

Corporate Governance in the Charity Sector

Introduction

'Corporate Governance' concerns the structures and systems in place to control and direct an organisation. In the UK there are various legal structures available for non-profit organisations, such as companies limited by guarantee, trusts, mutual societies, church ministries and non-registered associations. Further legal structures, such as the Charitable Incorporated Organisation, are being proposed in the current Charities Bill. Depending on the nature of their non-profit activities these organisations may also qualify to register as charities, which provides tax advantages but requires conformity to charity law and normally makes them subject to regulation by the Charities Commission. Non-profit organisations must consider what legal structures are most suitable for their activities according to the local laws. In the UK, regardless of the legal structure, most charities are governed by a board of trustees who are not employees of the charity. In small charities and associations the Board may simply be volunteers who help run the organisation. In larger charities the day-to-day management of the charity would normally be delegated by the board of trustees to paid employees who would have to account to the board for their actions. Tearfund recognises that many of its partner organisations overseas are ministries of churches and that these may need to have particular legal structures. Nevertheless, we believe that the model of non-executive (non-paid) board members overseeing paid management and staff is a suitable model for most of our partners to adopt.

In the UK, charity law says very little about the structure, composition and duties of a trustee board. There are various pressures to enhance standards of governance in the charity sector. These come from internal sources (the desire to improve within the voluntary sector), from the government (there is a review in the UK of charity law and an increased call for accountability for public funds) and from comparison with the private sector (which has quite comprehensive guidelines on corporate governance).

As a result of these pressures there have been a number of attempts to introduce guidelines on governance in the charity sector. The following 'Top Ten' list draws upon the guidance available from different bodies and recommends key principles that should be transferable throughout the voluntary sector both in the UK and overseas. References to the Board means the group of trustees. They may be known by other terms such as the Trustee Committee or management committee but they should not be confused with paid employees of the organisation.

Top Ten

Principles of Good Governance in the Charity Sector

- 1. The Board should advance the charity's objects**
 - The Board should ensure the organisation applies its resources to advancing its charitable objects for the public benefit
 - The Board should provide leadership and should set strategic objectives
 - The Board should ensure activities are directed towards achieving the strategic objectives
 - The Board should ensure effective procedures and personnel are in place for the management and operation of the charity
 - The Board should set targets for the management team, and should monitor and evaluate its performance

- 2. The Board should safeguard the charity's assets**
 - The Board should ensure that resources are applied promptly and are not allowed to unreasonably accumulate¹
 - The Board should ensure that the charity's assets are used reasonably and prudently²
 - The Board should ensure effective controls are in place over finances and staff appointments
 - The Board should ensure that funds raised are directed towards the purposes requested by the donor or described in the appeal

- 3. The Board should ensure the charity is accountable**
 - The Board should ensure the organisation produces an annual report
 - Annual accounts should be prepared in compliance with the local law and international good practice³
 - Accounts and reports should be approved at a Board meeting and signed by the Chair
 - Where income exceeds a minimum level (for example £10,000) annual accounts should be approved by an independent auditor or examiner
 - The auditor's independence should not be compromised by conflicts of interest⁴
 - Accounts and reports should be provided to stakeholders and the appropriate government department or regulatory authority in a timely manner
 - The Board should conduct regular risk assessments and develop a risk management policy
 - The Board should ensure regular reviews are undertaken of the charity's internal procedures and controls, especially relating to finance, operations, compliance, and risk management
 - The Board should ensure regular reviews are undertaken of external changes, especially relating to charity law, industry standards, employment law, and health and safety legislation
 - Larger charities should consider the appointment of an audit sub-committee

¹ There should be a policy on the holding of reserves

² This includes ensuring that disposals of property are made for good value, that loans borrowed are necessary, reasonable and affordable, that property owned is regularly inspected and maintained, that property is appropriately and adequately insured, that surplus funds are properly invested, that permanent endowments are properly preserved and utilised

³ Charities SORP 2000 is the current standard in the UK

⁴ The auditor should not be a trustee, employee of the organisation, a major donor or beneficiary, or a close relative, business partner or employee of the above. The auditor should be careful that any other paid work undertaken for the organisation does not compromise its independence.

4. The Board should properly represent the interests of stakeholders

- The Board has the responsibility to act 'jointly and severably' in the best interests of the charity in fulfilment of its charitable objects for the public benefit
- The best interests of the charity may be understood, and should be informed, by the views of relevant stakeholders
- Stakeholders for a charity will normally include beneficiaries, donors, users, members, the general public, the Charities Commission or other regulator, employees, and experts in the field
- The Board should consider a range of mechanisms to obtain stakeholder input, including representation on the Board, advisory panels, annual meetings, surveys and consultations
- The Board should be able to identify how stakeholder views have been taken into account when making important decisions

5. The Board should be effective

- There should be a written Board constitution⁵
- The Board should be an appropriate size depending on the size of the organisation
- The Board's function and responsibilities should be clearly stated
- The Board should meet frequently depending on the degree of delegation to sub-committees and/or to paid employees
- The Board should have the requisite skills, experience and knowledge
- A regular skills audit of the Board should be conducted to identify skills gaps
- Appropriate skills should be recruited to the Board
- The Board should conduct regular internal or external reviews of its own performance and of its policies and procedures
- The terms of office should be fixed to require trustees to periodically stand for re-appointment
- A maximum number of terms should be fixed to avoid the pool of trustees becoming 'stagnant'
- Retiring trustees may be offered non-voting advisory positions where their skills are needed
- Trustees should rotate their membership of sub-committees
- Non-trustees should be available to serve on sub-committees
- Minutes of meetings should be accurate and signed by the Chair at the next meeting
- The Chair should ensure that meetings are not dominated by individual vocal trustees
- External professional advice may be sought on issues where appropriate

6. There should be a clear division of responsibilities

- There should be a clear division of responsibilities between the Board and the management team, and between the Board Chair and the Chief Executive.
- Board members are collectively responsible even if there are specific offices of Chair, Secretary and Treasurer which have particular duties

7. The Board should have proper oversight of the charity

- The Chair should ensure that the Board is provided with regular and specific information
- The management, where there is one, should have primary responsibility for providing this to the Chair
- Information should be provided in a timely manner in advance of Board meetings
- The Board should not be over-reliant on the management as the sole source of information but should have access to other sources of information such as members, user-groups, beneficiary representatives, donor representatives, trade unions, staff councils, market surveys, and individual employees.

⁵ The Board Constitution should include job descriptions for Board members and for specific offices of Chair, Secretary and Treasurer where such exist. It might also include a range of provisions such as those relating to the function of the Board, responsibilities of board members, qualifications of board members, number of board members, how to nominate candidates to join the board, how to appoint new board members, periods of terms of office, maximum number of terms, how often the board must meet, the required quorum, codes of conduct for board members (such as minimum required attendance levels), terms of reference for sub-committees of the board, voting at board meetings, and the keeping of records of meetings

8. The trustees should be independent and impartial

- The Board should act reasonably and prudently in the best interests of the charity
- The trustees should be independent and should not benefit financially from their position
- A conflicts of interest policy⁶ and a register of interests should be developed and maintained
- Names of trustees should be listed in the annual report
- Reasonable expenses may be reimbursed
- Payment to trustees, either for their role as trustee or for additional services provided by them, should only be made in exceptional circumstances where the charity's constitution allows it or the regulating authority has approved it⁷
- The Board should consider whether payment may exceptionally be justified in order to encourage diversity and attract under-represented stakeholders
- Where the charity has members, payments to trustees should be approved at the AGM
- Where payment is made it should be listed and explained in the annual report

9. Recruitment should be transparent

- Trustees should be appointed on merit according to the skills and experience required
- Trustees should not be appointed merely because of their position in society. This is the role of patrons.
- Candidates should be given clear expectations of their time commitment
- Recruitment should try to avoid selection purely by word of mouth to encourage diversity, stakeholder participation, and fresh thinking
- Advertising should be used by larger charities
- The Board may appoint a nominations sub-committee to manage recruitment of new trustees. A final vote should be taken by the full Board.
- Where charities have members who elect their Board, the members should be aware of the skills and experience required by the Board and of the skills and experience being brought the candidates.
- Where the constitution permits, the Board may consider co-opting trustees with relevant skills.
- There should be a succession plan to replace retiring trustees
- Trustees should be asked to sign a declaration to confirm their commitment
- The Board should ensure that potential new trustees are not prohibited by law from acting⁸

10. The Board should be trained and inducted

- The Board should be aware of their legal and governance responsibilities
- The Chair should ensure trustees have opportunities for on-going training in the law and governance
- The charity should budget for such training
- New trustees should be given a comprehensive induction to the charity and to their responsibilities.

⁶ This should include rules on the allowable relationships between Board and members of the senior management, and rules concerning Board absenting themselves from meetings in which decisions are made which personally affect them.

⁷ Subject to proposed changes in the Charities Bill to allow payment for additional services subject to a duty of care.

⁸ The law in the UK prohibits persons from acting as Board who have been convicted of an offence involving deception or dishonesty, who are an undischarged bankrupt, who have previously been removed from Boardship by the regulator for misconduct, or in the case of children's charities, who are registered sex offenders.

Sources :

Institute of Chartered Secretaries and Administrators draft *Principles of Good Governance for Charities*

National Council for Voluntary Organisations consultation paper : *A Governance Code for the Voluntary and Community Sector?*

Tearfund's internal board manuals, board governance questionnaires, and guidelines

Charity Commission : *Responsibilities of Charity Board*

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