrictive covenants; and wayleaves.

On the construction side the language again is a world of its own with "D&B (Design and Build)"; "traditional" contracting; sub-contractors; collateral warranties; letters of intent etc.

On the planning and highways side, one will again come across another language which includes Section 106 agreements; Section 278 agreements; adopted highways; public highways; footpaths; private rights of way; planning obligations; unilateral undertakings; "JR" (Judicial Review) etc.

Much of the above is readily explicable in terms of what each basically means or does and trustees should feel completely free to expect their advisors to explain precisely what each word means and what each arrangement implies for their religious institute charity.

Q. | HOW DOES THE CHARITY ASPECT PLAY IN?

Where there is a religious institute charity the starting point as with other charities is to consider whether a particular property asset is operational or investment. There may be some element of mixed motive (and indeed this may increase as flexibility to use assets for mixed motive purposes increases), but

largely, at the moment, the first view of a property is whether or not it is being used for operational delivery of mission. If it is not the next simple question becomes "how is it best used to produce funds to assist the charity in delivering their mission?".

The next question then is to be sure that the property is applied in accordance with your charitable trusts (be it operationally or as a question of investment). On the operational side this can include observing any special trusts that apply to the property. In charity Property jargon this is referred to as designated land. Where the charity has designated land then the land must be used for that purpose. Any variation from that will require, in effect, variation of the charity's objects and so Charity Commission consent.

This is not to be confused with "permanent endowment" – land can form part of permanent endowment, but the question here is preservation permanently of capital value, not non-disposal of the land itself. Permanent endowment can be sold but must be sold so as to preserve capital and the proceeds (broadly) must be kept as a capital sum.

Q. | WHAT ARE THE SPECIFIC RULES THAT APPLY TO CHARITABLE PROPERTY?

As noted above, the first rule is that property must be used in pursuit of the charity's charitable objectives. The charity cannot pursue non-charitable activities with the property and if it wishes to carry out commercial activity (such as property development or trading) it will need to consider involving a trading subsidiary.

It should be noted that the charity can apply its property to pursue its charitable objects via an appropriate other charity with appropriately framed charitable trusts and this is picked up below under the question of disposals.

As with all charities the fiduciary duties of the charity are the critical overall duties on property matters and will include matters such as the following.

- Do not spend too much money on projects relating to the property (eg. construction contracts)
- Do not spend too much money on purchase of property or leasing the property

- Do not get too little money on a market disposal of a property

In support of the above take appropriate professional advice from appropriate experts in relation to the terms that should reasonably be expected for any transaction.

There are special rules that apply above and beyond the fiduciary duties on disposals of property and mortgages.

Q. | DISPOSALS OF PROPERTY

Unusually for a charity asset the special rules add extra hurdles for disposals of interest in land (largely for historical reasons). Historically the default position was that any disposal of interest in land required Charity Commission approval. However, that has (for obvious reasons) proved unworkable and disproportionate in practice.

It should be noted that the restrictions do not apply to “charity” disposals (i.e. disposals for less than market value to another charity that fits within the charitable objects of the disposing charity). Many religious institutes have disposed of missions formerly run by them to newly formed charities specifically set up by the religious institute for that purpose, often involving ongoing connection with the governance of the new charity. Such disposals are not subject to the restrictions set out below.

The disposal restrictions do not apply where the particular disposal is made under a statutory obligation or authorisation.

Other disposals are usually expected to be at full market value and the legislation anticipates the charities trustees, before disposing, have received and approved a qualified surveyors’ report that validates the proposed disposal. Broadly speaking, the report addresses how best the relevant property should be marketed in order to get the best terms reasonably obtainable and validate the expected price.

- There are a couple of qualifications:
 - Where the disposal is a lease of less than seven years then the reporting requirements are less onerous; and

- Where the disposal is to a “connected person” (i.e. someone connected to the charity which may include a member of the institute, a trustee, an employee, officer or agent or person connected to any of these individuals) Charity Commission approval is in any case required: this is to avoid any suggestion of impropriety in the disposal (the giving of a “cheap deal”)

There is much detail in the rules and the above is only the briefest summary, but please be aware that the rules apply to all “disposal of interests in land” including grants of easements; restrictive covenants and the like.

Q. | ARE THERE RULES WHEN TAKING OUT MORTGAGES?

If a charity considers taking out a mortgage over its properties, then there are further restrictions that apply. In particular, the trustees must obtain a report before taking on any mortgage which confirms three things:

1. That the money that is being secured by the charge could not be got better in some other way
2. That the terms of the charge and lending are the best reasons obtainable
3. That the charity can afford to repay the terms of the loan

Again there is much detail behind this and trustees are recommended to take advice.

Q. | WHAT KINDS OF THINGS MATTER IN LEASES?

Trustees may well come across situations where they are required to consider the grant or the taking of a lease. This may well lead to the delivery of a large and long document, containing numerous terms which will merit translating so that the trustees are assured that they are doing the right thing.

Leases take very different forms and have different contexts depending on the type of transaction involved (see below). But, as a summary, the general view is that the following should almost always have been addressed, one way or another, in a lease.

Parties	Who is the landlord? Do they own the necessary interest and who will be the tenant with responsibilities under the lease to fulfil the tenant's obligations Is it appropriate to have a guarantor also?
Extent	What is the extent of the property being lease? Is it the whole of the land and buildings or just the internal parts?
Rights	What are the rights that are necessary to go with the leasehold interest in order that it may work properly, for example, access rights for pipes/wires to run in utility services?
Reservations	What are the reservations the landlord requires to make it work, for example cross rights of access and pipes/wires
Term	How long is the lease for? Is it for a relevant period subject to a break?
Security of Tenure	Connected with the last item how has security of tenure/right of renewal been dealt with? This addresses whether the tenant may enjoy statutory rights for a new lease at the end of the current one*

*In a number of situations security of tenure can be implied by statute if it is not dealt with expressly in documentation. Where charity are granting leases it is very important to check that accidental security of tenure is not granted.

Break clauses	Again connected with the last items, are there to be break clauses for landlord or tenant? A break clause is a provision that enables either landlord or the tenant to bring the lease to an end earlier than would otherwise be the case. For example, in a 20 year lease you might include a right to terminate after five years. If there are, these ought to be carefully crafted as the law looks at them very closely to make sure they were really meant to be involved because they are so powerful. They can often be used where leases can often be personal
Rent and rent review	Self-evidently this is a key financial term and needs to be very clear. There are varieties of rent review method
Service charge	This is another key financial term and often less clear: as tenants it is very often important to consider whether a cap is needed on service charge. Again, there is lots of legislation governing what can and can't be done in relation to service charge and this is particularly important for charities where they are landlords letting for residential purposes
Insurance	Vital that appropriate provision is made for insurance of the property (who bears at whose cost with what responsibilities)
Repair	Another key financial element of a lease and there are traps that the unwary can fall into here. In particular, is the property supposed to be returned to the landlord in the same state as it was received in? If so the repair clause is likely to need to be modified

Use	It is vital that the permitted use is appropriate but there is an interlink here between the width of permitted use and an open market rent review clause (if one applies): the more flexible the use the land can be put to, the more valuable the lease and so potentially the higher the rent on an open market rent review. For example, in the case of a property leased to a school, the use of the property is likely to be restricted to “the operation of a Roman Catholic school”
Assignment/ underletting	In some cases the tenant may be permitted to transfer the benefit of the lease to a third party, or allow a third party to take occupation of part of the site. It is critical again to know who could take the benefit of the lease and who could be occupying as underlease. Particularly important where the charity is landlord
Alterations	If the parties need to anticipate physical changes to the property then either as landlord or tenant it is borne to bear what the extent of rights are as to who is responsible for such alterations and to what extent a tenant needs approval before making any alterations

Q. | ARE THERE DIFFERENT LEGAL PROVISIONS FOR DIFFERENT TYPES OF PROPERTY?

The answer to the above question is a strong yes. It is important that religious institute charities recognise the different context they can find themselves in.

Religious institutes themselves using land are a non-standard user type as they often look like being residential users (a Convent is the home of those within the Convent). But in law they are usually viewed through the charitable use as being within the “business tenancy” regime (with its security of tenure and compensation provisions). You therefore need to understand whether your property is viewed as residential or business.

Turning to residential short rentals – this introduces the housing regime with matters such as tenancy deposit schemes and HMO regulation plus; obligations on landlords regarding care for space, heating, water, electricity etc. If you are therefore providing short term residential lets to tenants, you need to be aware of the additional obligations that you are liable for as a landlord. It is always advisable to take professional advice on these obligations and, in some cases, to have a managing agent who deals with them for you.

With residential long leases – a different set of legislation applies introducing regulation of service charge arrangements but also leasehold and enfranchisement rights for tenants (and that is increasingly affecting charity landlords).

Agricultural – while not obvious, a number of religious institutes own land which they may let to farmers to manage. This introduces a whole host of legislation, particularly depending on when the original lettings are granted. Some older tenancies can have extremely severe security of tenure effects (for successive generations). Modern tenancies use the Farm Business Tenancy regime and would necessarily involve year-long notices to bring them to an end. This is a specialised area and one where advice should be taken before entering into any such arrangement.

As a final thought, the charity sector has more-than-usual use of 999 year leases as very often those are useful vehicles for ensuring both a restricted use and the restricted tenant. There are quite a few practical issues that arise from this and indeed some statutory ones (rights of enfranchisement can again arise unless carefully framed).

Q. | ARE THERE ANY THOUGHTS ON RELATED AREAS OF LAW THAT ARE HELPFUL?

As mentioned earlier there are a number of related areas of practice which may come to the attention of trustees/bursars and, in particular, we note following:

Planning – religious institute use being quite specific, it very often does not easily fall within the general summary of user types. Convent use itself is viewed as “sui generis” usually and otherwise there are plenty of occasions where “Residential Institution” may apply and or “Educational” use. It is

worthwhile engaging with consultants who are familiar with the specific area of practice when considering changes of use including development.

Construction – we have noted above that construction itself is a whole separate area. If you are embarking on any kind of construction project you would be well advised to take professional advice at the outset. It is important in any construction project to have proper project management. In addition, it may be possible to structure the project to recover VAT that may have to be paid.

Development – development projects are again a whole area of practice and specialist knowledge where it is worthwhile engaging with experienced consultants. Some trustees will come across the principles of clawback and uplift (in effect seeking to protect for the religious institute shares in possible future extra profit made by purchasers of land from religious orders. This is explained in more detail below.

Q. | IF WE DISPOSE OF LAND, HOW DO WE GET THE BEST VALUE?

As noted above, when disposing of land as an investment the starting point is obtaining (and then following) a qualified surveyor's report. Unless the charity takes this approach in order to get best terms reasonably obtainable, it will need Charity Commission approval to validate any later proposed sale.

The report is obliged to address a series of matters and to show that the trustees have considered the physical and legal pros and cons of disposing of the land and buildings, in the context of potential markets. It is in fact a very useful tick box list of items any seller of land should be thinking about.

The report can even, in unusually depressed market conditions, lead to a recommendation not to go to market for sale just yet, but consider renting until markets settle.

The report amongst other things considers, and must comment on, whether there are any actions worth pursuing in preparation for disposal that may add sufficient value to be of net benefit. This includes alterations and other physical things, but also especially asks the question as to whether it is worth seeking the getting of planning permission for development of the land.

Planning permission, above all, can have a huge effect on value of land. In the context of capital sales it is a key thing in terms of extracting value and the surveyor will be highly focussed on what might be possible in terms of planning possibilities and how to see the charity get a fair value for that.

The thing with planning is that it is uncertain until planning permission and all related obligations have crystallised and that can take time (during which markets can change) and can cost a lot of money to get. It is also not even certain when permission is granted as there are rights for third parties to appeal (judicially review) decisions. Planning permissions (especially larger ones) can be highly contentious and political and so challenges from third parties do indeed occur.

So there is a lot of risk in pursuing larger planning permissions as many can fail, or at least not produce a permission that is good enough to add value to the site (after development costs). This is therefore the kind of thing that is usually the province of property developers, as specialists and commercial entities trading for profit.

Not to say that in appropriate circumstances it may not be right for a charity, if advised and recommended by the qualified surveyor to do so, to seek planning permission itself as a question of investment in its charitable asset akin to repair/alteration or other enhancement to value. However, the cost involved in getting planning and the risks/uncertainties associated have made this less and less common as an approach over time. It has looked more and more like trading at risk and less and less like investment for a sufficiently certain return.

If a charity does wish to make an approach to planning and the risks are seen as too high to run within the charity - but the charity wishes to keep a closer rein on the proposal - it may be a trading subsidiary can prove a helpful vehicle (there may also be benefits in terms of VAT recovery). However, careful consideration and advice is always needed as the trading subsidiary has to be dealt with at arm's length and the apparent VAT savings can be counterbalanced by costs elsewhere.

More common in recent years has been to approach such disposals on the basis of one of the following:

1. An option

This is the right for a buyer to buy land at a defined price during a defined period.

The buyer has to pay a premium for the option as, in effect, the seller is saying they will not sell to anyone else during the defined option period.

This is usually a very beneficial position for the buyer who then goes off to seek planning (sometimes they are not even obliged to try for that) and the buyer only has to proceed with the purchase if a) planning is successful and b) they still want to proceed at that defined price.

If a) happens, the buyer is likely to have a go at getting the land cheaper anyway by agreement: their risk is that if they let the option expire they lose their right to buy the land in.

Options do not often work well for charity sellers as they are so buyer friendly and once the charity is selling it usually does not wish to hand over effective control to the buyer. Great care (and advice) is needed over them.

2. A conditional sale agreement

This is where if the buyer gets planning of a certain type they must complete on the purchase at an agreed price.

The buyer is obliged to get on with seeking planning and there is a known timetable. If the long stop date is reached without completion, either party can end the obligations. Long stop dates are usually shorter than option periods.

There is no up-front premium: only a smaller (usually 5%) returnable deposit.

The buyer having spent lots on planning will usually have commercial incentive to complete. They may try to get the seller to agree to a lower price but a looming long stop date usually keeps a control on that.

When planning was simpler (with more outline planning applications) conditional sale agreements were the standard approach for charity disposals, but as planning (and conditional sale agreements) have got more complex they have become less predictable in terms of delivering a successful end result.

While they should deliver higher end prices (than say an unconditional sale), that delivery has become less certain and the wait longer (and the cost of getting the higher sum disproportionately higher).

3. Sale with uplift/clawback

This has become a more common approach in recent years.

The sale is unconditional and for the full value of the land as sold with the then known planning, but through the uplift/clawback the charity seller shares in the upside of any enhancement in value/return enjoyed by the buyer, usually because a planning permission has been obtained by the buyer in a defined period after they completed on the purchase.

This has advantage to the charity of certainty of money immediately in the hands of the charity and relieving the charity of the care of the property (often empty). It will potentially mean a little less overall return than a conditional sale agreement might generate, as the buyer carries more risk.

The technicalities of uplift/clawback deals (how much the charity gets and triggered by what events) and their documentation (including security to make sure the charity gets paid) are not simple. They can take time to settle and it is important not to “let the tail wag the dog”; but it is also crucial to get good advice.

We mention both clawback and uplift:

Clawback is usually used when talking about a protection against an immediate resale by the buyer at a higher price: the clawback in effect protects the trustees against what might be seen as embarrassing lost profit, and usually the seller charity gets 100% of net surplus on sale so as to prevent that.

Uplift is about shares in future added value generated usually by future planning permission and must accordingly be framed as a share of that so as to incentivise the buyer to do it: the selling charity wants that extra income.

4. A sale agreement

The simplest deal is a straight unconditional sale. Here there are no conditions and any hope value for future planning uplift will have to be factored into the price. The simplest and most certain in terms of obtaining capital sum but also likely to generate the lowest overall.

5. Sales of 999 year leases

There are usually to retain control over use types and users, or to ensure a cross obligation re periodic payments sometimes helpful if the charity is retaining land next door or has reason for the use or user controls - but usually have an impact on value and range of buyer.

6. Promotion agreements and collaboration agreements

These are arrangements where charities look to work with other parties/ developers to a joint enhancement/scheme for the development of land. Again, matters where the charity trading issues need to be kept in mind and also to be sure of experienced advice.

7. Own development

Perhaps the last thing to comment on is the thought of whether the charity seeks to carry out a development of land itself with a view to retaining the profit.

Here, the starting point is to observe that property development is not a straightforward thing and can easily make loss as well as profit and most charities do not have expertise of property developers.

Secondly, property development for profit is not a charitable activity and must be carried out via a trading subsidiary at arm's length if it is to be pursued. This brings with it all sorts of implications such as on governance, conflict of interest, tax, administration/regulation, and financing. It also needs to answer the basic question of whether the money invested might be better invested in something else, given that this is about investment to generate return for mission.

The level of distraction from core mission that such schemes can generate should also not be underestimated.

So once again, very careful consideration is needed if such ideas are being considered and early advice is recommended.

8. Social enterprise/mixed motive projects

As a final comment (and counterweight to the last) charities at large are being enabled and even encouraged to look at mixed motive projects: these are projects that deliver in part mission and in part profit. It is conceived that property projects may in future form part of this and so there may be more attention turning to schemes for property development run in part under the wing of charities. Again, an area full of technical detail and many potential issues to address and resolve, and seeking early and good advice is again encouraged.

TRUSTEES' REPORTS



INTRODUCTION

The document which determines the format and content of a charity's report and accounts is known as Accounting and Reporting by charities: Statement of Recommended Practice, and is often referred to as the SORP. The SORP requires charities to prepare a trustees' report each year to accompany their annual accounts. Such a report provides an essential link between a charity's legal purposes, its aims and objectives and the activities it undertakes to achieve them. To be meaningful, it needs to focus on information relevant to a charity's stakeholders; tell the charity's story in a balanced manner, acknowledging those things that have gone well, but also those that could have gone better. In this chapter we examine why such a report is of crucial importance to religious institute charities, who should prepare it, what it should contain and give a few examples from actual reports to illustrate how certain points can be made in a powerful and positive manner.

Q. | WHY IS A TRUSTEES' REPORT IMPORTANT?

Charity accounts, for all but the most straight-forward of charities, are now complex documents which can extend to many pages. It is essential that someone reading those accounts, who may know nothing about the charity, understands the context to the figures and is able to appreciate how these figures relate to the work and objectives of the charity. The trustees' report, as a narrative document, should facilitate this understanding. It should explain why the charity was set up – what its mission is; what it does in practice to achieve that mission; describe the key achievements during the year covered by the accounts – acknowledging key successes and failures; discuss the impact of that work on the finances of the charity; and outline its future plans – in the context of its objectives but also its financial position. In doing this, the report should address the key risks that may impact on the charity which could prevent it from achieving its aims and objectives and how those risks are mitigated. It should also outline some of the key financial policies applied by the charity – most importantly the reserves policy, grant making policy and investment policy where relevant. Finally, the report should detail some of the important governance arrangements of the charity such as who are the trustees, how they are appointed, how they communicate with key individuals within the charity (and the institute) and how they fulfil their responsibilities.

The trustees' report is the charity's opportunity to "tell its own story in its own words". This is of paramount importance given the recent poor publicity the charity sector has faced – for example, concerns over fundraising, concerns over how much of a charity's money is actually spent on charitable activities, concerns over governance (following the collapse of Kid's Company) and the role of various charities in the inquiries into child sexual abuse etc.

A good trustees' report:

- Gives context to the accounts and finances of the charity and prevents the figures being interpreted incorrectly
- Demonstrates that the charity is using its resources wisely and for the purposes intended
- Satisfies the public benefit reporting requirement. One of the definitions of a charity is that it provides public benefit. This is now policed actively, but a good trustees' report should demonstrate very ably the benefit being provided and the impact the charity is having on society generally through its work
- Shows that the charity is well organised and managed properly
- Demonstrates that the charity is carrying out its activities efficiently and effectively; and
- Attracts new resources to the charity (people and money) enabling the charity to continue its work i.e. it acts as an effective "marketing tool"

Q. | WILL THE TRUSTEES' REPORT BE READ BY ANYONE?

This is a question that is often asked and many charities would be genuinely surprised by the number of people who probably access the report. Along with the charity's accounts, the report will be available on the Charity Commission's website. Many members of the public are aware of this and will look up a charity should they become interested in it or need to deal with it in some context. For example, in the case of religious institute charities, it is probable that the following may wish to access the report:

- Members of the religious institute itself – we all like to know what others are saying about us!
- Members of other religious institutes who may be curious

- Parishioners and those that members come across in their daily lives – possibly through their social and pastoral work or their church based work
- Organisations that the religious institute charity is contracting with for the provision of supplies or services. For example, before agreeing to carry out a significant construction project such as an extension to a property, the building company may wish to review the charity’s report and accounts to ascertain the sort of organisation it is and whether it has the finances available to pay for the work!
- For those religious institute charities that operate schools and/or care homes, their report and accounts may be of interest to prospective parents or relatives of residents

In addition to the above, the Charity Commission itself will be interested in the accounts as may other regulators such as OFSTED and the Care Quality Commission (CQC).

Finally, rightly or wrongly, inquiries such as those being carried out into child sexual abuse in Ireland, Scotland and England, mean that religious institutes and their related charities are under the spotlight and will be of interest to various parties that might access their report and accounts including the media.

Q. | WHO IS RESPONSIBLE FOR THE TRUSTEES’ REPORT?

Ultimately, responsibility for the report rests with the trustees. However, this does not mean that the trustees necessarily should draft it – they simply need to approve the final text.

In the case of many religious institute charities, responsibility for writing the report often rests with the provincial bursar. This is probably right provided that others within the institute understand that they will need to assist in providing material including text and photographs etc. The provincial bursar collates and combines these together into a final document – probably with assistance from the charity’s professional advisers also.

Q. | WHAT INFORMATION SHOULD THE REPORT CONTAIN?

To make the drafting of the report manageable and easier, it is usual to break it into specific sections:

- Reference and administrative details
- Structure, governance and management
- Objectives and activities
- Achievements and performance
- Financial review; and
- Future plans

There is nothing set in stone about the order in which these sections are addressed and presented. Ideally, the order in which they are presented should reflect the key interests of the perceived audience for the report. The trustees' report is the type of document that is rarely read in its entirety, thus the sections that are addressed first should be those which are deemed most important to the potential readers. In many cases, this will be the sections dealing with the objectives or mission of the charity and its achievements in the year. The section on structure, governance and management would perhaps be better towards the end of the report.

The above contents do not limit the inclusion of other information that the charity wishes to include, for example: an executive summary at the beginning, information about the charity's environmental credentials, and so forth.

Q. | HOW LONG SHOULD THE REPORT BE?

There is no right or wrong answer to this question. It is all about balance – ensuring the report is long enough to incorporate all of the information needed, and in sufficient detail to enable a proper understanding, particularly of the charity's work and its impact, but not too long that it becomes boring. It needs to be fair, balanced and communicate to stakeholders the trustees' stewardship of the charity's funds and work, rather than simply compliance.

As a very simple “rule of thumb” a good trustees’ report of a religious institute charity would typically be somewhere between ten and fifteen pages. However, there will be exceptions and it will depend also on whether photographs etc. are used in addition to text (see below).

Q. | SHOULD THE REPORT CONTAIN MORE THAN JUST NARRATIVE?

The answer to this question, in the view of the writer is a definite “yes”. The report needs to attract interest and for that reason it is often helpful to break up the text with photographs, quotes and diagrams. It is often said that a photograph “speaks a thousand words” and a carefully chosen quote from a satisfied beneficiary can be very powerful - it is a third party saying “this is a wonderful charity” rather than someone from within the charity saying it.

Q. | SHOULD THE STATEMENT OF THE CHARITY’S OBJECTIVES BE A DIRECT QUOTE FROM THE OBJECTS CLAUSE WITHIN ITS GOVERNING DOCUMENT?

The aim of the trustees’ report is that it should be readable and understandable to stakeholders. Quoting directly from the governing document is not always the best way of achieving this. What is needed within this section of the report is a summary of the purposes of the charity (consistent with the governing document) and a description of the main activities undertaken in relation to those purposes and to further public benefit. In many cases, religious institute charities have very broad objects – to support the members of the institute and allow them to carry out their work and that of the institute (provided it is charitable), and in furtherance of the Roman Catholic /Christian faith. This is all that needs to be stated but many religious institute charities will then go on to explain how the objectives of the charity are consistent with the religious objectives and charism of the wider institute.

Example – charitable objectives

The object of the English Dominican Congregation (Stone) Charitable Fund is the furtherance of the Roman Catholic faith. The charity aims to support the religious and other charitable works carried on by the members of the congregation and to care for those members throughout their lives within the congregation.

When setting the objectives and planning the work of the charity for the year, and when encouraging the work of individual sisters, the trustees have given careful consideration to the Charity Commission's guidance on public benefit.

Q. | HOW MUCH INFORMATION IS NEEDED IN RESPECT TO THE ACTIVITIES OF THE CHARITY AND MEMBERS OF THE INSTITUTE?

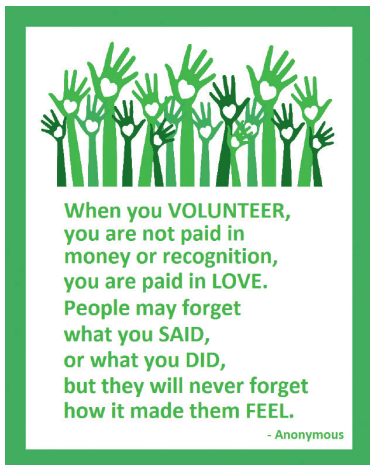
Once the objectives have been stated, there needs to be a context given to them by describing the main activities of the members and of the charity. Typically, this may include caring for members of the institute, the social and pastoral work of individual members, the operation of schools and/or care homes or similar works, and the provision of grants and donations to other charities and/or their own institute overseas. Importantly, the charity should not shy away from describing the key work of the members which will be religious and faith based activities. Ideally, the descriptions of the activities should provide a coherent explanation of the strategies for achieving its aims and how each activity contributes to this.

For many religious institute charities, the age profile of the members has affected both the work of those members and the application of the resources of the charity, with proportionately greater resources being applied towards the increasingly expensive care of members as they grow older and frail. It is helpful, therefore, for this section of the report to explain the age profile to the reader and its impact on the focus of the charity's work.

Key to enabling the religious institute charity to achieve its objectives is the contribution of individual members of the institute in giving or volunteering of their time. This needs to be explained together with some indication of the work carried out and the hours involved in order to enable the reader to fully understand the scale and nature of the activities undertaken.

Example – volunteering by members of the institute

We still have many sisters in England and Scotland working tirelessly with those in need. The following table details the volunteer hours provided by the Franciscan Missionaries of Divine Motherhood (FMDM) sisters during 2016 and the type of work that was undertaken:



Throughout the year, the members of the congregation in England and Scotland give their time to assist the poor and marginalised and those in need. The majority of members receive no financial reward for this work which contributes to the overall achievement of the charity's objectives. In addition, members are involved in administering the work of the congregation and charity – without their contribution the charity would not be able to function as effectively or fully as it does. Details of the areas in which members give their time are shown in the table.

Those working with vulnerable adults include our sisters who care in La Verna as part of that team, hence the good number of hours, as well as La Verna sisters such as Katie Naylor and Sheila Mahoney who work on a voluntary basis in Godalming for several hours each week.

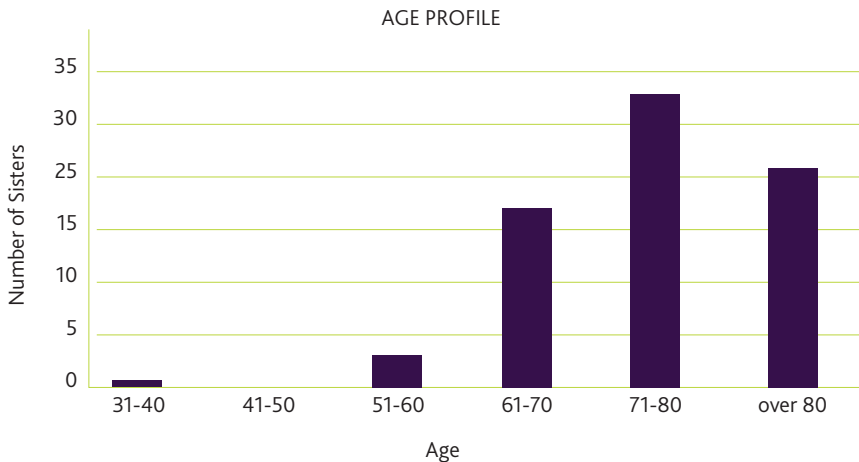
AREA OF WORK	NO. OF VOLUNTEERS	HOURS VOLUNTEERED
Hospital visiting including hospital chaplaincy & visiting the elderly	14	1,900
Bereavement counselling	3	700
General parish work	8	500
Education	8	264
Support of work for safeguarding structure in the Church	2	72
Working with the poor and vulnerable young people and adults	7	4,348
Hospitality for schools, parish and other groups	2	420
Spiritual/Retreat direction	6	714
Hospitality for people seeking space, prayer and renewal	4	12
Administration	8	543
Other	3	400
Total		9,873

The provision of donations and grants to other charities and the wider institute is also becoming a greater focus for many religious institute charities. As this aspect becomes more important and more significant in monetary terms, this section of the report also needs to explain the charity's grant making policy and explain how the making of donations and grants contributes to the achievement of the charity's aims and objectives. Clearly, as explained in chapter five, this is an area that will develop for a number of religious institute charities over the next decade.

It is normal also within this section of the report to contain the mandatory statement confirming that the trustees have had regard to the Charity Commission's guidance on public benefit.

The following are examples of how different institutes have addressed this section within their charity's trustees' reports:

Example - caring for members



In common with many religious congregations in England, the age profile of the members of the congregation is increasing, as existing members grow older and the number of new vocations becomes minimal.

The age profile of the congregation in England is shown graphically above:

The congregation has an obligation, both moral and legal, to provide care for its members, none of whom have resources of their own, and all of whom have devoted a significant part of their lives to the care of the elderly, poor and marginalised in society. As the age profile of the congregation increases there are more sisters needing a greater level of care, which sees increased costs. At present 24 (2015: 24) of the members of the congregation are receiving care in the charity's care home, La Verna, Ladywell.

Over the next decade, the trustees expect this number requiring care to reach its peak. As a consequence, the trustees are giving careful consideration to the impact of this on the work of individual members of the congregation, the property requirements of the congregation and the financial implications.

Example – description of activities

The ministries carried out by the sisters fall into the following main categories:

Education

There are no longer any sisters in a teaching position in a school. However, sisters are still involved in 'education' in the wider sense of the word. The trustees are aware that adult education is of great importance.

Social and pastoral work

Many sisters are involved in various forms of social or pastoral work throughout the province of Britain and Ireland.

During the year two of the sisters of salary-earning age received salaries, both from part time employment. One sister earns a stipend on a full time basis and one sister on a part time basis. Nine sisters receive occasional stipends; all these earnings are covenanted to the charity; some sisters work on a voluntary basis, in keeping with the ethos of the institute.

Caring for members of the institute

With an increasing number of frail, elderly sisters, some of our sisters are engaged fully in their own communities in helping to care for these sisters, who

in their active years devoted themselves to nursing, teaching and social work, all for the benefit of the public. It is the trustees' firm conviction, therefore, that it is only just that these sisters ought now to be cared for with dignity and respect in their final years.

Support of missionary work overseas

The charity helps to support sisters engaged in missionary work overseas. Also, one of the sisters helps for two months in the year in the international formation centre in Martillac, France.

Prayer groups, community and individual prayer

Community and individual prayer are a very important dimensions of the sisters' lives; it benefits the members of the public as their needs are prayed for and remembered. Many people specifically request prayers for special intentions. Lay people are also invited to join the community in prayer. Prayer groups are often formed from these gatherings and have included Christians from other denominations.

Example – description of activities

The ministries of the sisters of the congregation, all of which benefit numerous members of the general public, fall into the following main areas:

Worship and prayer

Members of the congregation are committed to personal and liturgical prayer which is reflected in their daily timetable. They are obliged to study in order to further their knowledge of the Christian faith. They give preference to the study of sacred scripture and the teaching of the Church, so that they in turn can instruct and help others. members of the congregation also celebrate and pray with the wider community including people of other faiths. They do this through the provision of spiritual guidance or by just being available to listen in times of need. Some sisters give talks and guide retreats and prayer groups. The sisters respect people of no faith and try to help them in appropriate ways.

Social and pastoral work

Many members of the congregation are involved in various forms of social or pastoral work in different parts of the country, including care of the elderly and people with special needs, support of families, and chaplaincy work in educational and healthcare establishments. In particular, the sisters aim to help the poor and marginalised in society regardless of their personal background, faith, gender or individual circumstances. The sisters share the convent premises with diverse groups e.g. groups of pilgrims, St Vincent de Paul Society, and clubs for the elderly. When public concerts are arranged in church, the congregation's premises are used for serving refreshments.

Care of the elderly

During the year the sisters provided care and assistance to the elderly at St Mary's Home, Stone. The Home provides care both for members of the general public and for members of the congregation in need of nursing care.

Education

During the year the charity operated an educational establishment, St Rose's School in Stroud, Gloucestershire providing education and care to 2-19 year olds. The congregation was also granted registration to provide a small unit for 19-25 year olds on the site of St Rose's School, and St Martin's Centre was opened in September 2012 to facilitate this. St Rose's School together with St Martin's Centre, collectively hereinafter referred to as "the School" or "St Rose's School", aims to provide the highest quality service to children, young people and young adults with physical disabilities, learning disabilities and associated complex medical, sensory and communication difficulties in the age range 2-25 years. The establishment aims to undertake this with due regard to the Catholic traditions from which the provision has developed, particularly those of the Dominican order. A commitment to provide support and professional development for staff, thereby enabling them to meet the demanding expectations of their role, is central to this mission.

Q. | IN TERMS OF THE ACHIEVEMENTS OF THE CHARITY, IS IT NECESSARY TO COVER EVERYTHING EVERY YEAR?

The answer is “no” and it might be better to try and concentrate on a specific theme or area of work each year while ensuring that anything of real significance is covered. This ensures that the report is not too long and it means that it varies from year to year, capturing the readers’ attention.

This section of the report should explain the extent to which the achievements of the charity have met its aims and objectives. It should give a balanced picture explaining progress by reference to milestones, indicators and benchmarks. Where the charity uses qualitative or quantitative information to assess the outcome or impact of the activities, the report should include a summary of the measures or indicators used. For example, this may be particularly relevant to those religious institute charities that run schools (where details of exam results, inspections, pupil numbers, extra-curricular activities etc. may be informative) and/or care homes (where details of resident statistics, CQC reports, occupancy, etc. may be helpful).

In the case of the social and pastoral work of individual members, this is best addressed by giving brief case-studies which can be anonymised if desired.

Case studies can also be used to demonstrate the effect that donations have had – particularly when given to overseas missions where immense poverty or distress may have been relieved as a result.

This section of the report couples as the section in which the charity explains the public benefit it brings or impact it has on direct beneficiaries and on society as a whole. The concept of “impact” is useful to have at the back of one’s mind when drafting this section.

Remember also that the report should comment on both positive and negative factors within and beyond the charity’s control which have affected the achievement of its ambitions. These factors may include the death of a specific member, the refusal of planning permission, a fall in world stock markets that has resulted in the use of greater caution, the loss of a key staff members, and so on.

Example – achievements (religious activity)

Liturgy

The liturgical services are all sung and the chapel is open to all who wish to participate in the worship. Retreatants, visitors and people living in the locality – of all denominations, faiths, and none, attend and there is a sizeable congregation at the daily Eucharist, with a capacity congregation on Sundays. Attendees say that they sense the welcome and know that their vocal contributions to reading the lessons and to the singing are valued. Orders of service are provided, and there are brief singing practices before services when new music is introduced. They enjoy the experience of singing together which adds to the sense of belonging to a worshipping community.

Worshippers at the Easter Vigil said “[We] love the Easter Vigil service, it is well worth the early rising” (the service starts at 4.30 am).

A retreatant wrote:

“It is such a privilege to be able to pray in your Chapel and participate in your Office [Services]; the atmosphere, the beauty and the harmony are conducive to prayer in a way I rarely experience.”



Lighting the Easter Candle from the new fire on Easter



The Easter Candle

Example – achievements (grant making)

Providing grants in the furtherance of the Christian religion

Grants awarded amounted to just over £246,000 covering three areas of grant funding.

CHARITABLE FUND £4,592

"We acknowledge with thanks your very generous donation of £500. This is a huge encouragement to the team. ... it will make a difference in the faith-walk of these young people."

Oxford Youth Works

GIFT AND GRANTS £41,500

"The sisters are so grateful for your support in ensuring they are able to continue providing free medical care to desperate Syrian refugees who seek their help ... Our sincere and heartfelt thanks from all of us at IRT for your continuing support to help the Syrian refugees in Jordan. Your kindness and compassion are a gift of hope to all."

International Refugee Trust

"Thank you from my heart."

Dimitrios Pallis, Theology student

DISCRETIONARY GRANTS £200,187.39

"The grant from SLG was vital in enabling the project stage of the Bible in the Life of the Church to come to completion. The Anglican Communion now has, as a legacy, over 140 different resources to encourage a deeper engagement with Scripture. For that, the Communion will be grateful to SLG not only for the financial backing but also the great encouragement that this gave to the work."

Stephen Lyon
Bible in the Life of the Church project
Anglican Consultative council

"What wonderful news!!

Thank you so much, and so many thanks to the Board of Management

We must invite them up and the rest of the sisters so that they can see for themselves what they have supported us with."

Rev. Paul Reily - Fundraiser
Scargill Movement
"Lives shared, lives transformed"

Example – achievements (social and pastoral work)

Pastoral work in Hull

At present the Daughters of Charity in Hull are supporting the parishes of West Hull and South East Hull. This involves taking communion to elderly, sick and housebound, supporting families, participating in sacramental preparation for children and adults and offering hospitality to the many who call at the door of our houses seeking help.

Our mission in Hull is to support evangelisation across the city. This is done through organising and supporting a variety of different programs and events. Following a very successful mission in the city during 2016 the Daughters of charity were asked to take the legacy of the mission forward with the laity. This is developing in a number of ways. Our aim is to encourage and support the laity to take forward various aspects of evangelisation that will help build up the Catholic faith community in the city. A retreat is organised for June and hopefully this will deepen some of the work that is already in place.

As a community we also offer pastoral support in St Mary's College, Hull's Roman Catholic secondary school and are involved in ministry with "Open Doors", St Vincent de Paul (SVP) drop-in, ship visiting through Apostleship of the Sea, Great Minds who support people with mental health issues and supporting St Stephen's Neighbourhood Centre as well as participating in a city ecumenical spirituality group.

We work closely with the Vincentian Family here in Hull, the SVP, Mini Vinnies and we have re-ignited the YSVP (Young SVP) in St Mary's College.

Much of our work is responding to needs that present themselves on a day to day basis. Living in the presbytery in a deprived area of Hull brings with it a ministry that defies structure and agendas!



We also work together as an Initial Formation local community, taking responsibility for the formation of Nadine, our Postulant.

2017 sees Hull as the "UK City of Culture" and the "faith" element of this experience is "I Believe in Hull". We will try as best we can to support the events and prayer this group offers.

Example – achievements (support of overseas missionary work)

During 2016 the following projects initiated and run by the Congregation of Our Lady of the Missions were supported with funding.

Orphans and abandoned children – bangladesh



Since 1813 the Religieuses de Notre Dame des Missions (RNDM) sisters have given refuge and shelter to abandoned children and to children from the Chittagong slums. The children's ages range from new-born to 17 year olds.

The sisters provide them with a stable welcoming environment where all of their needs are met. They receive good food, medical care, education and protection.

Most of these abandoned children are girls as they are not as valued in their society. Over the years many of them have become nurses or embarked on vocational work.



Providing clean drinking water for the children



In 2014 the RNDM sisters ventured into the Khasi Hills to provide education for the many poor children who lived in Mawlumiang in the locality of Mawiawet. They started a school which at the beginning of 2016 had 200 children. The children are provided with a midday meal each day.

The people are very poor and there is no proper water supply. The water in the area is not at all pure and is unfit for drinking. Rain water is harvested in a tank and used by all for drinking. A common pond provides all, including the animals, with water for daily use. The financial assistance given to purify drinking water for the children will prevent disease and death.



Q. | HOW IMPORTANT IS IT TO IDENTIFY KEY RISKS FACING THE CHARITY?

This is very important. For the reader to understand the challenges facing the charity, there needs to be an explanation of the things that could go wrong and have a material impact, it's finances and/or its work i.e. the key risks. In addition, once the key risks have been identified, it is necessary to explain what actions and/or controls the charity implements in order to mitigate those risks. The reader will only be interested in those overarching risks so avoid the temptation to go in to detail about small things that actually have no real impact in the greater scheme. For many religious institute charities, the key risks will be similar to those set out below.

Example – statement of key risks

The trustees undertake an annual review of the principal risks and uncertainties that the charity faces; categorising the risks between those affecting the governance and management of the charity, operational risks, financial risks, reputational risks and those which occur because of circumstances outside of the charity's control such as changes in government policy, laws and regulations. They regularly review the measures already in place, or needing to be put in place, to establish policies, systems and procedures to mitigate those risks identified in the annual review. To ensure that action is taken to implement changes to those policies, systems and procedures should they be needed, to minimise or manage any potential impact on the charity should those risks materialise.

Having assessed the major risks to which the charity is exposed, the trustees believe that by monitoring reserve levels, by ensuring controls exist over key financial systems, and by examining the operational and business risks faced by the charity, they have established effective systems to mitigate those risks.

The key risks for the charity, as identified by the trustees, are described below together with the principal ways in which they are mitigated:

- An analysis of the age profile of the members of the institute shows that the average age in the institute at 31 December 2016 was 79 years. The trustees are aware that there is both a moral and legal obligation to care for the older members. None of the sisters have resources of their own as all earnings, pensions and other income have been donated to the charity under a Gift Aid compliant deed of covenant. As the age profile increases, so too does the need to provide care for the sisters. Key elements of the management of this risk are: (a) ensuring that the charity has the available financial resources to finance this care both now and in the years ahead by setting aside assets in a designated fund, the value of which has been based on actuarial principles; and (b) ensuring that processes are in place to review regularly the ministries and needs of individual sisters encouraging those who need to take on less demanding ministries and for identifying those who need extra care and help

- Operationally the charity works with children and vulnerable adults including older people. The trustees recognise the absolute necessity of ensuring the protection and safety of all those that the charity serves. This means that sisters engaged in any ministry in Great Britain and Ireland, all those who work or volunteer for the charity and work with children or vulnerable adults must obtain clearance from the Disclosure and Barring Service (DBS). The trustees are committed fully to implementing the policies of the Catholic Safeguarding Advisory Service (CSAS). One of the sisters is responsible for ensuring this policy is adhered to in respect to all sisters, employees and volunteers. In addition, the trustees have established a safeguarding team of four sisters which meets several times a year to take part in on-going safeguarding training, to update internal policies, and to ensure that sisters, staff and volunteers are kept informed about good practice in work and ministry
- The charity donates significant sums in support of the wider institute and other organisations. The vast majority of donations sent overseas are to fund projects administered directly by members of the institute. Whether or not the funds are used here in Great Britain or overseas, the trustees always ensure that they are fully briefed and familiar with the work of a potential recipient of funds, that funds are transferred via bank transfer, that proof of receipt is obtained and that, wherever possible (and always in the case of monies sent overseas), a full written report of how the monies have been utilised and applied is obtained from the recipient
- The charity's principal assets comprise listed investments, the value of which is dependent on movements in UK and world stock markets. The investments are managed by reputable investment managers who adhere to a policy agreed by the trustees. The trustees meet twice a year with the investment managers, the managers' performance and that of the portfolio are monitored. The investment strategy is assessed regularly to ensure it remains appropriate to the charity's needs – both now and in the future

Q. | DO WE NEED TO EXPLAIN EVERY FIGURE IN THE ACCOUNTS?

The answer to this is "no". This section of the report should comment on:

- The financial effect of significant events – for example, the sale of a property, the receipt of a very large lump sum pension, the provision of a large donation or grant, or a major change in the value of investments because of stock market volatility
- Where the charity holds material investments, it should state its investment policy and what it hopes to achieve from holding investments. (This aspect is dealt with in more detail in chapter six)
- Any factors that are likely to have an impact on the financial performance or financial position of the charity going forward – for example, age profile, the decision to close or "hive off" a school, care home or project, the decision to dispose of a large property

The financial review should also explain:

- The principal sources from which the charity receives money
- Where the charity's money has been applied during the year
- The charity's policy for holding reserves, stating the amount of those reserves and why they are held (see below but also chapter four)

Q. | WHAT INFORMATION NEEDS TO BE GIVEN IN RESPECT TO THE CHARITY'S RESERVES POLICY?

This is best illustrated by giving a couple of examples and relating these examples back to the text and explanations given in chapter four, regarding the need to provide for the care of members for the rest of their lives and the need to possibly continue the mission of the charity in to the long term through grant making (see chapter five). However, a summary of the information needed is given below:

- The amount of the total funds (or net assets) of the charity at the financial year end
- Identify the amount of any funds which are restricted and not available for general purposes at the end of the reporting period. This will often include monies raised specifically for the institute's overseas missions

- Identify and explain any material amounts that have been designated or set aside at the end of the accounting period. This will include amounts set aside for the future care of members of the institute and monies set aside from which to make (or generate monies to make) future grants and donations
- Indicate the likely timing of the expenditure of any material amounts designated – for example, monies set aside for the care of members will be expended over the remainder of their lives
- Identify the amount of funds that cannot be realised because they are tied up in properties and other tangible fixed assets that are essential to the charity's work
- State the amount of "free" reserves that the charity holds at the end of the accounting period i.e. the amount arrived at after deducting from the total reserves the amounts that are restricted, the amounts that are designated and the amounts tied up in tangible fixed assets (including property)
- Compare the resultant free reserves with the charity's reserves policy and explain, where relevant, what steps are being taken to bring the amount of free reserves actually held in line with the policy

Example – reserves policy and financial position

The balance sheet shows total funds of £7,777,551 (2015 - £7,067,834).

£750,000 (2015 - £750,000) has been designated by the sisters as a mission fund, the income of which is used to support missionary work, both in the UK and overseas, associated with individual members of the congregation.

£5,250,000 (2015 - £5,250,000) has been designated by the trustees to provide for the sisters in their retirement. The fund has been calculated using actuarial principles, whilst having regard to the resources actually available.

Restricted funds amounted to £881,792 (2015 - £788,606) and represent the generalate funds, being monies given by the Generalate of The Congregation of the Sisters of the Sacred Hearts and of Perpetual Adoration to be used to finance the overseas missions of the congregation and the broader work of the congregation overseas.

Funds which are available as free reserves i.e. those unrestricted funds not designated for specific purposes or otherwise committed, are shown on the balance sheet as general funds and amount to £895,759 (2015 - £279,228).

It is the trustees' aim to ensure that sufficient funds are generated to be able to provide a proper level of care for sisters of all ages as they need it, while maintaining support for the active sisters who continue to generate low levels of income in badly needed ministries. The charitable company is reliant on investment income necessary to meet both current and future requirements. To this end, regular meetings are held to ensure that sufficient funds are generated from the investment portfolio and changes are made to the portfolio when appropriate.

The trustees consider that, given the nature of the charitable company's work, the level of free reserves should be sufficient to generate enough income to cover approximately one year's on-going expenditure and to provide for contingencies, unevenness in future income and volatility in the value of investments. At the date of the balance sheet the trustees believe the charitable company's free reserves to be adequate but not excessive.

Example - reserves policy and financial position

Reserves policy

The trustees have examined the requirement for free reserves i.e. those unrestricted funds not invested in tangible fixed assets, designated for specific purposes or otherwise committed. The trustees consider that, given the nature of the charity's work, the level of free reserves should approximate to between nine and 15 months' expenditure. The trustees are of the opinion that this provides sufficient flexibility to cover temporary shortfalls in incoming resources due to timing differences in income flows, adequate working capital to cover core costs, and will allow the charity to cope and respond to unforeseen emergencies whilst specific action plans are implemented.

Financial position

The balance sheet shows total reserves of £39,895,842.

£17,800,000 represents a retirement reserve designated to provide for sisters as they increase in age. The value of the fund has been calculated using actuarial principles to provide for the institute's sisters, but is not meant to guarantee sufficient resources. It is merely an estimate designed to recognise, and make some provision for, the financial undertaking implicit in the relationship between a religious congregation and its members.

Following the disposal of the freehold property in Cambridge, the trustees have set aside a total of £5,000,000 in a "Financing and Institutional fund" at 31 December 2016. While much work has to be done on deciding exactly how these funds are to be applied, the broad intention of the trustees is to use them to finance the work of the sisters for the mission of serving refugees, asylum seekers and homeless people, in Britain and Ireland. A large proportion of the money has been invested with a view to generating income to apply each year but it is anticipated also that some of the money may be applied directly towards grants and donations in the short term.

The tangible fixed assets fund totals £6,930,213 and is represented by tangible fixed assets used to support the work of the sisters.

The balance sheet also includes a permanent endowment fund of £47,998, the interest from which may be used for the general work of the charity.

Restricted funds of £7,236,823 are held for specific purposes as detailed in note 17.

Funds which are available to support the work of the sisters in the future i.e. free reserves are those shown on the balance sheet as general funds and total £2,880,808. These free reserves fall within the parameters of the charity's reserves policy set out above.

The free reserves are considered adequate when viewed in the light of the commitment to fund the running costs of a care home in Ireland, the charity's annual expenditure and the increasing age profile of the members of the institute. There is also a lack of new vocations and therefore no prospect of increased income in the future. There are only modest resources remaining

to look after the ever-growing number of sisters needing increasing, and increasingly expensive, residential and nursing care.

**Q. | OUR FUTURE PLANS ARE “BUSINESS AS USUAL”.
DO WE NEED TO INCLUDE THIS SECTION IF THIS IS THE CASE?**

The answer is "yes" but it is more than appropriate to state that the charity's trustees do not anticipate any significant changes to the charity and its activities over the next few years.

Where key events or changes are anticipated then these should be flagged. For example, this may be more relevant for those religious institute charities that still operate schools and/or care homes where there may be major capital expenditure planned, restructuring or actions following inspections from regulators. Similarly, where a major property acquisition or disposal is planned this should be referred to in this section of the report.

**Q. | WHAT IS MEANT BY STRUCTURE,
GOVERNANCE AND MANAGEMENT?**

The report needs to give the reader an indication of how the charity is constituted, its governance and management structures. For example, information normally given would include:

- A description of the charity's governing document e.g. trust deed or constitution if a charitable incorporated organisation (CIO)
- Details of its trustees. In the case of a religious institute charity it will often be necessary to provide an explanation of both the canonical situation and the civil law situation and reconcile the two
- An indication that the trustees have the expertise and experience to take responsibility for the charity and its activities. Often this will include explaining that all (or the majority) of trustees are members of the institute and it is often helpful to provide a few brief biographical details to highlight the relevant experience of each person
- An indication as to how trustees obtain an understanding of their role as trustees
- A description of who constitutes the “key management” of the charity. Key

management are those individuals responsible at a governance or day to day level of making key decisions. For those members of key management identified, the report needs to summarise the arrangements in place for setting their pay and remuneration and any benchmarks, criteria or parameters used in setting such pay. For most religious institute charities, the key management personnel will be the trustees but it may include head teachers, registered care managers and senior management teams in the case of those religious institute charities that operate schools and care establishments

- Details of any organisations with which the religious institute charity co-operates or works very closely with in the pursuit of its objectives e.g. diocesan charities

Q. | WHAT IS MEANT BY REFERENCE AND ADMINISTRATIVE DETAILS?

This information is usually given at the very beginning or end of the report and accounts. It comprises a listing of the trustees in office at the date when the accounts are signed (together with details of changes in trustees since the beginning of the financial year); the principal contact address of the charity; relevant registration numbers; and the names and addresses of key financial and legal advisers such as auditors, bankers, investment managers and solicitors. It would be normal also to give the name of the provincial leader and the provincial bursar and any key employees such as head teachers or registered care managers.

STAFF AND VOLUNTEERS



MANAGING STAFF AND VOLUNTEERS

Q. | WHAT IS THE DISTINCTION BETWEEN THE ROLE OF A TRUSTEE AND THE ROLE OF SENIOR EMPLOYEES SUCH AS A LAY BURSAR?

The main differences between the role of a trustee and that of senior employees are the duties required of a trustee and the greater responsibility associated with the role. Trustees bear the overall legal responsibility for the charity and are required to manage its administration, making important decisions on how it is run.

Unlike senior employees, trustees have a number of key functions:

- Trustees have a duty to act in the best interest of the charity. It is necessary for trustees to only act in a way that will enable the charity to achieve the purposes for which it was set up
- Trustees must ensure that the charity is carrying out the purposes for which it was set up
- Trustees must act with reasonable care and skill, devoting sufficient time and energy to the role
- Trustees must take reasonable steps to comply with the law and abide by the charity's governing document. They must take appropriate advice when necessary
- Trustees must manage their charity's resources responsibly. A trustee has a duty of prudence and must exercise sound judgment
- Trustees must make sure the charity is accountable
- Charity trustees should not financially benefit from it without specific authorisation from either its governing document or The Commission

Finally, trustees must act collectively unless specific delegation has been given, whereas a senior employee might be expected to work independently as a matter of course.

Q. | IF WE HAVE LAY MANAGEMENT, CAN WE LEAVE ALL THE DECISION MAKING TO THEM?

Trustees of larger charities should take responsibility for setting the charity's strategic aims and direction, and agreeing appropriate future plans.

Although certain responsibilities will be delegated to management, the charity remains responsible for ensuring decisions are made in line with its strategy and overall goals. Decisions should be closely monitored and overseen by the trustees to ensure that they enable the charity to achieve the original purposes for which it was established.

Q. | HOW IMPORTANT IS IT FOR OUR SENIOR MANAGEMENT TO HAVE CLEAR JOB DESCRIPTIONS?

Job descriptions are important for every role, not just the more senior ones. Although there is no legal obligation for employers to provide job descriptions, it is good practice to have a clear description for each role. However, where individuals are employed for more than one month, they are entitled to receive a written statement of particulars within two months, which must contain the job title and a brief description of the job.

Job descriptions should cover the job title, purpose, duties and responsibilities, reporting line, location, grading (where applicable) and any special working conditions e.g. unsociable hours.

Job descriptions, along with the person specification, are also a useful part of the shortlisting process when recruiting for vacant roles by breaking down the role into essential and desirable criteria. Candidates can then be scored against each criteria thus ensuring that not only are the best candidates invited for interview, but also a fair process is followed.

Clear job descriptions are also useful when used in an appraisal.

Responsibilities can vary over time so it is good practice to regularly review job descriptions, especially prior to recruitment or where there have been significant changes to a role.

Sometimes conflicts arise when the lines between strategic and operational matters are not clearly defined. It is sensible to ensure that the employment contracts and job descriptions of senior employees deal with these issues.

That said, it is usually useful in a job description to include an overarching clause permitting/requiring an employee to perform duties that may be outside their normal duties that are generally commensurate with their role.

If members of the institute are working alongside lay individuals, it is just as appropriate for the members of the institute to have job descriptions.

Q. | SHOULD WE DO APPRAISALS FOR STAFF, INCLUDING MEMBERS OF THE INSTITUTE, WHO ARE WORKING FOR US?

Employers are not legally required to conduct staff appraisals. However, although a formal appraisal system is not necessary, appraisals for staff, including members of the institute, who are actively working, can be useful to record and manage the assessment of an employee's performance on a regular basis as well as considering their potential and development needs in the role.

Appraisals are also useful in the event of dismissal as they can provide evidence of performance problems. This evidence can be used to support a fair dismissal.

Employee feedback usually cites effective appraisals as important in managing future expectations and career development.

It is important to treat members of the institute and staff in exactly the same way and ensure that both receive effective appraisals and are judged by the same performance standards.

Q. | IF A MEMBER OF THE INSTITUTE IS WORKING IN A POSITION LESS SENIOR THAN A LAY MEMBER OF STAFF, HOW SHOULD WE LINE MANAGE THIS POSITION?

If the less senior member of the institute is engaged on a voluntary basis, then it is difficult to apply normal line management principles. For example, if they are made subject to the disciplinary procedure it might be thought that they are more likely to be considered to be an employee, or a "worker" (which may give

rights to the national minimum/living wage and statutory holiday pay).

However, it is still possible to have statements of expectation and the management documentation should record those expectations. Essentially, if those expectations are not met, the charity should consider termination of the arrangements. Legal advice should be sought in relation to this.

Members of the institute should respect the lay management and expect to be treated by lay management in the same way as any other member of staff.

Q. | DO WE NEED FORMAL WRITTEN EMPLOYMENT CONTRACTS, IS THIS POSITION DIFFERENT FOR MEMBERS OF THE INSTITUTE WHO ARE WORKING FOR US?

Strictly speaking, employers are not required to provide formal written employment contracts for their employees. However, after eight weeks employment, employees are entitled to receive a written statement of setting out minimum specific terms and conditions of employment (Section 1 of the Employment Rights Act 1996). This statement should be given to employees within two months of starting employment.

This statement of terms and conditions is often used to form the basis of the full written contract.

In any event, despite there being no legal requirement for a written contract, they can of course be extremely useful in minimising the risk of ambiguity by setting out the rights and obligations of each party.

If a member of the institute is not an employee then you should avoid documents suggesting that they are. As described above, statements of expectation can be useful in these circumstances.

Q. | CAN WE PROVIDE ACCOMMODATION FOR STAFF?

Yes, you may provide accommodation for staff but this could have tax implications. There exist different "types" of accommodation which an

employer may provide for staff, for example, the staff may live independently or not and this may affect the tax treatment.

Special rules apply for applying accommodation costs against the national minimum/living wage and taxation principles in relation to benefits in kind, or where the accommodation is necessary to perform the role.

Specific tax advice should be sought in relation to such issues.

When setting up accommodation arrangements you should consider what would happen if you wanted to terminate either the accommodation arrangements themselves, or the working arrangements linked to them. If you ever wanted to sell the building, or merge the charity you also should consider what would happen to the accommodation in those circumstances.

Q. | WHAT POLICIES AND PROCEDURES SHOULD WE HAVE IN PLACE?

It is generally good practice to have policies set out in a staff handbook to make sure that staff are aware of the standard expected of them and to reduce legal risk by ensuring that employees understand their legal rights and responsibilities.

Organisations are required to provide a minimum level of information, usually given in a single written statement of terms (Section 1 of the Employment Rights Act 1996). This may be given to employees in the form of a statement, a letter of engagement or an employment contract. The policies and procedures below are either required by law or there exists strong legal reasons for including them:

- **Disciplinary procedures** – procedure for taking any decision as to disciplinary action or dismissal. This includes any appeals
- **Grievance procedures** – steps taken on submission of a grievance and to whom that grievance may be submitted
- **Information about pensions**
- **Health and safety** – if an organisation employs five or more people, it is required to have a written statement detailing general health and safety policy and arrangements for carrying out such a policy

- **Whistleblowing** – although only UK listed companies and public bodies are expected to have a whistleblowing policy, such a policy may be useful.

The following policies are suggested as good practice:

- **Equal opportunities**
- **Day to day working arrangements** – dress code, expenses & flexible working policies
- **Sickness, health and safety** – health & safety, no-smoking & sickness absence policies
- **Leave entitlement** – holidays, maternity, paternity, adoption & shared parental leave policies
- **Termination of employment** – redundancy & retirement policies

Q. | WHAT IF SOMETHING GOES WRONG?

If something were to go wrong the following procedures are available:

- **Disciplinary procedure** – if concerns arise in relation to an employee, informal discussions should be entered into before taking formal disciplinary action. A disciplinary hearing will allow both employer and employee to tell their side of the story
- **Grievance procedure** – where an employee has attempted to solve a problem informally but is not satisfied, they may make a formal grievance complaint and should follow the firm's grievance procedure
- **Dismissal** - it is possible for an employer to dismiss a worker by ending the employee's contract. When an organisation dismisses staff, this must be done fairly
- **Whistleblowing** – employees may report certain types of wrongdoing witnessed at work. Any wrongdoing reported must be in the public interest. A "whistleblower" is offered legal protection and should not lose their job or be unfairly treated as a result of their disclosure

Q. | DO WE HAVE TO PROVIDE PENSIONS FOR OUR STAFF?

If an organisation employs at least one person and deducts tax and national insurance contributions from an employee's wages it will be considered an employer and will have certain legal duties. A comparatively new law means that every employer in the UK must automatically enrol eligible workers in a workplace pension scheme and make mandatory minimum contributions provided the employee satisfies the following conditions:

- Works in the UK
- Earns more than £10,000 a year
- Aged between 22 and state pension age
- Not already enrolled in a qualifying pension scheme at work

An organisation will not have to automatically enrol a worker if they are given evidence of a lifetime allowance protection such as a certificate from HMRC.

All employers must make minimum contributions. At present an employer must pay at least 1% of their employee's "qualifying earnings" into the workplace pension. Although a worker will be automatically enrolled, they have the right to opt-out of the workplace pension scheme.

Each employer should check the date by which these rules will apply to them.

Q. | WHAT RIGHTS DO VOLUNTEERS HAVE?

There is no technical legal definition of "volunteer". A charity should superficially assess what are the arrangements it operates in respect of people it calls volunteers so as to be as certain as possible whether these volunteers are of a specific legal category e.g. employee, worker, self-employed.

Those working without payment, or any form of contract at all, are usually considered to be volunteers. A volunteer agreement may be put in place that sets out the training that will be delivered, the level of supervision and support to be given, whether the volunteer will be covered under the organisation's employer or public liability insurance, any health and safety issues, and finally, any expenses the organisation will cover.

Volunteers are not paid for their time but may receive money from the organisation to cover expenses such as food, drink, travel or any necessary equipment care should be taken to ensure that no more than expenses are paid.

There is a further specific category of staff available to charities, and that is a "voluntary worker". Broadly, this is an arrangement whereby it is accepted that the staff member is a "worker" but that they should not be entitled to the national minimum/living wage.

It is good practice to have a volunteer agreement of a volunteering policy.

Q. | IS IT OK TO SAY THAT WE WILL ONLY RECRUIT PRACTISING CATHOLICS?

The Equality Act 2010 provides protection from discrimination in the workplace. However, an exception set out in the Equality Act allows employers to discriminate where a particular characteristic (for example, religion) is necessary for the job. This occupational requirement exception would allow an organisation to discriminate lawfully in limited circumstances. The employer may discriminate where, having regard to the nature or context of the work, being a practising Catholic is an occupational requirement.

So, for example, it is likely to be acceptable to limit a ministerial role to a practising Catholic, but not a member of the finance department, or a cleaner, for example.

Q. | WHAT IS THE DIFFERENCE BETWEEN THE MINIMUM WAGE AND THE LIVING WAGE?

The national minimum wage is a minimum hourly rate of pay which applies to workers aged 16 or over and employers, regardless of their size, are obliged to pay their employees this hourly rate of pay.

The national living wage, introduced in April 2016, applies to all employees aged 25 or over and the current rate stands at £7.20 per hour. Therefore, anyone under the age of 25 will only be in receipt of the national minimum wage.

In addition to the national living wage, there is also the living wage set by the Living Wage Foundation. This campaigning organisation has calculated the cost of living in the UK and employers can opt in to pay this hourly rate. Therefore, the national living wage is mandatory whereas the living wage is voluntary. By opting in to the living wage this could mean that employers pay their workers significantly more than what they would under the national living wage that has been determined by the government.

The national minimum wage rates change every October and the national living wage rates change every April.

Q. | SHOULD WE CONTROL HOW STAFF USE THE INTERNET AND SOCIAL MEDIA?

The rise in popularity of social media in recent years has created numerous challenges for organisations, although it can also present exciting opportunities. It is possible to control internet and social media use by having a stand-alone social media policy in place or including one in an employee handbook. This policy can encourage appropriate employee use of social media and prohibit the use of social media in ways that could damage the organisation. If the policy were to be breached this could lead to disciplinary procedures and may, in very serious cases, result in termination of employment. If you do not have and work within a policy, that may well turn what could otherwise have been a fair dismissal into an unfair dismissal.

You should not “throw the baby out with the bath water!” Social media may be used to share information and knowledge with others, projecting a positive image of the organisation. Therefore, if a social media policy is adopted, care must be taken to ensure that the use of such forums for marketing, recruiting or other beneficial purposes is not restricted by the terms of the policy.

SAFEGUARDING

As you are all aware, safeguarding is a matter of critical importance and should be viewed as an integral part of the life and ministry of the Church. Within the Catholic Church there is a commitment to the “One Church” approach to safeguarding children, young people and adults through the promotion of a sustained and sustainable culture of constant vigilance. Even if your institute does no work with children or vulnerable adults, you should remember that

members of your own institute may well be vulnerable adults and you therefore need to be aware of their vulnerability.

All institutes have a nominated safeguarding officer who will be responsible for safeguarding matters and most institutes will be aligned with a diocesan safeguarding commission. You should always refer any safeguarding issues or concerns to your safeguarding officer and follow their guidance and advice.

The national procedures are set out in the Catholic Safeguarding Advisory Service's (CSAS) manual which can be found at www.csasprocedures.uk.net. The information below is intended to provide supplementary guidance from the point of view of a charity and should always be considered alongside the guidance from CSAS and your own safeguarding officer.

Q. | WHY DO CHARITY TRUSTEES NEED TO WORRY ABOUT SAFEGUARDING?

Everyone has the right to be safe regardless of who they are and their individual circumstances. Organisations working with children and vulnerable adults have a responsibility for their safety and welfare and must ensure that they are doing all they can to protect them. Trustees have various legal duties, including:

- A duty of care to safeguarding children and vulnerable adults
- A duty to protect the reputation and assets of the charity – a failure to protect the reputation and assets of the charity could be construed as misconduct and mismanagement in the administration of a charity which can lead to regulatory action being taken by the Charity Commission

As well as the important reasons set out above, it is crucial that well intentioned volunteers and staff know what is expected of them and what is considered appropriate when working with vulnerable groups, in order to avoid finding themselves in tricky situations where their actions or intentions could be misconstrued.

While The Commission has issued broad guidance in the area of safeguarding, it has always been clear that this area is regulated by other agencies. However, in their duty to safeguarding children, The Commission has refreshed its safeguarding strategy and as a result has expanded its advisory group and is communicating safeguarding lessons to other charities where safeguarding arises as an issue during its regulatory interventions.

What is a vulnerable adult?

The definition of "Regulated Activity" (see later in this chapter) for adults defines the activities provided to any adult as those which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time. These activities are: the provision of healthcare, personal care, and/or social work, assistance with general household matters and/or in the conduct of the adult's own affairs, and/or an adult who is conveyed to, from, or between places, where they receive healthcare, relevant personal care or social work because of their age, illness or disability.

Who is a child?

A child or young person under the age of 18.

Q. | HOW DO WE CREATE A SAFEGUARDING CULTURE?

"The harsh reality is that if a sufficiently devious person is determined to seek out opportunities to work their evil, no one can guarantee they will be stopped." (quote from Lord Bichard, who led the inquiry into failures of the safeguarding system following the murder of Holly Wells and Jessica Chapman in Soham by Ian Huntley).

The key to ensuring that the vulnerable are protected is by creating a safeguarding culture within your organisation. Think of it like a jigsaw puzzle – there are lots of pieces in the puzzle which, when they come together, create a strong message that the charity does all it can to provide a safe place for its vulnerable beneficiaries. This is reassuring for service users but also sends out a strong message about the rigour of the charity's safeguards and could deter anyone with malicious intentions from targeting your charity.

The pieces of the jigsaw include: creating a culture of openness, being consistent in your interaction with the general public through websites, publications, recruitment material etc. safeguarding policy, applying for DBS checks (and barred list checks) where appropriate and providing training to staff and volunteers.

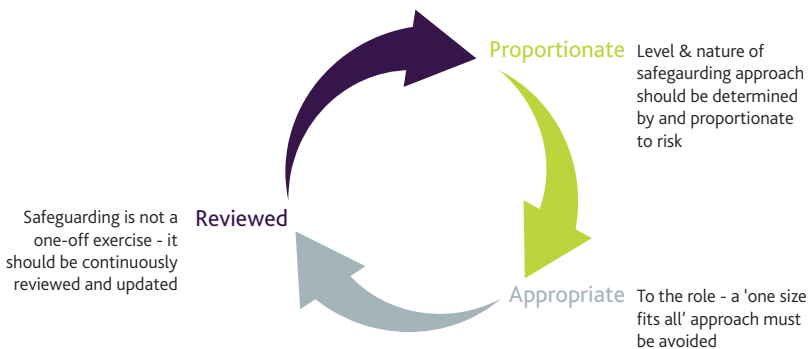
Q. | HOW DO WE ENSURE OUR APPROACH IS PROPORTIONATE?

A good approach to safeguarding includes carefully assessing risk and taking actions identified to mitigate those risks. The level and nature of any particular safeguarding approach should be determined by and proportionate to the risk inherent in the activities of the role in question. It is important to remember that sometimes even occasional or informal roles can potentially involve risk.

So at one end of the scale you might have a volunteer participating in a one-off event with little public interaction – here you might expect to have a simple chat/introduction about the role and practicalities e.g. health and safety and there would be no need to provide an induction or training meeting or to obtain DBS checks.

At the opposite end of the scale, recruiting an employee or volunteer to provide unsupervised care for children or vulnerable adults several times a week would require a far more robust safeguarding approach, for example, obtaining references, DBS check and possibly a barred list check, comprehensive induction and a trial period to allow work to be observed etc.

In reality, roles and activities are rarely black and white which makes it important to consider each role carefully and identify the measures needed. A "one size fits all" approach will lead to one of two outcomes – ineffective safeguarding or unnecessarily restrictive practices.



Q. | WHAT DO WE NEED TO THINK ABOUT WHEN CREATING A SAFEGUARDING POLICY?

This is a statement of intent that demonstrates a commitment to safeguard children and/or vulnerable adults involved with a charity from harm. It should be readily accessible to all employees and volunteers who should be familiar with its contents.

As discussed above, the key to creating a safeguarding policy for your organisation is proportionality. It needs to be tailored to fit your organisation and activities. For example, a small organisation that engages with children or vulnerable adults on a limited basis may only need a short policy concentrating on how to identify and report incidents of harm and abuse. But an organisation providing care for children or vulnerable adults would need a more thorough document, covering a wide range of eventualities and issues. If the document needs to be quite long, make sure it is clearly written and accessible so that individuals can identify the steps that need to be taken in certain circumstances. An index can be helpful together with flow charts and summaries for larger policies.

The safeguarding policy should be considered part of an individual's induction training. It is useful to ask the individual to sign a statement to say that they have read and understood the policy – in relation to volunteers, this can form part of a volunteer agreement if your organisation uses one.

Safeguarding policies should be reviewed regularly to ensure that they are fit for purpose and should be reviewed on a regular basis (perhaps annually), where new legislation comes in to force, or following an incident if improvements are identified as being desirable.

The essential inclusions for a safeguarding policy are outlined below:

- Clear definitions on identifying harm, abuse and neglect, and the different forms that this may take e.g. physical, emotional, sexual, domestic, discriminatory, financial abuse and neglect
- The welfare of the child or vulnerable adult is paramount
- All children and vulnerable adults without exception have the right to protection from abuse regardless of gender, ethnicity, disability, sexuality or beliefs
- Who the policy applies to (i.e. all trustees, staff and volunteers) – emphasis

on the fact that all trustees, staff and volunteers have a role in protecting the vulnerable from harm

- All concerns, and allegations of abuse will be taken seriously by trustees, staff and volunteers and responded to appropriately - this may require a referral to children's or adult social care services, (in relation to children) the independent local authority designated officer (LADO), and in emergencies, the police
- A commitment to safe recruitment, selection and vetting
- Reference to principles, legislation and guidance that underpin the policy
- Arrangements for policy and procedures review
- Reference to all associated policies and procedures which promote children's and vulnerable adult safety and welfare e.g. health and safety, anti-bullying, protection of children and vulnerable adults online, photography policy, code of behaviour

In many cases it may be appropriate simply to refer to the CSAS policies and procedures, but it is always good to have a specific document that sets out the institute's own commitment to safeguarding and then signposts to the CSAS policies and procedures.

Q. | WHAT SAFEGUARDING PROCEDURES AND SYSTEMS SHOULD WE HAVE?

Procedures and systems provide clear step-by-step guidance on what to do in different circumstances and they clarify roles and responsibilities. Systems for recording information and dealing with complaints are also needed to ensure implementation and compliance.

The procedures and systems should include:

- A named person (and deputy) with a clearly defined role and responsibilities in relation to child and vulnerable adult protection, appropriate to the level at which they operate
- A description of what child or vulnerable adult abuse is, and the procedures for how to respond to it where there are concerns about a child or vulnerable adult's safety or welfare, or concerns about the actions of a trustee, staff member or volunteer. Relevant contact details for children or adult services, police, health, the local authority designated officer

(LADO), Child Exploitation Online Protection Centre (CEOP) for eSafety concerns and NSPCC helplines should be available

- A process for recording incidents, concerns and referrals and storing these securely in compliance with relevant legislation, and kept for a time specified by your insurance company
- Guidance on confidentiality and information sharing, legislation compliant, which clearly states that the protection of the child or vulnerable adult is the most important consideration
- A code of behaviour for trustees, staff and volunteers; the consequences of breaching the code are clear and linked to disciplinary and grievance procedures
- Safe recruitment, selection and vetting procedures that include checks into the eligibility and suitability of all trustees, staff and volunteers who have direct or indirect (e.g. helpline/email) contact with children and vulnerable adults. In the case of trustees, because of their position within the charity, the Charity Commission takes the view that whenever there is a legal entitlement to obtain a DBS check in respect of such a trustee, a check should be carried out. A complaints procedure which is an open and well publicised way in which adults and children can voice concerns about unacceptable and/or abusive behaviour should also be included
- Systems to ensure that all staff and volunteers working with children and vulnerable adults are monitored and supervised, and that they have opportunities to learn about child and vulnerable adult protection in accordance with their roles and responsibilities. Safeguarding induction training is now mandatory for all those who work directly with children and vulnerable adults
- Requirements for trustees, staff and volunteers to learn about child and vulnerable adult protection in accordance with and as appropriate to their roles and responsibilities

It is important that each charity's safeguarding policy and procedures are tailored to the type of contact that the charity has with children. It also needs to take into account any particular vulnerabilities of the children with whom the charity has contact, for example, disabled children who are at increased risk of abuse, babies and toddlers who are vulnerable due to their age and dependence on adults. Again, this information is covered in the CSAS policies and procedures and you should familiarise yourself with the procedures in place.

Q. | IS HAVING A POLICY ENOUGH?

Absolutely not! There is no point in having a wonderfully drafted safeguarding policy that no one knows about or understands! Part of creating a safeguarding culture within your organisation is ensuring that everyone is aware of both their own individual responsibilities and what is considered best practice within the organisation. This means everyone taking part in awareness raising, training (appropriate to the nature of each individual's role) and creating an open culture where people feel able to raise concerns. Training can take the form of in-house or external sessions, training for the whole organisation or more specific training for individuals in certain roles.

Q. | WHAT IS MEANT BY "SAFER RECRUITMENT"?

"Safer Recruitment" is about demonstrating a clear and firm commitment to safeguarding in the way you recruit staff.

Website

Featuring your organisation's commitment to safeguarding on your website is an important first step in the safeguarding process. An up to date statement of your commitment to safeguarding and a link to an up-to-date safeguarding policy sends a strong message to individuals looking to target organisations with poor governance or little commitment to safeguarding.

Job advert

Again, include a statement confirming your commitment to safeguarding vulnerable groups and state that a DBS check (with barred list check) will be required, where the role is eligible for such a check.

Role description

An important and often overlooked first step in any effective safeguarding approach. Being clear about what a role involves helps a would-be employee or volunteer to understand what will be expected of them. It should clearly state skills, experience and time commitment required. It is also an ideal opportunity to outline the responsibilities that the organisation has for safeguarding and to

identify safeguarding as a top priority. It should also set out any safeguarding responsibilities that the individual may have. The role description can also be used as a point of reference on an ongoing basis for both the organisation and individual. It can also be used as a tool for support and supervision and can aid discussions around performance or responsibilities when needed.

Interviews

Where an individual will be working with vulnerable groups it will be necessary to arrange a face to face interview to assess the applicant's suitability, using the criteria set out in the job description. There should usually be a minimum of two members on an interview panel. It is useful to prepare a list of questions that will be put to all candidates based on the job description. The answers given to these questions will lead to other questions specific to each candidate. Asking open questions which invite a longer response is useful e.g. "Tell me about..." or "Give an example of...". The interview will help give you insight into the applicant's attitude towards the beneficiaries that they might be working with. You may need to have a sensitive discussion about any information that the applicant has provided which is unclear or which raises questions or suspicions e.g. inability to provide references, unexplained gaps in their employment history.

References

Asking individuals, including volunteers, for two references as part of the recruitment process is now standard practice where they will be working with vulnerable groups. This should normally include one from the individual's current or most recent employer. References are useful because they provide an independent perspective of an individual's skills, reliability and attitude. They can confirm first impressions or highlight what further information may be needed before offering an applicant a role. The reference should be signed by the person giving the reference.

Support and supervision

All employees and volunteers need support and supervision, the form it takes will depend upon the role in question and the individual. Buddying and volunteer meetings can be useful. Whatever approach an organisation takes, it is important to ensure that there is a way for individuals to raise problems and concerns at any time.

Q. | WHAT IS THE DISCLOSURE AND BARRING SERVICE (“DBS”), CRIMINAL RECORD AND BARRED LIST CHECKS?

Some organisations will have volunteers and staff in roles that require DBS checks (formerly CRB checks). These kinds of roles are usually those that involve close and unsupervised contact with vulnerable adults and children. For an organisation to request a Disclosure and Barring Service (DBS) check, they must be sure that the role is eligible for a check.

The ability for an employer or voluntary organisation to ask an individual to apply for a (DBS) check, at either Standard or Enhanced level, is set out in legislation. Eligibility is based upon the nature of the duties for the specific position – therefore there cannot be a blanket policy on DBS checks. To be eligible for a DBS check, a position must be:

- Listed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 – this entitles the position to a standard level check only
- Prescribed in The Police Act 1997 (Criminal Records) Regulations – this entitles the position to an enhanced level check. These are for posts that involve a far greater degree of contact with children or vulnerable adults. In general the type of work will involve regularly caring for, supervising, training or being in sole charge of such people. Examples include a teacher, scout or guide leader. Enhanced checks are also issued for certain statutory purposes such as gaming and lottery licences

Charity trustees of charities that work with children or vulnerable adults are entitled to obtain an official criminal record check through the Disclosure and Barring Service, known as an enhanced DBS check (previously known as a CRB check). The Commission strongly recommends that all charity trustees of charities that work with children or vulnerable adults obtain a DBS check, where eligible to do so.

An enhanced DBS check will disclose all of the following:

- Criminal convictions (spent and unspent)
- Cautions (spent and unspent)
- Police reprimands and warnings
- Other relevant police information
- Information held on the statutory lists of individuals considered unsuitable to work with children or vulnerable adults (barred list check), where appropriate to the post

A barred list check should be sought by anyone working or volunteering in a role that involves close and unsupervised contact with vulnerable adults and children – known as a regulated activity. There are two barred lists containing individuals who are unsuitable to work with children or vulnerable adults. For some roles a check of both barred lists will be required. This is the legal responsibility of the organisation and it is a criminal offence for organisations to recruit an individual who appears on either of the DBS barred lists in a regulated activity with the group from which they are barred from working. It is also a criminal offence for an individual to seek or carry out work in activities from which they are barred. For further guidance and definitions of regulated activity, see the links below.

It is important that your organisation only completes the level of check the role is eligible for and that the check is necessary. If an individual knowingly asks for a DBS check for a post which is not included in the Exceptions Order 1975 or the Rehabilitation of Offenders Act 1974 (ROA), they would be in breach of Part V, Section 123 of the Police Act, in that they are committing an offence by knowingly making a false statement for the purpose of obtaining or enabling another person to obtain a certificate under this.

Q. | HOW DO WE APPLY FOR A DBS CHECK?

As an employer, you should only arrange a DBS check on a successful job applicant. You can withdraw a job offer if the results show anything that would make the applicant unsuitable. Employers need to check the identity of a job applicant as part of a DBS check. There is further guidance on carrying out ID checks on the DBS website.

There are three types of check. The organisation running the check should provide the applicant with information about the level of check required. DBS check applicants must be 16 or over. Generally, it can take around eight weeks to get a DBS check.

Standard (£26)

This checks for spent and unspent convictions, cautions, reprimands and final warnings.

Enhanced (£44)

This includes the same as the standard check plus any additional information held by local police that's reasonably considered relevant to the role being applied for.

Enhanced with barred list checks (£44)

This is like the enhanced check, but includes a check of the DBS barred lists.

Your safeguarding officer and/or the Diocesan Safeguarding Commission will be able to advise you on the correct procedures to follow in order to apply for the relevant DBS checks.

Organisations providing care services for adults (e.g. in a care home) can use a service called DBS Adult First (for an extra £6). This will confirm, usually within two days, if the applicant:

- Can start work, as long as they're supervised; or
- Should wait for the results of an enhanced check

Update service

The DBS offers an update service which enables an individual to take their certificate with them from role to role within the same workforce for an annual subscription of £13 (free for volunteers). It means that employers can check the status of an existing DBS certificate, if it is for the same workforce where the same type and level of criminal record check is required and you have permission of the individual. However, the employer can only make the status check if they could also legally request a new DBS application for the role the individual will be working in. This is because it is initially the employer's responsibility to understand and apply the legislation to each role they are recruiting for. An employer can carry out a free, instant online check and will be given the current status of the DBS certificate.

Currently, an individual can join the update service before submitting their DBS check application form, during the application process or after the issue of the DBS certificate – they must do this within 19 days of the date of issue displayed on the certificate.

How do we check overseas candidates?

The DBS cannot access criminal records held overseas. A DBS check may not provide a complete view of an applicant's criminal record if they have lived outside the UK. Organisations should make sure they have access to all the information available to them to make a safer recruitment decision.

The application process for criminal records checks or "Certificates of Good Character" for someone from overseas varies from country to country. You will have to apply in the country or to the relevant embassy in the UK. The DBS website has guidance on how to apply for criminal record checks overseas.

Q. | WHEN SHOULD WE REPORT ISSUES TO THE CHARITY COMMISSION?

If any safeguarding issues or concerns are brought to your attention, you should immediately raise them with your safeguarding officer, who will then advise on the appropriate steps to be taken, including the extent to which these issues need to be brought to the attention of any statutory authorities.

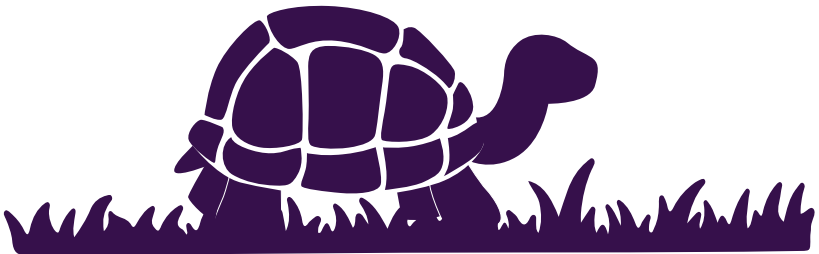
You will also need to make a serious incident report to the Charity Commission. Serious incidents relating specifically to safeguarding include:

- A disqualified person acting as a trustee
- Suspicions, allegations or incidents of abuse of vulnerable beneficiaries

The Commission's guidance requires an organisation to report a serious incident as soon as it becomes aware of it. In practice, we recommend that legal advice is sought quickly on how to report the incident to The Commission, what actions are required to remedy the situation and prevent such an incident arising in the future. If trustees fail to report a serious incident, The Commission may consider this to be mismanagement and take regulatory action.

Organisations also have a "duty to refer" or report individuals to the Disclosure and Barring Service who are dismissed from a regulated activity (or would have been if the person had not already left) because they harmed or posed a risk to an individual. This duty overrides any obligation to withhold information on the grounds of confidentiality. It is important that organisations know their responsibilities and ensure that they make it clear in policies and procedures how and when to report incidents.

RISK MANAGEMENT AND HEALTH AND SAFETY



“In Hertford, Hereford and Hampshire, hurricanes hardly happen”

Q. | WHY DO CHARITY TRUSTEES NEED TO WORRY ABOUT RISK MANAGEMENT?

According to the dictionary, risk means the “chance or possibility of loss or bad consequence”. As a charity trustee you are ultimately responsible for anything that happens in your charity. If something bad happens that has consequences for the charity then potentially you have failed in your duty as a charity trustee. As a charity trustee you are essentially a steward of the charity’s assets for a short period of time, you do not want anything to go wrong on your watch, so you need to take steps to manage all potential risks.

The Charity Commission’s guidance (CC26: Charities and Risk Management) says:

“Charity trustees should regularly review and assess the risks faced by their charity in all areas of its work and plan for the management of those risks. Risk is an everyday part of charitable activity and managing it effectively is essential if the trustees are to achieve their key objective and safeguard their charity’s funds and assets.”

Managing risk is fundamental to ensuring that:

- You are able to make informed decisions as a charity trustee about the activities that your charity is going to undertake, as you will understand the potential impact of each activity on your charity
- Your charity can make the most of each opportunity it faces by knowing that any associated risks can be managed within appropriate parameters
- Forward and strategic planning involving the allocation of resources are improved for the charity, meaning that your charity’s long term aims are able to be achieved successfully

The extent to which your charity faces risks will, of course, depend upon your size, structure and the nature of the activities that you undertake. If your charity is involved in the operation of a care home, or a hostel for vulnerable women, or an educational establishment, the risks faced by the charity may be far more extensive than those faced by a small charity with a few members and a focus mainly on grant giving.

Even though many religious institutes are similar and operate in a similar way, the risks that you each face and your attitude to dealing with these will be different. It is not possible to provide a one-size-fits-all risk management policy for every charity. Charity trustees should not in any event rely upon a pro-forma risk management policy. Part of the process of developing a policy is about you being able to understand the risks your charity faces, putting in place appropriate plans and learning how to adapt to meet those challenges. You cannot do this from a pro-forma policy.

Q. | IS IT A LEGAL OBLIGATION TO HAVE A RISK MANAGEMENT POLICY?

This is not really the question to ask. Managing risk is something that should be cultural within your charity. Every day we individually have to manage risk, for example, when we decide which side of the bed to get out of in the morning through to crossing the road during the day. These are all decisions that can only be taken when we are informed of the risks involved. Therefore a risk management policy is essential.

However, to answer the question, if your charity is legally required to have its accounts audited, then you will have to make a risk management statement in your trustees' annual report that confirms that "*... the charity trustees have given consideration to the major risks to which the charity is exposed and satisfied themselves that systems or procedures are established in order to manage those risks.*"

Charities (Accounts and Reports) Regulations 2008

This is reflected in the charities SORP (2015) which provides at paragraph 1.46 that your charity trustees' annual report should include "*a description of the principal risks and uncertainties facing the charity and its subsidiary undertakings as identified by the charity trustees, together with a summary of their plans and strategies for managing those risks*". It is no longer enough to simply use pro-forma wording to state that you have considered the major risks and have plans in place. You must summarise in narrative the plans and strategies you have in place to actually manage those risks.

Q. | HOW DO WE GO ABOUT PUTTING IN PLACE A RISK POLICY?

You need to take steps to identify the risks that your charity faces and then apply some form of scoring process to evaluate which risks are likely to have the greatest overall impact on the charity. Following the completion of this process you can plan how you will deal with those risks.

Q. | WHAT RISKS SHOULD WE BE CONSIDERING?

You need to start by considering the context in which your charity operates (which includes its current activity, its past activity and its potential future activity). This will enable you to identify the key risks that you face, but also enable you to consider the other areas where you may face risks. For example, if you operate a care home it is easy to consider that this may involve risks, but it may be more difficult to think about risks that are dependent upon matters outside of your control such as the effect of political events on your investments. If you have operated an institution in the past you need to think about the residual risks, for example, the potential for historic claims, how you would deal with them and the associated reputational issues.

You have to consider everything. Many charities simply focus on the financial and safeguarding risks, as these are the most obvious, and fail to consider issues that may be of much greater strategic importance. For example, for many religious institute charities a lot of focus is on declining numbers and managing the finances to ensure that sufficient funds are available to meet the needs of the elder members of the religious institute in the future. However, a focus on this area would not mean that it would be appropriate, for example, to overlook the risk to the future strategy of the charity and whether you are maybe drifting away from your core mission to activity that is outside of your charitable objects.

You need to consider the environment in which your charity operates, not just internal factors but also external factors, such as changing social attitudes, political and legal changes and developments in technology. For example, the risks associated with computers are no longer confined to trying to avoid viruses, but extend to inappropriate content, online bullying, fraud and so on.

It is important to remember that, while ultimately all situations that arise as a result of risks have a financial impact on the charity, it is not enough to simply consider risks that relate to financial issues or have a financial impact.

Be methodical about your approach and try and consider all key aspects of your charity's work. Engage with stakeholders and professional advisors who can help with this process, and maybe see risks that you have not thought about.

Q. | WHO SHOULD BE CARRYING OUT THE ANALYSIS?

Ultimate responsibility for developing the risk management policy rests with you as the charity trustees. You are responsible for the management and control of your charity. However, that does not mean that you alone should be responsible for preparing the policy. It is important to involve all those connected with the charity who may have a valid input, for example senior lay management. Everyone will have a different view as to what may be significant in terms of risk. You will also find that in many cases the way in which you deal with the risks will be delegated to a member of your staff. For example, if you have an internal property manager, they will probably be delegated with the responsibility of arranging insurance on behalf of the charity, so they would be well placed to advise on the likely risks to consider.

If you do not involve others in the process, it is difficult for you as charity trustees to be able to say, with confidence, that you have considered all the risks faced by the charity and put in place appropriate process and procedures to enable them to be dealt with. There needs to be a commitment to risk management throughout the charity.

Many religious institutes have a hierarchical structure, spread across a number of communities. The risks in some communities may be very different to the risks in other communities. It is important to ensure that there is a complete representation of all interests, so that all risks are considered.

Sometimes it is useful to have a third party, such as one of your professional advisors facilitate a discussion on this subject with the charity trustees and senior management, to ensure that what may seem obvious to an outsider, is at the front of your mind.

Q. | ARE THERE ANY PARTICULAR CATEGORIES OF RISK WE SHOULD CONSIDER?

Broadly speaking the risks considered for religious institute charities should fall into the following areas (this list is not by means exhaustive):

AREA	EXAMPLES
MISSION	Potential risks include: activities outside of the objects of the charity, lack of members to control strategic direction of the charity, lay staff/volunteers now aware of the ethos
GOVERNANCE	Potential risks include: charity trustees lack appropriate skills, conflicts of interest between interests of the religious institute and the interests of the charity, ineffective organisational structure, monitoring activities within communities
OPERATIONAL	Potential risks include: communities not following rules set by charity trustees, premises unsuitable for elderly members, dangerous, unsafe and dilapidated buildings, reputational issues, failure to be aware of changing legislative requirements, failure to comply with data protection issues
SAFEGUARDING	Potential risks include: changes in government policy, abuse or safeguarding issues, supervision and due diligence checks on volunteers
FINANCIAL	Potential risks include: poor accounting and budgeting, decisions based on inadequate financial information, over dependancy on particular income sources, diminishing sources of income, changing international financial markets, increasing financial demands of members, lack of adequate reserves, fraud and/or unauthorised access to financial systems, supervision of communities' finances

In each case your charity needs to consider what is appropriate to your own circumstances. It may be good to consider the risks you have seen emerge in the past one, three, five and 10 years, and consider how relevant these are going forward.

Q. | HOW SHOULD WE EVALUATE THE RISKS?

Some risks are going to be more significant than others. In order to decide which ones require strategic input and potential resources, you need to be able to classify them in some way. To evaluate each risk, you need to have some form of scoring mechanism that enables you to identify which risks are more significant than others.

It is important to understand that it is not always the most catastrophic events that are of most significant. For example, if you own a care home, the impact of a fire in that home is likely to be significant and do lasting damage to the charity. But the chances of this happening are probably very small with modern fire alarm systems and people being aware of the potential causes of fire. On the other hand, if you had a member of staff who was routinely claiming an extra hour of overtime that they have not done, this could be viewed on an individual basis as insignificant. However, if that same member of staff was doing it 365 days a year, every year, the sums involved might add up considerably over the years and in reality it may be better to put in place systems to stop this type of fraud as opposed to installing your own on-site fire men and fire engine.

The way in which you evaluate the risks you have identified therefore needs to give a measure that ensures that repeated moderate risks are, perhaps, as significant as the one-off natural disasters.

One way to measure risk, as outlined in the Charity Commission guidance, is to score it using the following approach:

Score = (Impact x Likelihood) + (Impact)

You take each risk and allocate it a score for the potential impact and a score for the likelihood of it actually happening, using one – five as your scoring range. By adding back in the score for the impact, this gives a weighted score that accurately reflects the risk.

The Charity Commission in its guidance (CC26) suggest applying the score using the following criteria:

IMPACT	SCORE	IMPACT ON SERVICE AND REPUTATION
Extreme/ Catastrophic	5	<ul style="list-style-type: none"> • Service interrupted for significant time • Major adverse publicity not avoidable (national media) • Major litigation expected • Resignation of senior management and board • Loss of beneficiary confidence
Major	4	<ul style="list-style-type: none"> • Service disrupted • Adverse publicity not avoidable (local media) • Complaint probable • Litigation probable
Moderate	3	<ul style="list-style-type: none"> • Some service disruption • Potential for adverse publicity - avoidable with careful handling • Complaint probable • Litigation probable
Minor	2	<ul style="list-style-type: none"> • Slight impact on service • Slight impact on reputation • Complaint possible • Litigation possible
Insignificant	1	<ul style="list-style-type: none"> • No impact on service • No impact on reputation • Complaint unlikely • Litigation risk remote

By way of example:

If you run a care home, the impact of a fire in the care home would be catastrophic, so you could give a score of 5. However, the likelihood (assuming your home is run to modern standards) of a fire is remote, so you could give a score of 1. This would provide an overall score of:

$$\begin{aligned} \text{Score} &= (\text{Impact} \times \text{Likelihood}) + (\text{Impact}) \\ 10 &= (5 \times 1) + (5) \end{aligned}$$

producing an amber risk.

Alternatively, you might decide that there was a risk that members of staff would potentially commit low level fraud in relation to their overtime. The effect of this would probably be minor in isolated instances, so a score of 2. However, the likelihood might be considered to be highly probable, so a score of 5. This would provide an overall score of:

$$\begin{aligned} \text{Score} &= (\text{Impact} \times \text{Likelihood}) + (\text{Impact}) \\ 12 &= (2 \times 5) + (2) \end{aligned}$$

producing an amber risk.

So, potentially both risks should be treated in the same way.

Q. | HOW SHOULD WE DEAL WITH THE RISKS WE HAVE IDENTIFIED?

As charity trustees, you need to decide upon the appropriate parameters for risk, as far as your charity is concerned. What is your appetite for risk? Not all risks are negative, sometimes you need to accept the fact that there are risks associated with a particular course of action, but proceed in any event, as the potential outcome will be worth it. Taking the simple example of crossing the road, if you were ultra-cautious, you would only ever cross a road using a bridge or a subway, but this would make life very difficult. Alternatively, if you had a high tolerance to risk, you would just run across a road whenever you needed to get to the other side, but this is highly risky.

Once you have agreed on your appetite for risk, you then need to consider how to deal with each identified risk, within those parameters.

There are broadly four ways to deal with any risk that has been identified (the four T's approach):

Treat

Take proportionate action to either reduce the likelihood of the outcome occurring, or to minimise the impact of it actually happening.

For example: if you are carrying out building work on one of your sites you might want to prohibit access to members of the public during the building work, or you might want to provide them all with hard hats whilst in the vicinity.

Tolerate

Accept that there is a risk that the event will occur, but accept that it is a fact of life which, within appropriate parameters, can be tolerated;

For example: if you operate a care home, it is likely that from time to time members of staff will be off sick, which may mean you have insufficient permanent staff on duty. Provided you still meet the required minimums this may be tolerated.

Terminate

Simply decide to stop carrying out the activity so that the risk goes away;

For example: if you have a community living in a property that is dilapidated, dangerous and very costly to repair, you may decide to simply sell the property and move the community elsewhere.

Transfer

Transfer the risk to a third party (e.g. outsourcing) or transfer the consequences of the risk to another (e.g. insurance).

For example: if you own a care home, if you are concerned that you are unable to cope with the consequences of having to comply with current legislation, you might outsource the operation of the care home to a third party management company. If you are concerned about the risk of fire in your properties, you are likely to take steps to transfer the risk to an insurer by taking out appropriate insurance.

Whatever action you decide to take, it should be proportionate. It is therefore worth considering the financial impact of potential risks. For example, if there is a risk that something may happen very infrequently and the impact will be minimal, there is little point spending vast sums of money on putting in place safeguards to prevent the event from ever occurring. You would not spend £1 million to prevent losing £10. Sometimes it is acceptable to simply decide to do nothing.

You should also decide who will be responsible for “owning” each of the identified risks. Who will take the appropriate actions needed to monitor and put in place appropriate responses?

You should also consider whether it may be appropriate to have a disaster recovery policy or a business continuity plan, which outlines the steps you would take in the event of a significant major disaster or catastrophe.

Q. | HOW SHOULD WE RECORD THE POLICY?

You should set out the charity’s risk management policy in an appropriate document.

This should have an introduction setting out:

- The charity’s approach to risk, and the importance the charity trustees place on this issue
- The parameters applied by the charity, i.e. is it accepted that some risks are unavoidable

- Who has overall responsibility i.e. the superior, the councillors, the charity trustees etc.
- Whether any lay staff have particular responsibility
- The fact that staff and volunteers should not engage in any types of activity that the trustees might not be aware of, without having first consulted with the charity trustees and carried out an appropriate risk assessment
- A reminder of the obligations to make a serious incident report to the Charity Commission

The second part of the policy should be a risk register, listing the various risks and the action you intend to take to manage those risks. This can be done in any format that you consider appropriate, as an example you may wish to consider the following format:

Section: Governance and Management

Risk	L	I	S	Responsibility	Monitoring	Controls/ Actions taken	Action Planned
Trustees lack appropriate skills	3	3	12	Trustees	Superior	Trustees to complete a skills audit Superior to ensure that appropriate professional advice is provided to fill gaps	Identify future individuals with appropriate skills to join trustee board

The policy should also contain a clear review date so that it is immediately apparent when it was last reviewed and when it is due to be reviewed again. You may want to include review dates for individual actions. In some cases you may wish to refer to other documents. For example, in the section dealing with financial risks it may be appropriate to refer to internal financial control or budgeting documents.

Q. | HOW OFTEN SHOULD WE DO THIS?

Risks change over time. Twenty years ago you would not have considered the potential risks of computer viruses, internet usage and social media, now that could be a significant risk. Over time your attitude to risk may change and you may decide that this has a strategic impact on the charity's activities. For example, you might decide that the risks involved in operating a school or a care home were such that you withdraw completely from that activity. This would require a fundamental change to your risk management policy.

Also, as you implement the changes you have identified to deal with each of the risks, this may over time change the potential impact and likelihood of these issues occurring, so scores will need to be adjusted which may alter priority.

You need to consider as part of your policy how often you should carry out a review. In some cases it may be sufficient to review the position annually, but in other cases it will be necessary to do this on a far more regular basis. For example, if you are involved in a construction project, you are likely to want to review the associated risks possibly weekly or monthly.

External factors change as well. For example a one-off political event may occur that has an impact which needs to be managed. Waiting a year to take appropriate steps in response would simply be too long.

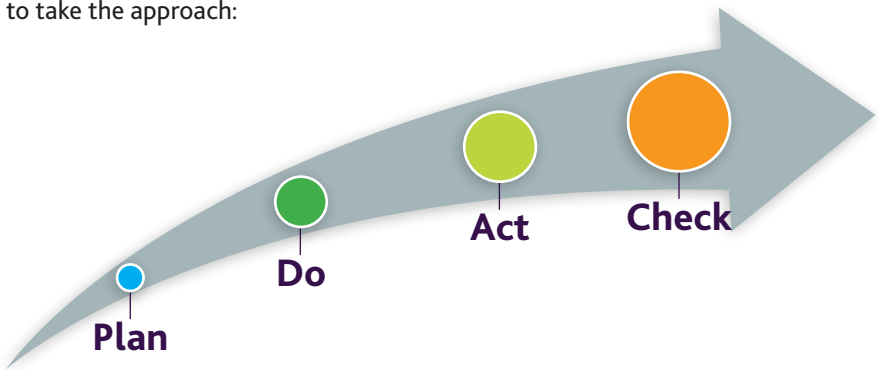
It is good practice to carry out a review of the risk management policy on a regular basis, and for this to be a standing item, at least at say, two charity trustee meetings a year. Above all, remember that the policy is a "living" document that should be updated and changed on a regular basis.

Q. | IS HAVING A POLICY ENOUGH?

It is certainly not enough to have a policy that is simply kept in a drawer. As mentioned above, it is important that the policy is reviewed on a regular basis and updated.

It is also important that the policy is communicated to staff, volunteers and members of your communities so that they know and understand what is being done and what is expected of them. It is important to check that it is actually being followed and implemented where appropriate.

The Health & Safety Executive (HSE) urge all charity trustees to take the approach:



Q. | WHAT IF WE HAVE MISSED SOMETHING?

There are always “Black Swan” events, i.e. the unknown unknowns that emerge as potential risks. There will always be something that happens which you have not considered or could not have considered. Look back over the past 12 months, have things happened that you did not expect?

When something unexpected happens, do not panic because it wasn't covered in the policy. Once the event has been dealt with make sure you learn the lessons from the process. Communicate with appropriate members of staff and volunteers so that they understand what happened and how such an issue can be avoided in the future.

Q. | WHAT IF AN EVENT HAPPENS?

The fact that you have identified a risk and included it on the risk register, does not mean it simply will not happen! If it happens, then it reinforces the reason why you included it on the register. However, if it happens and it is clear you had identified the risk, set out the action to control the risk but then never implemented the actual actions, this may be problematic.

If an event occurs, then it is likely to fall into the category of a serious incident, and should be reported to the Charity Commission in the usual way. If the incident involved, or could result in, a significant loss of funds or a risk to your property, work, beneficiaries or reputation then this should be reported to The Commission immediately.

When making a serious incident report to The Commission, you will need to outline what steps you have taken to prevent the incident occurring, or to prevent it occurring again in the future. If you have a clear outline of planned action in your risk register, then you will be able to refer this to The Commission and be able to show that not only was the risk anticipated, you had taken planned corrective action to prevent it happening, but it happened anyway.

Q. | ARE THERE ANY ISSUES FOR ME PERSONALLY AS A TRUSTEE, IF A CLAIM IS BROUGHT AGAINST THE CHARITY?

Potential claims will fall into one of two main categories, civil claims and criminal claims. The extent to which trustees are involved depends upon how your charity is structured.

TYPE OF CLAIM	UNINCORPORATED	INCORPORATED	INSURANCE
Civil claim e.g. negligence, personal injury, breach of statutory duty, employment related, contractual	Trustees are personally liable on a joint and several basis, but in most cases they are entitled to be indemnified out of the assets of the charity (provided they are sufficient to cover the claim)	Trustees are not personally liable, claim is brought directly against the charity itself	Liability for civil claims is normally covered by insurance e.g. Employers' Liability Insurance, Public Liability Insurance etc.
Criminal claim e.g. prosecution for criminal offences, regulatory breaches and health and safety offences	Trustees who are responsible for or complicit in the incident (or who should have had responsibility) may be prosecuted. Individual employees/members of the religious institute may also be liable. Fines imposed cannot be paid from the charity's assets	Prosecution can be against the charity itself, the trustees who are responsible for or complicit in the incident (or who should have had responsibility). Individual employees/ members of the religious institute may also be liable	Legal costs of defending successful claims may be covered by insurance. Fines resulting from prosecutions would not be covered by insurance

As an example in relation to potential criminal proceedings, Section 91 of the Health and Social Care Act 2008 provides:

"If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to any neglect on the part of: (a) any director, manager or secretary of the body corporate; or (b) any person who was purporting to act as such (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly."

Q. | DO WE NEED A SEPARATE HEALTH AND SAFETY POLICY?

If you have five or more employees, you are required (like all businesses) to have a written health and safety policy (Management of Health and Safety at Work Regulations 1999). In addition, the charity trustees are required to assess the risks to employees and people affected by the charity's activities and ensure that they have arranged for the effective planning, organisation, control, monitoring and review of preventative and protective measures.

The policy does not have to be complicated or time consuming to prepare. The HSE have provided template documents that can be downloaded and used (see the further reading notes below).

The health and safety policy should be in addition to (or a sub-set of) the risk management policy in place for the charity. Not all aspects of the risk management policy will relate to health and safety issues.

Other policies to consider that may be relevant:

- Disaster Recovering Policy
- Health and Safety Policy
- Financial Controls & Budgets
- Safeguarding
- Social Media Policy
- Skills Audit Policy
- PR & Media Policy

DATA MANAGEMENT (OR WHAT EXACTLY IS THE DATA PROTECTION ACT ANYWAY?)



“In God we trust. All others must bring data.”

INTRODUCTION

Your organisation will be dealing with different types of personal information for different purposes, and in different ways. From the names and email addresses of your trustees, to details of the members of your institute, right through to information about supporters or attendees on a retreat, and residents in a care home – all of this information has to be dealt with in accordance with your obligations under the Data Protection Act 1998 (**DPA**) and the General Data Protection Regulation (**GDPR**). As with many other areas in this handbook, this does not mean that you need to know the day to day details of how the institute complies with the DPA and GDPR. However you do need to be confident that your employees and members all understand their obligations, and you are able to demonstrate that you have checked this. The buck most certainly stops with you, and so you need to be confident that you understand what is needed, and what is needed is being done!

This chapter is split into sections, looking at some of the key areas that you need to understand in relation to the legislation. Your main responsibilities will be to put in place the right policies and make sure they are fit for purpose, and to check that those responsible for handling personal information know what their obligations are, nevertheless, you need to know about the following so you know what they need to know...

Q. | WHAT IS COVERED BY THE DPA?

The short answer, is that it only applies to **personal data**.

Personal data (referred to as personal information in the rest of this chapter), is information which can identify a living individual, either on its own, or when added to other information held by the person to whom you are disclosing information.

The latter part of the definition means that you have to take into account the context of the information that you have, when you decide whether it is personal information or not. Where you have, for example, a generic name such as “John Smith”, this is not personal information unless there is some other information available which can narrow it down to a particular John Smith. If

the name appeared in a list of donors, for example, it would not be personal information, but if in a list of members of your institute (such as an internal address book), it might, if you would be able to identify the individual John Smith through other information publicly available, such as from the phone book, where you could search by name and location.

Sensitive personal data is a further sub-set of personal information, over which there is special protection. This is known as a "special category" of personal information under GDPR, and includes (amongst other categories):

- The racial or ethnic origin of the individual
- The individual's political opinions
- The religious beliefs or other beliefs of a similar nature of the individual
- Whether the individual is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992)
- Information relating to the health of the individual
- Their sexual life – including sexual orientation
- The Commission, or alleged commission, by the individual of any offence, or any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings

The fact that an individual's religious beliefs are sensitive personal information is particularly important, because association with a religious institute can, effectively, disclose the religious beliefs of an individual. What this means in practice is that you need to make sure that you have explicit consent from individuals to any public association with the institute – otherwise you are potentially in breach of the first data protection principle, because you will not be able to meet a condition in Schedule 3 of the DPA (to become Article 9 GDPR). Those individuals who are members of the institute will, by entering into their vows, have expressed a public declaration of their association with the institute. However, members of staff who work for your institute would not be treated as having made such a public declaration and you should therefore be careful of doing anything to suggest what their particular religious beliefs may be. This is true unless they have given their consent, the information is already public because of actions taken by that individual, or you are only using the information within the institute and not disclosing or making public yourselves.

Q. | DOES THIS APPLY TO PAPER DOCUMENTS?

Yes, the definition of “data” includes information that is “recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system”. Depending upon how well organised your manual records are, they may fall into part of a “relevant filing system”, but each situation has to be looked at on the individual facts. As a rule of thumb, if you have some sort of recognised filing system, where someone without any prior knowledge of the system could access information relating to a particular individual, then any manually held records in that filing system will be covered by the DPA.

Q. | WHO IS RESPONSIBLE FOR COMPLIANCE WITH THE DPA?

You are!

The question is slightly more complicated under the legislation, as it depends upon who is the “data controller”. The data controller is the organisation that controls what happens to any personal information that is held. It is not an individual within the organisation, and although some organisations do have a named individual, it is the organisation as a whole that is responsible (meaning, for your purposes, the trustees).

There can be more than one controller for the same set of information, and the “control” can be as simple as deciding what to collect, or to whom it should be disclosed. You will be a data controller for any personal information that you hold and use, but be aware that you may also come to be a data controller in respect of information shared with you by others (for example social services and other statutory agencies). Where this occurs, you are responsible for ensuring that information is secure and kept in accordance with the principles set out below.

Q. | DO WE NEED TO REGISTER WITH THE INFORMATION COMMISSIONER?

Prior to 25 May 2018

Yes, as a data controller, you need to be registered with the Information Commissioner's Office (ICO). There is an exemption from registration if you are a not-for-profit organisation, which only deals with personal information for the purposes of establishing and maintaining a membership, supporting the institute, or providing or administering activities for members or those who have regular contact with the institute. More detail is available here:

<https://ico.org.uk/media/1567/exemption-from-registration-for-not-for-profit-organisations.pdf>

As most institutes engage with the public, it is likely that you will need to register with the ICO.

If you are exempt from registration (notification), you **still have to comply with the rest of the DPA**, and can choose to voluntarily register if you want to.

(All users of CCTV systems must register with the ICO, even if you do not make any other use of the data.)

The current fees payable annually for registration is £35 for charities, regardless of size or turnover.

Post May 2018

The situation is less clear. The GDPR removes the requirement to register entirely, but the UK has enacted specific legislation which means that we might re-instate the requirement. At the time of writing, this hasn't been decided either way.

Q. | HOW DOES THE ORGANISATION COMPLY WITH THE DPA?

Principally, by ensuring that you are compliant with the data protection principles which form the core of data protection legislation. These are, essentially:

1. Personal information must, at all times, be dealt with in a way that is fair, and transparent, and meets one of the specific conditions laid out in the

legislation – for sensitive personal information, those conditions are more stringent, as you would expect

2. Personal information shall be obtained only for one or more specific and lawful purposes
3. Personal information shall be adequate, relevant and not excessive in relation to the purpose(s) for which they are processed
4. Personal information shall be accurate and where necessary kept up to date
5. Personal information should be kept only as long as it is needed
6. Personal information shall be processed in accordance with the rights of data subjects
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data
8. Personal information shall not be transferred to a country outside the EEA (European Economic Area), unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data

Q. | WHAT RIGHTS DO INDIVIDUALS HAVE IN RELATION TO THE DPA?

The principle right that individuals have, is the right of subject access – which is the right to request copies of all personal information that you hold about them. This information has to be provided within 40 days (30 from the 25 May 2018), unless a specific exemption applies to that information. As trustees, you should ensure that you have a process in place for dealing with such requests. Ideally, a named individual will deal with them when they are received, and you should have in place a mechanism to review any decisions made, which will usually involve a review by trustee.

Individuals have other rights under the DPA – including the right to stop you doing anything with their personal information that is causing them damage or distress. New rights under GDPR include a right to have incorrect information amended, a right to have all information relating to an individual removed from the organisation, and a right to have copies of information in a format that is easily transferrable. You should ensure that you are aware of these rights, and could deal with a situation should it arise.

Q. | WHAT HAPPENS IF I EMPLOY A THIRD PARTY TO DO SOMETHING WITH PERSONAL INFORMATION ON MY BEHALF?

If you employ a third party to do something with personal information on your behalf, but they have no rights to use the information other than in the manner set out by you, it is a legal requirement that you have a written agreement in place, and that agreement has to include certain, specific clauses. For example, if you use a mailing house to send out regular mailings to your donors or contacts. This is known as a data processing arrangement, and you need a data processing agreement in place to do this.

This is particularly important if you use IT consultants to carry out work for you and they have access to your IT systems and the data held on them, as this may be a processing arrangement and require a processing agreement.

Q. | ARE THERE ANY AREAS WHERE WE NEED TO BE PARTICULARLY CAREFUL?

If you are using any cloud software, you need to be particularly aware of the seventh and eighth data protection principles, which state that you must ensure adequate levels of security, and you cannot send personal information outside of the EEA without equivalent legal protections being in place.

In terms of security, you need to be confident that your cloud provider provides adequate and reasonable security. It is essential that you have someone on board who understands some of the more technical aspects of cloud computing, as you are responsible for ensuring that the information you store in the cloud is secure.

The ICO has been clear that a lack of understanding about IT is not a valid excuse when something goes wrong and you can be held liable for breaches if you have not taken steps to ensure that you understand your IT systems. Responsibility can mean being sued by individuals, but can also mean being fined by the ICO. Recent cases have made it clear that voluntary organisations and charities are treated in exactly the same way as commercial organisations.

Cloud providers will not necessarily guarantee that your information is stored on servers that are located in the EEA. If this is the case for the provider you are choosing, you have to be sure that the information will still have the same level of protection that it would have, if it were subject to the law of the UK. Your

provider should be aware of this requirement, and should be able to provide assurances in this regard, but again, it is vital to have someone dealing with this who you know understands the issues, and can say with some confidence that they are able to confirm to you that this requirement has been met. If you do not have anyone internally, then you should consider appointing an external expert to assist.

Q. | WHAT ABOUT CCTV?

If you are considering installing CCTV at any premises, you need to have first carried out a privacy impact assessment, which looks at the potential intrusion to the privacy to individuals in having the system, and the potential benefits. You must conclude that the benefits outweigh the potential drawbacks before you can make a decision to install CCTV.

Once up and running you need to ensure that you have plenty of signage in place to alert individuals to the fact that you are using CCTV. You should also have a policy in place that governs how the system operates – including who has access to the images.

Q. | DOES THIS MEAN WE CANNOT KEEP ARCHIVE RECORDS?

There is a distinction between operational records and historical records. Both are important for different reasons. In an ideal world you would keep all of your records as they are potentially of historical significance for the future, but this is not always possible for practical and legal reasons. The key issue is whether the records contain any **personal data**. If they do, the fifth data protection principle provides that the data should “not be kept for longer than is necessary for” the purpose for which the data was collected in the first place. Therefore, once the data is no longer necessary it should, in principle, be deleted. You should therefore review operational records on a regular basis and, when they are no longer needed, should be deleted. It is advisable to have a clear document retention policy that sets out how long certain types of records should be kept. For example, accounting records should be kept for at least seven years, whereas the notes of an interview with an individual you have not employed, probably do not need to be kept for longer than six months.

We have included details of suggested document retention periods in Appendix A.

It is important to consider, however, whether destroying documents would in fact lead to a loss of significant historical data. You should therefore bear in mind that:

- Personal data only relates to living individuals, so if the individual concerned has died the provisions of the DPA no longer apply (a lifespan of 100 years is assumed)
- The law also allows the use and retention of personal data for the purposes of “research, history and statistics”. However there are certain restrictions on how archival data can be used and, in particular, it must not be used to support future measures or decisions taken in relation to the particular individual

You should therefore ensure that any document retention policy also includes a section on how archives are maintained and managed.

You also need to remember that if you are involved in litigation in the future, there is an obligation to disclose any documentation you have that is relevant to the issues in the litigation. The moment any suspected claim is notified or an investigation is commenced, you should ensure that all original records relating to the matter are identified and stored separately until the conclusion of that process and any subsequent time period for an appeal.

Q. | WHAT ABOUT SOCIAL MEDIA, EMAILS AND THE INTERNET?

“The Church recognised that these media, if properly utilised, can be of great service of mankind, since they greatly contribute to men’s entertainment and instruction as well as to the spread and support of the Kingdom of God. The Church recognises too, that men can employ these media contrary to the plan of the Creator and to their own loss. Indeed, the Church experiences maternal grief at the harm all too often done to society by their evil use.”

Decree on the Media of Social Communications, Inter Mirifica – His Holiness Pope Paul VI, 4 December 1963

A rather prophetic statement that perhaps did not anticipate the enormous potential technical innovation that was to come. Misuse of social media, emails and the internet can lead to various problems:

- Breaches of the DPA
- Malicious software being allowed in
- Impact on the performance of staff
- Damage to your organisation's reputation

For all these reasons, it is good practice to have an acceptable use policy that explains what your organisation considers to be acceptable use of social media, emails and the internet by members of the organisation and staff. It should also make clear the extent to which use of the internet and emails by members of staff is monitored, so that there is no arbitrary intrusion into the privacy of staff.

Q. | WHAT ABOUT THE FUTURE?

The General Data Protection Regulation is EU law, and already technically applies in the UK. Because of the changes required, the EU gave all organisations two years to implement the necessary changes, meaning that 25 May 2018 is the absolute deadline for full compliance. After the Brexit referendum, there was a period of uncertainty as to the applicability of the new legislation, but at the time of writing, the timetable for exit means that the regulation will come into full effect whilst we are still members of the EU. The UK Government have, at the time of writing, published a new bill to bring the GDPR into full UK law, so we are still working on the basis that the GDPR has to be complied with before May 2018.

The main changes about which you need to be aware are set out and explained further below:

- Focus on accountability and transparency
- Change to definition of consent
- Need for privacy impact assessments
- Legal requirements for policies
- Right to be forgotten

Focus on accountability and transparency

One of the key amendments to the law is in the change in focus to accountability and transparency. What this means in practice, is that organisations have to be able to prove that they comply with the law, and the only way to do this is to ensure that all your records are detailed, and up to date.

You may also need to think about the way in which you record certain information – such as when someone consents to you having and using their information. It is no longer enough just to comply with the law – you have to be able to prove it as well. Looking at the records that you currently have and where these might be improved, is something that you should be looking at now, to give you time to implement changes needed before May 2018.

Change to definition of consent

Under the current law, “consent” bears its natural meaning, but under GDPR, for consent to be valid, it must be specific, informed, freely given and unambiguous. Whilst this does not necessarily mean that you cannot continue to rely upon implied consent, it is worth looking at when you rely on consent and how you obtain and record that consent, so that you could show, if asked, that you meet those conditions.

Need for privacy impact assessment

Where you are doing something with personal data where there might be a risk to the individual, you are now required to carry out a “Privacy Impact Assessment” or “PIA”. This is simply a question of balancing the benefits of what you want to do against the risks to the individual and setting out any steps you are taking to mitigate or lessen those risks. This should be done before you put in place the new, riskier action and needs to be in writing and kept so that you can meet the accountability requirement above.

Legal requirements for policies

Data controllers will have to have a data retention policy in place and a data breach notification policy before May 2018. A data retention policy just needs to set out the categories of data that you have and how long you intend to keep them. There is no magic formula to this – some records you will be required to

keep for a certain length of time, but as long as you can justify it, you can keep the records for as long as you want to.

A data breach policy just needs to set out the procedure if there is any kind of breach of the data protection legislation. It needs to specify to whom any breach needs to be reported and what happens next. When putting this in place, you need to bear in mind that if you have to report the breach to the ICO, it has to be done within 72 hours, so initial action will need to be taken quickly.

Right to be forgotten

There is a new right under GDPR to ask to be forgotten by an organisation that holds your details. There are exceptions to this, such as where you hold records for historic or archive purposes, but it is worth being aware that the right exists, should you ever be asked to “forget” someone, and make sure that you have systems in place to be able to delete extraneous information if asked.

Q. | WHAT ABOUT THE FUNDRAISING REGULATOR AND FUNDRAISING PREFERENCE SERVICE?

If you are fundraising from the public, you need to be aware of the Fundraising Regulator’s Code of Practice, and follow this as closely as possible when carrying out your fundraising. In particular, you need to be sure that you have the necessary consent to contact individuals about fundraising, bearing in mind the requirements of the GDPR and the Code of Practice.

The Fundraising Preference Service is a mechanism for individuals to request that a charity stop all communications with them. If an individual wishes to stop hearing from your institute, the regulator will let you know and you must then take steps to ensure that you no longer contact that individual.

Q. | DOES THE FREEDOM OF INFORMATION ACT 2000 APPLY TO US?

No, the Freedom of Information Act 2000 is about promoting open government and therefore the obligations under that legislation only apply to public authorities. However, if you are carrying out services on behalf of a public authority (for example providing care services to local authorities)

aspects of the work you do may fall under the provisions of the legislation and any information you provide to the public authority would be caught.

Useful websites

www.ico.org.uk - is the regulator's website, where you can find guidance for organisations, and a helpline.

www.fundraisingregulator.org.uk - is the fundraising regulator's website, where you can find the Code of Practice on fundraising, and details of the Fundraising Preference Service.

Data protection policy checklist

There are a number of policies that you should consider having in place that relate to personal information. A data protection policy will be the main source, but DPA compliance will also come into CCTV, data retention and ICT. In terms of the data protection policy, you should cover:

- The categories of personal information that you collect
- The categories of uses to which you are likely to put the information you collect
- How you comply with the principles
- How you comply with subject access requests/other individual rights under the DPA
- What you do in the event of a breach, including the specific requirements of the GDPR
- A list of possible disclosures. This will never be exhaustive, but list the main/regular ones
- How to deal with a request from a third party for information

The most common mistake made in a policy like this, is to say "we will never release your information to a third party without your consent". Whilst in the normal course of events this may be true, if the police come knocking and request information, you are likely to pass this on without seeking the consent of the individual, so never limit yourself. If you must use that phrase, say "Unless exceptional circumstances apply, we will never disclose your information to a third party without your consent."

Other policies

Data retention

A requirement under GDPR, you need to set out the categories of information that you hold and the length of time that you intend to keep that information. This does not need to be very detailed, but should give a clear indication to any individual how long their information will be kept.

CCTV

This policy should cover where cameras are sited, who has access to footage, where footage is stored, for how long footage is kept and how individuals can request access to that footage.

ICT/social media

You will be using and storing personal information on your IT systems, so any IT policy should refer to the data protection implications of this, and as a minimum, should set out what security requirements you wish to impose. As an example, you may want individuals to change their password on a regular basis and not to give that password to anyone else.

Social media policies will also need to set out what is and is not acceptable use of social media, in terms of the individual's role, and may need to refer back to your data protection policy.

AN INTRODUCTION TO THE MENTAL CAPACITY ACT FOR RELIGIOUS COMMUNITIES



Many religious communities have an ageing population and encounter the same issues as the rest of society when caring for frail members of their community. However, for religious communities when a religious lacks capacity or is in ill health, these problems are often exacerbated due to a lack of understanding amongst outside agencies such as the medical profession, and even in some cases families, about what it means to be a member of a religious community and how the religious would want their wishes to be fulfilled. Because of the unique relationship between the religious and the other members of the religious community, the key issue for a religious is to ensure that their wishes take precedence and remain consistent with their religious beliefs and vows. This can be achieved by using the provisions of the Mental Capacity Act 2005.

Q. | WHAT ABOUT "NEXT OF KIN"?

It is important to understand that, under English law, the term "next of kin" has no legal meaning. Individuals are often asked to nominate their next of kin when admitted to hospital or registering with a GP but such a nomination actually confers no legal rights or responsibilities. It merely enables someone to be notified in the event of a medical emergency. Medical professionals will, if appropriate, take into account the views of the next of kin when making decisions on behalf of the patient. However, the next of kin cannot make decisions regarding medical care and cannot override any previously stated decisions of the patient.

Q. | WHO MAKES THE DECISIONS IF SOMEONE IS UNABLE TO DO SO THEMSELVES?

If a person lacks capacity, decisions must be made on their behalf. Such decisions can range from everyday choices about what a person wears and what they eat, to more fundamental issues about how their money is invested or spent, where they live and what medical treatment they receive. If the incapacitated person has appointed an attorney or if the Court of Protection has appointed a deputy to make decisions on their behalf then the appointed representative will be able to make the decision in question. If there is no-one appointed then the professionals involved in that person's care will have to come together to make a decision in accordance with the terms of the Act. The Act came into force in October 2007 and provides a framework and guidance for those making decisions on behalf of someone who lacks capacity to make

their own decisions to ensure that the individual's wishes which have been stated are safeguarded and upheld.

In the context of religious communities, the provisions of the Act can be used to ensure that the wishes of a religious can be fulfilled in a care or medical environment.

All religious communities should take care, when an individual religious loses capacity, to understand who has authority to speak on behalf of the religious and, where appropriate, take professional advice if there are concerns. If the religious has not appointed someone to speak on their behalf, then the religious community cannot automatically assume that role falls to the religious community. In some rare cases it may be necessary to apply the provisions of the Act and appoint an independent advocate to speak on behalf of the religious (for example when making major life changing decisions such as deciding to put the religious into care).

Q. | HOW ARE DECISIONS MADE?

The Act provides that whenever a decision is made for someone else who lacks capacity, there are five main principles that must be followed:

Principle one

It should be assumed that everyone has capacity to make his or her own decisions, unless it is proved otherwise.

Principle two

A person should have all the help and support possible to make and communicate their own decision before anyone concludes that they lack capacity to make their own decision.

Principle three

A person should not be treated as lacking capacity just because they make an unwise decision.

Principle four

Actions or decisions carried out on behalf of someone who lacks capacity must be in that person's own best interests.

Principle five

Actions or decisions carried out on behalf of someone who lacks capacity should limit that person's rights and freedom of action as little as possible.

Q. | WHAT IS MEANT BY BEST INTERESTS?

The Act sets out several factors which must be taken into account when deciding what is in someone's best interests. These include:

- The person's past and present wishes and feelings, and in particular any relevant written statement made by them when they had capacity; and
- The person's beliefs and values that would be likely to influence their decision if they had capacity (which can include religious beliefs)

The decision maker must also take into account, if practicable and appropriate to do so:

- The views of anyone named by the person as someone who should be consulted
- Those who are engaged in caring for the person or are interested in their welfare; and
- The donee of a Lasting Power of Attorney

This means that those who are making decisions on behalf of members of religious communities, should not simply be consulting that individual's family or next of kin. In fact, there is no reference to family members under the Act. The importance for the decision maker is to consider what is in the best interests of the person concerned and, in particular, the views that may have been expressed by that individual at a time when they did have capacity or the person of persons that they may have appointed to speak on their behalf. Considering the views of those interested in the person's welfare is a crucial part of deciding what is in that person's best interests. If members of a religious

community give advance thought to how they want decisions made on their behalf should the need arise, it is possible to avoid many of the complications that arise if no advance planning has been carried out.

Q. | HOW CAN THE PROVISIONS OF THE ACT BE USED TO PROTECT A RELIGIOUS' WISHES?

There are three main ways in which a member of a religious community can provide for their views to be taken into account should the situation arise:

1. By authorising named individuals to act in their best interests under a "Lasting Power of Attorney"
2. By deciding in advance what medical treatments they may wish to refuse, by using an "Advance Decision" (or "Living Will"); and
3. By making known their views and identifying the key people that they want to be consulted as part of any decision making process using an "Advance Statement"

Q. | WHAT IS A LASTING POWER OF ATTORNEY?

A power of attorney is a document which allows one person (the donor) to appoint one or more individuals (the attorney(s)) to make decisions on their behalf and can apply in many contexts.

Lasting Powers of Attorney are a particular type of power of attorney that allow individuals to appoint others to make decisions for them about key issues even when they lack capacity to make decisions for themselves. There are two types of Lasting Power of Attorney (LPA) introduced by the Act:

1. Property and Financial Affairs LPA; and
2. Health and Welfare LPA

The Property and Financial Affairs LPA allows someone to appoint attorney(s) to deal with their financial affairs. In the context of religious communities, the need to deal with financial affairs may be of lesser significance. However, in some cases the religious may have assets of their own or patrimony that they need to be administered in the event that they lose capacity and may wish to

consider a Property and Financial Affairs LPA. One key aspect of the Property and Financial Affairs LPA is that the chosen attorneys can be given authority to act with the donor's consent while they still retain mental capacity but perhaps need more physical support in managing their affairs which can make this type of LPA very useful.

The Health and Welfare LPA allows an individual to appoint an attorney(s) to make decisions about their health and personal welfare issues, such as where they live, day-to-day care or having medical treatment. If the donor so chooses, this authority can extend to making decisions about the giving or refusal of consent to life-sustaining treatment. Attorneys appointed under a Health and Welfare LPA can only act if it is established that the donor does not have the mental capacity to make the decision in question.

Q. | WHO CAN BE APPOINTED AS AN ATTORNEY?

The main drawback, for members of a religious community, is that it is necessary to appoint one or more named individuals to act as an attorney, so it is not possible to appoint the holder of a particular office (such as provincial superior) to act from time to time. The donor therefore has to give careful consideration to a suitably named individual to appoint as attorney. The choice of attorney is key and for members of religious communities it may be important to ensure that they appoint someone who understands the needs and demands of religious life while at the same time maintaining the authority to respect the donor's religious beliefs and the requirements of the religious community.

It would still be possible to appoint, for example, the existing provincial superior by name to act as attorney, but this has significant drawbacks:

- The appointment would need to be updated every time the officeholder changes, by drawing up and registering a new LPA (this can be a costly exercise)
- If the LPA is not updated the person named as the attorney will have authority to make decisions when LPA needs to be used, not the current holder of the office whatever the intention may have been
- In many religious communities members are all of a similar age profile. That may lead to the donor appointing an individual to act as attorney who, due to their own health issues, loses capacity first before the donor

There are a number of options that can be considered to address this problem:

- The donor can appoint more than one attorney, i.e. two or three named individuals who can be instructed to either act jointly, or independently. It would, for example, be possible to appoint more than one member of the religious community with whom the donor lives, or appoint both a family member and a member of the religious community. This latter option would ensure that family wishes were respected while at the same time ensuring that the obligations of the religious community were honoured. Careful thought must be given whenever the donor is considering appointing more than one attorney on a joint basis as the attorneys must make all decisions together. This can cause practical issues if one attorney is unable to act or in the event that one of the attorneys predeceases the donor. Appointing attorneys to act "jointly or independently" may be a more suitable option
- The donor can appoint substitute, or replace attorneys, so that if the first named attorney loses capacity a back up can act. A number of members of the religious community could be named, in order of preference. However, it is only really practical to name two or three substitutes
- The donor could consider appointing family members or lay individuals, but then instructing that the wishes of the current provincial superior are to be taken into account (or at least provide that the officeholder is to be consulted)

Q. | WHEN CAN THE ATTORNEY ACT?

An attorney under a Property and Financial LPA can act when the donor does not have capacity and if authorised within the LPA document and if they have the donor's consent, at times while they retain mental capacity.

An attorney appointed under a Health and Welfare LPA can only act once a person has lost capacity, therefore the donor retains the ability to make their own decisions until they are no longer able to make those decisions.

Q. | WHAT DECISIONS CAN A PROPERTY AND FINANCE ATTORNEY MAKE?

Property and finance attorneys will be able to do anything the donor could have done in relation to their finance and property, provided there are no restrictions in the LPA. This might include things such as running their bank account, investing funds on their behalf, buying and selling property and paying care fees.

The attorney has very limited powers to make gifts from the donor's property. They can only make gifts to people who are related to, or connected with, the donor (including attorneys) on specific occasions:

- Births or birthdays
- Weddings or wedding anniversaries
- Civil partnership ceremonies or anniversaries
- Other occasions when family, friends or associates usually give presents

Gifts can continue to be made to charities if the donor was making regular payments, or even from time to time, but any gift must be reasonable in relation to the donor's own assets and other and larger gifts, even if undertaken for appropriate purposes (e.g. to save inheritance tax), will require the prior approval of the court.

Q. | WHAT DECISIONS CAN A HEALTH AND WELFARE ATTORNEY MAKE?

The Health and Welfare LPA document allows the donor to instruct/authorise the attorney to make all decisions about the donor's personal welfare and health care. The attorney can also be given the right to consent to or refuse life-sustaining treatment on the donor's behalf.

The LPA can include restrictions to limit the decisions the attorney is able to make, or can include conditions that an attorney must act in a certain way, e.g. must talk to a particular person before making a certain decision such as the provincial superior or other person in authority within the religious community. The donor can also include guidance to their attorney(s) about their wishes and feelings about a particular matter. Although this guidance is not binding on the attorney it can help them decide what is in the donor's best interests. Again,

for a member of a religious community it may be helpful to set out guidance on religious beliefs and the impact these have on the way that the individual wishes their care needs to be addressed. It is important to ensure that such provisions are drafted carefully, as if they are vague or imprecise they may become unworkable. While something may have made perfect sense to the donor at the time of drafting, it may mean nothing to a medical professional faced with an emergency situation.

It is not necessary to include restrictions or conditions and, if the donor has complete faith in the attorney to understand and act in their best wishes, then it is possible to give the attorney complete flexibility as to how they act and not make any provisions at all.

The attorney can only take steps to consent to or refuse life sustaining treatment if this is specifically provided for in the LPA. The attorney also cannot require particular forms of medical treatment to be given, and has to work with the medical professionals to ensure that the treatment is appropriate in their opinion. In extreme cases the medical professionals may have to involve the Court of Protection if they feel that the interests of the donor are not being followed. In some cases it may be appropriate to consult a medical professional to advise on the particular provisions to go into the LPA, especially if the donor is already suffering from a pre-existing medical condition.

Q. | HOW ARE LPAS MADE?

To make an LPA the donor and attorney have to complete a prescribed form available from the Office of the Public Guardian or through a solicitor. There must also be an independent person who provides a certificate to show that the donor of the Power understood the importance and nature of what was being done and was not pressured into making it at the time. The LPA must also be registered with the Office of the Public Guardian before the attorney can act. A fee is payable at the time of registration, unless the donor's income falls below a stipulated threshold.

Q. | WHAT ABOUT ADVANCE DECISIONS?

Advance decisions are often referred to as "Living Wills" and are a document which sets out a person's wishes regarding their future medical care or

treatment which is to be referred to at a time when the person is incapable of expressing his or her wishes.

It is a basic principle of English law that a mentally competent person can refuse medical treatment even if this is sure to lead to their death. Medical professionals have a duty to respect a competent patient's autonomy to make decisions in relation to their treatment.

An advance decision is therefore an extension of this principle. It is a decision to refuse treatment taken at a time when the individual is mentally competent to take effect at a time in the future when he or she is no longer mentally competent. It is not possible to demand a particular treatment under English Law. The advance decision will only come into effect when the individual loses mental capacity and can no longer make decisions for themselves.

There is no prescribed form for an advance decision. It can be oral or in writing, however, it must be in writing if it relates to the refusal of life sustaining treatment and has to state that life sustaining treatment is refused even if life is at risk as a result. The statement must be signed, dated and witnessed. The advance decision does need to be very clear as to the type of medical treatment that is being refused.

As well as refusing treatment, the advance decision can include broader general statements about a person's treatment preferences etc. These broader statements will act as guidance to medical staff when deciding what is in the person's best interests but will not be binding on them.

An advance decision is a legally binding document and cannot be ignored by medical professionals. However, it can be changed without any great formality and a simple word or change of behaviour can be enough to change its provisions. It is sensible though to ensure that any changes are in fact documented to avoid confusion.

It can be made in conjunction with a Health and Welfare LPA, but the individual has to be careful to make sure that the two are consistent as an attorney under an LPA is not bound to follow the terms of an inconsistent earlier advance decision. In addition, if the individual makes an advance decision after the LPA that is inconsistent this can also complicate matters.

As with a LPA, the advance decision cannot be used to require medical

professionals to carry out particular forms of treatment if the medical professionals, acting in the best interests of the individual, do not consider them appropriate. If the advance decision involves treatment that is necessary to sustain life, then any provisions must be in writing, signed and witnessed.

There are three main drawbacks of using an advance decision:

- There is no named individual responsible for administering the individual's wishes
- It cannot be changed once the individual loses mental capacity
- If made when the individual is not suffering from any particular illness, it is almost impossible to predict what may happen and therefore any general wording that is used may not be binding as the medical professionals may decide the individual did not actually mean it to apply in the particular circumstances that arise

An advance decision does however enable a religious to give a clear indication to medical professionals about how they wish to be treated should the need arise.

Q. | WHAT ABOUT ADVANCE STATEMENTS? HOW ARE THEY DIFFERENT?

A LPA is a complex document to put in place. Due to the power being placed in the hands of the attorney to make life changing decisions on the part of the individual, it is important to ensure that the documentation is completed correctly. Advance decisions are less complex to draw up, but as they are legally binding it is important to understand what decisions are being made.

A further, more informal alternative, is to consider making an advance statement. This is simply a statement made by the religious of their wishes and is not legally binding. However, under the Act the medical professionals should consider the wishes that have been expressed and take them into account when making decisions on the religious' behalf or that affect their care. As this is a much more informal arrangement, it can take the form of a letter or even a note in the religious' medical records.

The problem with relying on an advance statement is simply that it is not legally binding. While it will give medical professionals, family and other

members of a religious community a clear indication of the religious' wishes about their care, the medical professionals are not duty bound to follow the wishes. The medical professionals must act in what they believe to be the religious' best interests, in the absence of any binding statement to the contrary.

Q. | HOW CAN WE ENSURE THAT THE RELIGIOUS' WISHES ARE FOLLOWED?

One difficulty is that, even if the religious has been diligent and prepared a LPA or an advance decision, they cannot always guarantee that this is brought to the attention of the relevant professionals. It is therefore necessary to ensure that once the LPA or advance decision has been drawn up, it is brought to the attention of the relevant individuals. This can be by:

- Ensuring the leadership team are aware of the document
- Filing a copy with the management of any care home where the religious lives
- Sending a copy of any Health and Welfare LPA or advance decision to the religious' GP and making sure that it is noted in the individual's medical records
- Providing a copy to key family members and explaining to them the significance of the decisions that have been made and the rationale for making them

Other members of the religious community should also be aware of the provisions so that, if the need arises, they know where to locate a copy of the document so that it can be provided to the medical professionals for information. This is especially important in an emergency situation.

In addition, if a religious is admitted to hospital, it is important to bring the documentation to the attention of the medical professionals as early as possible so as to ensure that the individual's wishes are respected. In the event that the medical professionals or family members refuse to follow the wishes of the religious as set out in an LPA or advance decision, it is important to seek immediate legal advice to ensure that the religious' wishes are followed.

In situations where an LPA or advance decision has not been made, it will be much harder for members of the religious community to be involved in the

decisions about the religious' care. However, even in these circumstances, it is important to remember that the Act requires medical professionals to act in the best interests of their patients. This will include taking into account the past wishes and beliefs of a patient, including their religious beliefs and values and the views of those who are interested in their welfare. A religious therefore has a right to expect that medical professionals will act in a way appropriate to their beliefs, when they themselves lack capacity to make decisions.

If a member of a religious community is admitted to hospital, it would therefore be appropriate for other members of the religious community to make the hospital staff aware of the beliefs of the individual. However, in emergency situations where medical professionals have to act fast, there is unlikely to be time for an in-depth discussion and the lack of a simple document will probably mean that the religious' wishes are overlooked. It is worth remembering that, where an individual religious still has capacity, they are fully entitled to make it clear to the medical staff that they wish the staff to take into account the views of the members of the religious community when carrying out treatment.

Deprivation of liberty safeguards

With effect from 1 April 2009, the Act was substantively amended to provide a way to authorise the deprivation of liberty of a person, when the person is unable to consent and that deprivation is in their best interests for their care or treatment.

Q. | WHY WERE THESE CHANGES INTRODUCED?

The Human Rights Act provides universal rights to everyone. Article 5 of the Human Rights Act ensures that everyone has the right to liberty and security and that no one is deprived of their liberty by the State, without lawful justification. Under Article 5, where someone is deprived of their liberty this deprivation must be in accordance with a procedure prescribed by law.

In the case known as *Bournewood* the European Court of Human Rights (ECHR) was asked to consider the issue of deprivation of liberty. As part of their judgement they criticised the fact that there was no procedure in place in England by which a deprivation of liberty could be authorised and reviewed. As a result of the *Bournewood* case the Mental Capacity Act 2005 was amended to introduce the Deprivation of Liberty Safeguards (DoLS).

Q. | WHAT IS DOLS?

DoLS provides a procedure whereby the managing authority of a hospital or care home is able to lawfully justify depriving a patient or resident of their liberty, if they are detained for the purpose of being given care or treatment. The deprivation can be authorised for up to 12 months and the authorisation must be kept under review.

The purpose of DoLS is to protect people from being detained if it is not in their best interests, prevent arbitrary detention when other possible alternatives have not been fully considered and give the person subject to the deprivation or their representative the right to challenge a decision.

If a person is receiving care in a setting other than a hospital or care home the DoLS procedure does not apply. This means that if a person, for example, is being deprived of their liberty in their own home, the deprivation cannot be authorised under DoLS. In these circumstances the deprivation may instead need to be authorised by the Court of Protection.

Q. | WHEN IS THERE A DEPRIVATION OF LIBERTY?

There have been numerous cases where the ECHR and the courts of this country have considered the criteria that need to be satisfied before a particular set of circumstances will amount to a deprivation of liberty under Article 5.

As a result of these cases it has been established that there are three elements which need to be satisfied before there will be a deprivation of liberty.

1. Is the person objectively deprived of their liberty?

The case of *Cheshire West* sets out the "acid test" for deciding whether a person has been objectively deprived of their liberty: (1) Is the person subject to continuous supervision and control? **AND** (2) Is the person free to leave?

Unfortunately the court did not lay down a prescriptive set of criteria for establishing whether the acid test is satisfied but did set out factors which would not be relevant:

- The persons compliance or lack of objection to the living arrangements
 - The "relative normality" of the placement
 - The reason or purpose of the placement
2. Has the person refused consent to the confinement or is the person unable to consent because they lack capacity to do so?
 3. Can it be said that the deprivation of liberty is one for which the state is responsible? (state imputability) This can arise in one of two ways:
 - Direct involvement of a public authority in the individual's detention e.g. the provision of care in a care home, hospital, supported living or where the local authority helps arrange or pay for care in the persons own home
 - By violating the state's positive obligation to protect individuals against a deprivation of their liberty carried out by private persons

Q. | TO WHAT EXTENT DO "PRIVATE" ARRANGEMENTS FALL WITHIN THE SCOPE OF THESE RULES?

For there to be a deprivation of liberty under Article 5 the deprivation must be "imputable" to the State. Following the case of *Cheshire West* there has been much discussion about whether people living in a private setting with no assistance from the local authority are outside the scope of Article 5, as the State is not directly responsible for the deprivation.

As mentioned above, there is a positive obligation on the state to protect individuals against a deprivation of their liberty carried out by private persons, but there is currently no guidance as to the precise scope of these obligations on local authorities and NHS bodies.

The current feeling is that if a local authority knows or ought to know that a vulnerable adult is subject to a deprivation of their liberty by a private individual, the positive obligations under Article 5 will be triggered. This means that the local authority will need to investigate the deprivation and, if there are no reasonable measures by which the deprivation can be brought to an end, the

local authority may need to apply to the Court of Protection for authorisation for the deprivation of liberty to continue. It is likely that there will be further cases in due course considering these obligations.

Q. | WHAT HAPPENS WHEN THERE IS A DEPRIVATION OF LIBERTY?

If someone is resident in a hospital or care home and is identified as being deprived of their liberty, or at risk of being deprived of their liberty, the hospital or care home manager must consider:

- Whether the deprivation is in the persons best interests and necessary to protect them from harm
- Whether there are alternative, less restrictive care regimes that do not amount to a deprivation of liberty

If it is believed to be in the person's best interests and a less restrictive arrangement is not possible, the hospital or care home manager must apply to "the supervisory body" for authorisation of the deprivation of liberty. In England, the supervisory body is the local authority for both care homes and hospitals. In Wales, the supervisory body is the local authority for a care home and the local health board for a hospital. This authorisation will be carried out following the DoLs procedure.

If a person is deprived of their liberty in a setting other than a hospital or care home, the deprivation cannot be authorised under the DoLs procedure and an application for authorisation may need to be made to the Court of Protection.

Q. | CAN A DEPRIVATION OF LIBERTY BE CHALLENGED?

Any third party who thinks a person is being deprived of their liberty without DoLS authorisation can ask the care home or hospital to either apply for authorisation, or change the care regime so that the person is no longer being deprived of their liberty. If the care home or hospital does not do this the third party can apply to the supervisory body for an assessment of whether or not the person is being deprived of their liberty. If there is a deprivation of liberty the full assessment procedure under DoLS will go ahead.

If a deprivation of liberty has been authorised under DoLs, the person being deprived of their liberty, or a person representing them, can apply for the authorisation to be reviewed. If it is thought that the deprivation is not in the person's best interests, the supervisory body can be asked for evidence of what alternatives to the deprivation were considered and why they were rejected. Further reading on this topic can be found in Appendix D.

APPENDIX A

RETENTION OF ACCOUNTING RECORDS

One of the most frequent questions we get asked by clients is “How long should we retain our accounting records?”. This is clearly an important issue because the longer they have to be kept the more expensive it is for the organisation.

The actual period records are kept will depend on a number of factors including:

- Legal and related requirements
- Costs
- The organisation’s own need to access the document
- Historical value

Each type of document needs to be assessed separately. In the case of many types of document, it will be sufficient to keep them only for the period required by statute; others will be essential reference material in future years and the organisation might, therefore, decide to keep them longer than the period required by law.

In the tables that follow, we set out the suggested retention period for the documents most commonly held by charities and give a brief explanation of the retention period given.

Keeping the records after the company is dissolved

If the company was dissolved via voluntary striking off procedure (under Section 1003 of the Companies Act 2006), the company’s directors have the responsibility to keep its business documents for seven years after the company is struck off the register. This is necessary because struck off companies may be restored to the register within six years from the date of dissolution. It is recommended that the share register be kept for 20 years from the date of dissolution.

If the company employed people, copies of the company's employers' liability insurance policy and schedule must be kept for 40 years from the date the company was dissolved.

If a company is dissolved via formal liquidation, the liquidator will confirm how long the records should be kept. If the company is liquidated due to insolvency, the liquidator has the power to destroy, sell or otherwise dispose of the insolvent company's books, papers and records whilst acting as liquidator or trustee but this power is subject to the limitations imposed by the Value Added Tax Act 1994. A trader registered for VAT is obliged to retain certain records, as described in the HM Revenue and Customs public notice number 700, for a period of six years from their creation. Destruction of these documents without express approval from the HMRC constitutes a breach of regulatory requirements and would result in a civil penalty. These provisions continue to apply even if the trader concerned has been de-registered for VAT purposes. Special arrangement may be reached with HMRC in relation to early disposal of these records.

It should be noted that, where an obligation exists to keep the company's records for a period of time, the obligation also exists to keep those records at the registered office or a SAIL address for the same period of time.

Purchase invoices and supplier documentation

Document	Retention period	Reason for retention period
Payments cash book or record of payments made	Six years from the end of the financial year in which the transaction was made	Companies Act/ Charities Act ¹
Purchase ledger		Companies Act/ Charities Act
Invoice - revenue		Companies Act/ Charities Act
Petty cash records		Companies Act/ Charities Act and HMRC
Invoice - capital item	10 years	Companies Act/ Charities Act and HMRC

Purchase invoices and supplier documentation

Successful quotations for capital expenditure	Permanently	Commercial considerations
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¹Although the Companies Act states three years for private companies and six years for public limited companies, the Charities Act states six years from the end of the financial year in which the transaction was made.

Income/Monies received

Document	Retention period	Reason for retention period
Bank paying in counterfoils	Six years from the end of the financial year in which the transaction was made	Companies Act/Charities Act
Bank statements		Companies Act/Charities Act
Remittance advices		Companies Act/Charities Act
Correspondence re donations		Companies Act/Charities Act
Bank reconciliations		Companies Act/Charities Act
Receipts cash book		Companies Act/Charities Act and HMRC
Sales ledger		Companies Act/Charities Act and HMRC
Deeds of covenant/Gift Aid declarations	Six years after the last payment made. 12 years if payments outstanding or dispute regarding the deed	Data Protection Act
Legacies	Six years after the estate has been wound up	Data Protection Act

Tax records

Document	Retention period	Reason for retention period
Transfer pricing documents and other records supporting the company's tax return	Six years after the end of the accounting period the tax return relates to/ the date on which the enquiry period for the tax return closes	Finance Act
Records of all delivery of goods or services and of imports and exports for VAT purposes	Six years from the date the records were created	VAT Act 1994
Stamp duty land tax documents	Six years from the effective date of the transaction/the date on which tax enquiry into a return is completed or end of the period during which HRMC have power to make an enquiry into the return	Finance Act

Payroll documentation

Document	Retention period	Reason for retention period
Income tax records re employees leaving i.e P45	Six years plus current year	Taxes Management Act
Notice to employer of tax code (P6)	Six years plus current year	Taxes Management Act
Annual return of employees and directors expenses and benefits (P11D)	Six years plus current year	Taxes Management Act
Certificate of pay and tax deducted (P60)	Six years plus current year	Taxes Management Act

Notice of tax code change	Six years plus current year	Taxes Management Act
Annual return of taxable pay and tax deducted	Six years plus current year	Taxes Management Act
Records of pension deductions (including superannuation)	Six years plus current year	Pensions Act
Clock cards	Two years after audit	Audit
Payroll and payroll control account	Six years plus current year	Companies Act/ Charities Act and Taxes Management Act

Employee/personnel records

Document	Retention period	Reason for retention period
Medical records and details of biological tests under the control of Lead at Work Regulations	40 years from the date of the last entry	The Control of Lead at Work Regulations
Accident books, accident records/reports	Three years after last entry or end of investigation if later	The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
Details of medical schemes	Permanently	Commercial
Organisation charts	Permanently	Commercial
Personnel files and training records	Maximum six years after the employment ceased ²	Limitations Act 1980 and Data Protection Act 1998

Wages and salary records	Six years plus the current year	Taxes Management Act
Expense accounts/ records		Taxes Management Act
Overtime records/ authorisation		Taxes Management Act
Redundancy details, calculations of payments, refunds, notifications to the Secretary of State	Six years after employment has ceased	Data Protection Act
Life Assurance expression of wish forms	Six years after employment ceases or death	Data Protection Act
Records relating to working time	Two years from date on which they were made	The Working Time Regulations
Applications forms and interview notes (for unsuccessful candidates)	Six months to a year	Disability Discrimination Act 1995 and Race Relations Act 1976 recommend six months. One year limitation for defamation actions under Limitations Act
Statutory Maternity Pay records, calculations, certificates or other medical evidence	Three years after the end of the tax year in which maternity period ends	The Statutory Maternity Pay Regulations
Statutory Sick Pay records, calculations, certificates, self-certificates	Three years after the end of each tax year for Statutory Sick Pay purposes	Statutory Sick Pay (General) Regulations
National minimum wage records	Three years after the end of the pay reference period following the one that the records cover	National Minimum Wage Act

² Records for key senior executives should be kept permanently for historical purposes

Resident/Care Records

Document	Retention period	Reason for retention period
Short break residents	Three years after last visit	Best practice
Long term resident contracts and correspondence relating to contracts	Six years after death or discharge ³	Data Protection Act
Resident care documents	Three years after date of last entry ³	Data Protection Act
Records of complaint and investigations	Six years after death or discharge or resident, or completion of investigation if later	Best practice
Resident meeting minutes	One year	Best practice
Clinical staff unit meetings	One year	Data Protection Act
Clinical audit forms	One year	Best practice
Unit communication books and diaries	One year	Best practice
GP visit records sheets and INR fax sheets	One month	Best practice
Bath and shower temperature logs	One year	Best practice
Controlled drug register	Two years	Best practice

³ The director of care is responsible for identifying exceptional/complex cases where documents should be restrained from longer periods. These documents should be retained separately.

Buildings, plant and engineering

Document	Retention period	Reason for retention period
Deeds of title	Permanently or until property is disposed of ⁴	Limitations Act 1980
Leases	12 years after the lease and liabilities under the lease have terminated	Limitations Act 1980
Final plans, designs and drawings of the building, planning consents, building certifications, collateral warranties, records of historical interest and final health and safety file.	Permanently or until six years after property is disposed of	Limitations Act 1980
Asbestos Register and Asbestos Disposal Certificate	Permanently. Property holders required to examine the premises for asbestos or possible asbestos materials, record the location or those materials and assess the risk. These assessments are to be recorded and provided to anyone who may disturb the asbestos	Control of Asbestos at work Regulations
Hazardous substances: disposal of heavy metals and radioactive sources	Permanently	Limitations Act 1980
Plant and Machinery	Until one year after the plant and machinery is removed from the building	Limitations Act 1980

Records of major refurbishments, warranties, planning consents, design documents, final health and safety files	13 years for actions against contractors etc.	Limitations Act 1980
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⁴ Copy of title deeds should be kept for six years after disposal.

Pension records		
Document	Retention period	Reason for retention period
Details re. current pensioners	10 years after benefit ceases	Commercial
Pensions scheme - next of kin/expression of wish forms	Six years after date of death	Data Protection Act
All trust deeds and rules	Permanently	Companies Act, Commercial, Pensions Act
Trustees' minute book	Permanently	Companies Act, Commercial, Pensions Act
Annual accounts	Permanently	Companies Act, Commercial, Pensions Act
Pension scheme investment policies	12 years from the ending of any benefit payable	Companies Act, Commercial, Pensions Act
Actuarial reports	Permanently	Companies Act, Commercial, Pensions Act
Contribution records	Permanently	Companies Act, Commercial, Pensions Act

Insurance documents

Document	Retention period	Reason for retention period
Policies	Three years after lapse	Data Protection Act
Claims correspondence	Three years after settlement	Data Protection Act
Employer's Liability insurance certificate	40 years	Employers' Liability (Compulsory Insurance) Regulations 1998
Accident reports and relevant correspondence	Three years after settlement	Data Protection Act

Other documents

Document	Retention period	Reason for retention period
Trustee/director/governor minutes of meetings and decisions made as resolutions in writing	Minimum 10 years from the date of the meeting or from the date of passing a resolution in writing	Data Protection Act, Companies Act, Charities Act
Minutes of general meetings and members' resolutions passed other than at a general meeting	Minimum 10 years after the date of the meeting/resolution/decision	Companies Act, Charities Act
Contracts relating to a purchase by the company of its own shares	Minimum 10 years either from the date of completion or the date on which the contract otherwise determines	Companies Act
Directors' service contracts	Minimum one year from the date of termination of the contract	Companies Act
Annual accounts and annual review	Permanently	Data Protection Act

Major agreements of historical significance	Permanently	Data Protection Act
Investment certificates	Permanently	Companies Act, Charities Act, commercial
Health and safety records	Three years for general records. Permanently for records relating to hazardous substances	Personal injury actions must generally be commenced within three years of injury. However industrial injuries not capable of detection within that period (e.g. Asbestos) the time period may be substantially extended.
Investment ledger	Permanently	Companies Act, Charities Act, commercial
Fixed assets register	Permanently	Companies Act, Charities Act, commercial
Contract with customers, suppliers or agents, licensing agreements, rental/hire purchase agreements, indemnities and guarantees and other agreements or contracts	Six years after expiry or termination of the contract. If the contract is executed as a deed, the limitation period is twelve years	Limitations Act 1980 ⁵

⁵ Six years is generally the time limit within which proceedings founded on contract may be brought. Actions for latent damages may be brought up to 15 years after the damage occurs.

APPENDIX B

CONFLICT POLICY CHECK LIST

This is for guidance only, we recommend you take legal advice on any specific issues.

Reason for the policy

Including legal duties re conflicts and private benefits. NB: Extra requirements for companies.

Guidance on identifying conflicts of interest

- Including relevant examples:
 - Trustee sitting on boards of two charities which need to work together (trustee of RO charity also on School charity board)
 - Close family member of a trustee applies to be employed by the charity
 - Funds being spent on the building trustees are living in
 - Duty of trustees to act in the best interests of the objects of the charity of which they are a trustee and requests from the generalate for funding
 - Trustees being housed/fed by the charity of which they are a trustee, because they are members of the institute – This has long been accepted by the Charity Commission, as the trustee volunteers all his/her time to the charity. However, lavish parties can be seen as a personal benefit over what is accepted as the norm

Procedure to declare/document interests

Applicable to Current and Potential trustees

- Declaration of Interests Form:
 - A trustee's personal interests

- Interests of a person connected to a trustee
- Gift/hospitality received
- Confirmation not aware of anything not disclosed
- Agreement to declare if a conflict arises
- Annual update or sooner if necessary
- Register of Interests
 - Holds information declared above
 - Must be held compliant with data protection law

⊙ **Process for declaring conflicts**

Including:

- First item on every meeting agenda
- Err on the side of caution when declaring a conflict
- Revisit information in Register of Interests, update if necessary

⊙ **Procedure for assessing conflicts at meetings**

Including:

- Declare any conflicts
- Decide whether the conflict is serious
- Comply with any Authorisation process (if Charity Commission consent is needed you may need to postpone the decision)
- Consider if the conflicted trustee needs to leave the meeting
- Minute the procedure followed

⊙ **Authorisation requirements**

Including:

- What is authorised under the charity's governing document
- Statutory powers if relevant
- When Charity Commission consent needed

⦿ **Procedure for managing conflicts**

Including:

- What is authorised under the charity's governing document
- Statutory powers if relevant
- When Charity Commission consent needed

⦿ **Procedure for managing conflicts**

When it is necessary to step out of meetings.

⦿ **Training – internal/external**

⦿ **Procedure for monitoring/reviewing the policy**

APPENDIX C

RISK MANAGEMENT – PRACTICAL EXAMPLES

Categories of Risk:

- Governance
- Operational
- Financial
- Environmental or external
- Compliance
- Disaster planning

Examples of the risks that might be considered under each category. It should be noted that the following are examples only and the lists are not intended to be exhaustive or to be applicable in all situations.

Governance

- The charity lacks direction, strategy and forward planning
- Trustee body lacks skills or commitment
- Trustee body is dominated by one or two individuals
- Conflicts of interest
- Ineffective organisational structure
- Activities outside objects
- Loss of key staff

Operational

- Contract risk
- Project or service development

- Security of assets:
 - A dangerous/unsafe or dilapidated building
 - Computer virus or loss/corruption/theft of data and information
- Employment issues
- Health, safety and environmental

Financial

- Budgetary control and financial reporting
- Reserves policy
- Workplace reform
- Fraud or error
- Overseas donations and transfers of money abroad
- Investment policies

Environmental

- Falling vocations, ageing members and other demographics
- Public perception
- Adverse publicity
- Government policy

Compliance

- Member involved in counselling gives wrong advice
- Nursing or care staff abusing patients/residents
- Medical negligence
- Failure to seek professional advice
- Taxation

Overleaf is an example of how an extract from a risk grid for a religious institute may look in practice showing the risk, the scoring of that risk, the mitigating factors and the action points arising.

Likelihood : 1 = Low; 5 = High Impact : 1 = Low; 5 = High

Risk factor = Likelihood x impact	Score	Colour
High	17 - 25	
Medium	10 - 17	
Low	0 - 9	

Risk	Lead responsibility	Likelihood	Impact	Score
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Governance

The charity lacks direction, strategy and forward planning	Provincial council (trustees)	2	5	10
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Controls/Action taken

Action planned

- Safeguards and procedures built into congregation’s own constitution (as distinct from trust deed) including three yearly chapters
- Ensuring mission of the congregation is not overlooked
- Clear mandate from 2011 provincial chapter
- Each member of the provincial team (or trustee) assigned a specific area of operational responsibility
- Regular performance reviews and supervision of staff with key staff given job plans and targets
- Feedback from and meeting with members, beneficiaries and staff
- Financial budgets in place and management accounts of Provincial Fund and care home monitored quarterly

- Regular council/ trustee meetings
- Next provincial chapter planned for 2014
- Regular meetings with all key members of staff and next round of performance reviews scheduled for early 2013
- Financial position to be kept under review

Risk	Lead responsibility	Likelihood	Impact	Score
Trustee body lacks skills and/or commitment	Provincial council (trustees)	3	5	15
Conflicts of interest	Provincial council (trustees)	2	4	8
Ineffective organisational structure	Provincial council (trustees)	2	3	6

Controls/Action taken	Action planned
<ul style="list-style-type: none"> • Trustees encouraged to attend external training courses • Each trustees allocated a specific area of operation responsibility depending on skills and experience 	<ul style="list-style-type: none"> • Discussions continuing with generalate regarding appointing member of General council as a trustee • Trustee training by accountants in November 2012 • Consider implications of changing constitution to a company limited by guarantee
<ul style="list-style-type: none"> • Verbal declaration of interests at start of all key meetings throughout the charity • Procedures in place for standing down on certain decisions • Key staff required to complete an annual written declaration of interest form • Bribery Act policy in place and communicated to all staff and members of the congregation 	<ul style="list-style-type: none"> • Keep under review
<ul style="list-style-type: none"> • Each trustee's allocated a specific area of operation responsibility depending on skills and experience • Organisation chart and clear job descriptions for all key staff members • Regular performance reviews and supervision of staff with key staff given job plans and targets 	<ul style="list-style-type: none"> • Organisation chart to be updated • Regular meetings with all key members of staff and next round of performance reviews scheduled for early 2013

Risk	Lead responsibility	Likelihood	Impact	Score
Activities outside objects	Provincial council (trustees)	2	3	6
Loss of key staff member such as Matron of care home; key nursing staff; etc.	Provincial councillor assigned responsibility for care home	2	5	10

Operational

Onerous contracts or non-performance under a contract		2	3	6
Project or service development		2	2	4

Controls/Action taken	Action planned
<ul style="list-style-type: none"> • All new projects considered by provincial council in the light of the charity's strategic plan and trust deed • Awareness of charity's objects • Procedures in place for taking advice in cases of doubt • Systems in place to identify restricted gifts 	<ul style="list-style-type: none"> • Keep under review
<ul style="list-style-type: none"> • All key employees have contracts of employment • Three months notice required for all key staff members • Regular performance reviews and staff training programmes • Competitive salary packages offered and good working conditions • Ability of someone else to "muddle through" for a short period 	<ul style="list-style-type: none"> • Regular meetings with all key members of staff and next round of performance reviews scheduled for early 2013

<ul style="list-style-type: none"> • Clear authorisation procedures documented for negotiation, approval and signing of contracts • Procedures in place for seeking professional advice 	<ul style="list-style-type: none"> • To discuss with insurers possibility of insuring losses under certain contracts
<ul style="list-style-type: none"> • Appraise new projects in light of consistency with strategic plan and financial impact • Regular senior management meetings with care home team 	<ul style="list-style-type: none"> • To be kept under review

Risk	Lead responsibility	Likelihood	Impact	Score
Security of assets: A dangerous/ unsafe or dilapidated building		2	4	8
Computer virus or loss/corruption/ theft of data and information		2	4	8
Employment issues: <ul style="list-style-type: none"> • Employment disputes • Health & safety issues • Claims for harassment, stress, injury, unfair dismissal • Diversity issues • Safeguarding • Low morale 		3	5	15

Controls/Action taken	Action planned
<ul style="list-style-type: none"> • Repair and maintenance policies • Obsolescence and replacement policies • Health and safety procedures • Budgeting procedures 	<ul style="list-style-type: none"> • Five year plan for all properties to be finalised
<ul style="list-style-type: none"> • Insurance cover • Virus detection software in place • Password controls and regularly changed passwords • Serial numbers on all hardware and a record of them kept • Backups maintained daily and weekly backups kept "off site" • "Firewall" in place to prevent hacking 	<ul style="list-style-type: none"> • Contract with IT maintenance company to be renewed in January 2012
<ul style="list-style-type: none"> • Processes in place for recruiting staff • All key employees have contracts of employment • Three months notice required for all key staff members • Regular performance reviews and staff training programmes • Competitive salary packages offered and good working conditions • References checked as a matter of course • Mandatory health & safety training for all staff and members • Whistle blowing policy in place and communicated to all staff and members • 24 hour employment advice from HR Consultants 	<ul style="list-style-type: none"> • Regular meetings with all key members of staff and next round of performance reviews scheduled for early 2013 • Exit interviews to be introduced • Care home staff to be given updated training in manual lifting

Risk	Lead responsibility	Likelihood	Impact	Score
Health and safety issues: <ul style="list-style-type: none"> • Staff injury • Injury to members of the public 		2	5	10

Financial

Poor accounting, budgeting and financial reporting leading to decisions based on inadequate financial information		2	4	8
Over-dependency on certain income sources		2	2	4
Diminishing salary or pension income as members retire or die		4	3	12
Financial loss due to inappropriate investment policies		2	3	6

Controls/Action taken	Action planned
<ul style="list-style-type: none"> • Insurance cover • Health & safety procedures regularly reviewed • Sisters trained to provide first aid and call emergency services 	

<ul style="list-style-type: none"> • Timely and accurate budgeting monitoring and reporting • Quality staff and systems • Follow up procedures • Bookkeeper and accountant employed • Budgets in place for Provincial Fund and care home and quarterly management accounts compared to these 	<ul style="list-style-type: none"> • Sage accounts software to be updated • Refining of some systems and processes needed
<ul style="list-style-type: none"> • Diversification of income 	<ul style="list-style-type: none"> • Continual assessment of position
<ul style="list-style-type: none"> • Adequate reserves to meet sudden shortfalls • Keeping members in salaried employment where possible 	<ul style="list-style-type: none"> • Continual assessment of position
<ul style="list-style-type: none"> • Defining investment requirements and objectives and drafting a policy suitable to these • Professional advice and management • Diversification 	<ul style="list-style-type: none"> • Twice yearly meetings with investment managers • Ethical policy to be reviewed in 2013

Risk	Lead responsibility	Likelihood	Impact	Score
Fraud and error		2	4	8
Absence of compliance with income restrictions		1	3	3
Not maintaining adequate reserves		1	4	4
Transferring funds overseas		3	3	9
Workplace reform		4	2	8

Environmental/external

Falling numbers and lack of new vocations		5	4	20
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Controls/Action taken	Action planned
<ul style="list-style-type: none"> • Regular monitoring • Sound financial controls • Segregation of employees' duties • Security of assets • Authorisation limits • Insurance cover 	<ul style="list-style-type: none"> • To revisit controls over internet banking • Communities to be reminded of dangers of retaining large cash balances
<ul style="list-style-type: none"> • Systems to identify restrictions • Good financial reporting to monitor use 	<ul style="list-style-type: none"> • To be kept under review
<ul style="list-style-type: none"> • Defining and quantifying the reserves required, including for elderly members • Linking policy to investment policy to help ensure achievement of objectives 	<ul style="list-style-type: none"> • Reserves reviewed each year with accountants
<ul style="list-style-type: none"> • Written acknowledgement of receipt of monies required from recipient • Report (not necessarily financial) to be obtained explaining how funds have been applied 	<ul style="list-style-type: none"> • Visit to Africa by Provincial in 2013 to see some of the projects funded
<ul style="list-style-type: none"> • Pension arrangements in place for some staff members 	<ul style="list-style-type: none"> • Staging date to be confirmed and professional advice sought

<ul style="list-style-type: none"> • Future plans in place for • Financial security • Accommodation requirements 	<ul style="list-style-type: none"> • Twenty year projection being prepared
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Risk	Lead responsibility	Likelihood	Impact	Score
Public perception		2	2	4
Effects on reputation of adverse publicity		2	3	6
Changes in government policy		2	4	8

Compliance

Members involved in counselling gives wrong advice		2	3	6
Abuse or safeguarding issues		2	5	10

Controls/Action taken	Action planned
<ul style="list-style-type: none"> • Website undated regularly • Key members and staff provided with PR training 	<ul style="list-style-type: none"> • Website to be updated
<ul style="list-style-type: none"> • Complaints procedures in place • Procedures for dealing with the press and nominated spokespeople identified 	<ul style="list-style-type: none"> • To be kept under review
<ul style="list-style-type: none"> • Regular dialogue with professional advisers and sector bodies such as APB and CoR regarding proposed legal and regulatory changes 	<ul style="list-style-type: none"> • To be kept under review

<ul style="list-style-type: none"> • Insurance cover • Procedures with dealing with press enquiries • Regular professional training for members • Supervision of members involved in counselling • Excellent written records required to be kept 	<ul style="list-style-type: none"> • Insurance cover to be reviewed with insurers in early 2013
<ul style="list-style-type: none"> • Training given to all care staff • Procedures in place for communication with CQC and nominated person identified as key contact • Regular compliance visits/returns from CQC • CSAS membership and advice • All incidences recorded and minuted 	<ul style="list-style-type: none"> • Training refresher in early 2013

Risk	Lead responsibility	Likelihood	Impact	Score
Taxation		3	3	9

Controls/Action taken	Action planned
<ul style="list-style-type: none"> • All staff payments processed through payroll • All PAYE liabilities settled by due date • Advice sought from professional advisers on payroll and related issues • Budgets prepared and monitored for care home staff salaries 	<ul style="list-style-type: none"> • Advice to be sought on tax and VAT implications of increasing offering of hospitality and hiring of facilities to third parties.

APPENDIX D

RECOMMENDED READING

Chapter two - lay trustees and induction training

(The Essential Trustee, recommended reading can be found in Appendix D):

<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

Chapter six - investment

Charity Commission

Sales leases transfer or mortgages: what trustees need to know about disposing of charity land (CC28):

<https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land>

Chapter nine - staff and volunteers

General

National Catholic Safeguarding commission:

www.catholicsafeguarding.org.uk

Catholic Safeguarding Advisory Service

www.csas.uk.net

Disclosure and Barring Service:

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

DBS – guide to applying for criminal record checks for overseas applicants:

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

Eligibility guidance (DBS checks and barred list checks)

<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

Catholic Safeguarding Advisory Service

www.csasprocedures.uk.net

Children

Department for Education – Guidance on Regulated Activity with children:

<https://www.gov.uk/government/publications/supervision-of-activity-with-children>

Supervision guidance

<https://www.gov.uk/government/publications/supervision-of-activity-with-children>

NSPCC – including a safeguarding tool and advice about writing a safeguarding policy:

<https://www.nspcc.org.uk/preventing-abuse/safeguarding/>

Department for Education – Statutory guidance – Working Together to Safeguard Children:

<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Vulnerable adults

Department of Health – Guidance on Regulated Activity with vulnerable adults:

<https://www.gov.uk/government/publications/supervision-of-activity-with-children>

Chapter ten - risk management and health and safety

Useful websites for further reading

Charity Commission

Charities and risk management (CC26):

<https://www.gov.uk/government/publications/charities-and-risk-management-cc26>

Serious incident reporting:

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

Institute of Risk Management

Risk management for charities – getting started guide:

<https://www.theirm.org/media/1238693/IRM-charities-SIG-Getting-Started-Final.pdf>

Risk management for charities – getting started: supplementary guidance:

<https://www.theirm.org/media/1238690/charitiesGuidanceV6FINAL.pdf>

Health and Safety Executive

Health and safety made simple leaflet:

<http://www.hse.gov.uk/pubns/indg449.pdf>

Health and safety made simple:

<http://www.hse.gov.uk/simple-health-safety/index.htm>

Write a health and safety policy for your business (including templates):

<http://www.hse.gov.uk/simple-health-safety/write.htm>

Further reading on deprivation of liberty

Chapter twelve - an introduction to the mental capacity act for religious communities

- Mental Capacity Act 2005
- Mental Capacity Act 2005 Code of Practice
- The Deprivation of Liberty Safeguards Code of Practice

APPENDIX E

LIVING WILL FOR RELIGIOUS INSTITUTES

[NAME]

LIVING WILL DATED

2017

Introduction

This Living Will is a record of your instructions regarding your medical care and treatment if you are ever unable to make or communicate a decision regarding them. Our advice is that you should consider discussing it with your doctor.

This Living Will has been prepared by Stone King LLP solely for the use of that firm and its clients.

Stone King LLP accepts no liability for this document unless it is completed following legal advice from that firm.

BOX ONE – YOUR PERSONAL DETAILS

Full name	
Title	
Date of birth	
Address	
Telephone	

BOX TWO - YOUR WISHES

Record here any information which might be helpful to explain your wishes and instructions.

I am a religious Sister living under vows in a community. The community is [Name and address of the institute].

The vows I have taken include a vow of poverty. The Community is therefore responsible for my maintenance and also my welfare. It is therefore of fundamental importance to me that my wishes are respected in respect of those individuals I ask to be consulted and informed regarding my health and welfare as set out in Box G below.

I wish the Roman Catholic Chaplain to be advised if I am admitted to a hospital or a hospice.

When I am nearing death, I wish a Roman Catholic Priest to be called to administer the Sacraments to me.

BOXTHREE- DETAILS OF YOUR DOCTOR

Doctor's name	
Doctor's address	
Doctor's telephone	
I have discussed this Living Will with my doctor	YES/NO

BOX FOUR – GENERAL INSTRUCTIONS

INTRODUCTION

I would like these instructions to be acted upon if [two registered medical practitioners are of the reasonable opinion that] I am no longer capable of making and communicating a decision regarding my treatment.

INSTRUCTIONS IF I AM UNCONCIOUS AND UNLIKELY EVER TO REGAIN CONSCIOUSNESS

[I wish to be kept alive for as long as reasonably possible. Please use any relevant medical treatments to achieve this.] OR

[I do not wish to be kept alive by medical treatment. Please only give me medical treatments which will so far as possible keep me in dignity, in comfort and free from pain. I refuse all other medical treatment.]

INSTRUCTIONS IF I AM SUFFERING FROM AN INCURABLE OR IRREVERSIBLE CONDITION THAT WILL RESULT IN MY DEATH IN A RELATIVELY SHORT TIME

[I wish to be kept alive for as long as reasonably possible. Please use any relevant medical treatments to achieve this.] OR

[I do not wish to be kept alive by medical treatment. Please only give me medical treatments which will so far as possible keep me in dignity, in comfort and free from pain. I refuse all other medical treatment.]

INSTRUCTIONS IF I AM SO SEVERELY DISABLED, PHYSICALLY OR MENTALLY, THAT I WILL NEED [INTENSIVE] MEDICAL TREATMENT TO KEEP ME ALIVE, OR WILL BE TOTALLY DEPENDANT ON OTHERS, FOR THE REST OF MY LIFE

Delete one of the following statements –

[I wish to be kept alive for as long as reasonably possible. Please use any relevant medical treatments to achieve this.] OR

[I do not wish to be kept alive by medical treatment. Please only give me medical treatments which will so far as possible keep me in dignity, in comfort and free from pain. I refuse all other medical treatment.]

BOX FIVE – SPECIFIC CONDITIONS OR TREATMENTS

Put in the first column below the condition(s) from which you suffer, and put in the second column any particular medical treatments or tests which you may wish to have or which you may wish to refuse.

Please note that you do not have the legal right to demand that you receive particular treatment, but your wishes can be taken into account.

INTRODUCTION

I would like these instructions to be acted upon if [two registered medical practitioners are of the reasonable opinion that] I am no longer capable of making and communicating a decision regarding my treatment.

CONDITION	INSTRUCTIONS
I suffer from the following illness or condition:	These are my instructions regarding my treatment:

BOX SIX – ORGAN AND TISSUE DONATION

I DO	(delete if inapplicable)
I DO NOT	(delete if inapplicable)
give consent for [any part of my body]	
[the following parts of my body ...] to be removed after my death and used for therapeutic purposes	

BOX SEVEN – PEOPLE TO BE WITH ME AND TO BE CONSULTED

I would like the following person(s) to be contacted to invite them to come and be by my side if I am likely to die within a relatively short time.	
Person 1 - Full name	
Address	
Home telephone	
Mobile telephone	
Person 2 - Full name	
Address	
Home telephone	
Mobile telephone	
I would like the following person(s) to be informed of my medical condition, to be consulted and for their views taken into account in respect of any decisions relating to my healthcare if I am not able to make decisions for myself.	
Person 1 - Full name	
Address	
Home telephone	
Mobile telephone	

Person 2 - Full name	
Address	
Home telephone	
Mobile telephone	

BOX EIGHT – STATEMENTS AND SIGNATURE

STATEMENTS

I am aged over 18.

The decisions set out in this Living Will apply even if my life is at risk as a result and I give the instructions in this Living Will –

even if I may as a result be refusing treatment necessary to sustain my life, and

even if the resulting treatment or non-provision of treatment might precipitate my death.

This Living Will remains in force until I have made it clear that it has been revoked or amended.

I have read and understood the explanatory notes annexed to this document.

EXECUTION AND DATE

IN WITNESS of which this Living Will was signed and delivered as a deed on 2017

Execution if you are signing the deed yourself

SIGNED and DELIVERED as a DEED)

by [NAME])

in the presence of -) (signature)

Witness

(witness signature)

Name

Address

Occupation

BOX NINE - REVIEWS OF THIS LIVING WILL

I reviewed this Living Will on the dates set out below and confirm that at each date it remains a valid and up to date expression of my wishes and instructions.

Date	Signature

APPENDIX F

STONE KING

Stone King has a long-established reputation for providing advice to faith based organisations and we have a particular history of experience and expertise in acting for Roman Catholic charities. We have been actively involved at a national level in dealing with many issues that are relevant to our faith clients. The firm's core team of charity law specialists advising faith organisations is supported by our specialists in other departments, who advise charities in their particular disciplines. Across our national offices, the core charity law Faith Team is led by two of our partners, Tim Rutherford and Robert Meakin.



Tim Rutherford

Partner, Charity & Social Enterprise Team
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Tim works with a wide range of charities, advising across a broad spectrum of issues. He has particular expertise in acting for faith charities and has worked for a number of Roman Catholic religious institutes, Dioceses and other Catholic organisations.

Tim was responsible for the first incorporation of a Roman Catholic religious institute as a new charitable incorporated organisation in 2014 and has done many more since. He is a regular speaker at events organised by faith organisations, having spoken at events organised by the Association of Provincial Bursars, Conference of Religious England and Wales, Conference of Religious Ireland and the International Union of Superiors General, as well as chapter meetings of clients. Tim is a member of the Executive Committees of both the Conference of Solicitors for Catholic charities and the Charity Law Association.



Robert Meakin

Partner, Charity & Social Enterprise Team
Based in Cambridge and London offices
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Robert has over 25 years' experience of advising a variety of charities. He has a particular interest in faith charities and previously worked at the Charity Commission. Robert is a qualified canon lawyer, having obtained a Masters in canon law (Distinction) from Cardiff University. He has a PhD in charity law.

Robert is a frequent contributor to The Charity Law and Practice Review providing papers, particularly on issues relevant to Roman Catholic charities and the relationship between canon law and secular charity law. Robert is a trustee of several faith charities, including the Association of Church Accountants and Treasurers.



Michael King

Consultant, Charity & Social Enterprise Team

Michael has acted for faith charities throughout his extensive career and is a nationally renowned expert on charity law issues, particularly those relating to Roman Catholic charities.



Alexandra Whittaker

Senior Associate, Charity & Social Enterprise Team

Alexandra has specialised in advising faith charities for over 10 years. She is described by the legal directories as a "star associate".



Hugh Pearce

Senior Partner, Commercial Property Team

Hugh is a familiar face in the Catholic charity sector and works closely with the firm's faith clients, especially in advising on matters with a property dimension. He has a coordinating leadership role in the firm's Faith Team and is a member of the Executive Committee of the Conference of Solicitors for Catholic charities.



Vicki Bowles

Head of Knowledge Management, Charity & Social Enterprise Team

Vicki was called to the Bar in 2002 and has worked in the charity sector for many years, including for the Charity Commission. She has particular expertise in data protection and Information Law and is a member of the Charity Law Association.



Peter Woodhouse

Partner, Employment Team

Peter is the firm's lead employment lawyer for the charity Sector and has been advising on a full range of employment matters for over 25 years. He is an experienced Employment Tribunal advocate.



Sarah Clune

Associate Solicitor, Charity & Social Enterprise Team

Sarah advises charities on the policies they should have in place and on all aspects of safeguarding vulnerable groups. She is the team's Professional Support Lawyer, ensuring the team is up to date with legal developments in the sector.



Kathryn Layzell

Senior Associate, Trusts & Estates Team

Kathryn deals with all aspects of trust and estate administration, including wills and tax planning matters. She is also on the firm's Legacy Team, providing support to charities dealing with issues arising from the administration of estates.

BUZZACOTT



Amanda Francis BSc ACA

Managing Partner

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Amanda is the managing partner of Buzzacott LLP. She is a partner in the charity team and works with a wide range of charities including the diocesan clients, 40 plus Roman Catholic religious institutes and a number of Anglican Communities. She has specialised in the provision of audit and advisory services to the not-for-profit sector, and in particular faith based charities, since the early 1990s.

As well as audit, Amanda undertakes projects for clients including assisting with strategic reviews and financial forecasting, advising on reserves policies and the content of trustees' reports, the format of the annual accounts, the transfer of foundations to new charitable bodies, and many other matters. She is a member of the Buzzacott team which authored "Charity Accounting and Taxation" published by Bloomsbury Professional Publishing and presents at our client seminars as well as external conferences and events. She is a regular presenter at the Association of Provincial Bursars Annual Conference and at the Conference of Religious.

Amanda is a Governor and the Treasurer of Royal Star and Garter Homes, a registered charity providing residential, nursing and dementia care to ex service personnel. She is also a governor and chair of the audit committee of London Institute of Banking and Finance, an educational establishment with degree awarding powers but one that also offers further education and A level courses, and is also a trustee of the Buzzacott Stuart Defries Memorial Fund.

Amanda is a Dame of the Papal order of Saint Sylvester.



Kimberly Bradshaw

Managing Director, HR Consultancy

Kimberly Bradshaw heads up the HR Consultancy team. She is a specialist in organisational change and ensuring HR legal compliance with an expertise in religious institutes and not-for-profit organisations.

She is an occupational psychologist, an executive and leadership coach and a seasoned recruiter. She has led her team in many re-structures resulting in better cost efficiencies, reduced risk and a more "happy" workforce.



Thomas Mobee

Senior Manager, VAT

Thomas has 24 years' specialist VAT consultancy experience, gained working with clients in the charity & not-for-profit sector. Thomas regularly contributes to the work of the Charity Tax Group, focusing on the minimisation of the tax burden borne by charities and not-for-profit organisations. He advises on VAT recovery opportunities, partial exemption issues, property transactions and all other aspects of VAT.



Luke Savvas

Partner, Charity Tax

Luke Savvas is a partner in the Buzzacott tax team and has worked in the accountancy and tax profession since 1992, having specialised in charity taxation since 1998. He advises faith based charities on Gift Aid, trading, property transactions and all aspects of direct tax.

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