

Charity Commission for England and Wales
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14th March 2023

Dear Sir / Madam,

Charity Commission consultation on draft guidance for charities about their use of social media

We welcome the opportunity to comment on the Charity Commission's consultation on draft guidance for charities about their use of social media.

The Chartered Governance Institute UK & Ireland is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead 'effective governance and efficient administration of commerce, industry and public affairs' working with regulators and policy makers to champion high standards of governance and providing qualifications, training and guidance. As a lifelong learning partner, the Institute helps governance professionals to achieve their professional goals, providing recognition, community and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and in many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in charities' governance arrangements. They are therefore well placed to understand the issues raised by this consultation document. In preparing our response we have consulted, amongst others, with members from the charity sector. However, the views expressed in this response are not necessarily those of any individual members, nor of the charities they represent.

Our views on the questions asked in your consultation paper are set out below.

General comments

The Chartered Governance Institute ('the Institute') welcomes this effort from the Charity Commission to equip charities to deal with the complexities of social media use. Guidance on this topic is both timely and needed. The recent furore over Gary Lineker's Twitter comments only highlight the risks that social media can pose to organisations' reputations.

Providing clarity for trustees about how their duties relate to social media is an important contribution to facilitating the smooth running of charitable organisations in the 21st century. Charities need to be aware of the risks posed by social media and have the appropriate policies and oversight mechanisms in place to mitigate these risks. Nevertheless, there are certain elements of the proposed guidance which we feel require careful consideration.

Potential overreach into individuals' personal online presence

From the perspective of our members and the Institute itself, the biggest issue with the guidance is that it fails to draw sufficiently clear lines about the extent of trustees' responsibilities with regards to monitoring the personal use of social media by individuals associated with the charity. This could have significant ramifications.

The idea that individuals' actions have implications for their employers is not new; there have long been press stories about employees' misdemeanours whilst 'off the clock', alongside corresponding HR policies which seek to instil an awareness of the reputational risks to an organisation of such behaviour. When applying these principles to social media, there is a need for great care. In the corporate sector, HR policies often contain social media guidelines to which employees are expected to adhere, which state that public-facing comments made online should neither damage the employer's reputation, nor reveal sensitive or confidential information about the employer's activity. Whilst this can be seen as a reasonable precaution, there are also times where these types of policies have been used to stifle employees' freedom of expression or ability to publicly divulge instances of poor corporate behaviour.

The Commission's draft guidance is explicit that those involved in charities (whether as a trustee, employee or volunteer) are free to use social media for their own, personal purposes, and rightly so. However, the guidance also states that personal accounts will be monitored by trustees. Naturally, all social media content – whether personal or professional – should abide by the law. However, the references to 'inappropriate' and 'problematic' content in the draft guidance are rather ambiguous and leave an unreasonable amount of room for interpretation. What is inappropriate or problematic according to one trustee may well be perfectly acceptable for another. The use of these terms therefore requires more clarity, or should be removed and replaced with a more granular set of principles. Such principles must allow individuals to comment on topics which may be considered controversial or socially contentious, in line with the fundamental right to freedom of expression.

Managing risk and embedding policies

The Institute thoroughly welcomes the recommendation that charities design and embed policies governing their social media use. Such policies provide charities with a 'roadmap' when handling the risks emerging from social media. As the Commission's guidance rightly points out, social media policies will relate to other existing policies including HR, whistleblowing and safeguarding policies. In particular, social media policies play an important role not only in day-to-day oversight, but also in crisis preparedness and in helping charities to respond effectively and in a process-driven manner when things go wrong (for example, through issuing corrective statements).

The Commission's guidance states that social media policies should set out internal controls which are 'appropriate, proportionate and clear'. The guidance could go further in making suggestions as to what 'proportionate' policies might look like. It should recognise that these policies will differ for each charity according to their area of operation, and that they should not encroach on employees', trustees' or volunteers' freedom to express themselves online in a personal capacity.

Furthermore, trustees cannot be reasonably expected to identify and manage risks arising from the content posted by each and every individual associated with their charity. Such a task would require a significant time commitment, regardless of the size of the organisation. That being said, trustees and those involved in governance should ensure that social media usage and policies are included on board meeting agendas, and that the relevant parties are involved in producing board updates and in reviewing existing policies.

The Commission's guidance could include a suggestion that, where relevant, boards seek to appoint and include a trustee with a certain level of social media experience and a more in-depth understanding of the online landscape. However, if it does, it should also warn against the risks of other trustees leaning too much on that expertise and remind them of their collective responsibility.

Impacts on trustee recruitment and organisational collaboration

Any overzealous monitoring of individuals' personal social media may have inadvertent negative consequences for charities' day-to-day operations. In particular, trustees, employees and volunteers could find particular scrutiny of their personal accounts off-putting. In a context where charities are already struggling to recruit and retain staff and board members, introducing more 'hurdles' for individuals to clear could be unwise, and the Commission's guidance must be mindful of these challenges. As Mrs Justice Falk stated in relation to trustees of the Kids Company: "It is vital that the actions of public bodies do not have the effect of dissuading able and experienced individuals from becoming or remaining charity trustees."¹

A further operational area which could be impacted by the proposed guidance is that of collaboration. The latest Third Sector Trends report found that 73% of organisations currently have informal collaborations with others in the sector, 65% work semi-formally with other organisations, and 34% have formal partnership agreements.² The Commission's guidance states that trustees should 'minimise the risks' of their charity being 'unduly associated' with comments made by a collaborating organisation. A review of the public-facing statements made by a potential partner organisation should, of course, be a significant part of the due diligence process before entering into any form of collaboration, formal or otherwise. However, it seems unlikely that the entire social media presence of a partner organisation can feasibly be kept under review by trustees. Moreover, trustees should not be held responsible, even implicitly, for social media content created by those who are not a part of their own charity (or, indeed, for content created in a personal capacity by those involved in their own charity).

Debates within civil society and a contentious online environment

Overall, the Institute's perspective is that whilst this draft guidance raises important issues around managing risk and implementing reasonable policies, it has the potential to result in somewhat punitive consequences for those involved in the charitable sector.

In its current form, this guidance may affect the quality and scope of online conversations happening within civil society, by altering the boundaries of what is deemed to be 'permissible'. Such conversations are hugely valuable to society at large and the charitable sector itself contains a veritable multitude of differing opinions, political beliefs and perspectives – which all must be free to express. The proposed guidance (rightly) focusses on the risks involved in social media use, particularly for campaigning and political aims, but it feels to us that this focus comes at the cost of demonstrating the value of engagement with stakeholders through social media. As it stands, the guidance may act a deterrent, depriving charities of the rewards that can be gained through social media use, including increased awareness of their purposes; direct communication with beneficiaries, funders, partners and other stakeholders; and vivid, tangible demonstrations of their impact. Charities must not be dissuaded from using social media in ways which align with their objects. Where relevant, this also includes using social media for campaigning and political purposes, in line with existing guidance.

¹ <https://www.bailii.org/ew/cases/EWHC/Ch/2021/175.html> Paragraph 911

² <https://www.communityfoundation.org.uk/wp-content/uploads/2023/02/Third-Sector-Trends-in-England-and-Wales-2022-relationships-influencing-and-collaboration.pdf>

Furthermore, the guidance implicitly hints at – but does not address – the ways in which charities can become caught up in so-called ‘culture wars’. It comments that charities ‘campaigning on controversial topics’ might require ‘independent advice from a suitably qualified person’, but it does not mention the wider context in which such discussions are held. This seems to be a missed opportunity for the Commission to provide practical guidance – or even a degree of reassurance – to charities who may, by the nature of their objects, become embroiled in discussions around contentious social issues. The guidance references the possibility that certain employees, trustees or volunteers may become the targets of complaints as a result of their involvement with particular charities. In aiming to educate trustees (some of whom may not be entirely up to date with social media practices), the guidance should also provide neutral, fact-based information about the meaning of terms such as ‘doxing’ and ‘cancel culture’, and the risks that these phenomena can pose to individuals and their organisations. It should also deal with the disclosure (both deliberate and accidental) of confidential information. Providing such information as part of this guidance would equip charities to make more informed decisions about the level of risk that their social media activity may engender.

Specific questions asked in feedback form

Having read the guidance how clear are you about the level of oversight trustees need to have about their charity’s use of social media?

Unclear. There are certain sections of the guidance which are not explicit or sufficiently clear in whether they are referring to a charity’s organisational social media accounts (i.e. those that are owned by the charity to publicise its own messages) or to the individual accounts of people involved with the charity (e.g. the accounts of trustees, employees or volunteers, whether professional or personal). For example, it should be made explicit that the use of social media ‘only to help you achieve your charity’s purpose’ applies solely to organisational accounts and does not impinge on an individual’s right to use their personal accounts for aims or about topics which go beyond those of the charity with which they are involved.

Do you think the expectations set out in the guidance of the level of oversight that trustees should have of the charity’s social media use are reasonable?

No. It is not reasonable for trustees to be held responsible for the personal use of social media by all those involved in a charity – be they trustees, employees, volunteers or collaborators from other organisations. This places too great a burden on trustees – both from a time and resource perspective, and from a responsibility perspective. Trustees should not be made to take on responsibility for the personal views of those involved with their charity. That being said, it is important that trustees take the time to consider social media in board meetings, and in particular that they put in place appropriate social media policies including processes for responding to any incidents which may negatively affect a charity’s reputation. These types of incidents may arise more frequently for charities operating in certain spheres (e.g. charities supporting transgender individuals, or those supporting immigrants and asylum seekers), or for those operating internationally across jurisdictions and cultures where certain subjects may be more sensitive (e.g. charities working for women’s rights). As such, the guidance should indicate that different risk profiles apply.

Do you think the guidance covers all the relevant issues that charities need to think about to help them use social media?

No. On the one hand, the guidance could be more informative in educating trustees about the complexity of online environments and offer more concrete explanations of the types of risks posed (such as offensive content posted by third-parties, doxing, or the disclosure of confidential information). On the other hand, it currently focuses solely on the risks involved in social media use and does not offer any indication of the many benefits that a strong online presence can have for charities. Social media provides a direct channel for stakeholder engagement and can be a cost-effective and straightforward

means for charities to raise awareness, demonstrate their impact and build relationships. It would be beneficial for the guidance to reflect this, so as to provide a more balanced picture and to avoid unintentionally acting as a deterrent for what has become – for many organisations – a key part of their external engagement strategy. As a part of this, the guidance could allude to marketing and branding considerations, including the type and format of imagery used, maintaining brand consistency, using a suitable tone of voice and the benefits of posting across multiple different social media platforms to increase the size and diversity of a charity's online audience.

Is what the guidance says about an individual's personal use of social media – whether a trustee, employee or volunteer – helpful?

Unhelpful. The guidance leaves a lot of room for interpretation and does not sufficiently clarify what constitutes 'inappropriate' content. Whilst it is important that all social media content stays within the constraints of the law, the question of what constitutes 'inappropriate' content is contentious and will produce a variety of inconsistent opinions. There is also a lack of clarity in the guidance about the extent to which individuals' personal social media use should be considered as an extension of their charity's viewpoints. For example, on certain platforms, particularly Twitter, users often include a 'disclaimer' in their bios, such as 'Views expressed are my own'. The guidance should make reference to this practice, and clarify whether such 'disclaimers' are satisfactory in creating enough remove between an individual and the charity with which they are associated. Whilst such a disclaimer would clearly not exempt the individual from complying with the law in their posts, would it, in the eyes of the Commission, exempt the individual from policing of their personal content by the trustees of their charity? Reasonableness would suggest that it should and the Commission should be explicit about this. In the corporate sector, social media policies governing the use of social media by employees often recommend using such disclaimers.

As a result of reading the guidance how confident would you be that you know what to include in a social media policy?

Neither confident nor unconfident. The guidance provides a good starting point for the creation and development of a social media policy. Within a social media policy, it should be very clear which elements apply to those posting from a charity's owned accounts (i.e. are posting 'as' the organisation and therefore representing the organisation's interests) and which parts apply to personal accounts. It is clear that the former should be more stringent than the latter, in terms of the type of content permitted and the themes which should be addressed. The Commission should further develop the section of the guidance about constructing a social media policy. In particular, it should include a greater awareness of the diversity of organisations in the sector, particularly in terms of size and area of operation, as some charities work in spaces which are far more likely to attract online controversy. Posts made on both organisational and individual accounts can reach much larger audiences than anticipated. The guidance should also state that social media policies must be regularly reviewed and re-circulated amongst those involved with a charity. Staff, trustees and volunteers must be regularly reminded of such a policy's existence and its stipulations, in order to avoid any misunderstandings. Ultimately, the Commission's guidance should encourage charities to think holistically about the risks – and the rewards – of using social media to support their purposes.

Please provide us with any other comments you have on the draft guidance.

Please see above under 'General comments'.

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

Emily Ford

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