



Embracing Change ... 2

30 October 2017

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Welcome

Amanda Francis

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- Housekeeping
- The follow up to Embracing Change – a trustees' handbook

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10	Data protection
11	Lasting powers of attorney, DOLs and living wills

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Today's Agenda

09.30	Registration and Coffee	
10.00	Welcome	Amanda Francis
10.05	Introduction	Brother James Boner
10.15 – 10.30	Why do you have a charity, and the different structures.	Tim Rutherford
10.30 – 11.15	Trustee Duties (including conflict of interest policies)	Alexandra Steffensen
11.15 – 11.30	Coffee Break	
11.30 – 12.30	Financial policies (investment policies; reserves policies and grant making policies)	Amanda Francis
12.30 – 13.15	Risk Management (including risk management policies)	Tim Rutherford & Amanda Francis
13.15 – 14.00	Lunch	
14.00 – 14.45	Data Protection – changes afoot (including GDPR policies)	Vicki Bowles
14.45 – 15.30	Lasting Powers of Attorney, DOLs and Living Wills	Kathryn Layzell

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Introduction

Brother James Boner

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Why do Religious Orders have charities and what are the different structures?

Tim Rutherford
Partner, Stone King

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Why do you have a charity?

CANON LAW



- Institute is a juridic person
- 634§1: Institute can acquire, possess and administer assets
- 635§1: Institute's assets are treated as temporal goods of the Church
- 1254§1: Goods are to be administered "*independently from civil power*"
- 1284: But, ownership of goods must be "*protected by civilly valid methods*"

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Why do you have a charity?



An institution will be a charity in England & Wales if:

- It is established for exclusively charitable purposes; and
- It is subject to the jurisdiction of the High Court in England and Wales.

Every charity must be registered with the Charity Commission for England & Wales (if income over £5,000 per annum)

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Standard charitable objects

UPON TRUST to apply the same as capital or income for such charitable purposes as shall advance the religious and other charitable work of the Order as the Trustees with the approval of the Superior shall from time to time think fit and if at any time the Order shall cease to exist or shall cease to carry on religious or other charitable work then for such other lawful charitable purposes connected with the advancement of the Roman Catholic religion as the trustees shall determine."



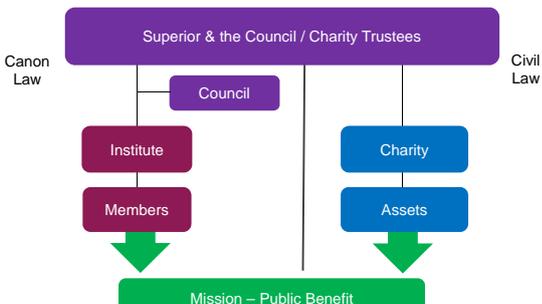
- But it's our money?
- Alienation
- Impressed with charitable purposes

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Governance structure



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Charity structures



Charitable Trust:

- Operates through the individuals
- Part 12 incorporation / corporate trustee

Charity structures



Company limited by guarantee:

- Exists as entity in its own right
- Limited liability
- Directors and Members

Charity structures



Charitable Incorporated Organisation (CIO):

- Exists as entity in its own right
- Limited liability
- Trustees and Members



Trustee duties (including conflict of interest policies)

Alexandra Steffensen
Senior Associate, Stone King

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Set the charity's direction

- Know your Charity's governing Trust Deed
- Set Charity's direction **within the Objects** and for the **Public Benefit**:
 - Establish appropriate long, medium, and short term aims for which the assets can be deployed
- Always act:
 - in the best interests of the Charity's Objects
 - within the Charity's powers
 - within the law

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Safeguard assets

- Trustees must safeguard and protect the assets of the charity:
 - Overlap with canonical responsibilities
 - Financial controls
 - Property: title, maintenance and insurance
 - Intellectual property
 - Reputation
 - Staff

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Duty of care

- **Trustee Act 2000:**
Exercise such Skill and Care as is reasonable in the circumstances
Having regard to any:
 - *special knowledge or experience that you hold yourself out as having; and*
 - *special knowledge or experience that it is reasonable to expect of a particular business or professional person.*
- **Companies Act 2006**
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

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External advice?

- Trustees must consider getting external professional advice on all matters where there may be material risk to the charity, where the trustees may be in breach of their duties, where required by law



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Duty to act "Prudently"

- General standard expected of trustees:

"that of the Ordinary Prudent Man of Business acting in the management of his own affairs"
[Speight v Gaunt 1883](#)



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Duty to act "Prudently"

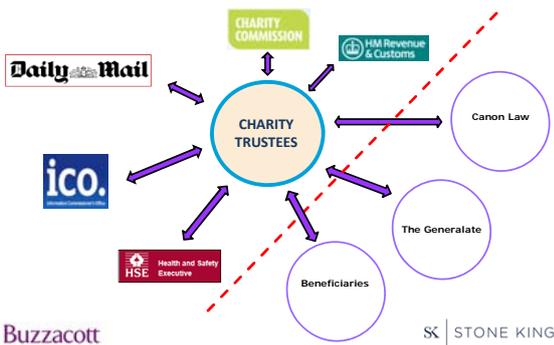
- Avoid undertaking activities that might place the charity's property, funds, assets or reputation at undue risk
- Ensure that the Charity is and will remain solvent
- Ask questions / Take appropriate advice / Document decisions

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Comply with the regulatory landscape



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Trustee payments and benefits

- Basic principle: Trustees are not paid to be Trustees
- Some payments and benefits are acceptable, e.g.:
 - Maintenance of members of the Congregation
 - Reimbursement for reasonable travel costs
 - Benefits enjoyed by all users of the charity
- Others only acceptable if authorised by:
 - Governing Document
 - Charities Act
 - Charity Commission



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Conflicts of interest

“A conflict of interest is 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)

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Identifying conflicts

Conflicts take many forms:

- direct financial gain to a trustee
- indirect financial gain e.g. where a close relative or dependent benefits
- other material benefit, direct or indirect
- conflict of loyalties or responsibilities

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Why are conflicts a problem

“.....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]



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Managing conflicts: “Declare”

- Effective Management relies on full disclosure
 - Allocate responsibility to co-ordinate
 - Conflicts Policy
 - Internal/External Training
- First point on Meeting Agenda
- Monitor during Meetings

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Managing conflicts: “Document”

- Declaration of Interests Form
- Register of Interests
- Minutes

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Managing conflicts: “Depart”

- Conflict of Interest Policy
 - Not part of quorum/discussion/vote
 - Absence from room
- Pervasive?
 - CC Consent
 - New trustees
 - Sub-committee
 - Resignation

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Top 10 do's and don'ts

- ✗ Don't just know your governing document, follow it
- ✗ Don't rely on everyone else, be involved
- ✗ Don't take any unnecessary risks
- ✗ Don't try to micro manage the charity
- ✗ Don't abdicate responsibility, delegate
- ✓ Be a critical friend
- ✓ Take proper advice
- ✓ Keep a 360 degree eagle eye
- ✓ Manage conflicts of interest
- ✓ Retire when the time is appropriate

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Coffee/Tea

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Financial policies

Amanda Francis
Partner, Buzzacott

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Introduction and context

- There are no magic or right answers for the path ahead
- Detailed planning and communication are essential
- Your strategy is the route that will ensure you arrive at your destination
- The tools that will help are good governance and financial planning



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Financial planning

- Why you need reserves – reserves policies
- Managing your investments – investment policies
- One potential use of your investments to fulfil your legacy – grant making policies

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Definition of reserves

- That part of a charity's income funds that is freely available for its general purposes (CC19)
- Income funds which are to be spent at the trustees' discretion in furtherance of the charity's objects but which are not spent, committed or designated ie they are "free"

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What is a reserves policy?

The policy should cover as a minimum:

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

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What level of reserves is appropriate?

- No 'rules' setting out acceptable level
- Beware of timing effects – consider defining by ranges?
- Legal duty to apply charity funds within reasonable time
- Cushion against future uncertainties
- Based on realistic assessment of needs and future commitments

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Justifying reserves (CC19)

A charity's reserves policy should be informed by:

- Its forecasts for levels of income in future years, taking into account the reliability of each source of income and the prospects for opening up new sources; and
- Its forecasts for expenditure in future years on the basis of planned activity.

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Why do you need reserves?

- Congregational charities have as a key objective the need to look after their members and enable their ministry for the rest of their lives
- State pensions will not keep pace with inflation
- Public funding for health care is in a state of flux
- Average life expectancy of a female at birth is now over 85
- Care and nursing costs rise faster than inflation. The average cost of nursing care in England is approx. £55,000 pa
- As we live longer the percentage of individuals needing long term nursing care is increasing

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Why do you need reserves?

- Average cost of maintaining a healthy and active member of a Congregation is typically circa £20,000 - £25,000
- In 2016 the average age of a member of the Congregation was mid to late 70's
- To provide an annual sum of £20,000 per Sister aged 75 until her death, the amount that needs to be set aside now is: £225,000
- For 30 sisters this means setting aside £6.75 million.
- For 30 sisters needing care this could rise to as much as £15 million plus

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What are your reserves for?

- The need to demonstrate sound governance
- Long term care of your members
- Property needs
- Grant making – both at home and overseas
- Are they adequate but not excessive?

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Reserves policy and the trustees' report

- Total funds at end of accounting period
- Identification of restricted funds
- Identification and explanation of designated funds
- Likely timing of expenditure of designated funds
- Tangible fixed asset funds
- Statement of free reserves held at end of accounting period
- Comparison of free reserves held with the reserves policy and an explanation of actions required to bring the level of free reserves into line with that policy

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Example one

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 ideally be approximately a year's expenditure to provide for contingencies and unevenness in future income.

Financial position

The balance sheet shows total funds of £12.95 million (2015 - £16.73 million). Of this, £6.04 million represents the net book value of the charity's tangible fixed assets. A decision was made to separate this fund from general funds in recognition of the fact that the assets are used in the day-to-day works of the charity and the fund value would not be easily realisable if needed to meet future contingencies.

£3.20 million has been designated by the trustees to provide for the sisters in their retirement. The fund has been calculated using actuarial principles to provide for each of the 66 sisters who are the responsibility of the Province, but is constrained by the resources available. Given the increasing age profile of the sisters and the lack of new vocations, this sum will provide only modest resources to look after the sisters, many of whom will need increasing and increasingly expensive residential and nursing care.

Restricted funds of £1.01 million represent monies received specifically for the Congregation's missions abroad.

Funds which are therefore available to support the work of the sisters in the future are those shown on the balance sheet as general funds and amount to £2.70 million.

The above level of funds exceeds the target set out in the charity's reserves policy. However, given the exceptional unrealised gains generated by the charity's investments during the year and the continuing volatility in world stock markets caused by economic and political uncertainties, the trustees are content to hold excess reserves at the current time, at least until there is greater financial stability.

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Example two

Financial position and reserves policy

Reserves policy

The trustees consider that a basic level of free reserves should be equivalent to approximately one to three years' ongoing expenditure (i.e. excluding any substantial one-off grants), to provide for contingencies and unevenness in future income. Additionally, reserves are required to deal with fluctuations in investment values. The trustees are conscious that gains in the value of investments may be reversed in future if stock markets fall. It is expected also that the trustees will be called upon to provide increasing resources to support the international congregation.

Financial position

The balance sheet shows total reserves of £4,954,675. Of this, £749,196 represents the net book value of the charitable company's tangible fixed assets and an equivalent amount has been earmarked as a tangible fixed assets fund in recognition of the fact that the assets are required for the charitable company's operations and are not available as a reserve to fund activities or meet future contingencies.

The trustees have set aside £2,000,000 in order to provide for the sisters in their retirement and care in old age and sickness. The value of the fund has been calculated using actuarial principles to provide for each of the Congregation's sisters. 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.

The trustees have also set aside £1.25m as a grant financing fund.

Funds which are available at 31 December 2016, therefore, to support the work of the sisters in the future are those shown on the balance sheet as general funds or "free reserves" and amount to £356,479. At the date of the balance sheet the free reserves were considered to be within the parameters of the trustees' reserves policy.

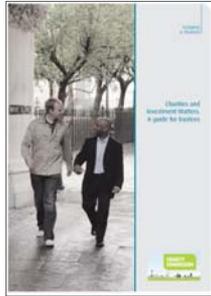
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Trustees and investments

- Definition
- s15 Trustee Act 2000 and delegation of investment decisions
- Application to CIO / CLG?



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Trustee Act 2000

- General power of investment
- Duty of care
- Specific duties
 - Suitability – class and asset
 - Diversification
 - Review and seek advice

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Considerations

- Scope of investment powers
 - Can we make financial investments
 - Can we make ethical investments?
- Setting investment objectives
- Attitude to risk



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Financial issues

- What funds are available?
- Consider financial needs?
 - Short term
 - Long term
 - Income v. Capital



Decisions, monitoring and reporting

- Types of investment
- Investment decisions and delegation
- The role of an investment manager
- Monitoring and performance
- Reporting requirements



Other forms of investment

- Bank and cash deposits
- Property





Investment policy and the trustees' report

- Details of investment adviser
- Investment powers/ restrictions in the constitution
- Investment policy including ethical considerations
- Performance against the policy
- Conclusion and actions

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What you should be thinking about now?

- Think about strategy – long, medium and short term
- Talk to your investment managers
- Determine your investment policy
- Monitor
- Review your strategy – are your circumstances changing?

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Why is grant making becoming more relevant?

- Many congregations in the UK used to be "asset rich cash poor"
- That position is now changing as properties are sold and "bricks and mortar" are replaced with cash and/or investments
- There are few or no new vocations in the UK and the average age is increasing as the number of members is falling
- As a charity, the Congregational charity has to be seen to be using its funds for charitable purposes to satisfy the requirements of both the Charity Commission and HMRC
- Whilst significant sums of money will be required in the years ahead to look after the living and care needs of members, some Congregational charities may have amounts in excess of their care and pastoral needs. If so, their mission may be achieved in new ways – possibly through grant making.

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What do we mean by grant making?

- Grant making is the payment by the Congregational charity of a voluntary contribution to another person or another organisation including the Congregation's Generalate or an overseas province
- A grant = a donation = a contribution
- A grant/donation can be made to:
 - Another charity
 - Your Generalate
 - Another province of your Congregation
 - A person

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Formulating a policy

- How much do you wish to give away each year?
- What do you want to support?
 - Causes – grants given must be consistent with your objects
 - Capital or income (or both)
 - One off or multi-year
 - Restricted or unrestricted
- Do you wish to identify recipients or do you wish to invite applications?
- How often will you make grant decisions?

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The process

- Applications including guidelines
- Initial assessment
- Due diligence
- Decision
- Monitoring
- Administering payments
- Recording

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Applications and guidelines

- An application form – online or on paper:
 - Name, address, registration numbers
 - Principal contacts
 - Why funding is being sought
 - Details of project including budgets, plans, other sources of finance, location
 - Timescale
 - Latest statutory accounts
 - Financial information
- A detailed, thought through process with clear guidelines
- Make clear mandatory information
- Ask for references
- Next stages
- Fairness and transparency

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Initial assessment

- Has the application form been completed properly?
- Does the application meet your criteria?
- Do you have the necessary supplementary information?
- Checklist

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Due diligence

- Research the applicant
- Review accounts and documentation supporting the application
- Specialist advice may be needed
- Take up references
- Interview applicant
- Visit the project
- Record results

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Decision

- Discussed and confirmed by the trustees
- Consider any terms and conditions to be imposed:
 - Restrictions and conditions of use
 - Feedback and reports
 - Deadlines for using
- Confirm in writing
- Request written acknowledgement of terms and conditions
- Do you require any permanent acknowledgement of your contribution? For example, a plaque?

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Monitoring

- Regular reports
 - Narrative
 - Financial
 - Specialist
- Interviews and meetings
- Site visits
- Compliance with conditions imposed
- Being prepared to cease or postpone funding
- Checklist

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Administration and recording

- Detailed minutes
- Applicants' files:
 - Application form
 - Supporting information
 - Record of due diligence
 - Monitoring reports
 - Assessments – initial and ongoing
- Payments:
 - One off
 - Instalments
 - By bank or electronic transfer

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Time commitment

- Do not under estimate!
- Grant administrator?
- Grants committee?
- Avoiding conflicts of interest

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Example 1 – generalate contribution

- Discuss at trustee level and minute including evidence that consideration has been given as to whether the payment is in the best interests of the charity
- Covering letter or email
- Bank transfer
- Written acknowledgement of receipt
- Information as to how the funds have been applied

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Example 2 – funding a capital project of an overseas province or a UK charitable organisation

- Request a detailed application
- Discuss and minute at trustee level
- If it is an application from an overseas province of your own Congregation, you must follow the same procedure as you would for any grants to a third party organisation such as a UK charity
- Example – funds to build a school in Africa by the African Province or an application to fund the building of a retreat centre in the UK

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Example 3 – revenue funding for a UK charity

- Responding to a national appeal – for example, CAFOD
- Responding to an application - to fund the salary of the Director of a retreat centre in the south west of England

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Example 4 – an individual

- Consider making grants to individuals for specific purposes only
- Purposes and age groups
- Limit on funding and financial checks/means tests
- Consider requesting that the application is made via a third party or an organisation such as a school, university or church
- Reporting process

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Grant making and the trustees' report

- Explain your policy and approach
- Give case studies

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Example – grant to an individual

The Ghana (Sunyani) Monastery Trust - £1,500 to part fund the final year of a Masters degree for Edmund Kwame Ankamah, to be administered and overseen by the Sunyani Trust at Kristo Buase Monastery, Ghana. He managed to fund the first year of his postgraduate studies himself after much hardship and self denial and was awarded a grant of £2,000 from another source towards the final year, so this grant made up the balance. Edmund's relationship to one of the Kristo Buase monks and his friendship with the community makes it an easy matter to monitor both his progress and his probity. His aim is to teach in universities and a devout and able man holding such a position could only be a force for good in both the Church and society in Ghana.

Extract from St Mary's Priory Fernham Residual Fund 2016

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Example – a grant to a UK charity

Donation of £2,000 to the Capuchin Day Centre for Homeless People



Inspired by the spirit of St Francis of Assisi, the Capuchin Day Centre welcomes people in need of food aid who have no home or are socially excluded and, respecting their dignity, provides a caring, pastoral, holistic and non-judgemental service responsive to their needs.

The increase in child poverty is very evident in the Day Centre with more parents needing to avail of the service. They also have a medical service, chiropody clinics, an optical service and advice and information clinics. They prioritise the needs of rough sleepers and the increased energy and water charges for the shower facilities together with the provision of new underwear, personal hygiene products etc. has all added to their expenses.

This is a cause that is very dear to the heart of the members of the Congregation and their contribution to the Capuchin Day Centre's funds, especially at Christmas time, was greatly appreciated.

Extract from The Congregation of the Sisters of the Sacred Hearts (P/C/P/S) 2016

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Risk management and policies

Tim Rutherford
Partner, Stone King

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Policy 1: Risk management

“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.” (CC26)



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Trustees' annual report



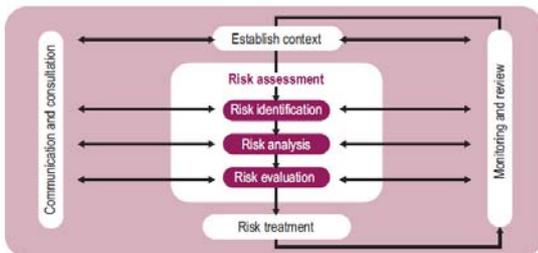
SORP (2015) Paragraph 1.46:
Trustees' report should include “a description of the principal risks and uncertainties facing the charity and its subsidiary undertakings, as identified by the charity trustees, together with a summary of their plans and strategies for managing those risks”.

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Risk policy



Summary of the ISO 31000 risk management process taken from Institute of Risk Management "Risk Management for charities, Getting Started" (January 2015)

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Identification and analysis

Principal areas to review:

- MISSION
- GOVERNANCE
- OPERATIONAL
- SAFEGUARDING
- FINANCIAL



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Evaluation and scoring

Score = (Impact x Likelihood) + (Impact)

Extreme / Catastrophic (5)	10	15	20	25	30
Major (4)	8	12	16	20	24
Moderate (3)	6	9	12	15	18
Minor (2)	4	6	8	10	12
Insignificant (1)	2	3	4	5	6
	Remote (1)	Unlikely (2)	Possible (3)	Probable (4)	Highly Probable (5)

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The 4T's



TREAT
TOLERATE
TERMINATE
TRANSFER

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Risk policy



- The charity's approach to risk
- The parameters that apply
- Who has overall responsibility
- Lay staff responsibility
- Staff and Volunteers' responsibility
- Serious Incident Reporting
- Risk Register

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Risk register

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.

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Risk management in practice and internal controls

Amanda Francis
Partner, Buzzacott

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An example

Categories of risk:

- Governance
- Operational
- Financial
- Environmental or external
- Compliance
- Disaster planning

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Specific risks - governance

- Governance
 - The charity lacks direction, strategy and forward planning
 - Trustee body lacks skills or commitment
 - Trustee body is dominated by one or two individuals
 - Charity legal structure is no longer appropriate
 - Conflicts of interest
 - Ineffective organisational structure
 - Activities outside objects
 - Loss of key staff

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Specific risks - operational

- Operational
 - Contract risk
 - Project or service development
 - Security of assets:
 - A dangerous/unsafe or dilapidated building including fire risk
 - Computer virus or loss/corruption/theft of data and information
 - Employment issues
 - Health, safety and environmental

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Specific risks - financial

- Financial
 - Budgetary control and financial reporting
 - Reserves policy
 - Diminishing salaries and pensions
 - Workplace/pensions reform
 - Living wage
 - Fraud or error
 - Overseas donations and transfers of money abroad
 - Investment policies

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Specific risks - environmental

- Environmental
 - Falling vocations, ageing members and other demographics
 - Public perception and impact of IICSA and similar
 - Adverse publicity
 - Government policy
 - Brexit
 - The impact of VAT on school fees
 - General Data Protection Regulation (GDPR)

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Specific risks - compliance

- Compliance
 - Member involved in counselling gives wrong advice
 - Nursing or care staff abusing patients/residents
 - Medical negligence
 - Failure to seek professional advice
 - Taxation
 - All aspects of legal compliance

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Specific risks – disaster planning

- A fire in a care home or community for older members
 - Detailed policies and procedures
 - Fire risk assessment reports on safety of the building, fire doors, sprinklers, etc
 - Fire equipment and trained usage
 - Fire evacuation procedure and drills
 - Notification to the fire brigade
 - Alternative service provision
 - Insurance

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Internal controls

- Policies, objectives, plans and communication thereof
- Organisational
- Budgets
- Personnel arrangements
- Supervision
- Physical safeguards
- Segregation of duties
- Accounting
- IT
- Management review and monitoring

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Risk management - conclusion

- If used properly, risk management is a very powerful tool and essential induction for any new leadership team.
- Most of it is about applying common sense.
- The biggest risk you face is the risk you never think of!

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Lunch

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Data protection – changes afoot

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GDPR

- Timings
- Fundamentals
- What's changed

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Timings

June 2016: Brexit referendum

25/05/16: GDPR in force

March 2017: Article 50 triggered

25/05/18: GDPR deadline

?????: Brexit UK equivalent law

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Fundamentals

<p>DPA</p> <ul style="list-style-type: none"> • 8 Data Protection Principles • Supervision by ICO • Rights of access and rectification 	<p>GDPR</p> <ul style="list-style-type: none"> • 6 Data Protection Principles (1-6), plus 7 and 8 as separate Articles • Supervision by ICO • Rights of access, rectification, erasure, portability and restriction • ACCOUNTABILITY AND TRANSPARENCY
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Fundamentals

- The basics have not changed – still have to comply with principles:
 - Only deal with personal data if lawful, fair and transparent (and meets a condition in the law)
 - Only use information for the purpose it was collected
 - Only collect and use what you need
 - Keep it accurate and up to date
 - Only keep it as long as you need it
 - Keep all information safe
 - Don't transport the information outside Europe without additional safeguards or consent.

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Accountability and transparency

- **PROOF** is the key – how do you prove you're compliant
- Public facing information most important
- What are you telling people and **HOW?**
- Privacy Notices

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Privacy notices

- Information Notices/Privacy Policies/Data Protection Notices...
 - What you tell people when you collect their information.
 - Not enough to have the information available somewhere – **PROVE** that you've given it, and they've seen it.
 - New *requirements*

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Privacy notice

- Identity and contact details of: Controller, Rep, DPO;
- The purposes for which information is being collected;
- The legal basis for use of information:
 - If consent – mention withdrawal;
 - If necessary for legitimate interests – detail what those interests are;
 - If statutory requirement or contract – whether or not obligatory and consequences of not providing
- Recipients/categories of recipients;
- Details of safeguards if outside EEA;
- Retention period or criteria used to determine the period;
- The existence of the rights to access information, rectification, erasure, object to processing, and data portability;
- The right to complain to the ICO;
- If automated decision making is being used, what the logic is, and the significance and consequences for the individual.

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Legal justification

- First principle – data shall be processed lawfully, and in a transparent manner in relation to the data subject (lawfulness, fairness and transparency).

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Legal justification

- Cannot be lawful unless **one** of conditions in Art 6 met.
 - a) Consent has been given – but that consent must, according to Art 7, be
 - DEMONSTRABLE
 - DISTINGUISHABLE FROM OTHER CONSENTS
 - IN CLEAR AND PLAIN LANGUAGE
 - WITHDRAWABLE, AS EASILY AS GIVEN
 - FREELY GIVEN
- *Remember – you have to be able to PROVE that the consent meets this criteria...*

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Legal justification

- Processing is necessary for:
- b) Performance of a contract with individual, or to take steps to enter into contract
 - c) Compliance with legal obligation
 - d) Protect vital interests
 - e) Performance of a task carried out in public interest or exercise of official authority
 - f) Legitimate interests without prejudice to individual (NOT if “public authority”)

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“Special categories”

- Racial/ethnic origin, political opinions, religious or philosophical beliefs, TU membership, genetic/biometric for identification, health, sex life, sexual orientation...
- ALL PROHIBITED, unless...

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...You can meet one of these criteria:

- Explicit consent (unless there is a legal bar)
- Legitimate interests of not for profit body with religious aim AND
 - Appropriate safeguards
 - Relates to members, former members, people who have regular contact AND
 - No transfers to third parties without consent

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- Already made public by individual
- Necessary for:
 - employment;
 - protection of vital interests;
 - establishment, exercise or defence of legal claim;
 - Substantial public interest on basis of legal requirement
 - Preventative or occupational medicine
 - Public interest in area of public health
 - Archiving in public interest, scientific or historical research, or statistical purposes

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Which means...

- Religious information ok as long as not making public/telling others without express consent of individual, or individual has already made public;
- Where medical information involved – ok for the provision of health or social care/treatment or management of health or social care systems and services as long as recognised health professionals involved
- **BUT – BE CLEAR ON EXACTLY WHAT BASIS YOU ARE USING THE INFORMATION**

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Accountability and transparency the sequel

- How do you prove accountability?
 - Paper trails
 - Staff and volunteer training
 - Policies and procedures

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Accountability and transparency the sequel

- Policies and procedures:
 - General Data Protection – Recommended
 - What data you have, and what you do
 - Safeguards
 - How you comply
 - Data Breach – Required
 - Privacy Policy – Required
 - Data Retention – Required
 - ICT - Recommended

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Individual rights

- Subject Access (30 days)
- Rectification
- Erasure
- Restriction
- Data Portability

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Processors

- Still need written agreement
- Additional requirements:
 - Duty of confidentiality on staff;
 - Subcontract with Controller permission;
 - Assist Controller with subject rights and security;
 - Return or delete at end – controller’s choice;
 - Make info about activity available to controller.

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DPIAs

- Certain circumstances require risk assessment
- Any high risk processing
- Identify risks and mitigation factors

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What should you be doing?

1. What data do we have?
2. Where did it come from?
3. What do we do with it?
4. What is the legal justification for what we are doing?

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Five key messages

1. Understand what you have and why
2. Be clear on legal basis for any and all uses
3. Make sure you are open and transparent
4. Get website right
5. PAPER TRAIL!!!!!!

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Questions?



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Introduction to the Mental Capacity Act 2005

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Mental Capacity Act 2005



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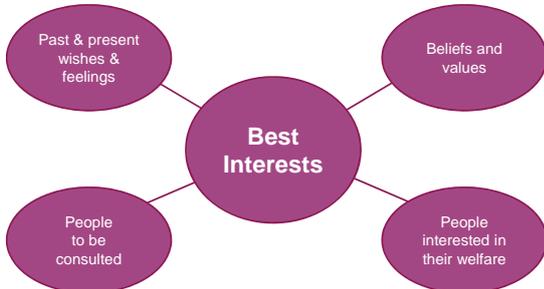
Decision making

- Presumption of capacity
- Help and support to make decisions
- Unwise decisions
- Best interests
- Rights and freedoms

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Best interests



Lasting powers of attorney

- Donor appoints attorney(s) to make decisions on their behalf.
- Must be a named individual but replacements can be appointed.
- Two types – property and financial and health and welfare.

Advance decisions

- Decision to refuse medical treatment
- Takes effect at a time in the future
- Must be in writing if refusing life sustaining treatment
- Can include statements about treatment preferences, who should be consulted etc



LPA v Advance Decisions

LPA

- Someone else has authority to make decisions
- Broad in scope – covers general welfare matters

Advance Decisions

- Donor's own wishes
- Limited to decisions about medical treatment

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DoLS

- Article 5 Human Rights Act 1998
- Justify and authorise depriving patient/resident of their liberty to give them care/treatment
- Applies in care homes and hospitals

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DoLS

- Objectively deprived of their liberty – the *Cheshire West* 'acid test'
 - Continuous supervision and control?
 - Free to leave?
- Refused consent/unable to consent
- Imputable to the State
 - What about private arrangements?
- Authorisation from supervisory body

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Thank You – Any Questions?

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