



Llywodraeth Cymru
Welsh Government

The role of the Welsh Ministers as the Principal Regulator of exempt charities

Welsh Further Education Corporations and St David's
Catholic Sixth Form College

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Guidance

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The role of the Welsh Ministers as the Principal Regulator of exempt charities

Audience	Governors and clerks of further education corporations in Wales and St David's Catholic Sixth Form College.
Overview	<p>Governors of further education corporations are 'trustees' of the charities they serve. Charity trustees are responsible for overseeing a charity and directing how it is managed and run. Trustees of an exempt charity have the same general duties and responsibilities as trustees of other charities and must comply with charity law in the same way as other trustees.</p> <p>This guidance provides an overview of the role of the Principal Regulator in Wales and the responsibilities of further education corporations and St David's Catholic Sixth Form College in complying with charity law.</p> <p>This guidance is not intended to act as a comprehensive guide nor as an authoritative statement of the law; it instead provides an overview and identifies relevant sources of information. Corporations remain responsible for taking their own advice on corporate governance and the obligations flowing from their charitable status.</p>
Action required	For information and dissemination to governors and clerks of further education corporations in Wales and St David's Catholic Sixth Form College.
Further information	Enquiries about this document should be directed to: Skills, Higher Education and Lifelong Learning Directorate Welsh Government Rhodfa Padarn Llanbadarn Fawr Aberystwyth SY23 3UR e-mail: principalregulatorfe@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government's website at www.gov.wales/educationandskills
Related documents	Charities Act 2011 www.legislation.gov.uk/ukpga/2011/25/contents The Charities Act 2011 (Principal Regulators of Exempt Charities) Regulations 2013 www.legislation.gov.uk/uksi/2013/1764/made

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1. Introduction

This guidance note covers the role of the Principal Regulator in Wales and the responsibilities of Further Education Corporations as exempt charities. Further Education Corporations must obtain appropriate information and advice to ensure they understand their obligations when complying with charity law.

This guidance note provides an overview of the requirements with links to relevant sources of information.

2. Background

The Charity Commission is the regulator of charities in England and Wales, it has five objectives to:

- increase public trust and confidence in charities
- promote awareness and understanding of the operation of public benefit
- promote compliance by charity trustees with their legal obligations in exercising control and management of their charities
- promote the effective use of charitable resources; and
- enhance the accountability of charities to their beneficiaries and the general public.

What is an Exempt Charity?

Exempt charities are charities which are exempt from registration with, and oversight by, the Charity Commission. Schedule 3 of the Charities Act 2011 (the Act) identifies Further Education Corporations¹ as charities with exempt status. The Act provides for exempt charities to be regulated by a Principal Regulator.

What is a Principal Regulator?

The Principal Regulator has a general duty to do all it reasonably can to promote compliance by trustees of exempt charities with their legal obligations when exercising control, management, and administration of their charity².

The Principal Regulator works closely with the Charity Commission and aims to increase public trust and confidence in those charities it regulates by promoting awareness and understanding of the 'public benefit' requirements for beneficiaries and the general public. If however the Principal Regulator identifies a concern with a particular charity they can invite the Charity Commission to use its powers of investigation and intervention. In practice this may include:

- Promoting charity trustees' compliance with charity law by signposting information and guidance.
- Monitoring charity law compliance through existing monitoring processes.
- If a complaint is received about an exempt charity that concerns its compliance with charity law, the Principal Regulator will refer the matter to the Charity Commission.
- Working with the Charity Commission to ensure that exempt charities are accountable to the public.

¹ The governing body of St David's Catholic College was incorporated, and exempt charitable status conferred on it by virtue of S.I. 2005/2293 (W. 171) which was made using powers in section 143(6) of the Learning and Skills Act 2000 (c.21).

² This is described in the Act as the compliance objective see section 26 of the Act.

In Wales, the Welsh Ministers were on 1 September 2013 appointed as Principal Regulator of Further Education Corporations in Wales, and St David's Catholic College.

3. What this means for further education corporations

Trustees

The members of Governing bodies of Further Education Corporations are 'trustees' of the charities they serve. Charity trustees are responsible and have ultimate responsibility for overseeing a charity and directing how it is managed and run. Trustees of an exempt charity have the same general duties and responsibilities as trustees of other charities and are therefore required to comply with charity law in the same way as other trustees.

A trustee's responsibilities will include, but are not limited to:

- Carrying out the charity's purposes for the public benefit.
- Complying with the charity's governing document and the Further and Higher Education Act 1992³.
- Acting only in the charity's best interests.
- Managing the charity's resources responsibly; and
- Acting with reasonable care and skill.

These requirements can be met by the following:

- i. Adhering to the charities Instrument and Articles of Government and primary legislation including the Further and Higher Education Act 1992.
- ii. Having regard to the Charity Commission's guidance on public benefit and ensuring the corporation is only involved in activities which further its charitable objectives and does not put its charitable status at risk.
- iii. Including a statement on public benefit in the Corporation's Annual Report.
- iv. Ensuring funds and assets of the corporation are only used for the purposes set out in the governing document.
- v. Being well informed of the overall condition of the charity's estate, ensuring that it is being properly used and adequately insured.
- vi. Preparing timely accounts and annual reports, making them available to the public on the website.
- vii. Not gain direct or indirect financial benefit from their role except as permitted by charity law or within their governing document.
- viii. Actively prevent the misuse of a governor's position and college funds/assets to ensure they do not allow personal views or prejudices to affect their conduct as trustees.

³ <http://www.legislation.gov.uk/ukpga/1992/13/contents>

- In addition it is good practice for charities to publish charity information on the website including the governing document, name of trustees and a summary of what the charity does alongside the accounts.

Detailed guidance is available from the Charity Commission in *The Essential Trustee: What you need to know (CC3)*⁴.

⁴ <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

4. Promoting compliance

To raise awareness of the role and promote compliance with charity law the Welsh Ministers as Principal Regulator acting through the Department for Education and Skills are taking the following steps:

- Issue this guidance note to clerks, chairs and vice chairs of governors for all exempt Further Education Corporations in Wales and St David's Catholic Sixth Form college.
- Setting up a webpage on the DfES site which sets out the roles and responsibilities of the Principal Regulator and governors as charity trustees with useful information sources and contact points.
- Include reference to this note and Charity Commission guidance in the proposed guide for governor's code in Wales with regard to advisory conduct for both Boards and individual Board members collectively which is anticipated to be adopted by the Welsh FE sector.
- Updates as and when required delivered by a range of methods including email and via the FE Clerks network.
- Maintain close liaison with the Charity Commission to ensure regular updates and guidance are issued accordingly.

How will the Principal Regulator monitor compliance with charity law?

Wherever possible, established regulatory/monitoring systems will be employed and additional requirements will only be introduced where considered essential. It is anticipated that, on a day to day basis, corporations will not notice any difference in the way they are regulated. Officials in the Department for Education and Skills (DfES) will continue to apply their existing processes to ensure that FE Corporations are complying with Charity law. These include, but are not limited to:

- Monitoring compliance to a range of documentation including terms and conditions of funding, financial memorandum, audit code of practice and accounts direction; and
- Requiring three financial returns to be submitted from each institutions each year; audited financial statements (and associated finance record) in December each year, a forecast and financial strategy in July each year, and a mid year return submitted in April each year.

The Provider Assurance and Governance Service is responsible for evaluating the risk management, control and governance processes, of institutions funded by the Welsh Government and giving assurance, to the Director General of DfES on those internal control arrangements. This is

normally completed by evaluating the annual returns but may include visits to assess internal control arrangements

5. Reporting serious incidents

Further Education Corporations must notify the Principal Regulator immediately if they identify any serious incident which may put the charity's assets, beneficiaries or reputation at risk. The Charity Commission's list of serious incidents includes:

- Fraud, theft, or the charity losing a significant amount of money another way.
- A large donation from an unknown source.
- Links with terrorism.
- The charity having no policy to safeguard its vulnerable beneficiaries.
- Suspicions, allegations and incidents of abuse or mistreatment of vulnerable beneficiaries.

If you are unsure whether an incident is classed as being serious it is advisable to report and discuss the issue with the Principal Regulator and if appropriate the Charity Commission. Further information can be located at Annex A.

6. Concerns and complaints

Concerns or complaints about possible non-compliance with charity law may also be raised by a student, staff member of the general public. These cases should be sent by email to the Principal Regulator at principalregulatorfe@wales.gsi.gov.uk

7. Further information

This guidance note will be reviewed regularly and updated as required to reflect developments in the sector. If you have any questions on the content of the document email principalregulatorfe@wales.gsi.gov.uk

The Charity Commission website offers a wide range of accessible information and guidance available at <https://www.gov.uk/government/organisations/charity-commission>

Annex A: Handling of serious complaints and contact details

Process for reporting serious incidents

When an FE corporation identifies a serious incident it should notify the Principal Regulator by emailing principalregulatorfe@wales.gsi.gov.uk

The email should be entitled 'Principal Regulator- serious incident report' and provide full details of the issue alongside any investigative and remedial action already undertaken by the corporation.

When the Principal Regulator receives a serious incident report, our main priority will be to determine the severity of the incident and its impact on learners, staff, and other stakeholders as well as and whether any aspects of charity law have been breached. Following this we will identify how the corporation has managed the incident and how it has reviewed systems/controls to minimise the risk of recurrence. In most cases, if the initial report is comprehensive and steps to address the incident have been identified⁵, the expectation is there will be no requirement to seek further information or take further action.

If further action is deemed necessary the Principal Regulator will notify the Charity Commission and work with them to resolve the issue.

Process for handling concerns and complaints

Students, corporation staff members and members of the public may raise concerns or complaints regarding non-compliance with charity law by emailing the Principal Regulator.

The email should be entitled 'Principal Regulator – non-compliance' and provide full details of the issue. The Principal Regulator will then work to investigate the incident.

Any complaints about the corporation that are raised directly with the Charity Commission will be considered by them as a matter for the Principal Regulator to address. The Charity Commission will only become involved following invitation by the Principal Regulator.

When the Principal Regulator receives a complaint, the first step in most cases will be to advise the complainant to raise the concern with trustees of the FE Corporation if this has not already been done. The corporation should then investigate the complaint and report to the Principal Regulator. At this point a decision will be made if the issue is resolved or if further action is needed.

⁵ Taking account of the governing bodies legal duties, and where appropriate consulting expert advisers, as well as guidance and advice from, amongst others, the Charity Commission.

FE corporations are required to have published procedures for complaints handling. These procedures should contain the process by which someone can make a complaint, have it investigated, reviewed and resolved. It should also include the time-scales and named individuals.

Further guidance on reporting concerns and complaints can be found on the Charity Commission website at <https://www.gov.uk/government/publications/complaints-about-charities>

Investigating concerns on FE corporations compliance with charity law

Most problems in charities can be resolved by the charity trustees themselves. Others might be examined and resolved by the Principal Regulator without the need to open an investigation. However, in the most serious cases the Principal Regulator may need to work with the Charity Commission to formally investigate the matter further.

In these cases, DfES will write to the Chair of the governing body setting out the concern and inviting a response. Further action will depend on the nature of the response and the seriousness of the issue. Officials would anticipate that most incidents could be resolved through correspondence. However, if this is not possible in the case of a serious incident the Principal Regulator may ask the Charity Commission to assist with the investigation.

The Charity Commission have a range of statutory powers they can use to stop abuse and protect charitable assets and beneficiaries including:

- **Information gathering powers** which require them to obtain information or documents; or named individuals to meet them to answer questions.
- **Temporary protective powers** which allows them to protect charity property for a temporary period while they continue investigating.
- **Remedial powers** which allows them to implement long term solutions to problems often identified by an inquiry.

It should be noted where there are serious concerns of abuse in a charity the Charity Commission may investigate and open a statutory inquiry under section 46 of the Charities Act 2011. The Commission's guidance on their regulatory approach is available at <https://www.gov.uk/government/publications/risk-framework-charity-commission>

Contact details

The Principal Regulator can be contacted by emailing principalregulatorfe@wales.gsi.gov.uk

Annex B: Charity Commission guidance and legislation

The Charity Commission has a range of useful guidance to assist in your role as trustee of an exempt charity. In addition the Charities Act 2011 allows the Commission to provide advice to charities. A charity can write to them for formal advice on whether taking a particular course of action would be deemed as acting appropriately as a trustee.

Guidance

Essential trustee

Exempt charities

Public benefit guides

Decision making

Conflicts of interest

Payment of trustees

Campaigning and political activity

Risk management

Managing charity assets

Legislation

Charities Act 2011