



# Part one **Good foundations**

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# Foreword

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Good governance has always been key in all sectors. In the corporate world events such as Enron are still seen as bywords for the consequence of cracks in the model. But nowhere is governance more important than in the charity sector. Those with ultimate responsibility in not for profit organisations are giving their time voluntarily, but this does not absolve them from blame if things go wrong. Therefore the systems and structures within which they operate have to be especially clear and robust. A whole industry has grown up around effective governance, and managing risks. Training and guidance exists in abundance, much of it excellent.

But things don't stand still, and best practice evolves. There seems to be an especially high focus on good (or bad) governance currently, following some high-profile charity collapses. Attention has moved beyond those in the sector bubble into the mainstream media. If you examine many of the easily available Charity Commission inquiry reports of the last few years, governance failings, usually from ignorance, are a marked feature of where things have gone wrong. Resolution is vital if lessons are to be learnt. In the last two months alone an academic qualification specifically about charity governance, and a new set of awards recognising and highlighting best practice have been launched.

But improving governance is not just about guarding against failure. It should not just be a tick-box exercise following which trustees can sit comfortably and abdicate further responsibility. Charity Governance 2020 is about being as effective as possible. Raising average to good to outstanding, to enable a raise in the standards of delivery and outcomes.

As well as constrictive internal analysis there is a role for professional advisers, be it your auditor, lawyer or a consultant. This can come with a cost, but realistically remunerated sound and robust advice can in the long-term be cheaper than that which is free. The independent assessment and expertise of a committed and knowledgeable outsider, with the experience of many other similar organisations can offer a fresh view. And talk to your peers. Learn from what others have done well – and badly.

RSM has vast experience looking at charities with an independent, understanding but critical eye. This guide uses that wealth of knowledge to not just provide a handy overview of the main issues and areas of debate, but frames them both individually and as a cohesive whole. It draws on that experience to highlight common problems and suggest practical solutions, remembering all the time that good governance is not set in stone once reviewed, and improved, but is a fluid process, that evolves within a robust structure.

Not everything that follows will be for everyone, but most will be for all. There is no one-size-fits-all model, and some charities have individual restrictions, such as membership organisations. But subject to the specific requirements imposed by a charity's own governing document, there are lots of guiding principles that apply across the board, of all boards. If these are at least considered and where appropriate actioned, adhered to and developed, it should help realise good, if not, great governance. Charity Governance 2020 – looking ahead with a clear vision for the next five years and beyond.

**Ian Allsop**

Charity commentator and writer

# Part one **Good foundations**

## 1

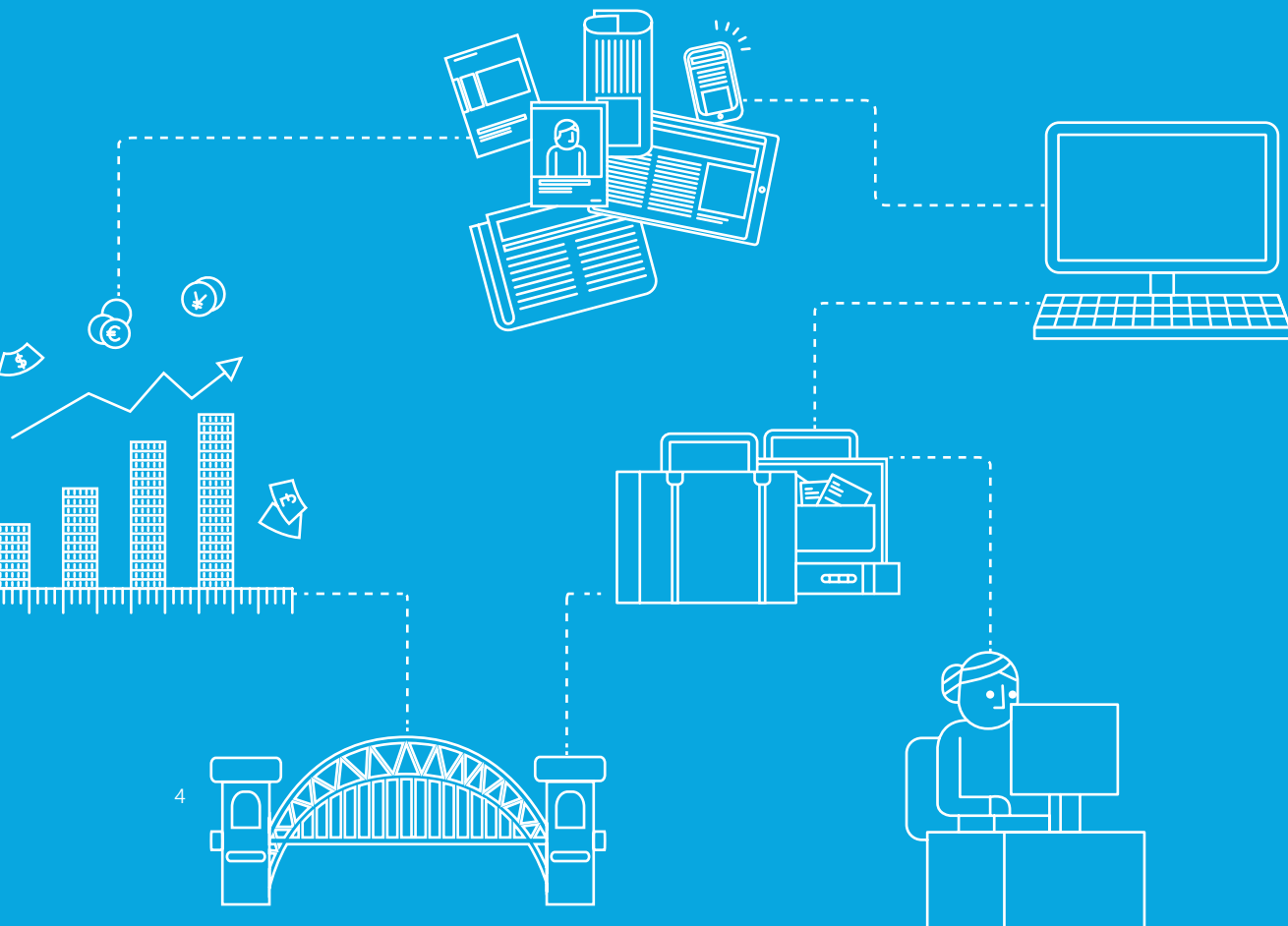
### WHAT AND WHO ARE WE HERE FOR?

#### Framing the issue

These are two important questions that are seldom considered. Some charity trustees seem to never quite get to the core of their organisation's purpose. The level of detail in the responsibility of stewardship can be all-consuming meaning that the fundamental questions of why the charity exists and who it is for are given insufficient consideration. But boards do not exist to micro-manage a charity; instead they should complement management by asking a different set of questions – this is true governance.

The what? and who? questions were also once recognised by the regulator of charities in England and Wales. Until the introduction of the revised Charity Governance Code in July 2017, the Charity Commission used to define six hallmarks of an effective charity and the first one was about being clear on a charity's purposes and direction: "An effective charity is clear about its purposes, mission and values and uses them to direct all aspects of its work".

Nonetheless accountability is important. Financial oversight is critical and charity board members will always have ultimate fiduciary responsibility. Without an ongoing cash inflow the charity cannot be sustained in perpetuity. But they need to be allied to the charity's core purpose. Charity Governance 2020 is about setting the agenda, challenging assumptions about the charity, and identifying the underlying values that drive strategy to determine "what exactly are we trying to accomplish?"





## In our experience

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### What is a board member?

Something that every board member shares is the responsibility for having general control and management over the administration of the charity that they serve. This is clearly set out in the Charities Act 2011 but what does it mean in practice? Even the names to describe the title board member are varied in the not for profit sector. They are variously described as trustees, governors, committee members and directors. However, in the context of the drive to achieve high standards of governance the job descriptions are, in practice, interchangeable and largely inconsequential. For the purposes of this guide, the term trustee will be used.

Whatever job title a board member is given in a particular charity, they are the people who lead the charity and decide how it is run. Being a trustee means making decisions that will impact on beneficiaries and with this responsibility comes accountability. In some ways this is no different from the role in a commercial organisation. However, it is worth noting that the main difference between a company director and a charity trustee.

- Directors' duties are covered by company law, especially Companies Act 2006.
- Trustees' duties are covered by charity law (statute and case).

Both have similar duties to act in the best interests of the organisation; to exercise care; and to avoid conflicts of interest. The biggest difference is that trustees must ensure their charity acts within its charitable purposes

and provides a public benefit; and demonstrate they have taken account of public benefit statutory guidance.

### Accountability

The ultimate responsibility rests with the trustee to direct the affairs of a charity, and ensuring that it is solvent, well-run, and delivering charitable outcomes for the benefit of the public for which it has been set up.

Along with this there are many other recognised legal duties for trustees.

- Compliance with charity law and the requirements of regulators such as Charity Commission of England and Wales and Office of the Scottish Charity Regulator (OSCR).
- Compliance with the charity's constitution and remaining true to the original charitable purpose and objects.
- Avoiding conflicts of interest and conflicts of loyalty including the misuse of charity funds or assets.
- Remaining solvent and using charitable funds and assets in furtherance of the charity's objects.
- Not unduly jeopardising the charity's endowment, funds, assets or reputation.
- Being careful when investing or borrowing funds.
- Making full use of trustees' personal skills and experience.
- Obtaining external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

Additionally, the Charity Commission has suggested that trustees can demonstrate integrity if they have:

- acted within their powers;
- acted in good faith and only in interests of charity;
- adequately informed themselves; and
- taken into account all relevant factors, and disregarded irrelevant ones.

All of these are extremely important in discharging fiduciary responsibilities but are only part of what might be defined as effective governance. For example, to be consistent with its charitable purpose a trustee of a charity established to relieve poverty may consider wider social responsibilities such as paying its staff a living wage rather than the legal minimum. This may also extend to employing ethical supply chains and having investments governed by a set of ethical values and policies. Expectations of the standard required for trustees have continued to increase (and become more complex) and in 2020 this is unlikely to reduce. But before knowing what is required by an individual trustee it is important to know what is trying to be accomplished by the charity. This first step in Charity Governance 2020 is a recommendation to start with the charitable objects; the mission statement; the *raison d'être*.

### Mission statement

Most trustees are serving as unpaid volunteers being drawn from all areas of society bound by the same desire to serve their charity to make decisions that will positively impact on the charity's beneficiaries. It is therefore

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Being a trustee means making decisions that will impact on beneficiaries and with this responsibility comes accountability.

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# EXAMPLES OF MISSION STATEMENTS

**Dogs Trust:** "Working towards the day when all dogs can enjoy a happy life, free from the threat of unnecessary destruction. We are absolutely determined to STOP healthy dogs being put to sleep in the UK and beyond. We never destroy a healthy dog in our care."

**MS Society:** "Our mission is to enable everyone affected by MS to live life to their full potential and secure the care and support they need, until we ultimately find a cure. Our aim is to beat MS."

**Royal British Legion:** "To be the number one provider of welfare, comradeship, representation and remembrance for the armed forces community."

essential that a trustee understands the purpose behind their charity and that this is consistently adopted. A strong, yet concise mission statement based upon a charity's values can help achieve this.

A corporate entity will measure its success or otherwise by its profit and loss account but this is not the main purpose of a charity. Instead a mission statement can be used as a framework to facilitate consistent decisions by trustees which can also be communicated to stakeholders such as employees and funders in plain English. The best mission statements include a clear description of a charity's future objectives to achieve the needs of its beneficiaries and are often developed from the charity's own objects clause in its constitution or governing document. An effective mission statement is concise and unforgettable for trustees to articulate when asked by stakeholders. An ineffective mission statement relies on sound bites that may lack depth and not withstand further analysis.

## Fostering innovation and engaging beneficiaries

A well thought through mission statement will be developed in line with an organisation's strategic plan having taken account of the views of trustees, beneficiaries, management, employees, funders and many other interested stakeholders in the community it serves. However, a mission statement can only reflect a given point in time. A board should set time aside from fulfilling its fiduciary duties to consider exactly what it trying to be accomplished. Often new ideas will come from recently

appointed trustees and should be welcomed. A "but we have always done it this way" attitude can stifle innovation. Societal changes and technological developments will require the charity to constantly adapt and become more innovative, both in its own operation, and in how it identifies and addresses the changing needs of beneficiaries.

Sometimes the charity's original purpose will, hopefully, be fulfilled. Therefore, a trustee should consider the need to review the charity's mission statement on a regular basis.

## What does success look like?

Having a clearly defined mission statement will assist in determining whether there are relevant and measurable benefits, arising as a result of the charity's activities. This is becoming increasingly important to funders who expect to see a social as well as financial return on their investment, for example in the evolving area of social investment or payment-by-results initiatives.

A trustee that is achieving effective governance will have several well defined measures to assess the charity's performance and the impact on its beneficiaries. As with the mission statement the performance measures will need to be reviewed regularly to determine if they are still fit for purpose and ultimately providing an informed view of performance against the mission statement.



## GOOD GOVERNANCE INDICATORS

- 1** In addition to fiduciary duties trustees set aside time to consider “what exactly are we trying to accomplish?”
- 2** The existence of a mission statement that complements the charity's vision and strategic plan. Even if no mission statement exists then every trustee would be able to articulate the rationale for the activities being undertaken and how performance is being measured. For example, can they identify the charity's three most important objectives, and whether they are achieving them?
- 3** Trustees that engage and, where appropriate, consult with beneficiaries and other interested parties. Sufficient involvement of stakeholders in developing the charity's strategy and confirming its underlying values.
- 4** A charity that is able to consider and measure the impact that it has on its beneficiaries.
- 5** Trustees that are able to horizon-scan, and recognise an external perspective and wider context within which their organisation operates.



## 2

### EXPECTATIONS OF TRUSTEES

#### Framing the issue

A board member at Tesco faces a different set of circumstances requiring a different set of decisions to be made than their Asda counterpart despite both companies being grocery and general merchandise retailers. The two have a slightly different customer base, differing resource constraints and profitability. Similarly charities have different beneficiaries, funders and mission statements. Therefore, it is essential for the charity trustee to have an in-depth understanding of their organisation that will include an appreciation of where funding comes from and how it is spent. As a result, a trustee must be prepared to invest sufficient time in understanding the charity to provide a platform for making effective decision-making.

A non-executive director of Tesco or Asda is a member of the board of directors and do not form part of the executive management team. They are not employees of those companies and are in many ways similar to the trustee of a charity providing strategic oversight rather than day-to-day management. While they may have experience in areas of relevance to the work of a charity, be it in social care or animal welfare for example, the expectation is that they also apply their brains to the bigger picture rather than the minutiae. The absence of daily involvement is no excuse for a lack of engagement and commitment. Too often the phrase "left their brains in the briefcase" is used to illustrate situations where trustees do not apply their knowledge and experience from the outside world to their charity role. Charity Governance 2020 is about trustees having an in-depth understanding of the charity to be able to "provide sufficient oversight but not management interference".





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## Every trustee must appreciate the resource requirement for the activities being proposed.

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### In our experience

#### Understanding the charity

Before becoming a trustee most people try to learn as much as possible about the prospective charity and the required commitment. This can involve reading the latest annual reports, financial statements, scrutinising strategic and operational plans, and obtaining policies as well as meeting with existing trustees, management, staff and sometimes beneficiaries. It is vital for a trustee to obtain a copy of the charity's governing document paying particular attention to the charitable objects section as it directs and governs key aspects of the charity's work, as well as what if any restrictions it places upon an organisation. On appointment this research provides a good indicator of the current state of the charity and the new trustee will also have an appreciation of the charity's reputation. It can also help to develop the incoming trustee's ideas and plans for influencing the charity's future. If practical a formal induction session outlining the basics of a trustee's responsibilities can also be valuable.

This process should not cease on appointment. Instead an effective trustee will continue to develop a deeper understanding of the charity. This will include developing and protecting the charity's brand over time. Failure to do this and the subsequent reputational risk frequently score highest on charity risk registers. As the trustee's term of office progresses this understanding will include an appreciation of the funding position and consideration of the sources of income. The effective trustee will contribute to developing a strategy to raise the funds required by the charity and diversifying sources of income, where possible. Gaining a good understanding of the core income streams is vital as is an appreciation of the costs of charitable activities being undertaken. Charity Governance 2020 establishes where the money comes from and how is it spent, as well as enabling an understanding of the reasons should expectations not be met.

#### Only a lack of cash will cause a charity to fail financially

Every charity requires funding to survive; ultimately, only a lack of cash will close an organisation. If establishing the charitable purpose is the first priority, then implementing a financial strategy is a close second. An effective trustee is aware of the financial risks involved for each significant source of existing income streams but also considers the potential for new ventures and new streams of funding, with diversification and sustainability in mind.

Alongside these risks is the mitigation of those associated with loss, inefficiencies and fraud by having robust financial controls and procedures in place. The failure to do so often leads directly to serious financial mismanagement or abuse. The Charity Commission has cited numerous examples where its case workers encounter charities in which the very basics of good practice are ignored: trustees routinely signing blank cheques, single individuals responsible for counting cash donations, staff members signing off one another's expenses claims. Naivety is often involved when charities fail to put controls in place, and while a certain degree of mutual trust between trustees and staff members is vital to the smooth running of an organisation, it must always be underpinned with effective systems and processes that protect the charity.

Most charities will be undertaking multiple activities and being able to understand the income and costs associated with each is paramount. It is these activities (specific programmes and services) that provide the outputs (services being delivered) which lead to the outcomes (changes for beneficiaries) and ultimately the impact (benefits to society) made by the charity. Activities are important because of the link to

the ultimate mission but these must be underpinned by having financially sustainable activities to be sustainable.

Evidencing that the activities are sustainable is achieved through the annual financial budget process and considering this in advance of the year ahead is an important duty. Every trustee must appreciate the resource requirement for the activities being proposed as well as understanding the resultant surplus or deficit. This should not be confined to an annual exercise as financial sustainability requires an ongoing management of cash flows, monitoring and reviewing financial performance throughout the year on a timely basis. This then allows for timely corrective action where needed. The annual financial budget should not be a standalone feature of financial governance as financial planning should be integrated with wider organisational planning and management to ensure resources are used in the most effective way.

#### A well-considered reserves policy

Annual budgets should not be considered in isolation; of relevance are any uncertainties over future income or the risk of unexpected calls on the charity's funds. In looking at future plans, projects or other spending needs may be identified that cannot be met from the income of a single year's budget alone. The identification of these factors illustrates the importance in having a well-considered reserves policy. Reserves are that part of a charity's unrestricted funds that is freely available to spend on any of the charity's purposes (excluding restricted income funds and endowment funds and also normally excluding tangible fixed assets held for the charity's use and amounts designated for essential future spending). Therefore, it may be entirely appropriate for a charity to approve a single-year deficit budget in the context of a longer-term reserves policy that is bidding to reduce overall funds.





# LEADERSHIP

## Using the users

The perspective of what strategy is required for the charity can be different when viewed from the position of a beneficiary (a user trustee). The responsibilities of user trustees go beyond advising on issues of service delivery and speaking on behalf of all users generally. However, user trustees have equal standing with all other trustees and should see their role not just in terms of contributing to improvements in services instead of maintaining high standards of governance – there should be no such thing as a single interest trustee. While the unique perspective of a user trustee will be invaluable they need to be clear that they are still trustees and as such have a responsibility to act in the interest of the charity. Drawing up robust user involvement policies can avoid the lines becoming blurred.

## Trustees are not managers...but should be motivated and committed

Trustees are expected to use their personal skills and there is a need to be prepared for board meetings. In the UK, the expectation of trustees is generally to volunteer time. The time commitment for a charity varies depending on the activities of the charity and its size. As a guide, many trustees of larger charities devote one day per month to their role, for example preparing for and attending board and sub-committee meetings, plus perhaps project visits. Some organisations openly report attendance records by individual trustees in the annual reports.

In the USA it is commonplace for trustees to be given a financial expectation for fundraising whether through personal contacts, pledges or own donations. Rather than such a direct approach to solicitation of funds UK trustees should be able to contribute through a proactive involvement of trustees in the fundraising process. Trustees will be able to source and introduce prospects and help cultivate high net worth individuals through meetings or at the charity's own events.

## Oversight not management

The degree of oversight rather than management that is required will be largely dependent on the size of the charity. A trustee of a smaller charity might take on most of the work of running the charity in the absence of paid staff whereas in larger charities, trustees are able to delegate operational activities to staff. Most of a trustees' contribution will be made at formal meetings rather than through involvement with staff.

Ultimately the board and its members are accountable for the charity's affairs and this must always include the basics such as compliance with regularity deadlines, internal controls and budget monitoring. A well-governed board will ask for evidence that management has implemented these basics, for example, confirmation from management that the charity's annual return has been filed with Charity Commission.

Oversight	Management
Set mission/ policy/ statement	Develop policy and strategy
Appoint and oversee CEO	Appoint managers/staff
Manage governance process	Support governance process
Provide insight/ wisdom / judgement	Implement board decision
Determine services	Deliver services
Monitor performance	Measure performance
Being accountable	Delivering compliance

# GOOD GOVERNANCE INDICATORS

- 1** A financially sustainable strategy that reconciles to the charity's mission statement.
- 2** A charity that provides sufficient information to prospective trustees and on induction.
- 3** An annual financial budget that is approved in advance of the financial year commencing.
- 4** An annual financial budget that reconciles to the targets in the charity's reserves policy.
- 5** Consideration as to whether and how beneficiaries or users could be represented within a charity's governance structure.
- 6** Monitoring the attendance of trustees at meetings and their contribution each year.

# Part one **Good foundations**

## 3

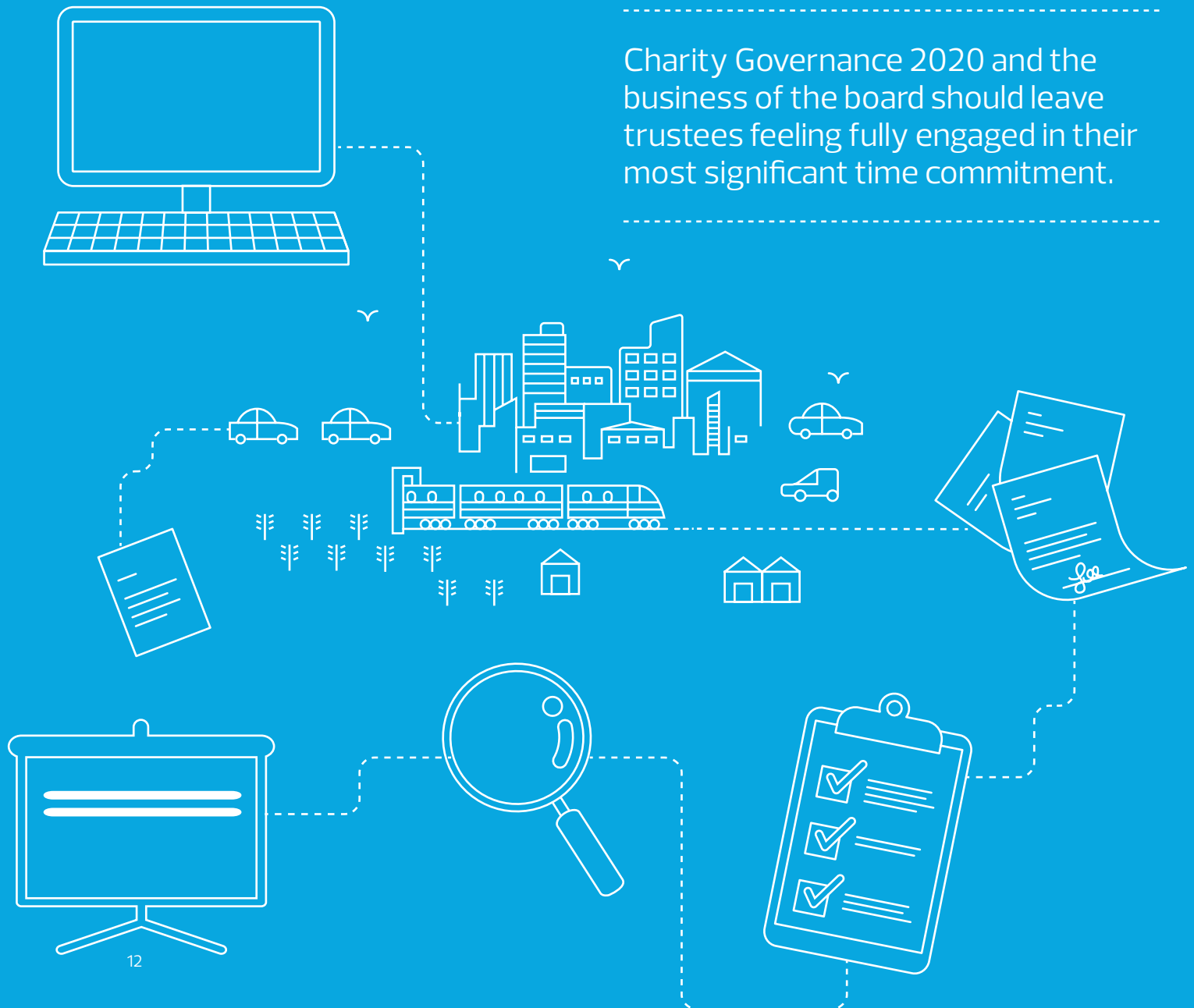
### THE BUSINESS OF THE BOARD

#### Framing the issue

For a trustee, time is a scarce resource and a significant proportion of it will be spent in board meetings. Therefore, it is critical that they are well-timed, effective and focus on the critical issues if the time spent on a charity's affairs is used to its greatest effectiveness.

Far too often, a board can attract highly skilled and experienced individuals, but a bland or ill-thought out agenda, or poor chairing of the meeting itself, does not fully utilise those qualities. The way in which board meetings are run is a common complaint by trustees about their own organisations. Charity Governance 2020 and the business of the board should leave trustees feeling fully engaged in their most significant time commitment – the meetings. Creating an engaging agenda is fundamental but so is going beyond the humdrum policy and process of meetings in order to drive the strategy of the organisation.

Charity Governance 2020 and the business of the board should leave trustees feeling fully engaged in their most significant time commitment.





## In our experience

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### What's on your agenda?

Trustees are typically busy people and providing sufficient notice of meetings contributes to achieving a good attendance record. A well-run board will have a rolling programme of meetings at least twelve months ahead. Consideration also needs to be given to the frequency of board meetings, which can occur from as infrequently as twice a year to as often as monthly; it will be dependent on the size and complexity of the organisation as well as whether additional work is conducted through committees.

The best time of day to hold meetings will also need to be carefully considered. This can be a challenge as the preference for charity staff to meet during normal office hours can often contrast with trustees who may themselves be in employment elsewhere. Start times can be varied from meeting to meeting if a compromise is needed or, alternatively, consider using technology such as video or telephone conferencing. Such technology can be useful if timely decisions are required or to reduce the costs and time of travel although caution should be exercised as meetings can only be held in this manner if permitted by the organisation's governing document.

### Running out of time for the real work of the board

Determining the suitable amount of time required to complete each meeting is a sound governance principle. New trustees can successfully be introduced to other trustees immediately prior to a board meeting (with refreshments or at an alternative social gathering). This has the benefit in getting the new trustee to integrate and the group to work better as a team during their precious meeting time.

The agenda itself should be informative to provide trustees with the insight they require to be effective decision-makers. Many organisations benefit from employing a consent agenda, which combines routine committee reports, minutes and other non-controversial items as one agenda item on the basis that they do not require discussion or independent action. These items are presented to the board in a single motion allowing any trustee to request that a specific item be moved to the full agenda for individual attention. The majority of the meeting can then be devoted to strategic thought, decision-making and actions. Organising meetings in this way is beneficial because it streamlines them and allows the focus to be on strategic and leadership issues. In order to operate a consent agenda effectively documentation must be provided in good time prior to any meeting to allow trustees to give sufficient care and attention to the information.

Although a basic consideration, each charity will need to consider the practicalities in providing board papers electronically or printing and posting. If going down the electronic route there needs to be 100 per cent commitment to adopting if the benefits, such as reduced costs, are likely to be realised. The use of electronic formats should always be when there can be no confusion as to which elements of the electronic documents form part of the official papers. Many board meetings have suffered time-wasting issues with board papers being printed (usually at home) in black and white when, in fact, colour was required in order to provide a full understanding; or because spreadsheets with multiple worksheets have not then been completely printed.

## CREATING MORE EFFECTIVE AGENDAS

Have you considered timed agendas?

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Are agenda items varied?

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Are the papers you circulate too long for effective decision-making?

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Do you selectively use presentations, brainstorming and/or scenario planning to break up meetings?

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Are there good biscuits?

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In principle, the chairperson should have a general plan in terms of the time allowed for each item on the agenda while maintaining some flexibility. A Charity Governance 2020 board is one that devotes substantial time in board participation and only a minority of time on presentations and briefings.

**Not forgetting the governing document...**

The governing document or constitution should detail how and when to organise meetings and how to vote on decisions; these requirements must be followed to avoid invalidating any of them. Typically the governing document will explain the minimum number of trustees that must attend a meeting so that decisions can be properly made (the quorum) and how to deal with conflicts of interest. It is good practice to have a standing item on any formal agenda for declarations of interest to be made or allow for confirmation that there are none. Capturing this in accurate minutes of meetings is vital evidence of a well-run board. Minutes should be a record of the key decisions taken and points of discussion without turning into a transcript of the meeting. Preferably the minute-taker should not be a trustee but if this is not possible then steps should be taken to ensure an appropriate involvement in the meeting of the relevant trustee.

As a result of careful planning and the use of consent agendas, board meetings can become non-routine, rather than rubber-stamping affairs, more debate centred and with members engaged in the fundamental strategic question, "what are we trying to achieve?"

**An ineffective board**

**Charity Governance 2020 board**

Meetings are routine and follow a similar pattern

Meetings are varied

Agenda provides large volumes of information

Meetings are strategy focussed

Listening

Debating

No forward annual plan

A seasonal plan with themes for each meeting

Dominated by a few individuals

All trustees are fully engaged

# EXAMPLES OF KPIs FROM A MEDICAL INFORMATION AND SUPPORT CHARITY

Number of care professionals in charity's network

Number of people supported through face-to-face services

Patient information resources downloaded and distributed

Number of Twitter followers and Facebook likes

Unique visitors to website

Members of the public reached through awareness programme

Helpline calls answered

## Managing conflicts of interest

Issues can arise where trustees are benefitting from the charity, for example by providing paid services to the charity or indeed being directly remunerated for their work as trustees. Even when such benefits are authorised, trustees must manage the conflict, including identifying and recording it and ensuring that the conflicted trustee is not involved in discussions or decisions about the benefit in question. Being able to explain clearly how the conflicts are being managed is especially important where they relate to complex legal and financial structures such as trading subsidiaries and private companies linked to the trustees.

Sometimes trustees' personal benefits are unauthorised by the charity's governing document. This does not always result from an intention to exploit a charity as often the benefit works in the charity's favour – for example when a trustee's company is providing services to the charity at a discount on market rates. But if a benefit is not authorised, the trustee in question may need to account for their profit and repay the sums involved. There is also a reputational risk if trustees are seen to act outside their powers or take advantage of their position in a charity in granting themselves personal benefits.

## Beyond the policy and process of meetings – strategic thinking

Assuming that the Charity Governance 2020 board has been able to move away from being a formal seal-of-approval-making body then producing weighty written business and strategic plans will become less of a process driven exercise. Instead trustees (and

management) will be able to devote more time to generating ideas and affirming the key strategic priorities for the organisation. This is likely to be around three or four key priorities rather than a dozen. Accordingly board meetings will have more time available for structured and non-structured strategic thinking about the way forward for the organisation.

## Measuring the strategy

Having identified the strategic direction of the organisation then a Charity Governance 2020 board should consider how the organisation will monitor its performance. There are many metrics available such as the balanced scorecard or using KPIs, where an organisation defines a minimum a number of key performance indicators (usually half a dozen or so).

Obtaining accurate data is critical to organisational performance measurement and boards will need to be mindful of the methods required to achieve this.

## The AGM

The exact requirements for an AGM are usually set out in detail in the charity's constitution (AGMs are not always required) and providing the correct notice to those entitled to attend requires administrative precision. This is a common failing when providing financial statements that should already have been approved by the board and auditors at a board meeting – not the AGM. Even when an AGM is not being held the governing document may require the financial statements to be distributed to the members. Trustees should also consider when the best time is to hold the AGM.







# GOOD GOVERNANCE INDICATORS

- 1** Meetings are run in accordance with the requirements of the charity's governing document particularly in being quorate and complying with voting rules.
- 2** Consideration has been given to the optimal timing and frequency of meetings.
- 3** Sufficient advance notice is given for meetings and consent agendas are employed.
- 4** Sufficient time is allowed in meetings for debate not simply following a repetitive agenda.
- 5** Conflicts of interest are considered at every board meeting.
- 6** Minutes of meetings are circulated to attendees on a timely basis.

# Part one **Good foundations**

## 4

### ORGANISING FOR GOOD GOVERNANCE

#### Framing the issue

Consider the following football scenarios.

- A team with 11 strikers.
- A club that puts its best coaching staff in charge of its second 11.
- A team with eight players rather than 11.
- A coaching staff that does not have any specialists in goalkeeping.
- A club that fails to identify the weaknesses in its team and the players from opposing teams that could be purchased to fill those gaps.

In each of these situations performance is most likely to be at a lower standard than could otherwise be achieved. Furthermore, in each of the given situations the way in which the scenario was structured or organised was to the detriment of the outcome. Similarly organisations need to be structured for good governance in order to optimise performance.

A charity is not about choosing strikers or goalkeepers but it does need to strive for the best and most efficient structures, trustees, functional committees and taskforces to demonstrate Charity Governance 2020.



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## Is it about maintaining a balance between continuity, and refreshed skills and fresh thinking.

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### In our experience

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#### Board composition

Fundamentally the number of trustees permitted in an organisation will be dictated by its governing document or constitution. At the outset a trustee needs to recognise this important rule as the terms of the founding documents often specify a maximum or minimum number of trustees. Provided the correct procedures are followed it is, of course, possible to amend these parameters through the correct legal process if they are no longer suitable for modern day governance. More recently, charities have sought to reduce the maximum number of trustees in order to make decision-making more effective. While there is no magic number, as a generalisation in our experience it is considered that a decision-making body is not as effective once it requires the input of 15 or more people. However, it may vary with the requirements of a specific organisation and the specific skill sets needed in certain areas. Additionally, some membership organisations have a specified number of reserved places allocated. The number of people on the board need not be static or fixed. For example, it can be useful for trustees that are at the retiring stage to stay on a little longer if there is a large influx of new trustees to pass on knowledge about the organisation. It is about maintaining a balance between continuity, and refreshed skills and fresh thinking.

#### Using committees

Another determinant of the size of the main board will be the use of committees. These may allow for a smaller number of people on the main board but a key consideration will be the amount of reporting from each committee to the board as this can become cumbersome and inefficient with duplication being the main concern. It should be clear for all committees that there are defined

terms of reference (from the board) with a mechanism for reporting to the board. Similar considerations also apply to the numbers of committee members as with the main board although it is commonplace to allow experts or specialists in the area of activity of the committee to form part of the committee itself even if they are not themselves trustees. Consideration may need to be given to having independent members on an audit committee as good practice, as well as the role of users on service committees where appropriate.

#### Working parties, project groups and taskforces

Working parties, project groups and taskforces are often extremely effective in addressing important non-recurring issues. The work required in these groups can be relatively short-term and quite intensive in terms of time commitment from its members. Being able to take expedient decisions is a feature of such groups as well as enlisting and utilising specialist skills. Once the group has resolved the issue for which it was constituted then it can be disbanded.

#### Trading subsidiaries

In order to structure activities that may be outside of a charity's objects many boards organise their affairs through the use of a trading subsidiary company. Trustees need to ensure that the governance structure allows the trading subsidiary to be managed in the interests of the charity including monitoring the trading subsidiary's performance. It should be remembered that an organisation and its trading subsidiary are separate legal entities and this presents potential conflicts of interest. Such conflicts can be managed by having at least one trustee who is not a director or employee of the trading subsidiary as well as at least one person who is a director of the trading

subsidiary who is not a trustee or charity employee. These persons are then able to advise their colleagues as to the proper actions when conflicts arise.

#### Attendance

Assuming that the board has organised its meetings well in advance then the attendance record of individual trustees is something that should really only need to be considered in exceptional circumstances. However, many boards do struggle with the attendance of certain individuals from time to time. To properly fulfill their responsibilities as a trustee individuals need to be in attendance more often than not unless medical or other valid reasons are known. For this reason there has been a trend for annual reports to include individual attendance records for trustees.

This is one area where technology can be put to good use and if physical attendance by a trustee is not possible then it may be possible to hold telephone conference calls or video conferencing. Statute also now generally provides (if permitted by the organisation's governing document and constitution) for decision-making by electronic means. Therefore, for specific items that may require timely decisions this can often be executed by trustees' agreement via email.

#### It's a team game

Like the football analogy above, a board and its members should be selected to provide a balance of skills, experience and behaviours. In some popular research Dr R M Belbin developed nine team roles to identify people's behavioural strengths and weaknesses with the objective of aiding recruitment processes and developing team performance. The theory is equally applicable to a charity board where each person should be chosen to ensure that the correct balance of skill is achieved.





The theory does not suggest that nine is the optimum number for a board (although it is in the optimum range) as not all roles are required and some persons can play more than one role in each team. The Belbin roles measure behaviour rather than personality and the nine are described as plant, monitor evaluator, co-ordinator, resource investigator, implementer, completer finisher, team worker, shaper and specialist. Each role has a detailed description, for example, a completer finisher is one who works effectively used at the end of a task, to polish and scrutinise the work for errors, subjecting it to the highest standards of quality control or a team worker who helps the team to gel, using their versatility to identify the work required and complete it on behalf of the team. At the heart of the theory is that having balance in a board is essential.

#### **Recruiting new trustees**

A Charity Governance 2020 board will be aware of the ongoing need to add new skills and recruit new trustees at the appropriate times. It can be helpful for a board to conduct a skills audit to assess how the skills of the board may be affected by retiring trustees or new challenges the charity is facing. A successful skills audit will capture the current skills of the board and highlight possible gaps where new trustee skills or professional guidance may be required.

With transparency being important for charities, it is key that any recruitment is in the best interests of the charity and an open process wherever possible. In some cases it is an explicit requirement in the charity's rules. Being clear on what is required of new trustees can assist in setting expectations on commitment at the start as well as being able to explain the immediate and longer-term

objectives and strategy of the charity. Some prospective trustees may be unaware of the trustee role but this should not preclude them provided that their duties and responsibilities as trustees are sufficiently explained, for example through a formal induction session.

Many trustees are recruited from existing contacts of members of the board or word of mouth although this is not necessarily the best means of sourcing a good mix of skills, diversity and balance. Some charities are able to expand their pool of potential applicants through advertising (charity's own website, community publications and noticeboards or even national press for larger charities) and trustee brokerage services.

#### **Diversity**

In line with Belbin's thinking outlined above an effective board will encompass a diversity of thought and backgrounds. There are many pools of potential candidates for trustee roles that can also extend to volunteers, users, beneficiaries, people with learning difficulties or with mental health issues. A diverse board is more likely to contain a broader range of skills, knowledge and experience than one which is more narrowly based. The Charity Commission advocates creating a diverse board to help to increase accountability and public confidence and the requirements of the Equality Act 2010 imposes upon public authorities (including charities having due regard) a general duty to eliminate discrimination on certain grounds and to advance equality of opportunity. In the corporate sector there have been calls and initiatives to increase the number of black, Asian and minority ethnic directors, as well as female directors on company boards, and this has filtered across to the charity sector.





## FIVE QUESTIONS TO CONSIDER IN ORGANISING FOR CHARITY GOVERNANCE 2020

**1** Do you have the right number of people on your board?  
.....

**2** Do you have any skill gaps on your board?  
.....

**3** Are all trustees really contributing?  
.....

**4** Would the organisation benefit from having committees  
or specialist project groups?  
.....

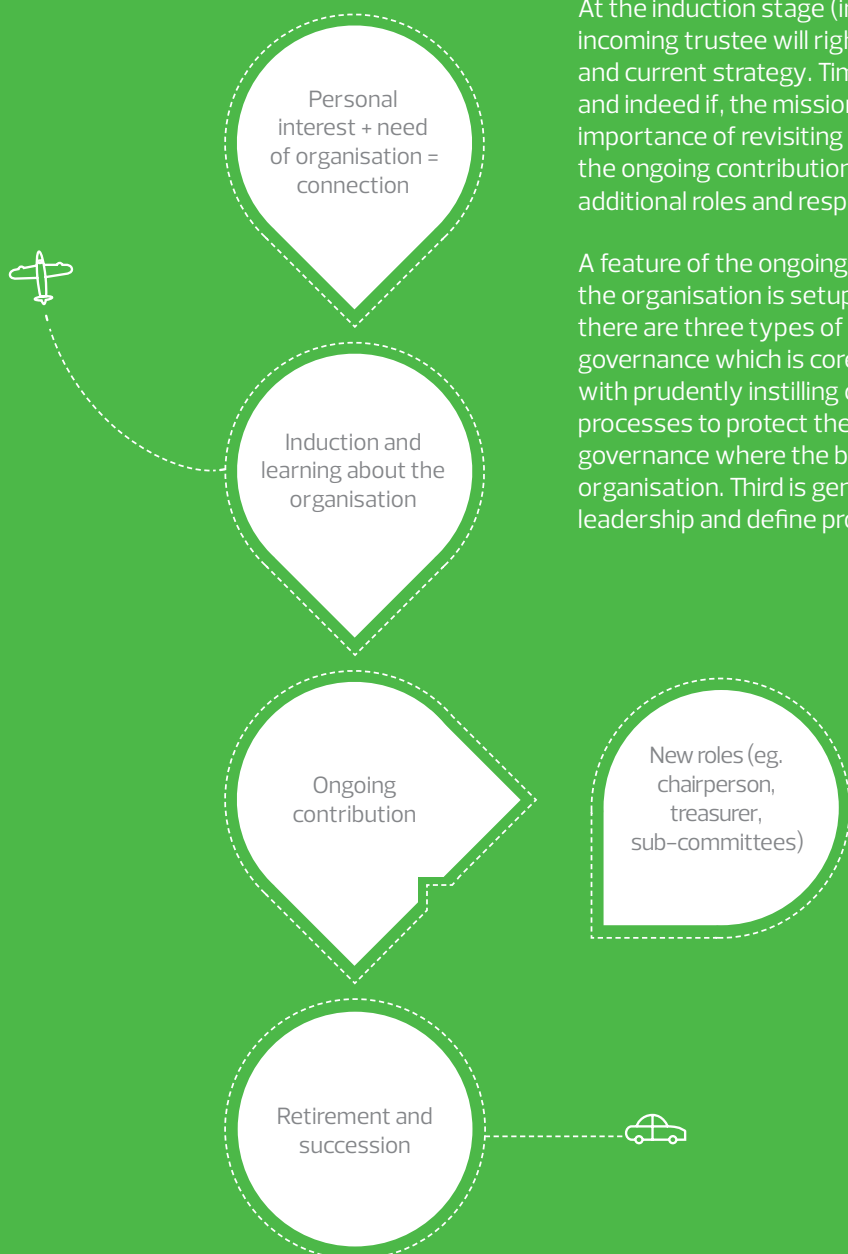
**5** Is diversity an issue for your board?  
.....

## 5

### A THRIVING ORGANISATION AND BOARD

#### Framing the issue

The journey of a trustee tends to follow a typical route. It begins by exploring whether the individual has the motivation and personal interest in the objects of the organisation. This can be a two way process as a charity will need to demonstrate that they can offer what the individual is looking for. It moves on to whether the individual has sufficient expertise and experience, and following appointment and fulfilling the terms of the role culminates in planning for the individual's retirement from the board and succession. These phases can be illustrated as follows:



At the induction stage (including learning about the organisation) an incoming trustee will rightly spend time in understanding the mission and current strategy. Time should also be spent understanding how, and indeed if, the mission is meeting the needs of beneficiaries. The importance of revisiting this question regularly continues through the ongoing contribution phase. Some trustees will then undertake additional roles and responsibilities such as treasurer or chairperson.

A feature of the ongoing contribution phase will be the way in which the organisation is setup to thrive and excel. It has been suggested that there are three types of governance in an organisation. Firstly, fiduciary governance which is core to many organisations and is concerned with prudently instilling confidence and trust in the legal and financial processes to protect the organisation's good name. Second, is strategic governance where the board is concerned with performance of the organisation. Third is generative governance where the board provides leadership and define problems and opportunities.

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## The litmus test for any trustee is being able to discuss the organisation's purpose and why it exists.

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### In our experience

#### Matching personal interest with the needs of the organisation

Fundamentally a Charity Governance 2020 trustee will have considered the purpose and mission of the organisation before joining the board. It needs to fit – or at least fit with the vision of – the individual's own beliefs. Blended with the appropriate time commitment given by the individual this should be a good starting point to motivate that person to provide an ongoing contribution. There are also many other areas to consider at the outset including determining potential conflicts of interest, cultural fit of the individual and the required expertise and experience. The organisation should also confirm that it requires the skills and experience of the individual concerned. This may not necessarily be an immediate need but could be as part of a wider succession plan for an existing trustee. Some organisations ask people to initially become members of a sub-committee to the board so that both sides can get to know each other.

#### Learning about the organisation and ongoing contribution

The most fundamental task for a new trustee is to understand the legal objects of the organisation which identifies the charitable cause and beneficiaries. Alongside this is developing an appreciation of the organisation's current strategy and how it is performing against its stated objectives.

At the outset it is not unusual for a new member of the board to ask questions that may be perceived as rudimentary: is the mission statement clearly defined? Is there an understanding of the performance targets of the organisation? Sometimes these questions may be ones that have not been considered recently by the existing board as decision-making and strategy have drifted over time.

The litmus test for any trustee is being able to discuss the organisation's purpose and why it exists. A trustee should be able to provide examples of how the charity has performed by reference to actual case studies and real-life examples. Explaining how the organisation is funded and the priorities for the future are also indicative behaviours of a well-informed member of the board, as is a keen awareness of the key risks the organisation faces.

As part of the ongoing contribution made by a trustee it will include a regular review of those key questions that were first asked when joining the board to ensure that the organisation remains on track.

#### Looking overseas

In the same way in which local charities can benefit from seeing what their counterparts are doing in neighbouring counties, towns and cities, then so too can charity trustees benefit from looking at what is happening in terms of governance outside of the UK. Many of the world's leading academic institutions such as the Hauser Institute for Civil Society have their own faculties for the study of civil society and not for profit organisations. These seek to promote education and advance critical thinking about civil society, its leaders and institutions. As a result new ideas and policies can be developed to enhance the sector and society generally. Another good example is the Social Enterprise Initiative at Harvard Business School. Many offer executive programmes promoting new ideas on leadership, philanthropic practices, effective chief executive management, the role of emerging economies such as China and International NGOs.

#### Generative governance

All effective boards will have the basics of fiduciary governance covered – the

stewardship of the organisation's assets (not just financial but also intangibles such as people) will be under control. Fewer boards will have successfully implemented a partnership with management to achieve strategic direction. Fewer still will have the additional characteristics of a generative thinking board thereby providing a critical source of leadership for the organisation.

Generative governance is about taking a fresh look at an issue or opportunity, whereby starting with a clean sheet of paper without suggestions from the executive team can foster true innovation. It embraces the issues that are critical success factors for an organisation and can motivate the board to become true leaders. Examples include dealing with the recruitment of a new CEO, a fundraising campaign for a capital project or identifying a new strategic direction for the organisation. Such issues are far more likely to engage and excite a board than dealing with more trivial issues that can be undertaken by any competent management team. The work of the board that is working generatively can be categorised into four key areas.

1. Dealing with the do-or-die issues that define the organisation's success.
2. Having results that are monitored within a defined timetable.
3. Establishing clear measures of success.
4. Engaging with those both inside and outside the organisation.

One of the best ways of illustrating the different types of governance is considering the key question under each mode. The key question for a board concentrating on fiduciary matters is "what's wrong?" whereas a strategic focussed board will be asking "what's





the plan?" Generative boards will be asking "what's the question?" and will therefore spend time discerning problems and framing the key issues. The benefits of the latter approach are that it can empower the board to do meaningful work prompting members to frame the key issues demanding management's attention. Trustees are then able to add real value by employing their skills and experience. The value placed on the board's contribution is also increased under a generative approach – it no longer is just a ratifying body for the detailed plans and results presented by management.

### **New roles**

Over time some trustees may take on new roles within the governance structure of the organisation. This may be to take on a formal role such as chairing a committee or leading a project team. This is part of the evolution of the board and can help to reinvigorate the trustee's motivation that may have waned since joining the organisation.

### **Retirement and succession**

After a suitable period of time – which is hard to define unless required by the organisation's constitution – it may be that the organisation is best served by a trustee retiring. This may be driven by the chairperson, a nominations committee or similar or the individual themselves. The actual length of time can also be influenced by where the charity is in its life cycle. Any plans for succession will then need to be actioned or developed.

Some trustees will have a clearly defined term of office typically outlined in the organisation's constitution or as required by a nominations committee. An example would be a person being permitted to serve as a trustee for an initial period of three years with a possible of extending this once or twice (for example, a further three to six years). Another example would be for the chairperson to serve for a fixed term of five years. Such fixed terms ensure that there is no ambiguity from what the organisation is expecting as well as going a long way to setting a mechanism whereby the board must consider the issue of succession for all members. Organisations that successfully consider board succession will map retirement dates for its trustees and start the process of recruitment well in advance. Sometimes organisations are faced with a high proportion of the board retiring at similar times and this can be unavoidable if individual trustees' circumstances change – for example, ill health forcing an early retirement. For organisations that have fixed terms of office this can be a problem that will recur at regular intervals in the future.



## FIVE ACTIONS TO ACHIEVING GENERATIVE GOVERNANCE

- 1** Ensure that the board sets time aside for exploring new ideas and possibilities.
- 2** Ask the CEO to identify the key issues and facilitate the board's input to collectively agree the priorities (sometimes achieved by an away day). Be clear about what needs to be measured. Typically an organisation would not have any more than a dozen indicators of success.
- 3** Structure and establish committees and working parties to address the key issues identified ensuring that there is a timely report back to the board.
- 4** Ensure that key stakeholders are involved – including regular feedback from beneficiaries, when applicable.
- 5** Involve external advisers and expertise to enhance board knowledge or understanding.



# Part two Thriving and excelling

## 6

### PROBLEM SOLVING VERSUS SOLUTION BUILDING

#### Framing the issue

Perhaps the most prevalent way in which an organisation's decision-making process works is when management approaches a board to outline a number of problems that have been determined to collectively find a series of actions to resolve. In other words, a problem-solving approach. A feature of this is for the trustees to spend time making an assessment of the facts and then reasoning, which results in an action or series of actions to intervene and eradicate the problem. The focus is on problems and is not necessarily an inspirational way of operating. In applying the widely recognised SWOT analysis (to determine strengths, weaknesses, opportunities and threats) the problem-solving approach concentrates on weaknesses and threats and preventing trouble rather than promoting success. Sometimes fundamental questions are missed.

An alternative, solution-building, approach is one whereby management is empowered by trustees and focusses on an organisation's existing strengths but also considers opportunities. In this way of working an organisation's board would set the parameters and management would have the ability to act. Such an approach avoids excessive attention to detail by a board and concentrates on the fundamental questions facing an organisation with micro-governing avoided. In more successful organisations this is embedded in their approach to risk and as such the framework is clearly set by a board and management is allowed a degree of freedom to provide solutions.



## In our experience

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### **Framing issues and debating**

Many boards are prone to operating in a repetitive fashion – meeting at regular intervals and dealing with similar routine business. With the limiting factor of available time this can be to the detriment of healthy constructive debate in the boardroom when opposing points of view can be shared prior to decisions being made. Without debate and the opportunity to frame issues board meetings can become dull affairs, even having an adverse effect on attendance and the ability to attract trustees in the longer-term. As such, it is important to ensure that trustees are mindful of the initial motivations for joining the organisation; to support the beneficiaries' cause.

### **Vision, scenario-planning and the dangers of micro-governing**

Having established a vision for the organisation one tool that can be useful for trustees is scenario-planning; developing a range of possible outcomes that identify the sequence of events that would lead to them. Boards that follow strict routines and do not allow time to frame issues can incorrectly assume that the future will replicate the past with only gradual changes. Scenario-planning considers the impact of events which could quickly become much better or worse and, as a result, an organisation is generally better prepared for any possibilities that may unfold.

Scenario-planning can also be an aid to debate within a board that prevents management and trustees tending to adopt an approach that maintains the status quo. Similarly an organisation that is micro-governing is excessively paying attention to detail and missing the bigger picture. As a result it risks being put in a position where the fundamental issues are not addressed. Scenario-planning provides a method to map alternatives and challenge existing strategies.

### **Risk appetite**

Strategic risk can be defined as those risks that, if realised, could fundamentally affect the way in which an organisation exists or provides its services in the next one to five years. These risks will have a detrimental effect on the organisation's achievement of its key business objectives. The risk realisation will lead to material failure, loss or lost opportunity.

To identify the strategic risks there has to be a starting point. In all cases this should be the organisation's strategic objectives, after all, this is what the organisation is looking to achieve. However, this is often the first difficulty, as in many cases they are not commonly known, or they do not exist at all.

Strategic risk identification should involve all members of the board,

both executives and management, but does not need to be limited to these individuals. That said, beyond the boardroom, the strategic focus can become diluted. However, it is often appropriate to make use of an independent external facilitator who can provide objective challenge to the thoughts in the boardroom. Furthermore, be aware, it may take a few sessions to get to a point that the organisation is satisfied that it has captured its set of strategic risks and suitably articulated these with appropriate cause and effects analysis.

With the set of strategic risks decided, boards are encouraged to determine the correlation between the risks and each strategic priority, enabling them to understand which risk will have the most detrimental effect. This will start to form a strategic risk appetite. A further step, dependant on the size of the organisation, is to link operational risks to strategic risks. By their very nature the strategic risks will take some time to materialise, unlike the operational risks which can present themselves more quickly and be used as early warning indicators. What the board will have eventually is a risk management methodology that is focussed totally on the achievement of its strategic objectives.







# ADDRESSING STRATEGIC RISK

- 1** What is occurring internally at the organisation that could present strategic risk or challenge?  
.....
- 2** What is occurring externally, either locally or nationally, that could present strategic risk or challenge?  
.....
- 3** What has happened in the past that led to the realisation of a strategic risk and could it happen again?  
.....
- 4** What is happening elsewhere (other providers/sectors)?  
.....
- 5** What are beneficiaries, regulators, partners, public and other stakeholders telling you about the organisation?  
.....
- 6** What does the organisation want to look like in five years? How different is that from now? What will the organisation face in getting there?  
.....



# Part two Thriving and excelling

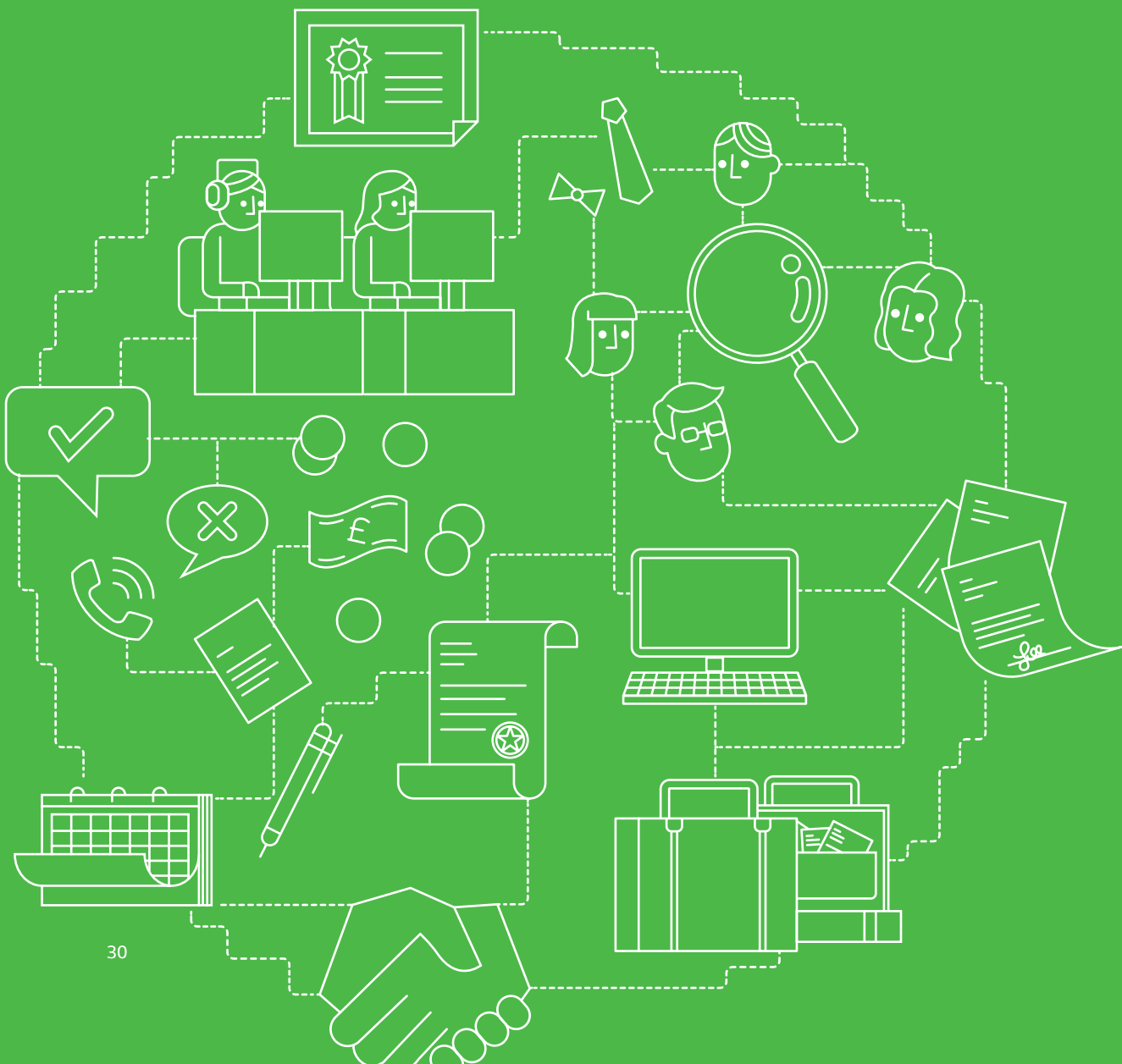
## 7

### BOARD DYNAMICS

#### Framing the issue

The best performing boards are more than the sum of their parts: the members of the board ideally share a common goal in the organisation's mission and work well together to achieve this. But a good starting point in establishing the board is to create a balance in terms of skills and expertise as well as a diversity of background and thinking.

Recruitment of new trustees should not be a random process; instead gaps in skills and expertise should be identified and filled through a considered and planned process. One such way is to carry out a skills audit of existing trustees to determine where gaps may exist. Once recruitment needs have been addressed and trustees are well-established, ongoing consideration should be given to board dynamics. The crew of a ship that is harmonious and agrees on the destination will work more effectively than one that squabbles and cannot agree on the final port of call.



## In our experience

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### Boards behaving badly?

The ways in which trustees interact with each other, and a board operates collectively, is arguably more of an aid to success than governance processes or organisational structures. The Charity Commission has recognised that while trustees will have specific skills and expertise, their background and experience can also help:

- bring different points of view to a discussion;
- give insight into beneficiaries' needs and experience;
- make contacts in the community; and
- think of new ways of doing things.

Best practice boardroom behaviour may be characterised by:

- a clear understanding of the role of the board;
- the appropriate deployment of knowledge, skills, experience, and judgment;
- independent thinking;
- the questioning of assumptions and established orthodoxy;
- challenge which is constructive, confident, principled and proportionate;
- rigorous debate;
- a supportive decision-making environment;

- a common vision; and
- an achievement of closure on individual items of board business.

Any board that is considering its own performance would benefit from considering how it measures against the above traits. Any shortcomings may suggest that the board is not working at an optimum level.

### Skills assessment

One of the consequences of the 2008 economic downturn was a measurable increase in trustees' awareness of their own roles and responsibilities. However, this improved awareness has not always been supported by organisations formally implementing procedures and controls that good governance suggests are vital.

Obtaining the right mix of skills, experience and qualities is a key ingredient in building an effective board. The starting point in determining whether the board has the requisite expertise to make it effective is to review the attributes of existing trustees. This is important because existing trustees may possess a range of skills or knowledge that have not been identified or called upon. One such process that can be employed to help identify existing skills, knowledge or experience is a skills audit.

Once the board has agreed that a skills audit is in the best interests of the organisation it is good practice for an

individual (the chairperson, a trustee, or member of the management team) to be nominated to coordinate the process. Alternatively it can be through a formal or informal group (such as a governance working party, committee or nominations committee). Before initiating the skills audit it is advisable to review the exact requirements of the organisation's governing document. This is an important consideration particularly if the skills audit is to result in a recruitment initiative as there may be restrictions on board numbers and (in some cases) the ability to appoint new trustees may rest with third parties.

It is customary for skills audits to take the form of a questionnaire that can be sent to all existing trustees to complete. Carrying out the audit would involve the nominated person sending out these questionnaires with an explanatory note (as to the purpose of the exercise). The questionnaire can be used electronically but if traditional post is preferred it is usually a good idea to provide a self-addressed envelope to aid timely completion. One advantage of electronic questionnaires, such as Survey Monkey is that the results are collated automatically. Providing a deadline for trustees to return the documentation can also help the process to run smoothly.



# THE RANGE OF SKILLS THAT A TYPICAL BOARD MIGHT CONSIDER

Typically, the significant part of the questionnaire is a list of (almost) every desirable area of expertise that could possibly be expected of a trustee.

As well as skills, a well-composed board should consider attributes such as the ability to work as a team or respect the views of others, though these can be less tangible. There is also a greater expectation on larger charities to appoint trustees with demonstrable board experience.

Administration	Knowledge of the community
Campaigning	Legal
Change management	Lottery
Conflict resolution	Management – general
Consultancy	Management – restructuring
Customer care	Marketing
Disability	Media/PR
Equal opportunities	Networks/alliances
Financial	Organisational development
Fundraising	Policy implementation
General strategic planning and training	Property
Governance	Research
History of the sector	Retail
Human resources /training	Specialisms specific to type of charity eg. clinical/ medical, social care, research
Information technology	Systems

At this stage the board should also be mindful of the strategic direction of the organisation and in that context ensure that any future skills needs are incorporated into the questionnaire. It may also be appropriate to have an appreciation of the need for board diversity and any required stakeholder representation such as input from beneficiaries and users (although these may not ultimately become full trustees). Issues to consider on board diversity include gender, geographic location, ethnicity and disability. There is now an increased focus on recognising the voice of younger trustees, which is important both in the different perspective they may offer, if not the experience, but also in terms of their possible long-term engagement with the charity and sector generally.

Trustees should then be asked to score whether they possess each individual area of expertise. Once all trustees have returned the questionnaires the results should be collated and analysed, while considering the potential different scoring approaches undertaken by different people. One of the best ways to do this is to use a spreadsheet and enter all of the possible skills from the specimen questionnaire in the first column and then map the scores for each trustee in subsequent columns. Such a basic

level of analysis is, however, likely to be insufficient. This is because it is not necessarily the average score that is important. For instance, it is important to recognise the highest score recorded by any trustee for each area of expertise. This is because it is essential that most areas of expertise can be demonstrated even if that particular area of expertise rests with just one person. In some areas such as finance it is important that all trustees have at least a basic understanding of the issues rather than deferring to a few lone experts, or else they will not be able to sufficiently and confidently question any concerns. Training is available, for example, on basic financial skills for trustees.

By now it should be possible to identify whether there are any areas of weakness or concern at a lack of expertise in one or more areas. One obvious action to take would be to recruit prospective trustees to remedy any known weaknesses in the expertise of the board as a whole. Prospective new trustees can then be enrolled on the basis of what they can bring to the board, complementing and enhancing what is already there and increasing the diversity of both skills and perspectives.

Identifying whether there are going to be trustee retirements in the near future is an important factor. Sometimes these cannot be avoided, for example, if rotation of trustees is required by the governing document. If so, then it would be wise to consider the skills audit excluding the results of trustees that are about to retire. This will make it easier to identify whether short-term retirements from the board are likely to take away any key areas of expertise.

Carrying out the skills audit also presents a good opportunity to ask other questions to collate information

that is useful to the organisation. Examples of additional questions include those aimed at identifying areas where trustees may be able to become more involved as well as helping to understand the motivations behind individuals becoming trustees (which can aid future recruitment).

Once the results have been analysed and recommendations determined these should be reported to the board (and/or the relevant committee). It may be appropriate to report the results of the skills audit to the board on an anonymous basis. For that reason they are sometimes carried out by an independent third party.

Typical next stages would then include one or all of the following:

- arranging formal training for existing trustees to cover any identified weaknesses;
- actively recruiting new trustees to fill any gaps;
- buying-in any missing expertise;
- co-opting individuals with specific skills on to sub-committees; and
- agreeing a date for a future review of skills if no weaknesses have been identified.

### **Training and board development**

One of the requirements of Charities SORP FRS 102, which is the accounting and reporting recommended practice for the charity sector, is for organisations to disclose the policies and procedures for the induction and training of trustees. Having established that some gaps in the board need or must be filled by recruitment it is possible that some areas of expertise or skills could be brought to the board by the development of existing trustees. Despite this being

a requirement of the accounting regulations under SORP it is an aspect of board development that every organisation should consider. This also extends to informing the board about the work of the organisation and the environment in which it operates. For example, there may be an imminent change in the regulatory regime in which the organisation operates and one way of up-skilling the board could be to arrange for some training en masse or appointing individual trustees to become the recognised specialists.

The importance of trustees working together is the starting point for better board dynamics. Therefore, any tools to develop the board will ultimately benefit the organisation. Popular activities designed to integrate and provide a better understanding of teams include team building exercises and board away days. Although these may not be considered to be educational, as such events do not directly pass on knowledge, they are building the team and, therefore, contributing to board development for the good of the organisation.

### **Board appraisal**

If an organisation has a governance or nominations committee then this is also well-placed to consider the individual contribution of trustees. Alternatively this can be undertaken by a small working party or the chairperson. Continual appraisal of trustees is considered to be an effective method of achieving engagement and ensuring that efforts are of a sufficient intensity. Some organisations implement a formal process to consider the contributions of trustees and this can also extend to a 360 degree review of the board itself incorporating feedback from management and staff as well as other stakeholders.



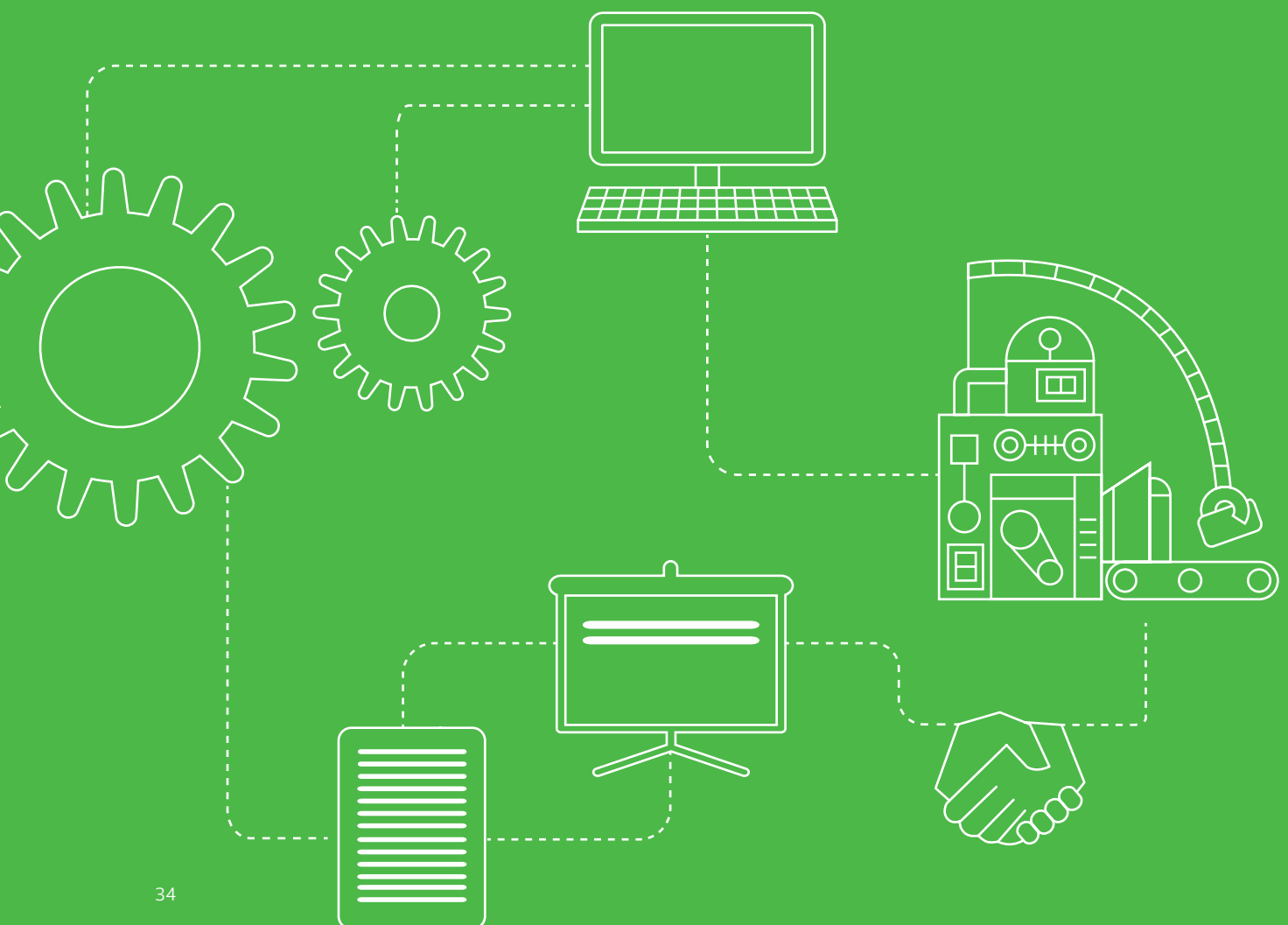
## 8

### THE TWO CRITICAL ROLES – CHAIRPERSON AND CHIEF EXECUTIVE

#### Framing the issue

F Warren McFarlan, Baker Foundation Professor of the Social Enterprise Initiative at Harvard Business School cites the recruitment of a chief executive as one of the most important tasks facing a not for profit board. Similarly having the right chairperson in place beforehand is critical to the future direction of an organisation.

There are essential differences in the two roles; one carries the ultimate responsibility for the organisation, is unpaid, part-time and a leader in the background whereas the other is responsible for the day to day operations, is remunerated and a more visible leader. While it is worth noting that there are some high-profile chairs who can play an important role in promoting and furthering a charity's work, this should be balanced with maintaining a clear distinction about who does what. These sometimes conflicting standpoints mean that it is imperative that the right individuals fill these two critical roles and that they have the ability to work well together to achieve the organisation's goals.



## In our experience

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### The searches

When a vacancy, or potential vacancy, is arising in the position of chairperson it is important to initially involve all trustees in the consideration of the required attributes of the ideal incoming person. Achieving a consensus on the attributes of a new chairperson will help to make the probationary phase easier once the appointment has been made. Potential candidates may arise from either the existing board or a new appointment from outside the organisation. The use of head-hunters have become more common especially by larger charities. Another key person to have input in the process is the existing chief executive given the pivotal relationship that these two individuals will have in the future. Once trustees and the chief executive have been consulted then it is usually appropriate to create a small working group with a view to creating a shortlist of candidates for the whole board to consider.

A key element of the chairperson's role is the amount of time required to properly carry out the required duties. Broadly this can be as much as twice the time required for a typical trustee. Having someone with the ability to be this flexible in the time that they are able to offer is important for any organisation. Not least because many

of the duties of a chairperson can be unplanned, for example, when a chief executive vacancy arises it might be the chairperson that has to become more involved as a quasi-interim chief executive in order to keep the organisation on track.

The chairperson must be motivated by the organisation's longer-term aims given the voluntary nature of the role. While a chief executive should also be motivated by the mission, the payment of a salary may introduce a slightly different dynamic. The selection of the chief executive is not solely the responsibility of the chairperson and, again, a small working party is an effective means in recruiting and sometimes involving the expertise of search and selection agencies, as appropriate. As with recruiting a chairperson the potential pool of candidates can come from both within and outside the organisation. For an internal candidate that might go on to become the chief executive competing against external candidates gives credibility to the appointment and shows existing staff that it was a robust process. Many of the principles for the recruitment of the chairperson similarly apply to the chief executive including an initial assessment of the characteristics required and establishing a working party to oversee the process.

### Relationship and culture

Ideally the vision of the chairperson and chief executive will be aligned and there will be general agreement on the organisation's needs and future direction. Both should have an appreciation and understanding of the others' strengths and weaknesses, usually so as to be complementary but remembering that opposites can also be effective. The important aspect is both individuals having an understanding of where gaps may exist.

The relationship between chairperson and chief executive should be one that is sufficiently close, but not too cosy. Both should feel comfortable in challenging the other, and other trustees should not feel alienated by the relationship. It is important to remember that these other trustees carry more of the ultimate legal responsibility than the chief executive, on an equal footing with the chairperson.

### Dominant figures

The Charity Commission has identified the need for effective, collective decision-making by trustee boards. Too often, it sees individuals, or small groups of individuals controlling a charity to the extent that decisions are not made properly by the trustee board as a whole. When individuals are too overbearing, other trustees often fail to fulfil their duties to

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**A key element of the chairperson's role is the amount of time required to properly carry out the required duties.**

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consider issues before making decisions, perhaps because they are intimidated or obstructed by the dominant individuals, or because they are simply not included in decision-making in the first place. Therefore trustees should consider whether their board is affected by dominant individuals, and reflect on their own performance as trustees; do they always apply their skills and experience when contributing to board decision-making, or are they sometimes tempted to go with the flow and agree with majority feeling? Do they regularly challenge the charity's executive on proposals, or its performance against targets? Do they switch off when certain issues arise in board meetings, because they don't consider it to be their area of expertise or responsibility?

#### **Chief executive/chair evaluation and appraisal**

The chief executive must be accountable to the board and not a free agent. A formal assessment of the chief executive's performance should be undertaken on an annual basis often carried out by the chairperson or governance, nominations or remuneration committee. As soon as the chief executive is in their new post objectives should be set for a suitable timeframe ahead. At the end of that period the relevant body should then assess the chief executive's performance providing appropriate feedback. Depending on the organisation's financial model this can be linked to remuneration and it is a good practice

to confidentially share the outcome of any formal appraisal of the chief executive with the entire board. However, it is important that the board's involvement in routine and day-to-day staff matters stops at the chief executive. Trustees should not interfere with the appraisal of other staff members as this should rest with the chief executive. They should also consider appraising the performance of the chair.


#### **The future – succession success**

Periodically both the chairperson and chief executive should consider their own positions. Many organisations have limited time periods for an individual to serve as chairperson. Some recent high-profile charity failures have been cited as being due to a lack of rotation of individuals in key roles. Chief executives may have a sense of how long they should remain in post to deliver key objectives but without getting stale, or perceived as having their carpet slippers on. Encouraging a competent but stale chief executive to move on is one of the most difficult challenges facing a chair, and a reason to guard against too much closeness in the relationship. In the absence of a defined term then Charity Governance 2020 would recommend at least the chairperson considering their own ongoing role from time to time. As such, the following questions to consider have been developed from *Joining a Nonprofit Board: What you need to know*, Marc J Epstein, F Warren McFarlan.



## AREAS A CHAIRPERSON SHOULD REGULARLY REVIEW

## AREAS A CHIEF EXECUTIVE SHOULD REGULARLY REVIEW



Is the chief executive the visible leader of the organisation, while I work behind the scenes?

Am I the right person for the job given the organisation's current state?

Do I have the confidence of the other trustees?

Do I have the support of the board of trustees?

Do I keep myself up to date about changes affecting the sector in which the organisation operates?

Am I perceived as an asset or liability to the organisation?

Do I have sufficient insight of the organisation?

Do I work well with the chairperson?

Have I considered succession planning?

Do I have the right management structure and team in place to support the board's objectives?

Am I developing new talent within the organisation?

Honest answers to these questions should then identify when it is appropriate to think about succession for the chairperson and chief executive.



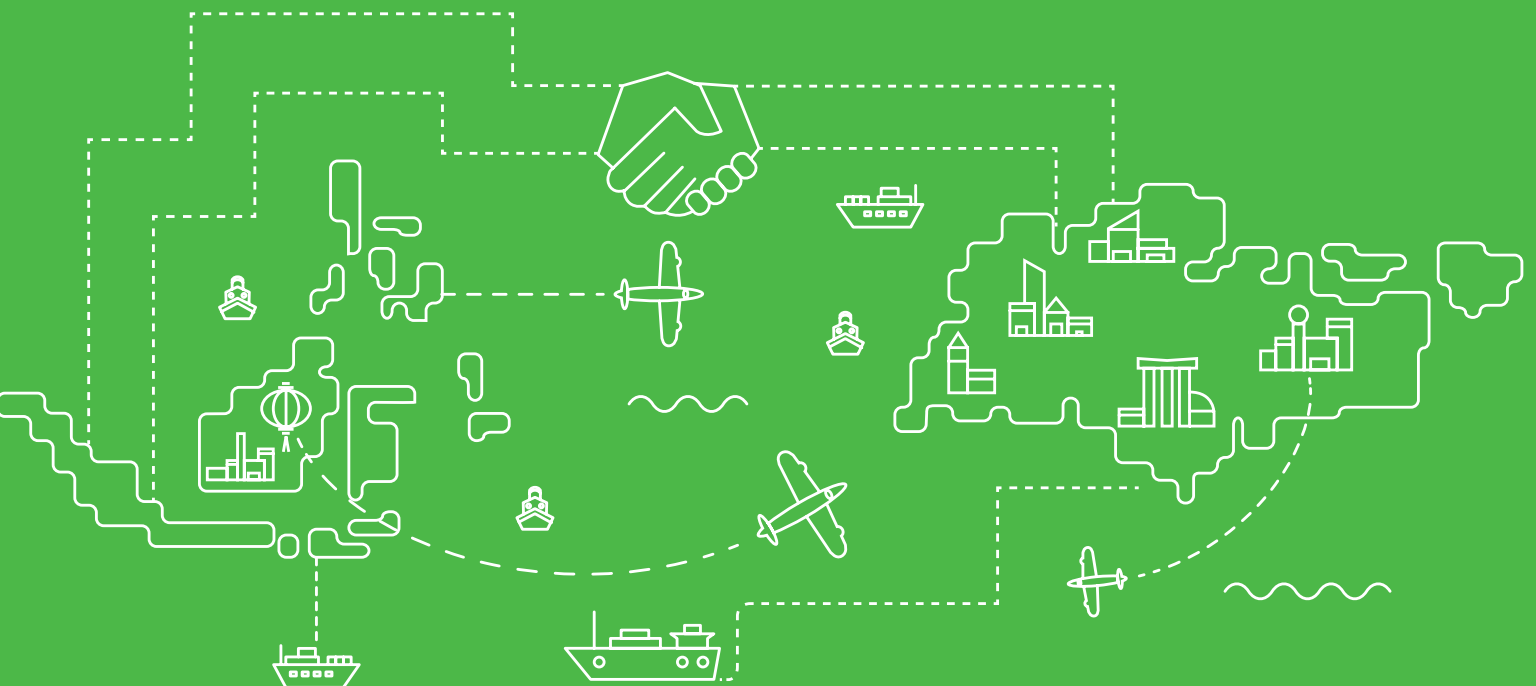
## 9

### COMING TOGETHER

#### Framing the issue

Many charities do unstinting work for little reward but the recent high-profile collapses of some national charities has sounded alarm bells throughout the sector. It has been said that the fear of failure or takeover is what keeps corporate entities effective and, for too long, charities have been sheltered from such outcomes on the basis of their honourable objectives or the desire to have a diverse range of organisations. More positively, strategic boards and those who are thinking creatively about future options actively pursue collaborations, mergers and amalgamations. The Charity Commission has long campaigned for charities to consider merger opportunities and now, more than ever before, charities need to identify the opportunities that may exist as well as getting their own organisation ready for the task of potentially integrating with another. Specifically the Charity Commission highlights that an effective charity considers whether collaborations and partnerships (including the possibility of a merger) with other organisations could improve efficiency, the use of funds and the better delivery of benefits and services to beneficiaries

The need for the sector to be seen as modern and focussed on the requirements of beneficiaries rather than the organisation itself is apparent more than ever before. If there are two organisations that would benefit from working together either collaboratively or in a formal merger arrangement then a Charity Governance 2020 board will always be open to exploring the opportunities that may exist with others.



## In our experience

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### Thinking about the future

An effective board will anticipate changes in the sector in which its organisation operates as well as other factors such as environmental or financial developments in order to ensure that its services to beneficiaries continue to be appropriate and relevant. Any organisation will have its own strengths and gaps in what it is able to deliver. Some shortcomings may not be paramount to the success of the organisation but the consideration of working with other organisations is one way in which the more important ones can be overcome. Benefits in working together can include increased range of services, economies of scale, improved access to funding, improved financial resource, increased public profile and improved learning within the organisation.

It is therefore important that a board devotes sufficient time to consider collaborative working and merger opportunities with other organisations. In our experience boards do not regularly consider the potential of working with other organisations and provide the opportunity for strategic debate to trustees.

### Considering other organisations

Sometimes it is obvious as to who a potential partner organisation may be. This could originate from a general awareness of the sector in which the organisation operates or known competitors. Potential partners can be found from websites and specialists

in finding partner organisations but lawyers and auditors can similarly have a good awareness of the general marketplace. Umbrella and trade bodies will also have relevant information about other organisations that could prove useful as well as the information held by Charity Commission and OSCR.

The fundamental reason for a partnership needs to be for the good of the beneficiaries. However, there are many more factors which need to be considered and all stakeholders will have a view on the appropriateness. Many of the questions that arise may be answered from an initial review of the last annual reports and financial statements of the target partner organisation. Such an initial review will provide a preliminary conclusion as to the possibilities. As the discussions proceed the following factors may be relevant:

- legal objects – consideration of compatibility;
- financial viability of the proposed arrangement;
- the impact on fundraising and existing or potential donors;
- the ability of trustees and management to work together or integrate;
- the culture of the two organisations;
- availability of resource to be able to make the arrangement work; and

- identification of any risks in the arrangement.

Before entering into any arrangement both organisations should undertake a cost/benefit analysis of the likely outcomes.

### Collaborative working

Organisations can work together informally or at the other extreme this can extend to working together under a formal legal agreement as part of service delivery. A collaborative working arrangement may also not only be concerned with service delivery and can instead include sharing back office services, fundraising, other administrative arrangements or joint contracts of employment for shared employees. Such arrangements can continue indefinitely, others leading to a more formal merger or sometimes just for a fixed period.

A feature of collaboration is that each organisation will retain its own identity, legal structure and continue to be independent. Occasionally, the collaboration may have a joint name for branding purposes, for example, a retail operation. Some collaborations involve more than two organisations and in any collaboration it may be agreed by the various organisations that one is appointed as the lead party (this usually occurs when the collaboration is to obtain funding although this can assign the risks to that organisation as well).

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**It is therefore important that a board devotes sufficient time to consider collaborative working and merger opportunities with other organisations.**

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Any collaborative arrangement should generally be supported by a formal agreement that sets protocols for decisions, legal and financial arrangements to mitigate problems as the arrangement progresses. Typically, when back office arrangements are collaborated new entities can be setup which has the advantage of ring-fencing financial risks and liabilities.

### **Federations and affiliations**

Federations and affiliations typically exist when a separate identity is given to the arrangement but a degree of autonomy (not always total) resides with the partners. Some national charities are organised in this way where the national name of the umbrella organisation can be used in a local context with local decision-making. Sometimes the national element of such an arrangement is only to provide expertise to the member parties or administrative support.

### **Mergers**

A merger of organisations means two or more separate entities coming together to form one legal entity. In order to facilitate this a new charity can be established to take over the work and assets of the combining entities or one charity can take control of the other.

As with collaborative arrangements the same principles apply in other words consideration of the costs/benefits and compatibility of the two organisations only in a merger arrangement the work must be more considered and detailed. Financial viability is important and before any arrangement is finalised a combined budget should be set to fully understand the opportunities

and problems that may face the merged entity. Although economies of scale can quickly be identified a significant merger of two entities can bring one-off costs in the short-term and potentially slow both organisations to the detriment of missed opportunities. As well as legal and financial considerations it is worth noting that the success of a merger can be down to a cultural or soft skills fit. In any merger there is the issue of two boards becoming one, which may mean some trustees having to step aside, as well as the challenge of two chairs who may both want to remain as chair of the post-merger organisation.

Both organisations should also look to carry out appropriate due diligence having assessed the risks involved. In some situations this may only need to be a brief review but in more significant mergers this can be extensive. Under any scenario the risks associated with commercial, legal and financial arrangements need to be considered. As with any significant project the organisation would typically be best served by a working party or sub-committee to oversee the arrangements. An important step in the process can also be regulatory approval either from Charity Commission, OSCR or other regulators depending on the area of operation of the entity (for example, education).



## STRATEGIC QUESTIONS THAT EVERY BOARD SHOULD CONSIDER

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- 1** Do we periodically consider the emerging trends of the sector which we serve and the needs of our beneficiaries in several years?  
.....
  - 2** Are we the only organisation that is capable of delivering the services we provide and want to provide?  
.....
  - 3** What is happening in our sector generally? Are there benefits in staying the same size or are we at odds with the general trends?  
.....
  - 4** Which other organisations do we admire or might benefit from working with us?  
.....
  - 5** Can we open discussions with those other organisations to see if we may be able to collaborate to the advantage of our beneficiaries?  
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# Further reading

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- A chair's compass, Association of Chairs, [www.associationofchairs.org.uk](http://www.associationofchairs.org.uk)
- A marriage made in heaven? The relationship between chairs and chief executives. Penelope Gibbs 2010 Clore Social Leadership
- Boards that work: A guide for charity trustees, David Fishel
- Charities and risk management (CC26), Charity Commission
- Charities SORP FRS 102, [www.charitiessorp.org/](http://www.charitiessorp.org/)
- Essential trustee (The): what you need to know (CC3), Charity Commission
- Charity meetings: making decisions and voting, Charity Commission, [www.gov.uk/charity-meetings-making-decisions-and-voting](http://www.gov.uk/charity-meetings-making-decisions-and-voting)
- Charity trustee: what's involved, Charity Commission, [www.gov.uk/charity-trustee-whats-involved](http://www.gov.uk/charity-trustee-whats-involved)
- Finding new trustees (CC30), Charity Commission, [www.gov.uk/government/publications/finding-new-trustees-cc30](http://www.gov.uk/government/publications/finding-new-trustees-cc30)
- Governance as leadership, reframing the work of nonprofit boards, Richard P Chait, William P Ryan and Barbara E Taylor
- Joining a Nonprofit Board: What you need to know, Marc J Epstein, F Warren McFarlan
- Setting up and running a charity, Charity Commission, [www.gov.uk/topic/running-charity](http://www.gov.uk/topic/running-charity)
- Team roles, Dr R M Belbin, [www.belbin.com](http://www.belbin.com)
- Balanced scorecard (The): Translating strategy into action, Robert S Kaplan, David P Norton
- Current and Future State of Charities 2015, Nick Sladden and Karen Spears
- New work of the nonprofit Board (The), Barbara E Taylor, Richard P Chait and Thomas P Holland
- Trustee board: people and skills, Charity Commission, [www.gov.uk/trustee-board-people-and-skills](http://www.gov.uk/trustee-board-people-and-skills)
- Trustee recruitment, selection and induction (RS1), Charity Commission, [www.gov.uk/government/publications/trustee-recruitment-selection-and-induction-rs1](http://www.gov.uk/government/publications/trustee-recruitment-selection-and-induction-rs1)

# Regulatory information

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For charities in England and Wales – Charity Commission – [apps.charitycommission.gov.uk](http://apps.charitycommission.gov.uk)

For charities in Scotland – Scottish Charity Regulator – [www.oscr.org.uk](http://www.oscr.org.uk)

For charities in Northern Ireland – Charity Commission – [www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk)

# What next?

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So how do you embed the thinking contained on the preceding pages? For a start you will need an assessment of how far down the road to Charity Governance 2020 your charity already is. This can be an informal appraisal of governance policies and processes and of trustees or a full-blown governance review. Using an established Governance Code such as the Voluntary and Community Sector Governance Code can be a good starting point. Don't try and change everything at once. Identify some easy fixes to help achieve buy-in, especially from any more conservative-minded trustees. Sometimes the biggest barrier can be those trustees who are unaware of, or unwilling to recognise, issues or areas where improvements could be made. And remember that risk averse doesn't just mean inaction. Often there is a greater risk in not doing something, as long as it is done properly after due consideration.

Change can seem daunting, and there is a natural tendency to remain in the comfort zone. Sticking with the devils already known. The mentality of not fixing that which ain't noticeably broke. Your charity may well already be operating at what you perceive an effective level, and meeting its KPIs. But is it as effective as it could be? Does it pass the 'media interest' test? For example do trustees have oversight of fundraising? Is your charity well run? Do you clearly explain what you are doing and why? Can anything be improved? Are the KPIs the right ones or challenging enough?

Charities cannot always influence let alone control the wider environment within which they operate. Situations can change rapidly. The closer you are to having a Charity Governance 2020 board, the better equipped you will be to deal with the unexpected, as well as exploit situations that may offer benefits.

Moving towards being a Charity Governance 2020 board should be seen as an opportunity not a threat. A challenge, yes, but then what are charities there for if not to meet such challenges, and overcome barriers, to make a difference?

**Rosie Chapman**

Charity governance adviser

# Contributors

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## **Nick Sladden**

Nick Sladden is head of charities for RSM and a client partner responsible for a portfolio of RSM's largest charity clients, including a number of top 250 charities. Nick has also worked with charity clients internationally including projects in France, Germany, Ireland and Romania with RSM International. He is also a recognised specialist in charity accounting, law and regulation, management and governance having produced many papers on changes in sector legislation. More recently, from 2013 to 2015, Nick has submitted responses to the Charity Commission and OSCAR on various Charities SORP consultations. As well as speaking at both external and in-house training sessions Nick has been widely quoted in the sector press. In 2013 he was one of the ICAEW technical screeners for the Charities' Online Financial Reporting Awards, while in 2015 he was an assessor for the Stephen Lloyd Awards. As well as completing the Governing for Nonprofit Excellence program at Harvard Business School in 2014, Nick gained the ICAEW Diploma in Charity Accounting in 2008. He is a trustee and volunteer for two national charities.

## **Rosie Chapman**

Rosie has a governance and regulatory background, including ten years as director of policy & effectiveness at the Charity Commission for England and Wales, and senior roles with the English Housing Regulator. She now works as a governance and regulatory adviser to UK charities and has recently been appointed as chair of the steering group overseeing the development of the UK voluntary and community sector Code of Governance. A qualified chartered secretary, Rosie is a fellow of the Institute of Chartered Secretaries and Administrators. In 2014 she acted as secretary to the National Council of Voluntary Organisation's influential inquiry into UK charity senior executive pay. She is a member of the UK Charity Law Association and a member of NCVO's Charity Law Review Advisory Group. Rosie also sits on Business in the Community's CommunityMark Independent Approvals Panel. She has been a trustee of a number of charities and is currently on the board of Charity Finance Group and a member of Wikimedia UK's governance committee.

## **Ian Allsop**

Ian is a freelance journalist and editor specialising in not for profit management and financial issues. He was editor of Charity Finance between 2004 and 2009 and has worked in and around the voluntary sector for almost 20 years. Before becoming a journalist he worked in the dedicated charity unit at a major accountancy firm, where he was involved with a number of governance reviews. As well as writing articles for the New Statesman and the Guardian Voluntary Sector Network, he still regularly contributes to Charity Finance, and is editor of the Charity Finance Yearbook. His other clients have included Stone King, CAF, Bates Wells Braithwaite and Charity Leaders Exchange. He also writes regularly for Funding for Independent Schools on various topics including governing bodies. He has spent five years as chair of governors at his local infant school.

## **rsmuk.com**

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