

Safeguarding: a legal perspective

Our Mosques, Our Future
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Overview

We are going to cover:

- Legal framework and key statutory guidance for children
- Legal framework and key statutory guidance for vulnerable adults
- Charity Commission guidance on safeguarding
- Tips for dealing with safeguarding issues
- DBS checks



Safeguarding and people protection

- “Conventional” safeguarding:
 - Children
 - Vulnerable Adults
- Charity Commission

“Charities must take reasonable steps to protect people who come into contact with the charity from harm”
- DfID: concerned primarily with sexual exploitation, abuse and harassment
- More generally: legal obligations, duties of care and appropriate conduct



Legal framework



Definitions

Child or Young Person

- any person under the age of 18 years

Vulnerable Adult or Adult at Risk

- any person aged 18 or over
- who is or may be in need of care and support (e.g. health care, relevant personal care or social care)
- is experiencing or is at risk of abuse or neglect and
- as a result of this is unable to protect themselves from either the risk or experience of neglect or abuse



Legal framework

The key legislation and guidance (in England and Wales) is:

- Children Act 1989 and 2004
- *Working Together to Safeguard Children* 2018
- *What to do if you are worried a child is being abused* 2015
- Care Act 2014 and statutory guidance
- Safeguarding Vulnerable Groups Act 2006



Key Government Guidance – Children

Working together to safeguard children (July 2018)

“Voluntary, charity, social enterprise (VCSE) and private sector organisations and agencies play an important role in safeguarding children through the services they deliver. Some of these will work with particular communities, with different races and faith communities and delivering in health, adult social care, housing, prisons and probation services. They may as part of their work provide a wide range of activities for children and have an important role in safeguarding children and supporting families and communities” (at para 57)



Key Government Guidance – Vulnerable Adults

Care and support statutory guidance, Department of Health (updated 26 October 2018)

Six key principles for adult safeguarding: empowerment; prevention; proportionality; protection; partnership; and accountability.

“Voluntary organisations need to work with commissioners and the SAB to agree how their role fits alongside the statutory agencies and how they should work together. This will be of particular importance where they are offering information and advice, independent advocacy, and support or counselling services in safeguarding situations. This will include telephone or on-line services. Additionally, many voluntary organisations also provide care and support services, including personal care. All voluntary organisations that work with adults need to have safeguarding procedures and lead officers” (at para 14.223)



Charity Safeguarding/People Protection

- The Charity Commission for England and Wales uses 'safeguarding' more broadly than one would traditionally expect:

"For those charities providing activities and services to children or adults at risk, the term safeguarding has a particular meaning under UK legislation and practice guidance and may require reporting of incidents to statutory safeguarding agencies.

However, for the purposes of charity law and reporting obligations to the Commission as regulator, the Commission uses the term safeguarding as the range of measures in place to protect the people who come into contact with charities through their work from abuse and mistreatment of any kind (including neglect)."

How to report a serious incident in your charity



Charity Safeguarding/People Protection

"A charity should be a safe and trusted environment and trustees must take reasonable steps to protect the people who come into contact with their charity through its work from harm. These people include:

- *the charity's beneficiaries, including adults at risk and children*
- *the charity's staff and volunteers*

It may also include other people who come into contact with the charity through its work. This might be, for example, people who attend an event run by the charity who are not beneficiaries, staff or volunteers."

How to report a serious incident in your charity



“Safeguarding and protecting people for charities and trustees”

Types of risk identified by the Commission:



- sexual harassment, abuse and exploitation
- negligent treatment
- physical or emotional abuse
- bullying or harassment
- health and safety
- commercial exploitation
- extremism and radicalisation
- forced marriage
- child trafficking
- female genital mutilation
- discrimination on any of the grounds in the Equality Act 2010
- people may target your charity
- a charity's culture may allow poor behaviour
- people may abuse a position of trust they hold within a charity



Safeguarding/people protection for non-charities

- Safeguarding / protection issues should be of concern to all organisations because:
 - They may attract duties of care
 - They may breach other laws, e.g.:
 - Equality Act 2010
 - Sexual Offences Act 2003
 - Modern Slavery Act 2015
 - The Regulations associated with professional status or the provision of education, health and social care
 - They pose a serious threat to reputation



Bond/DfID: Good Governance for Safeguarding

- **Setting the right tone:** Set culture based on mission and values and develop a code of conduct.
- **Reducing risk:** Do context-specific risk assessments, which are regularly reviewed, with good planning, processes, checks and training. This includes appropriate vetting of individuals and delivery partners.
- **Encouraging speaking up:** Have a clear referral and reporting system and know how to spot and refer or report concerns.
- **Investigating complaints:** Handle complaints professionally, promptly and keep records.
- **Supporting survivors:** Help complainants to be safe, provide support as appropriate.
- **Ensuring transparency and accountability:** Embed the culture and annually explain how safeguarding is overseen and provide a summary of complaints.



Handling and reporting issues



Internal reporting: receipt of information

- Safeguarding (children and adults at risk) and whistleblowing/grievance (staff misconduct) and complaints (wider beneficiaries, volunteers and those who come into contact with the charity) policies readily available online and contacts on posters/similar in projects and other outreach mechanisms
- Zero tolerance of misconduct; protection of whistleblowers/complainants
- Information to flow confidentially on need-to-know basis through appropriate procedure to decision maker (safeguarding/whistleblowing etc.)
- Safeguarding trustee/equivalent committee: it is recommended that safeguarding is not the responsibility of just one trustee
- Standing item in reports to Board and on risk registers



What to do if a safeguarding concern arises

- Follow policies and procedures
- Matter should be reported to the Designated Safeguarding Officer / Lead
- Staff should not investigate
- External reporting to the appropriate authorities (police, local authority, regulators, DBS, insurers)
- Keep documents and correspondence securely and information limited to those who need to know
- Review policies and procedures



Investigating complaints

Policies and procedures should ensure concerns which are raised are investigated thoroughly, robustly, fairly and sensitively.

Policies and procedures should reflect best practice but also have proper consideration of local law requirements.

Being clear on roles and responsibilities of individuals, reporting lines and how information will be treated, especially with regard to confidentiality.

Appropriate individuals carrying out investigations: they should have relevant experience, skills with consideration of location, culture, language as well as potential conflicts of interest or loyalty.

Adequate record keeping which complies with GDPR and other relevant laws.

Updating the Board in summary of reports and outcomes. Updating regulators, donors, insurers and others appropriately and when required.

Providing opportunities for improving practice after an investigation.



Support those affected

Adopting a survivor-led approach whereby the safety and wellbeing of survivors is treated as absolutely paramount.

Having in place relevant resources for providing support to survivors.

Being accountable to survivors and updating them on progress about their case.

Providing an opportunity for survivors to give feedback so policies and procedures can be improved, if necessary.

Treating survivors with respect and dignity, empowering them (where possible) and ensuring no mechanisms in place negatively impact on a survivor.

Ensuring there is no time limit for reporting allegations, issues or concerns.





External reporting to the Charity Commission

- Reporting to the CC via a Serious Incident Report (“SIR”):
 - Full and frank disclosure and timely reporting
 - Suitably anonymised
 - Explain what actions the trustees are taking
 - Reported to police if criminal – or can justify decision not to
 - Explain the charity’s decisions on other external reporting
 - Report material changes of facts and significant developments
 - Mark the SIR “confidential”
 - Ask the CC to notify you if the CC receives requests from the media/public about the charity in relation to the SIR
 - Consider reporting historic safeguarding incidents

Note: there is a new Commission portal

What to report to the Charity Commission...

A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- harm to your charity's beneficiaries, staff, volunteers or others who come into contact with your charity through its work (who are collectively referred to throughout this guidance as people who come into contact with your charity through its work)
- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work or reputation

NB You do **not** need to report allegations of abuse/neglect that occurred outside the organisation if appropriate agencies have been made aware and there is no harm to the organisation's own reputation

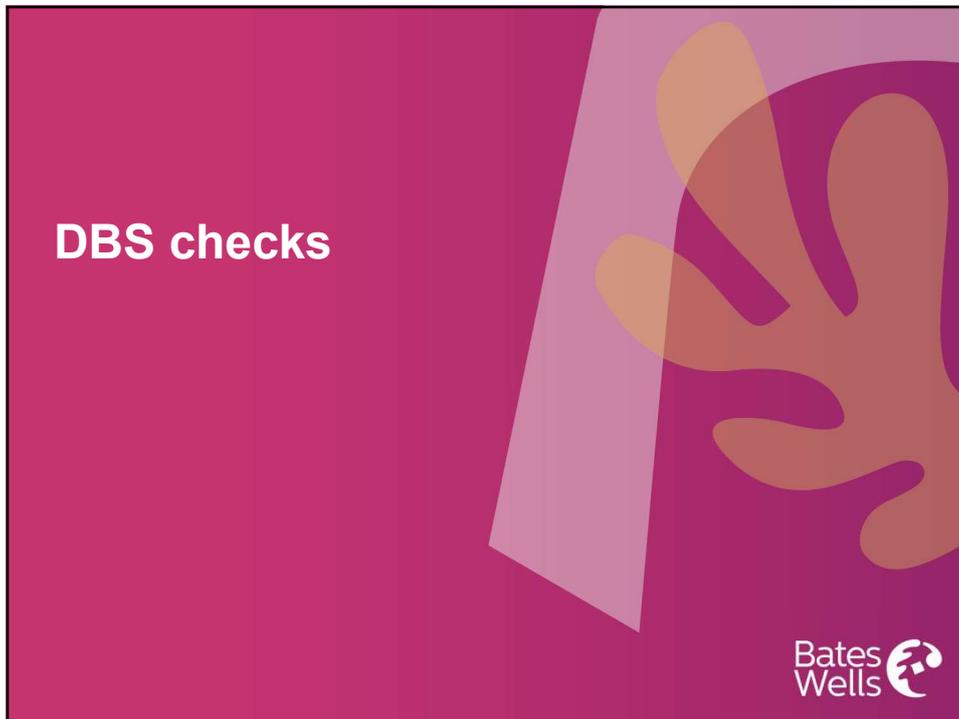
<https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>



Non-recent abuse (historical abuse)

- An allegation of neglect or abuse made by or on behalf of someone who is now 18 years or over, relating to an incident which took place when the alleged victim was under 18 years old
- Allegations of non-recent abuse should be dealt with under your usual safeguarding procedure, which may include reporting the matter to the police and/or LADO where appropriate and notifying insurers
- The alleged perpetrator may still be alive and pose a risk to others
- Children who have been abused or neglected may experience long term effects of abuse and neglect
- Consider appropriate apology, subject to insurer's view





DBS Checks



Disclosure &
Barring Service

It is a criminal offence:

- to allow someone to work with children or vulnerable adults if they are barred from doing so, if you know or have reason to believe they are barred
- to request a standard or enhanced DBS check if you know that the position is not eligible for such a check

There are **different types** of DBS check

Eligibility depends on the role and responsibilities of the member of staff / volunteer / board member as set out in:

- the Safeguarding Vulnerable Groups Act 2006
- the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and
- the Police Act 1997 (Criminal Record) (No 2) Regulations 2009

There is also an **obligation to make a referral** to the DBS in certain circumstances (where a person is dismissed or would have been dismissed for a safeguarding issue)

Bates Wells 

Types of DBS checks

Information Searched	Type of Criminal Record Check			
	Basic	Standard DBS	Enhanced DBS	Enhanced DBS (incl. barred list check)
Unspent convictions	Yes	Yes	Yes	Yes
Spent convictions	No	Yes	Yes	Yes
Cautions, Warnings, Reprimands <small>note: this does not include fixed penalty notices, penalty notices for disorder, or any other police or other out-of-court disposal</small>	No	Yes	Yes	Yes
Other relevant police info.	No	No	Yes	Yes
Childrens or Adults barred list	No	No	No	Yes



Enhanced DBS with check of barred list - children

Regulated activity in relation to children includes (among other things):

- a. **teaching, training, instructing, caring for or supervising children if the person is unsupervised, or providing advice or guidance on well-being, or driving a vehicle only for children; or**
- b. an activity carried out in a limited range of establishments (which include schools and colleges) by a person engaging in work for or in connection with the purposes of the establishment (but not including work done under a contract for occasional or temporary services which is not an activity in (a), or work done by supervised volunteers), with the opportunity for contact with children.

Work under (a) or (b) is regulated activity only if carried out frequently by the same person (once a week or more often), or on more than 3 days in any 30 day period or overnight. Work under (a) is not regulated activity if, on a regular basis, it is subject to the day to day supervision of another person who is engaging in regulated activity related to children (e.g. a teacher).

A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.



Enhanced DBS with check of barred list - adults

Regulated activity in relation to adults includes the provision to an adult of:

- health care by, or under the direction or supervision of, a health care professional
- relevant personal care (includes physical assistance with eating, drinking, washing etc., or prompting and supervising where the person is unable to make a decision without prompting and supervising)
- relevant social work by a social care worker to an adult
- assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability
- any relevant assistance in the conduct of an adult's own affairs
- the conveying of adults who need to be conveyed by reason of age, illness or disability



Safer recruitment

- Seek at least 2 references – 1 from current or last employer
 - Are they satisfactory in content?
 - Are they on headed paper/from verified source?
 - Any conflict with information provided by candidate?
 - Is further information needed?
- Inter-agency scheme for the disclosure of safeguarding-related misconduct in recruitment processes within the humanitarian and development sector https://www.bond.org.uk/safeguarding-our-progress#employment_cycle



In summary...

- Appropriate policies, clearly setting out procedures
- Zero tolerance and sensitive management of sensitive issues, including data security
- Ensure information is reported internally
- Ensure required external notifications have been made
- Follow local authority guidance
- **Give effect to lessons learned**



Case Studies

- Introduction to case studies

Discussion questions within your organisations:

- What roles and responsibilities in relation to safeguarding do you have?
- What actions would you take?
- Signage and local resources

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