

The Croda Foundation Reporting of Serious Incidents Policy

1. Scope of policy

1.1 This policy applies to the Croda Foundation, a charitable company limited by guarantee (company registration number 13097522) (“**the “Foundation”**”).

1.2 This policy should be shared with and made applicable to the Foundation’s partners (including grantees).

1.3 This policy applies to all those working on behalf of the Foundation including trustees, paid staff, volunteers, agency staff and contractors. Failure to adhere appropriately to the policy will be treated as a very serious matter and may result, in the case of staff, in disciplinary action for gross misconduct or, in the case of contractors, in contract termination. If you are not working under a contract (for example, you are a volunteer or trustee), a breach of this policy may mean that we have to ask you to cease being a volunteer or trustee.

2. Why do we need this policy?

2.1 The purpose of this policy is to ensure that representatives of the Foundation are able to identify serious incidents, escalate them as appropriate and report them internally so that the trustees can exercise adequate oversight and consider whether to make a serious incident report to the Charity Commission for England and Wales (the “**Commission**”) among other potential actions.

2.2 In particular, this policy sets out how the Foundation seeks to ensure compliance with the Serious Incident Reporting (“**SIR**”) requirements of the Commission which are set out in guidance available on its website¹ (the “**SIR Guidance**”).

2.3 This policy sets out the process which should be followed to ensure that the Foundation complies with its reporting obligations in relation to serious incidents which occur within the Foundation and any wider obligations to take appropriate action in response to an incident.

2.4 The responsibility for reporting serious incidents to the Commission ultimately rests with the Foundation’s trustees. However, in practice this may be delegated to someone else within the Foundation, such as a senior employee.

3. Why report serious incidents?

3.1 The Commission treats reporting serious incidents as a duty which applies to all charities registered in England and Wales. It is also clear from its guidance and from recent events in the sector that the Commission expects serious incidents to be reported to it as soon as possible.

3.2 As part of the annual return charities registered in England and Wales are **legally required** to sign a declaration confirming that there were no serious incidents or other matters relating to the charity over the previous financial year that should have been reported but were not. Although there is no statutory requirement under charity law to report serious incidents as they occur, following this policy

¹ The current guidance (updated 14 June 2019) ‘How to report a serious incident in your charity’ is accessible here: <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity> which may be updated from time to time.

will enable the Foundation to sign the declaration in the annual return in compliance with its legal obligation to do so, in confidence that no relevant incidents have been left unreported.

3.3 The Commission also considers that, as a matter of good practice, all charities regardless of size or income should report serious incidents to the Commission promptly.

3.4 It is the Commission's regulatory role to ensure that the trustees of the Foundation comply with their legal duties and that the charity manages any incident responsibly, taking steps to limit its immediate impact and prevent the incident from happening again.

3.5 Reporting a serious incident to the Commission will demonstrate that the Foundation has the appropriate processes in place to deal with risks and is taking the correct action. Where a report is made effectively, it can limit the likelihood that the Commission will take any formal regulatory or enforcement action against a charity in respect of the incident.

3.6 If the Foundation fails to report a serious incident that subsequently comes to light, the Commission may consider this to be evidence that a charity has been mismanaged. The failure to report, of its own account could prompt or add to the seriousness of regulatory action, particularly if further abuse or damage has arisen following the initial incident.

4. The potential for reputational damage can also be lessened if the Foundation is able to show that the incident has been handled well

5. **What is a serious incident?**

5.1 A serious incident is defined by the Commission as being an adverse event, (whether actual or alleged) which results in or risks significant:

- (a) **harm to a charity's beneficiaries, staff, volunteers or others who come into contact with the charity through its work;**
- (b) **loss of a charity's money or assets;**
- (c) **damage to a charity's property; and/or**
- (d) **harm to a charity's work or reputation.**

"Significant" means significant in the context of the charity, taking account of its staff, operations, finances and/or reputation.

5.2 The SIR Guidance identifies the following main categories of reportable incidents:

- (a) protecting people and safeguarding incidents – incidents that have resulted in or risk significant harm to beneficiaries and other people who come into contact with the charity through its work (this includes incidents of abuse or mistreatment (actual or alleged) and a breach of procedures or policies which has put people who come into contact with the charity at risk, including failure to carry out checks which would have identified that a person is disqualified in law from holding their position within the charity e.g. under safeguarding legislation, from working with children or adults)².

² The Commission's guidance 'Safeguarding and protecting people for charities and trustees' (22 October 2019) is available here: <https://www.gov.uk/guidance/safeguarding-duties-for-charity-trustees>

- (b) financial crimes: fraud, theft, cyber-crime and money laundering;
- (c) large donations from an unknown or unverifiable source, or suspicious financial activity using the charity's funds;
- (d) other significant financial loss;
- (e) links to terrorism or extremism, including 'proscribed' organisations, individuals subject to an asset freeze, or kidnapping of staff; and
- (f) other significant incidents, such as:
 - (i) a trustee or a senior manager being disqualified from holding that position;
 - (ii) something has happened to force the charity into insolvency or to wind up;
 - (iii) forced withdrawal of banking services and difficulties securing alternative accounts;
 - (iv) the charity is subject to a police investigation or a significant investigation by another agency/regulator (the SIR Guidance states that a charity does not need to report routine regulatory inspections unless they resulted in significant adverse findings that place the future of the charity in doubt, are likely to damage the charity's reputation or public confidence in the charity, or relate to any of the other categories of serious incidents);
 - (v) major governance problems, such as mass resignation of staff or trustees, or other events, leaving the charity unable to operate;
 - (vi) the charity's trustees or employees are the subject of criminal proceedings, in connection with the charity or their role in it;
 - (vii) there has been a significant data breach or loss within the charity; and
 - (viii) an incident has occurred involving one of the charity's partners in the UK or internationally which materially affects the charity, its staff, operations, finances and/or reputation (this includes delivery partners, subsidiary companies, funding recipients and organisations linked to the charity).

5.3 The Commission recommends that any incident or matter which could get into the public domain or be reported in the media is reported to it as soon as possible (even if initially on an interim basis) so that the Commission can prepare its own public response and be in a position to say that it is already liaising with the charity in relation to it.

5.4 The SIR Guidance provides more details about the types of matters that should be reported and also includes a table of examples of matters that usually should or should not be reported. This Policy and the SIR Guidance are not exhaustive and matters may still constitute serious incidents if they do not fall within any of the categories identified above. If in doubt as to whether something constitutes a serious incident, you should discuss it with the Executive Director of the Foundation.

6. Reporting principles and procedures

6.1 The Foundation will provide this policy to those who work for it (including trustees, staff and volunteers) so that they can identify serious incidents and know what to do if one occurs.

Internal reporting by employees

Staff or volunteers should not seek to make a serious incident report to the Commission themselves. Instead they should report the incident to the Executive Director of the Foundation, whose contact details are at the end of this Policy, as soon as possible and in any event within 24 hours.

6.2 Where an incident relates to the Executive Director of the Foundation, staff should report the incident or allegation directly to the Chair of the board of trustees of the Foundation, the board of trustees or an alternative member of the board if the nominated trustee is not available or would be subject to a conflict of interests or loyalty in relation to its subject matter. The nominated trustee's contact details are at the end of this policy.

6.3 Upon receiving a report, the Executive Director of the Foundation will assess whether they think it may potentially be a serious incident and if so, will promptly (on the same day) report the incident to one or more of the Foundation's trustees.

6.4 The trustee receiving the report will determine the next steps. In most circumstances the report will be shared with the Foundation's board of trustees in order for them to consider whether a serious incident report is required. However, there may be circumstances where this is not appropriate due to reasons of confidentiality, conflict of interest/loyalty etc, in which case the nominated trustee will decide how to deal with the matter, taking account of any relevant policies and procedures and taking advice as appropriate. Consideration should be given as to whether any particular steps can be taken to address particular issues e.g. whether the report could be appropriately anonymised before sharing with the board.

Reporting to the Commission

6.5 The trustees will respond to serious incidents promptly, in a comprehensive and systematic manner; will assure themselves that all appropriate steps have been or are in process; and will seek to prevent or minimise any further harm, loss or damage.

6.6 Assessing whether a reportable serious incident has occurred is a matter for the trustees to determine, having reviewed and considered the SIR Guidance and any related Commission documents or other guidance, and they may seek advice from professional advisers before doing so.

6.7 The trustees will report serious incidents to the Commission promptly. The urgency of reporting will depend on factors including the nature and seriousness of the incident, the potential impact on the Charity and whether it is likely that there will be significant media coverage of the incident.

6.8 The SIR Guidance notes that it is important to provide enough detail in the report to give the Commission a clear picture of what happened and when, the extent of any loss or harm, how the charity is dealing with it and the planned/possible next steps (see below for further details of the information to provide in the report).

6.9 It is important to balance the fact-finding exercise with the need to report incidents promptly. Some discretion may need to be exercised in these circumstances. It will always be open to the Foundation to make an initial report to the Commission covering those facts that are known to the charity to date, and provide further updates to the Commission following internal investigation or as matters develop, including regarding the actions which have been taken to respond to and manage the incident. The SIR Guidance says that if, having submitted a report to the Commission, the charity becomes aware of any material changes to the facts reported or significant developments, the charity must inform the Commission as soon as it becomes aware of them.

6.10 The trustees may delegate responsibility for reporting a serious incident to a senior member of staff – any delegation should be clear about the scope of the report, trustee oversight of it and the deadline for submission. The SIR Guidance makes it clear that decisions made by others should be reported back to trustees; particularly where incidents were ‘borderline’ and the charity considered making a report but decided not to.

6.11 The serious incident report should be filed by the Commission’s [online form](#), or such other method of reporting as the Commission may from time to time require.

Other actions to take

6.12 The Foundation should prepare a communications plan covering what it will say to staff, volunteers, beneficiaries, members, supporters, patrons, the public and the media.

6.13 Consideration should be given to whether it is appropriate to obtain external advice, such as legal and/or communications advice.

6.14 The Foundation will review what happened and identify and take steps to prevent it from happening again - this may include strengthening internal controls and procedures, and/or seeking appropriate help from professional advisers.

6.15 Consideration must also be given to whether a serious incident should be reported to the Foundation’s insurers in accordance with the relevant insurance policy (if any).

6.16 In addition to making a serious incident report to the Commission, if the incident occurred in the UK, it may be necessary to inform or make reports to other relevant regulators or agencies. The Foundation should report:

- (a) crime, or suspected crime, to the police and obtain a crime reference number;
- (b) any incidents of harm or risk of harm to children or vulnerable adults (including any concerns, suspicions or allegations) to the relevant local authority and obtain a reference number;
- (c) incidents of fraud and cyber-crime that take place in connection with the the Foundation to Action Fraud and obtain a crime reference number;
- (d) any serious data breaches to the Information Commissioner’s Office; and
- (e) any incidents relating to possible terrorist financing offences to police or the National Crime Agency (“**NCA**”) and obtain a reference number.

6.17 Where a serious incident has occurred in another country, the Foundation will ensure that it is made aware of the requirements of local law and regulation, including in respect of reporting. The Foundation will carefully consider and risk assess the making of such a report to the police and/or to any other regulators or authorities to which the Foundation is accountable or which otherwise have jurisdiction in relation to the matter.³

7. What happens next?

³ The Charity Commission has issued guidance on reporting criminal incidents in the UK and overseas, accessible here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749335/guidance_on_criminal_reporting_inc_overseas.pdf.

7.1 The Commission will typically acknowledge receipt of the report. It is understood that it will assess the risk and look at how the Foundation is dealing with the incident, and may take steps to verify the details. The Commission may also follow up if it:

- (a) needs more information about the incident;
- (b) considers the Foundation's needs regulatory advice and guidance;
- (c) has to use its legal powers to protect the Foundation and/or the people who come into contact with the Foundation through its work;
- (d) decides to request updates on future development;
- (e) needs to monitor the Foundation progress in dealing with it.

7.2 In very serious cases the Commission may take steps to exercise its enforcement powers, for example, issuing a warning or opening a statutory inquiry into the Foundation, though it is rare that it would do so without some form of preliminary communication or dialogue.

8. Data protection and confidentiality

8.1 When trustees report serious incidents, some of the information provided may be of a sensitive nature. The Commission is obliged to handle this responsibly, with care and only for the purposes of carrying out its statutory functions.

8.2 As a public authority and a 'controller', the Commission is subject to the Freedom of Information Act 2000, the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679 (and any other law and related guidance as may subsequently be in force).

8.3 The Commission's SIR Guidance states that the Commission does not routinely guarantee that information provided will be kept confidential, because information sharing is often necessary in order for the Commission to further its statutory functions and objectives and in some cases it is required by law to share information (e.g. to other relevant public authorities).

8.4 Despite this, all serious incident reports should be marked as confidential (unless the information is already wholly available in the public domain, which is highly unlikely). In addition:

- (a) any personal data should be removed to the greatest extent possible and, if appropriate, the risk of identification of individuals (though unnamed) should be highlighted;
- (b) any particularly sensitive information in the report should be identified;
- (c) any specific exemptions from disclosure (such as an exemption under the Freedom of Information Act) should be specifically referred to and relied upon; and
- (d) the report should contain a request that it is not disclosed to third parties and that the Commission notifies the Charity if it receives a request to disclose information to third parties (e.g. the media or individuals).

9. Partner organisations and recipients of funds or other resources

9.1 The Foundation should enter into appropriate agreements on UK Serious Incident Reporting with each of its partners, affiliates and entities in receipt of the Foundation funds and other resources, and provide them with a copy of this policy. These should outline the requirements for prompt notification to the Foundation regarding any serious incidents within or likely to impact the Foundation-funded programmes or where incidents may have an adverse impact on the Foundation.

10. Learning from serious incidents

10.1 It is important that the Foundation appropriately manages and responds to a serious incident. This includes learning from the incident and taking steps to minimise further harm in consequence of the incident and to prevent similar incidents from occurring in the future.

10.2 Senior employees and trustees should consider whether the Foundation has taken appropriate steps to respond to a serious incident and ensure that sufficient controls and procedures are put in place to mitigate and manage any future risks to the Charity and its beneficiaries. This should be documented.

11. Review of this policy

This policy will be subject to review by the board of trustees **every two years**; upon the Commission issuing updated guidance in relation to serious incident reporting, whichever occurs first, or as otherwise appropriate.

Relevant contact details:

Nominated trustee: Nigel Turner	Email:	nigel.turner@thehelions.com
	Telephone:	+44 (0) 7785 733858
Alternate trustee (if nominated trustee is not available): []	Email:	
	Telephone:	
Executive Director of the Foundation: Rommel Moseley	Email:	rommel.moseley@crodafoundation.com
	Telephone:	+44 (0) 7917 144500

Date of policy: 13 January 2022