

10GM: equipping charity trustees to lead their organisations with assurance as we emerge from Covid-19

Structure of webinar

- INTRODUCTION: why does good governance matter?
- FRAMEWORK: an overview of the responsibilities of charity trustees
- CONTEXT: common issues that arise in practice
- APPLYING KNOWLEDGE: some strategies and tools to help you.

INTRODUCTION

- Why is governance so important to charities in these most challenging of times when charities are struggling to survive and need more funds to meet greater need?

INTRODUCTION cont

- Because the really difficult decisions, which make or break organisations, continue to have to be made.
- And because, increasingly, continuing support for charities is linked to evidence of good governance.

INTRODUCTION cont.

IVAR Briefing No 9- between a rock and a hard place challenges faced by VCSE leaders during Covid-19 17.08.20:

- Staff and personal welfare – time of great stress for all
- Navigating the easing of lockdown- which way to go, how to weigh up competing pressures?
- Long-term strategy: how can you plan in times of such uncertainty?

INTRODUCTION cont.

What does good governance (ie good decision-making) look like?

- Decision-makers who are capable people, with the rights skills set and aptitudes, working together for the good of their charity's purposes and who are clear about the legal framework within which they operate.
- Those people are given accurate, timely and complete information.
- They have effective oversight of those charged with carrying out their decisions, based on the information available to them.

INTRODUCTION cont.

In addition (from the Charity Commission):

- “Public expectation” as well as “public benefit.”
- How charities operate is as important as what they do. CC was giving charities leeway during lockdown but winter is coming (see CC annual report 2020).
- The importance of a charity’s culture, for which trustees set the tone from the top, acting as the moral compass (CC20 – fundraising)

FRAMEWORK

- Who are your charity trustees?
- What is your charity there to achieve?
- What powers does it have?
- Fiduciary duties (almost always exercised subjectively)
- “Non-interventionist” principle

FRAMEWORK cont

- **Acting in your charity's best interests means...always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future. It's not about serving:**
 - the interests of trustees or staff
 - the personal interests of members or beneficiaries
 - the personal interests of supporters, funders or donors
 - the charity as an institution in itself, or preserving it for its own sake

CC3: The Essential trustee section 6

FRAMEWORK cont

- Manage risk rather than be risk averse – that's what the Charity Commission does.
- “ *To achieve our purpose and fulfil our statutory functions, we are risk-led in our regulation, which means:*
 - *being proactive in identifying risks and intervening, where possible, to prevent harm before it occurs*
 - *addressing harm effectively where it occurs*
 - *focusing our resources effectively on the highest risk...*”

Regulatory and Risk Framework updated 29 April 2020

FRAMEWORK cont

It's your decision: charity trustees and decision making (CC27):

- Act within your powers
- Act in good faith, and only in the interests of your charity
- Make sure you are sufficiently informed, taking any advice you need
- Take account of all relevant factors of which you are aware
- Ignore any relevant factors
- Deal with conflicts of interest and loyalty
- Make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

FRAMEWORK cont

Trustee decision-making

- Trustees have a duty to make decisions ‘collectively’ (jointly).
- The decision-making process must comply with the procedures in the governing document.
- All trustees should be allowed to ask questions and express their views.
- Once a decision has been made, trustees must support and carry out that decision.

It's your decision: charity trustees and decision making (CC27).

FRAMEWORK cont

Trustee decision-making

- An absent trustee will still share responsibility for the decision that the other trustees made.
- It is part of a trustee's role to exercise independent judgement, constructively question and challenge proposals. No one should be able to direct the trustees or drive decisions through without discussion.
- Trustees who simply defer to the opinions and decisions of one person are not fulfilling their duties.

It's your decision: charity trustees and decision making (CC27).

FRAMEWORK cont

Recording decisions

- Who attended the meeting (was it quorate)?
- Any conflicts of interest and did anyone withdraw?
- What did the trustees decide?
- What was their reasoning?
- What factors did the trustees consider/ decide to disregard?
- Did the trustees take advice and if so from whom?
- What were the key points of discussion?
- If a matter went to a vote, what was the result?
- Did any trustees disagree with the decision?
- Detail should be proportionate to the decision

FRAMEWORK cont

Trustee decision-making:

- “...the trustees’ duty does not extend to being right on every occasion...” (UK Supreme Court 2013)
- St Margaret’s Somerset Hospice (regulatory compliance case)
- Charities are having to make difficult decisions every day eg The National Trust, RSPCA.

QUESTIONS

- What are your charitable purposes?
- Can you name all your fellow trustees?
- What is the quorum for your board meetings?
- Can your board meet remotely?
- Do you have to reach decisions unanimously?
- Do you have sub-committees?
- Who are your members?
- Can they meet remotely?
- Who regulates your charity?

NPC State of the sector 2020: where we stood as the crisis hit

- Most charities running public sector contracts are still not covering costs and are cross-subsidising from other income.
- Most are not prepared for Brexit.
- Most are not using data properly.
- Most are not good with digital.
- Most are still poor on diversity.
- Most struggle to secure core cost funding.
- Not much board discussion about strategy (haven't considered mergers).

CONTEXT: common issues

- Insolvency?
- Not acting in accordance with your objects?
- Not having authority to do something?
- Failing to follow governing document?
- Board not leading on strategy?
- Board not setting the tone at the top?
- Board not supervising/micro-managing?

CONTEXT: common issues cont

- Conflicts of interest?
- Unauthorised benefits?
- Failure to document decision-making?
- Policies not being policed?
- Use of funds for non-charitable purposes?
- Not getting best value for disposal of assets (eg land)?
- Spending money when you shouldn't?

CONTEXT: what has the crisis taught us so far?

- Charities are (going to continue to be) needed more than ever.
- The central government rescue package has been a fraction of that needed – but are charities evidencing their worth to The Treasury?
- Many grant funders have covered core costs: this should become the norm if charities can show they are well-run.
- There is a window of opportunity to build back better.
- We are adaptable and can collaborate.
- People do care: Colonel Sir Tom Moore.
- We can work from home: you can teach an old dog new tricks.
- Disruption is here to stay.

APPLYING KNOWLEDGE: coping strategies

Charity Governance Code: gap analysis

- Organisational purpose
- Leadership
- Integrity
- Decision-making, risk and control
- Board effectiveness
- Diversity
- Openness and accountability

APPLYING KNOWLEDGE: coping strategies cont

- Revisit your governing document
- Board composition, recruitment, onboarding, tenure, removal and transitioning
- Chairs
- Board meetings
- Documenting your decision-making

APPLYING KNOWLEDGE: coping strategies cont

- Sub-committees, terms of references and schemes of delegation
- Policies
- Dealing with complaints and RSIs
- Group structures: conflicts of interest and trustee benefits
- Charity Commission
- Insurance
- NCVO know how

A final thought

What does your charity look like on the new-look Charity Commission register of charities?

Questions?

- Do you have any questions?
- What's your most important take away from today?
- What one thing will you commit to doing after today to help to improve your charity's governance?
- How could this session be improved?

PARTING QUESTIONS

- Why does your charity exist?
- What's your strategy for the next 6 months/12 months?
- Is your structure fit for purpose?
- Is your board a rubber stamp/talking shop/stimulating forum providing leadership?
- What do you bring to the table?
- Do you have a handle on the finances?
- How do you keep tabs on what people are doing in the charity?
- Are your trustees visible to everyone else?
- Are your agendas and board minutes good enough?
- Do you know what policies you have, whether any need reviewing and how you do you know they are implemented?
- Is your governing document up to date? (reviewed in last 10 years)

Thank you for your engagement

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