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Current Charity Issues and some Do's and Don'ts

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Perfect Pillars



- Good Constitution – Charity Governance Code Compliant
- Good Governance
- Strong Board – Equality/Diversity
- Skill Sets – e.g. Legal/Accounting/Business/Marketing/Passion
- Good Policies
- Strong Relationships – Strategy/Vision/Mission/Mandate

Understanding your governing document



Legal Form	Type of Governing Document
Charitable Trust	Trust Deed / Declaration of Trust
Unincorporated Association	Constitution / Rules
Royal Charter body	Charter and Statutes
Community Benefit Society	Rules
Company Limited by Guarantee	Articles of Association
Charitable Incorporated Organisation (CIOs)	Constitution

Keep your constitution updated and relevant.



- E.g. – check that your objects cover what you are doing and want to do.
- Check that Trustee powers are sufficient
- Check that so far as possible provisions do not conflict with the Charity Governance Code.
- If you are a Sports Charity seeking grants from UK Sport or Sport England check that your constitution also complies with the Sports Governance Code.
- Check that provisions for rotation or terms of office for Trustees are appropriate for renewing your board and skill sets.
- For member organisations, have you introduced electronic voting and communications for members?

Don't forget the provisions that make your charity charitable



- Objects
- Restrictions on benefit
- Dissolution
- Powers
- Managing conflicts of interest

Objects clause



- Sets out the main purposes of the charity
- All charities must have purposes which are:
 - Wholly and exclusively charitable
 - For the public benefit
- Refresh your Objects/Articles as needed.
 - Sub-committee say of 3 to review

The public benefit requirement

- To be a charity, you must only have charitable purposes, which must be for the public benefit.
- Charity trustees must carry out the charity's purposes for the public benefit – will be more Government and Charity Commission scrutiny.
- Charities must report each year on how they have carried out the charity's purposes for the public benefit, and confirm that they have done so.
- Do you maintain a register/file of your public benefit activity, however small each item?
- Do you revisit it at meetings?

Membership



- In a guarantee companies CIO's and Unincorporated Associations, members only have occasional involvement yet play an important custodian role (Can remove the Board)
- Who are the members of your charity? (Are they still alive?!)
- Distinction between members and trustees
- Meetings: who should come? How often?
- Voting procedures? [example of say 25,000 members with electronic voting systems]

Who governs your charity?

- Board composition?
- Appointed by whom? [members or board]
- Length of terms?
- Retirement by rotation
- Maximum length of service (losing skills – are there exceptions?)

Further governance matters

- Diversity – how to achieve? (can be difficult)
- Open recruitment – how to achieve? [sample of 50 applications]
- Balance of skills Legal/Financial/Accounting/Marketing/HR/
Property/Educational
- Charity Governance Code
 - Not Mandatory
 - More difficult for smaller charities
 - Assess performance against Code
- Sports Governance Code
 - Mandatory if you want money
 - Need to amend or adopt your constitution

Nature and extent of Trustees' duties and responsibilities



- Duty of care to whom? i.e. duty to take such care as is reasonable
- Wider duties to....funders, donors, supporters; stakeholders and the community; the general public; contracting parties; Charity Commission and other agencies – quite a burden
- Fiduciary duties
- Is everything you do for the 'public benefit'?

Six main duties of trustees



- Ensure your charity is carrying out its purpose for the public benefit
- Comply with your charity's governing document and the law
- Act in your charity's best interests
- Manage your charity's resources responsibly
- Act with reasonable care and skill
- Ensure your charity is accountable

Liabilities



- Understanding governance responsibilities
- Managing operational liabilities
- The corporate shield of the company structure –v- unincorporated trusts. Corporate shield works for charter organisations, CIO's, CBS's and CLG's
 - Relevant in a modern litigious world
- Risk management/Risk Register
- Don't enter into open-ended commitments/guarantees. It will not only affect your cash position but also impact on your Statutory Accounts.[pop concerts/underwriting letters

Role of the Charity Commission

- Registrar
- Regulator
- Guidance
- Sanctions – enforcement and intervention
- Serious incident reporting, where
 - loss of your charity’s money or assets
 - damage to your charity’s property
 - harm to your charity’s work, beneficiaries or reputation

Risk management / fraud



- The Commission has recently stated that there are three areas of risk facing charities that it is prioritising:
 - Safeguarding – Do you have up-to-date policies?
 - Fraud/financial abuse and mismanagement
 - Extremist abuse and mismanagement

- For Risk Management:-
 - Identify
 - Assess
 - Act
 - Monitor
 - Review

Financial management



- Accounts and auditing – understand them and process (Courses)
- Financial controls and procedures
- Strategy and budgets (away days)
- Investment policy (Risk Profile/Aims-Income/Capital Growth)
- Reserves (Policy and Discipline)
- Expertise on the board/delegation
- Communication and knowledge sharing between finance team, board and finance committee
- Trustees must familiarise themselves with CC guidance

Investments



- When you invest your charity's funds, by law you must:
 - follow any restrictions in your governing document
 - make sure you know what you're doing when making investment decisions
 - take advice from an expert where necessary
- Minimise risk to your charity's funds, for example by having a mix of investments rather than a single large investment which could drop in value
- Explain your investment policy in your Trustees' Annual Report

Reserves



- Keep money aside as a reserve to protect your charity against drops in income or allow it to take advantage of new opportunities. The charity's reserves can be spent on any of its objects. (Think of ways to create Reserves. Free reserves –v– e.g. property re-valuation reserve).
- Write a reserves policy to explain to yourselves and others why you are setting money aside rather than spending it now on the charity's objects.
- The reserves policy should set out:
 - how much the charity needs to hold in reserve and why
 - What is it for? – very different for service provider/grant maker
 - how and when the charity's reserves can be spent
 - how often the reserves policy will be reviewed (i.e. regularly!)

Charity governance, finance and resilience: 15 questions trustees should ask



- Effect of current economic climate?
- Financially strong enough for beneficiaries?
- Impact of social/economic climate on beneficiaries?
- Reserves policy?
- Adequacy of banking arrangements and investment policy – (Covenants/Relationship with Bank)
- Review of contractual commitments
- Contracts to deliver public services?
- Review of pension scheme?

15 questions (continued...)



- Use of permanent endowment
- Optimising effectiveness of board of trustees
- Fraud prevention
- Optimising financial benefits
- Optimising use of staff and volunteers
- Possible opportunities for collaboration with other charities
- Making best use of property and assets

Policies

- Safeguarding (children and vulnerable adults, volunteers)
- Investments
- Trustee Recruitment
- Board Code of Conduct
- Reserves
- Diversity
- Equality
- Volunteers
- Health and Safety
- Disabled Access

REVIEW POLICIES

No point in their being hidden in a bottom drawer

What makes a strong board?



- Does every board member make a contribution?
- Does every board member understand his/her role and responsibilities? [e.g. Governance/Legal/HR/Health and Safety/Financial]
- Induction process
- How effective are the meetings? Does somebody dominate?
- Recruitment, retirement and succession planning
- Developments which impact on work of charity – developing awareness
- ‘Connectedness’ to each other, to staff, volunteers and the public [staff engagement days/where staff can review trustees]
- Top priorities

What makes a strong board? (continued...)



Bad Practice

- Dormant Trustees
- Reliance on one individual
- Board unaware of true position e.g. Finance, Risk

General Data Protection Regulation 2016 (GDPR)



- Good practice – have you reviewed your policies and procedures for data collection and processing? Are they fit for purpose?
- NB – Trustees are ultimately responsible for breaches
- Impact on fundraising



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This presentation is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.