

GOOD GOVERNANCE SUPPLEMENT

Purpose of this Guidance

This guidance is aimed at voluntary and community organisations whose work is broadly charitable.

It is important for some very positive reasons – ensuring effective use of your staff, volunteers and other resources and bringing the maximum benefit to your chosen cause – and for less positive reasons, such as ensuring that you don't fall foul of the law or otherwise alienate your funders and supporters.

It is timely because as grant aid increasingly gives way to commissioning, funders are showing signs of increasing concern about their own exposure to risk through sub-contracting. They are becoming less inclined to assume you have good governance – and more inclined to demand proof of this.

What is Governance?

Governance, meaning direction or control, is a word used particularly to describe what governments and councils and boards of directors or governors do. If civil servants, local government officers and other staff teams are the "doers", then governance can be thought of as the role of those who oversee their work – the governing bodies.

In the voluntary and community sector, the governing body is likely to be known as the Management or Executive Committee, or the Board of Trustees in a registered charity.

There can only be one governing body (although it may have sub-committees with delegated powers). All committee members are automatically Trustees under charity law (if the organisation is a charity) and a Director under company law (if the organisation has

been incorporated as a limited company.) Matters normally seen as the responsibility of the governing body would be:

- approval of long-term plans and operating budgets
- oversight and scrutiny, including legal compliance
- evaluation and review of performance, including service user feedback
- decisions to start (or terminate) work in new areas or types of activity
- changes in legal structure or governance arrangements
- Board succession planning and recruitment and appointment of Officers
- approval of draft accounts, changes in accounting practice, choice of auditors
- internal control systems and risk assessments
- decisions on major contracts
- approval of press releases and major public documents
- decisions on staff pay and conditions, staffing structure
- appointment of senior staff

Other matters can normally be treated as operational. If you have a manager, then you let them get on with everything else and avoid the temptation to meddle – subject to formal supervision arrangements. The Trustee who is line-managing the manager should learn about and follow recognised good practice in supervision.

Roles, Boundaries and Conflicts of Interest

In a charity, paid staff members cannot be trustees. Nor can trustees apply for a paid post that the Board has created. The Charity Commission would normally require a gap of at least a year before any ex-trustee is appointed to a staff post. The governing document will normally set tight limits on the benefits that any trustee may receive from the charity, other than those received by the service users in general. These restrictions apply equally to connected persons such as relatives and domestic or business partners. All organisations should have a Conflict of Interest Policy, with trustees required to sign up to this.

Trustees need to be able to take an objective view of the organisation's work. This can be more difficult if they are also involved in volunteering at an operational level, helping to deliver the service. In this situation, it is important to be aware of which "hat" you are wearing at any given time. If you have a paid worker, then they will be accountable to you in your trustee role, but you will probably be accountable to them in your volunteer role. If you have no paid staff, then it is useful to recruit some trustees who are not also volunteers; otherwise there is no-one to challenge those who are running the service.

Are We a Charity?

The underlying purpose of the organisation should be set out in the objects clause at the start of its governing document, usually known as the Constitution, or the Articles in the case of a limited company. Trustees need to familiarise themselves with this document, have their own copy, know where it is and ensure the organisation is operating in compliance with this document.

If the organisation's objects are entirely charitable (the Charity Commission can advise on this), then it is automatically subject to the principles of charity law. The Committee is in effect holding the organisation in trust on behalf of the beneficiaries. Also, if the organisation has an annual income of at least £5000, then it is legally required to register with the Charity Commission and comply with its administrative requirements. Legally, you do not have a choice in this matter. On the positive side, charity registration brings exemption from paying corporation tax, and may be a requirement for some funders.

The Charity Commission provides extensive guidance on a wide range of issues:

www.charity-commission.gov.uk

Contact 0845 300 0218 or 0151 703 1797 (8.00-6.00 Monday to Friday).

Should We be a Company?

Many voluntary and community organisations are registered as both a charity and a limited company. This is mainly to protect trustees from personal liability for commercial debts. (This is not something that Trustee Indemnity Insurance is designed to cover.) If you are taking on paid staff or signing a lease on property or equipment, you should be already thinking about incorporation. The Charity Commission can supply model Articles; Companies House will supply the incorporation forms.

Companies House also provides extensive guidance on a wide range of issues:

www.companieshouse.gov.uk

Contact 0303 1234 500 or 02920 381411 (8.30-6.00 Monday to Friday)

Trustee Responsibilities



Plans and Budgets

Trustees are responsible for directing the affairs of a charity, and ensuring that it is solvent, well-run and delivering the charitable outcomes for public benefit for which it has been set up.

Trustees need to set out the organisation's vision of success and its distinctive values, its overall purpose, its long-term goals and how it aims to achieve them and measure that achievement. Staff and volunteers need to know where the goal-posts are!

Trustees also need to approve financial plans and budget updates. An organisation can become insolvent either because it is operating at a loss or because the cash dries up. Trustees should therefore receive an updated income and expenditure forecast at least quarterly, and if the organisation receives significant funding in arrears, they need a cash flow forecast too.

Oversight and Scrutiny, including Legal Compliance

Trustees are required to be careful and prudent and ensure the organisation complies with the law. In a limited company, individual trustees will not normally be liable for breach of contract, but they could be prosecuted for tax evasion or health and safety breaches or operating while insolvent. They could also be sued for breach of trust if they have acted improperly, or for negligence, nuisance or defamation.

This doesn't mean having to know everything, but it does mean being prepared to ask someone who does! There are a number of ways in which this can be achieved: training courses; targeted Board recruitment; paid

subscription to specialist advice on human resources and health and safety matters (such services normally indemnify trustees against legal action); buying at least a reference copy of the Voluntary Sector Legal Handbook (£60) or Voluntary but not Amateur (£35). If problems arise, Trustees should seek advice (often, but not always, free), rather than muddling through.

Evaluation and Review, including Service User Feedback

Trustees should periodically assess whether the organisation's activities are leading to real benefits to service users (service outcomes), as intended. Funders won't take this for granted – and trustees shouldn't either! Be prepared to challenge your own assumptions about what works and what doesn't. It helps if you have systems in place for gathering service user feedback on a regular basis.

Changes in Structure or Governance Arrangements

Whilst some decisions will lie with the members in a General Meeting, Trustees should appraise their own performance each year, consider the composition and balance of the Board, whether a recruitment drive is needed, whether there needs to be any change of legal status or changes to the governing document. Do you have paid staff or a lease or equipment contract? If so, are you incorporated? You probably should be. If you are also thinking of charity registration, be sure to form a company first, then apply for charity registration, otherwise you'll have to do it twice!

Board recruitment, appointment of Officers

Trustees should take overall responsibility for Board recruitment. Board members will be responsible for managing the manager, so it is obviously unhealthy for their recruitment to be seen as being in the gift of the manager. Recruitment can often be done best by advertising openly.

Accounting and audit

The auditor (or independent examiner in small charities) is a key ally in ensuring that the organisation's finances are in order. Whilst final approval may lie with the members in a General Meeting, Trustees should recommend an auditor that they feel understands the voluntary sector and its accountability issues, and maintain a direct relationship with the auditor once appointed – at least in the form of an annual meeting with the Treasurer. Trustees should familiarise themselves with the annual accounts (and any budgets), and ask naïve questions about anything they don't understand.

Internal control systems and risk assessments

Trustees should ensure that formal systems are in place for managing risk and handling finances – and that these systems are implemented. Sound financial procedures are vital. It's no use having elaborate arrangements for authorising expenditure and then pre-signing cheques. Never, ever pre-sign a cheque. Dual authorisation is one of the most important controls you have.

Decisions on major contracts

Contracts can make or break your organisation. Unlike a grant, if things go wrong, you could be required not just to repay the money but also pay compensation for commercial loss. Make sure you know the key features of any contract: who with? how much? how long for? what (and who) for? Have they specified the inputs (resources such as staff posts) or the outputs (activities to be delivered) or the outcomes (effect on the lives of the beneficiaries)? Are you clear what you will need to monitor? Are monitoring arrangements in place?

Press releases and major public documents

Public pronouncements can make or break your reputation. A press release can spread like wildfire. If there's a policy issue involved, get it run past at least someone on the Board with delegated responsibility. Make sure the boundaries are clear between manager and Board. An agreed Communications Plan will help.

Staffing Decisions

Where there are paid staff, the Board acts as the employer, determining the staffing structure needed, setting pay and conditions, appointing senior staff, and supervising the work of the senior manager – taking advice on good practice as needed.

Conclusion

Trusteeship is both a challenging and a rewarding experience. Manchester Community Central is happy to advise and support trustees on governance issues.

Visit www.manchestercommunitycentral.org or call 0333 321 3021 for further information.

