

9. Whistleblowing – continuing reporting duties for independent examiners **For independent examiners**

Independent examiners (and auditors) are also required to report certain matters to OSCR as part of their statutory reporting duties. This duty is distinct from the requirement for the independent examiner's report which is attached to the accounts document as described in Step 5. It is important to note that the independent examiner's report is only submitted to OSCR with the annual accounts. It is the charity trustees' duty to ensure that this is done. However, relevant matters as discussed below should be reported to OSCR by the independent examiner as soon as they become apparent. This requirement allows information to be provided to OSCR to assist in the fulfilment of its regulatory purposes.

The provisions within section 46 of the 2005 Act fall into two strands:

- matters that must be reported on the basis that the independent examiner has reasonable cause to believe that the matter is likely to be of material significance for the purposes of OSCR exercising its functions under sections 28 (inquiries about charities etc.), 30 (removal from the Register of a charity which no longer meets charity test) or 31 (powers of OSCR following inquiries) of the 2005 Act – often referred to as the 'statutory' reporting duty
- matters that the independent examiner may report as they have reasonable cause to believe they are relevant for OSCR in exercising any of its functions but are not captured by the mandatory reporting duty – often referred to as the 'discretionary' reporting duty.

The statutory reporting duty

The reporting of a matter of material significance is a separate report from the independent examiner's report on the accounts. The 2005 Act requires the report to be made immediately the matter comes to the independent examiner's attention and it is recommended that the report should be made in writing although there is no legal obligation to do so.

It is not part of the reporting duty to require independent examiners to perform any additional scrutiny work as a result of the statutory duty nor are they required specifically to seek out reportable matters. Examiners should however include procedures within their planning processes to ensure that they have sufficient understanding to enable them to identify situations which may give reasonable cause to believe that a matter should be reported to OSCR.

In order to recognise whether a situation is likely to be of material significance to OSCR's functions, an understanding is needed of those matters which, either due to their nature or potential financial impact, are likely to require evaluation and, where appropriate, investigation by OSCR.

OSCR will always consider the following to be of material significance, and hence reportable:

- matters suggesting dishonesty or fraud involving a significant loss of, or a major risk to, charitable funds or assets
- failure(s) of internal controls, including failure(s) in charity governance, that resulted in a significant loss or misappropriation of charitable funds, or which leads to significant charitable funds being put at major risk
- matters leading to the knowledge or suspicion that the charity or charitable funds have been used for money laundering or such funds are the proceeds of serious organised crime or that the charity is a conduit for criminal activity
- matters leading to the belief or suspicion that the charity, its trustees, employees or assets have been involved in or used to support terrorism or proscribed organisations in the UK or outside of the UK
- evidence suggesting that in the way the charity carries out its work relating to the care and welfare of beneficiaries, the charity's beneficiaries have been or were put at significant risk of abuse or mistreatment
- significant or recurring breach(es) of either a legislative requirement or of the charity's trust
- a deliberate or significant breach of an order or direction made by a charity regulator under statutory powers including suspending a charity trustee, prohibiting a particular transaction or activity or granting consent on particular terms involving significant charitable assets or liabilities
- the notification, on ceasing to hold office or resigning from office, of those matters reported to the charity's trustees which fall into one or more of the headings listed above.

These matters are considered central to the integrity of a charity and as such will require evaluation and where appropriate investigation by the regulator. OSCR considers all such reports to have a very high intelligence value and takes a risk based and proportionate approach to inquiry work when deciding whether to open an inquiry.

It should also be noted that where the matter relates to terrorism, then the matter must also be reported to the police. Should the matter involve money laundering, independent examiners who are charging a fee for their service should also report the matter to the National Crime Agency under the requirements of the Money Laundering Regulations. If the report concerns the abuse of vulnerable beneficiaries, a report should also be made to the Police and/or Social Services.

Other matters considered material may change from time to time; currently they are reflected in OSCR's monitoring programme priorities.

Where independent examiners make a report, they may not have complete information about the issue(s) but should be prepared to provide as much relevant information as possible about the matter(s) they are reporting. Reference may also be made as to whether or not the trustees are aware of the issue and/or what action has been taken in response.

The discretionary reporting duty

Independent examiners also have a broad discretionary right to report those matters that they believe may be relevant to the work of OSCR but that do not fall under the statutory reporting duty.

OSCR considers such reports to have considerable intelligence value and welcomes these submissions. Given the broad discretion permitted, it is not possible to list all instances for reporting. However, the examiner may usefully review the following matters:

- those which were not considered material relating to statutory duties
- where trustees are requested to provide additional information as part of OSCR's monitoring regime.

OSCR monitors larger charities using the annual Supplementary Monitoring Return which is designed to consider specific areas of interest, including:

- payments to charity trustees
- relationships with connected trading companies
- for charities with income of over £250,000 (£100,000 for accounting periods starting before 1 April 2011), comparison of some income/cost relationships.

Pre-populated Annual Return including the Supplementary Monitoring Return are sent out to charities automatically if the gross income for the previous year is £25,000 or over.

A specimen copy of the Supplementary Monitoring Return is available to download from our website.

Matters falling within this discretionary category are likely to be indicative of significant risks to charitable funds or their proper application and would therefore normally be relevant to the work of OSCR. Where such a matter arises, the independent examiner may discuss the matter with the trustees to identify whether it remains a matter of concern and whether the trustees have taken or are taking action which can reasonably be expected to remedy or mitigate the effect in the current or future years.

The range of matters to be included in this section is very wide and while the following examples can provide a guide, they are in no way exhaustive. The type of matters that may require reporting to OSCR could include:

- the cumulative impact on a charity of ignoring professional recommendations
- unexplained large discretionary redundancy payments above the statutory minimum
- smaller administrative or financial issues
- expenditure outwith the scope of the charity's purposes.

Although the independent examiner enjoys a discretion as to whether to make a report of a matter relevant to the work of OSCR, it is recommended that the examiner documents any relevant matters identified in the course of the independent examination and also the basis of any decision not to report a matter falling within this discretionary category.

Milestone 11 –

- **Are there any matters that I must report to OSCR?**
- **Are there any matters that I think may be of interest or use to OSCR?**
- **Have I made the required/appropriate reports to OSCR?**