



SHEPHERD+ WEDDERBURN

**Scottish Episcopal Church (SEC)
Risk Management for Vestry members
of
SEC Congregations**

1. Executive Summary

- 1.1 Effective management of risk is a very important way for SEC congregations to ensure that the risk of occurrence of events which may unduly disrupt the proper running of congregations is reduced. Furthermore under their current constitutional arrangements, Vestry members of SEC Congregations are potentially at risk of exposure to personal liability resulting from their actions on behalf of their Congregation. Vestry Members should ensure they are aware of the risks faced by the Congregation and implement effective Risk Management (RM) policies and procedures to appropriately combat those risks.
- 1.2 Some of the main categories of risk facing SEC Congregations are:-
- 1.2.1 Governance;
 - 1.2.2 Operational;
 - 1.2.3 Financial;
 - 1.2.4 External.
- 1.3 There are a variety of ways in which RM can be undertaken. Some specific tools which may be useful for Vestry members of SEC Congregations are:-
- 1.3.1 Risk registers;
 - 1.3.2 Insurance;
 - 1.3.3 Effective Financial management;
 - 1.3.4 Ongoing oversight and review;
 - 1.3.5 Use of different constitutional structures.

2. Introduction

This paper discusses:-

- 2.1 The nature of risks faced by SEC Congregations, and
- 2.2 How these can be addressed through RM.

This paper also considers the issue of personal liability of trustees of SEC Congregations.

3. Nature of Risks

Any charity, business or other organisation is faced with a wide range of risks throughout its day to day operations. The first step in effective RM for SEC Congregations, therefore, is for the Vestry members to think about and identify things that could go wrong, so that they can be properly assessed and mitigated as appropriate. Members of those SEC Congregations which are required to produce accrued accounts are required, under paragraph 1.47 of the Charities Statement of Recommended Practice (SORP), to

explain in the Trustees' Report the steps they have taken towards the identification and mitigation of risks. A link to the relevant SORP is provided in the Appendix at the end of this document.

Vestries may find it useful to consider risks in two separate contexts. Firstly, general risks which exist in the everyday environment and operation of the Church, for example the risk of damage to Church buildings. Secondly, Vestries should consider specific risks which attach to events, projects or other 'one-off' activities of the Church, such as Sunday School outings and other Church days out, or capital projects such as construction or modification of buildings.

These risks can then be divided into categories. We consider, for example, that some of the main risks facing SEC Congregations might fall into the following categories:-

3.1 **Governance**

The Vestry members of SEC Congregations must ensure that their organisational structure is appropriate. This includes both the management structures implemented for the ongoing life and activities of the congregation and also the fact that on occasion specific structures for particular projects or operations might be appropriate. There is a risk that the day to day functions of the Congregation may be impaired if the correct structures are not in place.

A primary aspect of the vestry's role in governance is to attend to the ongoing life of the congregation including strategic planning for the future, opportunity for the congregation's mission and service to the local community and maintaining the financial viability of the congregation.

Additionally, Vestry members need to have the relevant skills and be able to make the necessary time commitment to the Congregation to adequately fulfil their duties, and must also be aware of the possibility of conflicts of interest arising. Similarly, Vestry members may be found personally liable for a failure to act in accordance with their duties. For example, under Clause 13 of the Model Constitution, the Vestry are "bound to keep the buildings and properties in repair and insured against fire and other risks...". If there was fire damage to a church for which the Vestry had not obtained proper insurance, the Vestry members may be held personally liable for the restorative costs.

3.2 **Operational**

Examples of operational risks include areas such as:

3.2.1 **Safeguarding**

The Vestry has responsibility for ensuring that appropriate procedures and practices are implemented to ensure the safeguarding of children and vulnerable adults in the congregation. Whilst specific aspects might be delegated to particular individuals the Vestry retains overall responsibility for this area.

3.2.2 **Property**

The Vestry has responsibility for looking after the church fabric. Failure to do so may result in deterioration of buildings and consequent significant bills for maintenance and repair or, in worst case situations, the possibility of personal injury.

3.2.3 **Health & Safety**

The vestry, as charity trustees, should ensure that matters of fire and other areas of health and safety are dealt with to ensure the safety of clergy, employees, external worker or church members.

3.2.4 **Personnel/Contractual**

SEC Congregations, where they employ staff, must ensure compliance with all relevant employment legislation. It is also important to ensure that when entering into employment relationships that is done based on clear expectations on both sides on the agreed scope of work and well considered contracts of employment.

When contracting with external providers of goods and services, Vestry members must ensure that they are acting in the best interests of the Congregation, and also within

their powers as governed by the Constitution of each Congregation. Acting for the best interest of the charity in general means that vestry members must not act for their own personal gain and charity law requirements in relation to conflict of interest must be observed. This might arise in cases where for example it is suggested that a vestry member provides some form of service to the church for a fee.

3.3 Financial

3.3.1 Financial Health and Wellbeing

The Vestry has a responsibility to monitor the congregation's financial health and to take steps to address perceived challenges in areas such as such as levels of giving, investment income, overdependence on particular sources of income etc.

3.3.2 Fraud

Any organisation which deals in financial transactions (especially cash) on a regular basis is susceptible to theft and fraud. Additionally, as a holder of individuals' personal information, SEC Congregations may be targeted by data fraudsters such as phishing scams or hacking. Mitigation against the risk of data fraud will also assist Congregations in compliance with their responsibilities under the Data Protection Act, which covers both financial and other personal information.

3.4 Regulatory

SEC Congregations must comply with all relevant charities and tax legislation. Failure to comply with the rules laid out in relevant legislation could result in HM Revenue & Customs withdrawing charitable status from a Congregation, along with access to valuable tax reliefs.

Further, the Scottish Charity Regulator (OSCR) has wide ranging powers, including the power to remove a charity from the Register, in the event of non-compliance with the law. OSCR also has the power to suspend charity trustees found to be acting improperly in the management and control of a charity.

Vestry members must also ensure that their Congregations comply with all other relevant regulation relating to, for example, data protection, equalities legislation, and safeguarding. Further Guidance relating to these issues is available online, to which please see the Additional Resources section at the end of this paper.

4. Personal Liability of Vestry Members

Under the form of the Model Constitution for SEC Congregations, each Congregation is established as an unincorporated association, and most SEC Congregations are so constituted. This means that Congregations do not have a separate legal personality (unlike a Company, or Scottish Charitable Incorporated Organisation), and the Vestry members contract and incur liabilities in their own names on behalf of the Congregation. This is in contrast to, for example, directors of a company. As a company has separate legal personality, it can carry out these functions on its own behalf and the directors do not, generally, incur any personal liability.

Vestry members will generally be entitled to set off any liabilities they incur when acting on behalf of a Congregation against the assets of the Congregation. However, if a Congregation's liabilities exceed its assets then vestry members may be exposed to these liabilities personally.

5. Risk Management (RM)

Vestry members must ensure they are aware of the risks which may arise in the life of their Congregations. Having robust and effective RM policies and procedures in place is not only a necessary measure to assist Vestry members in their overall responsibilities in promoting the welfare of the congregation but is also a very important means of helping to minimise any potential personal liability of Vestry members themselves.

Once risks have been identified and categorised, Vestry members should then consider the likelihood of each occurring, and the potential seriousness of the consequences thereof. By considering these factors,

Vestry members will be able to develop a strategy for RM which is proportionate to the particular risks faced by their Congregation.

Additionally, it is essential that the RM strategy is reviewed and updated regularly, with assessments of both the risks faced and methods used to manage them undertaken periodically by the Vestry.

Vestry members should consider the best and most proportionate methods of addressing every category of risk identified. Some common tools for RM which will prove useful for Congregations depending on their particular requirements are:-

5.1 Use of Risk Registers

As part of ongoing monitoring of risk, Vestry members should keep a register of the risks identified, and the processes to be followed in relation to them. The likelihood of occurrence and severity of impact should be rated or 'scored', with a combination of the two scores giving an overall risk rating.

The risk register should then identify the procedures to be followed to mitigate the overall risk, and make an assessment of the 'net' level of risk which exists after these are taken account of. This recognises that not all risks can be eliminated entirely and helps Vestry members and others involved with the Congregation to know what areas need closely monitored. A process and schedule for monitoring and reviewing the procedures in place should also be included.

The register should also identify, by name if possible, the trustee(s) or other members of the Congregation who are responsible for the overall management of each particular risk identified. For example, in relation to fraud prevention, this would likely be the Treasurer.

A template for a Risk Register has been prepared by the SEC for use by Congregations. That template includes suggested risks which are known to be relevant for many SEC Congregations and can be further tailored depending on the particular circumstances of each Congregation. Further guidance is available from the charity regulators and includes a template Risk Register produced by the Charities Commission. A link to that template is provided in the Appendix to this document.

5.2 Insurance

One of the most effective ways of mitigating the potential impact of risk factors is having comprehensive insurance in place. This includes, for example, buildings and contents insurance, public liability and employer's liability insurance. Trustee Indemnity insurance may also be appropriate to protect against personal exposure of vestry members.

Vestry members are obliged to keep in place suitable insurance cover for church buildings and against such other liabilities as are appropriate.

5.3 Financial Management

Proper financial management is a key factor in addressing financial risk. Vestry members must ensure that adequate processes are in place to control and capture income and expenditure of the Congregation. This will help to inform Vestry members of potential risks associated with the finances of the Congregation and plan to manage risks arising accordingly.

Vestries must, in order to comply with OSCR rules, prepare annual accounts. As it requires a significant amount of information gathering and processing, the process of preparing these accounts is naturally complementary to the Congregation's overall RM strategy.

As charities, SEC Vestries must also ensure that an audit or external examination of their accounts takes place. Congregations should support that review process fully. Such review is legally required. Additionally, ongoing financial monitoring of this type can be provided by Vestry members designing and implementing internal auditing procedures within their Congregation.

At its simplest, auditing involves financial information and record keeping being periodically checked by individuals who are not otherwise concerned with them, to ensure there are no unexplained discrepancies or missing records. External audit or examination is of course not a substitute for appropriate internal procedures. Internal financial checks will also involve straightforward steps like having two authorisers for bank payments.

5.4 **Ongoing oversight**

A RM strategy can only be effective if there is a clear procedure in place for ensuring it is complied with, understood and regularly maintained.

Vestry members of SEC Congregations should have access to RM policy documents, which clearly explain to them their roles and responsibilities in implementing the strategy. Additionally, Vestry members and other individuals responsible for RM (e.g. Treasurers) should have access to guidance and training to ensure there is a strong working knowledge of RM within SEC Congregations.

Finally, named individual(s) should be responsible for oversight of the effectiveness of each Congregation's RM strategy, and ensuring it is regularly reviewed and updated as necessary to reflect changes to the nature of risks faced by the Congregation. If necessary, suitably trained and skilled Vestry members should be recruited.

5.5 **Constitutional Structures**

By operating through certain structures, Vestry members of SEC Congregations can limit liabilities. This method of RM could take two forms:-

5.5.1 **Use of Special Purpose Vehicles (SPVs) for large or complex projects**

'One-off' transactions, events or projects undertaken by SEC Congregations will have their own risk profiles distinct from the day to day operations of the Church. These could include construction of, or significant alteration to Church buildings, joint-ventures with other organisations such as schools, or significant 'one-off' fundraising activities.

Vestry members can protect the wider Congregation, and themselves as individuals, from exposure to these additional risks by managing such projects through a corporate structure, such as a company or a Scottish Charitable Incorporated Organisation (see below). This company would then bear most of the risks and liabilities relating to the project.

The benefits and disadvantages of an SPV would have to be analysed in full before deciding it was an appropriate step for an SEC Congregation to take.

5.5.2 **Conversion to a Scottish Charitable Incorporated Organisation (SCIO)**

SEC's congregations are typically structured at present as 'Unincorporated Organisations'. This type of structure does not create a separate legal entity, and therefore Vestry members of SEC Congregations are potentially personally liable for the liabilities of the Congregation.

A SCIO has a separate legal personality and is able to own property and contract in its own name. Additionally, any liabilities would generally attach to the SCIO rather than to its trustees personally.

The administrative work and costs involved with a conversion to a SCIO are potentially significant and should be carefully balanced against the intended benefits before such a conversion is pursued.

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Appendix: Additional Resources

Vestry Members or other individuals responsible for RM within SEC Congregations can find further guidance, hints and tips on RM in practice at the following locations:-

1. For general guidance as to the responsibilities of Vestry Members under the Charities and Trustee Investment (Scotland) Act 2005, the SEC website has published Guidance for Vestries, available at <http://www.scotland.anglican.org/vestry-resources/vestry-responsibilities/charities-and-trustee-investment-scotland-act-2005-guidance-for-vestries/>;
2. OSCR, as the regulator of charities in Scotland, has published its own Guidance for Charity Trustees, at <http://www.oscr.org.uk/charities/guidance/guidance-and-good-practice-for-charity-trustees>;
3. The regulator in England and Wales, the Charity Commission, has issued specific RM Guidance for charities, including a template for a risk register, at: <https://www.gov.uk/government/publications/charities-and-risk-management-cc26/charities-and-risk-management-cc26#annex-1-risk-register-template-with-examples-of-use> (link may require to be copied to internet browser);
4. For some specific examples of risks faced by charities, see the Association of British Insurers' guide to Trustee liability, at: https://www.abi.org.uk/~/_/media/Files/Documents/Publications/Public/2014/Voluntary/ABI%20Trustee%20Liability%20Guide.pdf
5. [Charities Statement of Recommended Practice \(Financial Reporting Standard for Smaller Entities\): http://www.charityscorp.org/media/619092/frsse_complete.pdf](http://www.charityscorp.org/media/619092/frsse_complete.pdf)