

DSC Consultation Submission

Charity Commission Draft

Social Media Guidance

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1. DSC and Charity Regulation

The Directory of Social Change has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society. Through our publications, courses and conferences, we come in contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers and are constantly struggling to maintain and improve the services they provide.

DSC believes in '[Responsible Regulation](#)' – that regulation of independent voluntary activity should be proportionate, appropriate and enabling. Regulation should strike a balance between perceived risk and intended benefit; it must be informed by the characteristics, capacity, and needs of the organisations and individuals that are being regulated; it should seek to empower rather than control voluntary activity.

Over many decades, DSC has been a strong supporter of the role of the Charity Commission in upholding the public interest in a thriving charitable sector, and we believe the Commission has a vital role to play in the health and impact of charities. DSC has always worked closely and constructively with the Commission on relevant consultations, to access and analyse data to facilitate our research work, and to understand the latest regulatory developments so we can inform charity staff and trustees via our many courses, events and publications.

2. Context

Social media is an ever-changing landscape: it moves fast and can be hard to fully understand in all its entirety. Exacerbated by the pandemic, online communities have become even more important. For charities, these online spaces are now a crucial component for forming solid communities, raising funds and awareness for charitable causes, getting direct information on the needs of beneficiaries, and campaigning for change.

Unfortunately, like with anything, there are also some dark sides to social media, as it provides a platform for hate and discrimination. Perceiving a risk in social media for trustees and charities, the [Charity Commission released a consultation on draft guidance for trustees and their use of social media](#), ending on Tuesday 14 March. The draft guidance seeks to help trustees navigate the realm of social media, by setting out guidelines on these areas:

1. Creating a social media policy
2. Managing potential risk
3. Engaging in controversial topics
4. Campaigning and political activity
5. Fundraising on social media
6. Staying safe online

The guidelines have prompted a mixed reaction from communications professionals and trustees in the sector. Many believe this guidance from the Commission is necessary, however, many also take the view that there is still much more work to do to ensure this guidance is fit for purpose. We understand that the Charity Commission acknowledges the amount of work that still may need to be done, and we appreciate the time and effort they are putting into consulting on it.

3. General observations on the draft guidance

In general, sections 2 and 3 are the most problematic and in need of further work, and the rest of the sections are more helpful and closer to what is needed.

Social Media Policy

There is a great need for trustees to understand the importance of a social media policy for their organisation. This is a crucial element of the guidance, which needs to remain and become more extensive. Every charity needs policies, especially for something as complex as social media, and ensuring these are in place and appropriate is a key responsibility for trustees. A key point however is that the policy must fit the charity and its own circumstances. Charities will use social media in different ways or not at all, and will have different levels of capacity and skills. A 'one-size-fits-all' approach won't work, but at the same time the guidance should include more examples for illustration and more dos and don'ts. There also needs to be more clarity on how social media can be delegated better by staff within an organisation.

Managing risk

Sections 2 and 3 of the guidance discuss the reputation of the charity and the activities of trustees, volunteers and staff. It states: 'trustees, employees or volunteers are free to post or share personal content and viewpoints on their own social media accounts'. However, it also adds that 'there are risks that an individual's posts are interpreted as reflecting those of a charity'. This is not a simple distinction and relies on judgment, interpretation and potentially conflicting points of view. The recent controversy around the sports presenter Gary Lineker at the BBC and his criticism of the government's refugee policies, while not involving a charity, showcased some of the difficulties and challenges involved.

Regulating personal accounts could be incredibly hard, especially in cases where individuals are linked to multiple charities. The legal basis for enforcing personal behaviour could be complicated or non-existent, unless there were for example clauses in employment contracts or trustee/volunteer codes of conduct which give the charity the right to discipline or dismiss people in circumstances that could even then be very open to interpretation.

Some of the text of the draft guidance could also be seen as going against the principle of freedom of speech, encroaching on the personal lives of trustees, staff members and volunteers and their ability to express their political or personal views on social media. In this respect the guidance is too murky and difficult to decipher, and could mean that

trustees could be deterred from using social media altogether, which could be very damaging. Individuals should not be discouraged from using their voices online, because society needs the voices of charities and trustees to be heard.

It's possible that trustees need to understand the importance of social media more. They may be less familiar with social media or not frequent users of it, hence complicating their ability to create workable policies or undertake oversight. NCVO and Charity Comms ran a roundtable discussion on this topic and a common theme throughout was that many trustees are disengaged from using social media, maybe because they're too busy or not sure how to use it properly.

A focus in the guidance therefore should emphasise the need for policies to be in place and that they are clear and robust, offering encouragement, and being realistic about the degree to which trustees can monitor all the risks in this area. For example, expecting monitoring and taking action on 'third parties' in terms of the charity's social media activity may in many cases simply not be reasonable or possible, if the charity does not and cannot have full control of the online platform where material may be hosted (as is the case with most mainstream social media platforms).

Charitable objectives

The guidance talks about charities' use of social media needing to be in keeping with their charitable objects. That may be technically correct, but the reality of social media means that sticking strictly to that principle would be extremely limiting. Many charities took to Twitter and LinkedIn for example to pay their respects when the Queen passed, even though they were not associated with the monarchy (for example as Royally Chartered charities) and the issue wasn't technically related to their charitable objectives. This begs the question: is only sticking strictly to your charitable objectives online possible or desirable?

Recruitment and retention of trustees

Charities are finding it increasingly difficult to recruit trustees currently and the burden of liability and seemingly ever broadening legislation is surely a factor. There is a risk this guidance deters even more people from becoming trustees. Censoring or limiting voices in the sector could potentially be harmful for recruitment, adding even more pressure to a role which already carries great responsibility.

4. Practical actions to improve the draft guidance

In addition to the comments above, we think the Charity Commission should consider the following practical actions to improve the guidance in subsequent versions:

- The section on having a social media policy needs to give more examples, or even ideally a template for charities to use that can be changed and adapted
- The Charity Commission should create a 5-minute guide exploring in detail how to create a social media policy and the key aspects
- More encouragement should run throughout the guidance about the benefits of using social media and having a voice, and the importance of charities and trustees being able to advocate on behalf of their cause
- Make clear the dos and don'ts for using social media as a charity.

5. Responses to consultation questions

Below we repeat our response to the online consultation questions hosted on the Charity Commission's webpages on gov.uk.

Q1. 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

The strength of the guidance is in reiterating the need for a policy and signposting to other important relevant guidance such as fundraising, safeguarding and political activity. Its major weakness is in attempting to extend trustees' responsibility for managing the reputation of the charity into monitoring and potentially taking action on the social media activity of employees or volunteers outside of work or volunteer roles. This would be in many ways unworkable, potentially contrary to individual liberties, and could set double-standards compared to other sectors which are not clearly justified by the law.

Q2. 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

The guidance expects too much of trustees and as drafted could prove to be another burden that disincentivises trusteeship, encourages trustees and charities to be more risk averse in their communications, and causes problematic legal consequences. The only way trustees could enforce the behaviour of individual trustees or staff on their private social media accounts in terms of being related to the charity's objects or reputation is if this is backed up not just by the charity's policy but employment contracts or other codes of conduct. This could be detrimental to recruiting and retaining trustees and staff, but also potentially complicate the legal differences between employment and volunteering.

Q3. Do you think the guidance covers all the relevant issues that charities need to think about to help them use social media?

✓ no

It does need to remain succinct, but it lacks examples for illustration that could help clarify the scope of trustees' responsibility for oversight. However, coming up with useful examples to cover the scope anticipated in the draft guidance may be very difficult. For example, a trustee of multiple charities can't reasonably be held accountable for their social media communications related to all of those charities. The effect of expecting that to be the case would lead that trustee to self-censor or not express their views on social media at all - hence there is a significant risk of a 'chilling effect'.

Q4. Is what the guidance says about an individual's personal use of social media – whether a trustee, employee or volunteer – helpful?

✓ Very unhelpful

It needs to set clearer boundaries and examples, but the three cases - trustee, employee, volunteer are potentially very different legally and in terms of the leverage trustees may have to supervise and enforce certain behaviour. The guidance as drafted doesn't recognise this. For employees it is arguably simpler, for volunteers and trustees it may be unworkable.

Q5. As a result of reading the guidance how confident would you be that you know what to include in a social media policy?

✓ Neither

The guidance contains many positive elements but would be improved by focusing more on the need for a policy and the relevant elements, and connections to other relevant guidance, and less on the scope of expecting trustees to monitor and be accountable for the personal social media activity of individuals because of the potential risk to the charity's reputation. This is a complex area where behaviour, platforms and systems are constantly evolving, so it will be extremely difficult for regulators. Focusing on the nuts and bolts will be better for everyone.

Q6. Please provide us with any other comments you have on the draft guidance:

There seems to be broad support in the sector for some kind of guidance in this area. From what we have heard, trustees and charities generally would welcome some guidance as long as it is helpful and facilitates the right conversations at board level and the right policies for the charity, rather than exposing them to further regulatory risks unreasonably. This is a complex and evolving area which is not straightforward, even legally. The guidance needs to reflect that reality.

It is critically important that charities and trustees are able to use their voices to advocate for their charitable causes, including on social media. Regulation should not stifle or have a chilling effect on those voices, because the greater risk is that collectively they are silenced

and beneficiaries suffer as a result, rather than a few trustees for example overstep the mark and their charity therefore experiences some kind of unquantifiable 'damage to reputation'.

Many charities are operating in a hostile media and political environment, where they are under intentional and sustained attack from certain parts of the press and political system. This extends from refugee charities, to food banks to even the National Trust. This guidance should not be used as a cudgel for those actors to silence charities that are rightfully advocating within their charitable objects and using social media to do so.