

# Good governance

## *Simrun Garcha gives the lowdown on the Charity Governance Code*



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**T**he new Charity Governance Code (the Code), which was published on 13 July 2017, sets out a plethora of governance-related measures and recommendations aimed at facilitating charities to reinforce and develop their governance, representing a standard of good governance practice to which all charities, irrespective of their size, should aspire.

This is the third version of the Code, which is now in its twelfth year, and replaces the previous Code of Good Governance, which was introduced in 2005 and last updated in 2010. The Code builds upon the previous Code of Good Governance while including more stringent standards for trustees. Key recommendations include a focus on increasing diversity on boards and imposing a limit on trustee terms of nine years in the absence of a good reason.

The Code has been welcomed by the Charity Commission which has supported the more rigorous approach, particularly in light of changing public expectations of charities and trustees. The Commission has even withdrawn its own guidance 'Hallmarks of an Effective Charity' in the hope of encouraging individuals to turn to the new Code. This Code represents a significant development in respect of the importance placed on effective charity governance and the desire to restore and enhance public trust and confidence in the sector.

### **Background**

The original draft of the proposed new Code was launched at the start of Trustees' Week in November 2016 and the consultation period was open until early 2017. The work on the Code was funded by the Barrow Cadbury Trust and the Clothworkers Foundation and was led by a steering group of charity umbrella bodies made up of an

independent chair, Rosie Chapman, the Small Charities Coalition, the Wales Council for Voluntary Action, NCVO, The Governance Institute, ICS, Acevo and the Association of Chairs.

The consultations on changes to the Code received over 200 responses, including a response from the Charity Commission which welcomed the increased focus on values and behaviours and stated that the Code, insofar as was possible, needed to be forward-looking and anticipate future governance challenges and risks. It has been heralded by Chapman as:

... an essential tool for charities to use and will greatly assist them to develop and grow in their effectiveness.

The Code intended to be aspirational and there is a consensus within the sector that strengthening governance is vital, particularly in light of previous failings, such as the collapse of Kids Company in 2015, and the adverse impact these have had on public trust and confidence.

There is a strong emphasis placed on not simply using the principles of good governance as a box-ticking exercise. Charities and their trustees must strive actively for effective governance and ensure this is reflected in their values, attitudes and culture.

Notable changes include the recommendation to review the performance of the board and individual trustees annually and for larger charities to appoint an external evaluator every three years to carry out this function. There is also a stronger focus on diversity and ensuring boards are regularly reviewing the skills and experience of their trustees and avoiding situations in which trustees serve on a board for longer than nine years unless there is good reason for doing so.

**'The introduction of the new Code highlights the increased emphasis on ensuring charities adhere to robust governance standards with a greater focus on openness and transparency.'**

### Status of the Code

Rosie Chapman has stated that she is not in favour of the Code being used punitively to take funding from charities that have chosen not to follow it. Charities and their trustees do not have a legal or regulatory requirement to comply with the Code. It is not enforced by the regulator, but rather is a tool aimed at providing guidance

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and support to trustees to enable them to strive towards best practice charity governance.

The message behind the Code therefore is one of 'apply' or 'explain' rather than 'comply' or 'explain' which means that trustees should either apply the recommended practice or alternatively explain why they have chosen not to apply it and what they have done instead. The Commission realises that while the same core principles apply to all charities regardless of their size, they apply in different ways depending on the particular organisation's circumstances.

However, trustees are being encouraged to read the Code and apply it to their particular circumstances. Vicky Browning, the chief executive of Acevo, has stated:

We know effective governance is crucial to the running of any charity. The new governance code is a key tool in ensuring this is achieved. I would recommend that all charity leaders, whether they are chairs or CEOs, read it and take on board its recommendations.

Those who follow the Code are also being encouraged to include a statement to this effect on their website or in their annual report and accounts, which may be useful for grant-makers. Indeed, Sir Stuart Etherington, the chief executive of NCVO, has indicated that he envisages, in the future, that funders may well require a commitment to following the Code and urges charities to take action as 'a way of getting ahead of the game'.

In recognition of the diversity in the sector and variance in size and complexity of different charities, it is recognised that a 'one size fits all' approach is not appropriate. This is addressed through the publication of Codes – one for larger charities (a charity which has an income of over £1m requires an audit) and another for smaller charities.

### Structure of the Code

The premise of the Code is the underlying foundation of good governance followed by seven principles. The starting point of the Code is that all trustees are committed to good governance and the continued improvement of their charity. There is an assumption that they have joined the charity's board because they want to help and they understand their roles and responsibilities and in particular have read and understand the Charity Commission's guidance 'The Essential Trustee (CC3)' and the charity's governing document.

The Code then sets out the seven principles, the rationale behind each principle and recommended practice for both larger and smaller charities.

### Organisational purpose

The board must have clarity about the charity's purposes and ensure they are being successfully and sustainably delivered with a core focus on strategy and performance. The Code recommends that charities periodically review the organisation's charitable purposes in the context of the external environment in which the charity operates to ensure its purposes remain relevant. It is also recommended practice for the board to evaluate the charity's impact, outcomes and outputs on an ongoing basis and to take account its responsibilities towards communities, stakeholders and the wider society.

Trustees are encouraged to evaluate the benefits and risks of partnerships, mergers or dissolutions

in circumstances where other organisations are carrying out similar charitable purposes more effectively.

### Leadership

The board must provide strong and effective leadership consistent with the charity's values and purposes. This sets the tone for the organisation's visions, values and reputation. Although the Code recommends that the board as a whole takes collective responsibility for its decisions, there is a greater focus on the role of the chair. The chair should have prime responsibility for ensuring the board has appropriate structures and processes in place and for ensuring that trustees and senior staff can add value to the charity.

This section of the Code also reinforces the commitment level required of trustees and the importance of the expected time commitment being made clear to trustees both before and upon acceptance of their appointment.

There is also a recommendation that where trading subsidiaries are established, the board is clear about the reasoning behind this together with the benefits and risks. The parent charity at suitable intervals should consider whether the arrangements with each of its subsidiaries continue to best serve the charity's purposes.

### Integrity

This principle sets out the importance of the board being aware of the public's confidence and trust in charities and emphasises that the board has ultimate responsibility for the charity's reputation. It is the responsibility of the board to safeguard and promote the charity's reputation, thus promoting public confidence in the sector.

Recommended practice includes maintaining a register of interests, hospitality and gifts which is made available to stakeholders and following an appropriate code of conduct which sets out expected standards. There are also recommendations about dealing with conflicts of interest and ensuring the board recognises the impact of how such conflicts, whether real or perceived, can have an impact on the charity's performance or reputation.

### Decision making, risk and control

This principle focuses on ensuring decision-making processes are

well-thought-out and timely and that delegation, control and risk management systems are set up and monitored. It is important that the board recognises it cannot take on all the work and should actively determine the matters it will make decisions upon and those which it can and will delegate.

It is recommended that the board has a 'delegations' framework which it sets out in writing, providing adequate detail so that the delegations can be clearly understood and carried out. Larger charities are recommended to maintain systems to monitor and oversee the way in which delegations are exercised. There is also a focus on active risk management and the board should regularly review the charity's specific significant risks and ensure it is clear about how it will mitigate and manage these risks.

#### **Board effectiveness**

This principle focuses on the board's attitude, approach and conduct. It recognises the ability of board members to raise challenges and questions by creating a culture of developing strong working relationships, where differences of view are accepted and resolved. One of the key outcomes behind this principle is that the board takes decisions confidently and stands by its decisions, accepting them as binding once they have been made.

The importance of respecting alternative views, considering different perspectives and working out a solution when differences in opinion arise is highlighted. It is also recommended that the board consists of at least five but no more than 12 trustees. Board members reflect the mix of skills, knowledge and experience required to run the charity and this mix is reflected in its trustee appointments.

The Code recommends that trustees are appointed for an agreed period of time and that they are not appointed for longer than nine years. If a trustee has served for longer than nine years it is recommended that their reappointment is explained in the annual report and subject to a robust review which recognises the importance of the need to update and refresh the board. Larger charities are recommended to review individuals' performance each year, with an external evaluation taking place every three years. The evaluation should consider a range of factors, including the board's diversity, how it

works together and the balance of skills, experience and expertise on the board.

#### **Diversity**

The board should attempt to recruit individuals from different backgrounds who are likely to think in different ways as this is likely to encourage debate. A diverse board which includes individuals from different walks of life should result in a more effective board.

Recommendations include that the board regularly partakes in diversity training and makes a positive effort to reduce obstacles to being trustees. Suggestions of how to do this include considering how information is presented to the board, for example, using digital technology, or formats such as audio and Braille, paying reasonable expenses and considering the time, location and frequency of meetings.

It is also recommended that boards of larger charities regularly carry out an audit of skills, experience and diversity of their members' backgrounds in order to identify and address any gaps or imbalances. They are also recommended to monitor and report on diversity by publishing an annual description of what steps the board has taken to address the diversity of the board and its performance against its diversity objectives, with an explanation where these objectives have not been met.

#### **Openness and accountability**

This principle focuses on the need for charities to be transparent in their work and engage in two-way communication with their stakeholders in order to build public trust and confidence, which in turn impact upon the charity's reputation and success. This includes ensuring there is regular and effective communication with stakeholders including users, beneficiaries, volunteers, staff and donors. The board should take steps to ensure there are agreed systems in place for these stakeholders to hold the board to account and ensure it consults with stakeholders about significant changes to the charity's services.

It is recommended that the board strives to develop a culture of transparency within the charity, including receiving regular reports about complaints received by the charity. It should ensure there is an open and effective process in place for making and handling a complaint

impartially and constructively. The Code also recommends that a register of interest for trustees and senior staff is maintained by the board and that larger charities publish the remuneration levels of senior staff on their websites and in their annual reports.

It is intended that the Code will be adopted in different ways by charities depending on their particular circumstances. It is designed to be sufficiently flexible to enable charities to develop how they use it over time as they evolve and grow.

#### **Conclusion for practitioners**

The introduction of the new Code highlights the increased emphasis on ensuring charities adhere to robust governance standards with a greater focus on openness and transparency. There is also a greater focus on encouraging diversity on charity boards and on ensuring that the board has the right mix of expertise, skills and experience to deliver the charity's purposes effectively.

The Commission has welcomed and supported the new Code, stating that it is imperative that charities get to grips with governance. It has emphasised that following good governance procedures is more than a simple box-ticking exercise and that charities should ensure the attitudes and culture within the charity are consistent with its mission and strategy for achieving it. The Commission's director of policy and communications, in a statement published on 13 July 2017, stated:

... the bottom line is, good governance is no longer an optional extra. It is essential to charities' effectiveness and probably their survival too.

Charity law practitioners should ensure that charity trustees, regardless of the size of the charity, are aware of the Code and encourage trustees in the first instance to read and familiarise themselves with the principles set out within it. They should then discuss the Code with their fellow trustees and consider how they will apply its principles to their specific circumstances, having regard to the charity's objectives. The trustees should then start applying the Code in the manner they have agreed and ensure that, periodically, they review the way in which it applies to their charity as it evolves. ■