

Charity Times

Charities and not for profit newsletter.



Welcome



Welcome to our winter edition 2018. Following the announcement that the Insolvency Service intend to take proceedings against the former directors and CEO of Kids Company, we have focused this edition on the theme of governance:

- The updated Charity Governance Code
- Key messages from the Charity Commission speaking at our recent governance seminars
- How to tell if you have an effective Board

We also look at converting charitable companies to Charitable Incorporated Organisations (CIOs) and include a catch up on the Budget, Tax and VAT. Finally we take this opportunity to wish you all a happy and prosperous New Year.

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We hope that you find our newsletter informative and would welcome any **feedback** you may have.

The updated Charity Governance Code



This article was written by **Helena Wilkinson**, Head of Charities.

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Good governance is essential to effectiveness and survival of charities. As such improvements are continually made to the Code to keep up-to-date with modern and best practices.

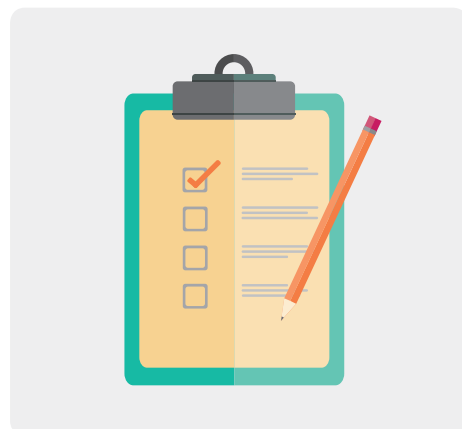
The latest version was released on the 13 July 2017 www.governancecode.org/wp-content/uploads/2012/06/Code-of-Governance-Full1.pdf and covers seven key principles, which are seen to be the main drivers of trust and confidence:

1. Leadership
2. Integrity
3. Decision making
4. Risk and control
5. Board effectiveness
6. Diversity
7. Openness and accountability

There are two versions of the Code, one for larger charities that are defined as those with income over £1M, or are audited, and then a small charity version. The Code reminds us that Trustees that follow good practice:

- Are committed to the cause and want to help deliver the charity's purposes
- Understand that meeting the charity's stated public benefit is an ongoing requirement
- Understand their roles and legal responsibilities, and have read the Charity Commission's guidance 'The Essential Trustee' (CC3) www.gov.uk/government/uploads/system/uploads/attachment_data/file/617828/CC3.pdf
- Have read their charity's governing document; and
- Are committed to good governance and the charity's continued improvement

The Code focuses on Board performance and using the Code as a tool for continuous improvement. In both versions it suggests that each year the Board reviews its own performance and that of the Chair. This review should encompass a review of the balance of skill on the Board, their experience and knowledge, diversity, how the Board works together and any other relevant factors which could impact on its effectiveness. Individual trustee performance is also suggested for larger charities to take place annually.





So there is a real push for all charities to review and understand the effectiveness of their governance processes, which we think is a good thing if undertaken appropriately.

In addition for larger charities, the Code requires that board effectiveness is subject to an external evaluation every three years. We have seen more charities start to undertake governance reviews and believe that effective governance is essential in ensuring charities are resilient, understanding how they are delivering their strategy and the positive impact created as a result, as well as ensuring that they manage their resources (be it staff, assets, reserves or income) effectively. It is also recognised that the Chair's role is crucial in promoting good governance.

We welcome the drive for charities to really consider their strategy and focus through these governance reviews, as there is a real need for charities to look at sustainability and income diversification in the continued challenging times they face. For us, diversification is not purely about different types of voluntary income sources, but looking at generating more stable and secure income streams that supplement these sources. It reminds Trustees to be prudent in use of the resources but not too risk-averse. No action is as much of a risk as action.

In addition, the ICAEW has produced a report that looks at these themes – 'Positive Impacts in Challenging Times' www.icaew.com/-/media/corporate/files/technical/audit-and-assurance/audit-insights-charities.ashx%20 and encourages charities to be 'accountable and transparent' in describing their activities, outputs, outcomes and impact. We have been advocating this approach to our clients and the sector for some time – to report on the difference that they make, rather than just list reams of achievements without any context in the Trustees report, so welcome this publication.

The Code looks at Board size, suggesting a minimum of five Trustees and a maximum of twelve; and looks at length of service with Trustees being appointed for agreed lengths of service. We think this is a positive suggestion, as we believe that a Trustee should be asked to consider their own effectiveness and reflect on if they wish to actively seek reappointment for another term. The maximum term spent on a Board is nine years, although a Trustee can continue after that time, as long as they have been subject to a particularly rigorous review/consideration has been made of the need to refresh the Board; and this is explained in the Trustees' report.

Finally on accountability, the Code encourages charities to 'go public' – on their websites and in Trustees' reports - with a public register of Trustees' interests; and to use the Trustees report to explain how they comply with the Code.

Summary of the key messages from the Charity Commission on being a Trustee



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We were really pleased to welcome Mike Ashley, a member of the Board of the Charity Commission, to our last series of evening seminars held in November and December 2017.

Mike presented on governance both of the Commission and Trustees, and future plans. However this article highlights some of the key messages on Trustees roles and responsibilities.

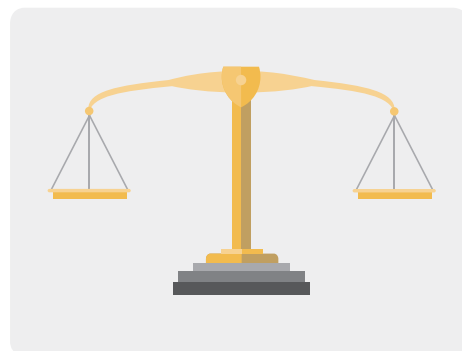
To start, clarification was made on the position of Trustees: '...trustees carry full legal responsibility for their charity; no matter how large it is, no matter how many senior executives it employs. The buck always stops with them...' (extracted from a statement made by William Shawcross, Chair of the Charity Commission).

This extract set the tone in highlighting the need for Trustees to ensure there are proper governance procedures in place within charities - with appropriate systems, policies, controls and standards to ensure that they are managed and governed effectively. Trustees are responsible for setting the tone and protocols around which the charity will make decisions within those delegated authorities to deliver their charitable activities, fundraising, marketing and communications. It was clear from the seminar that the Charity Commission expects Trustees to have a grip on their strategy, holding the executive to account on delivery against this and having enough oversight to be comfortable with decisions that are made.

Trustees need to ask difficult questions – this includes the need for all Trustees to be comfortable with the numbers – both income and expenditure and the balance sheet – to understand the finances of their organisations. Trustees should be comfortable that the charity is financially sound and prudent.

Taken on Trust - The awareness and effectiveness of charity Trustees in England and Wales, was a survey of 19,000 Trustees undertaken in conjunction with the Charity Commission supported by various sector bodies and individuals published in November 2017. The full report can be accessed here: www.gov.uk/government/publications/taken-on-trust-awareness-and-effectiveness-of-charity-trustees-in-england-and-wales

The research was undertaken in order for the sector to better understand Trustees views on the challenges they face in their role. The estimated figures for the sector, across all



167,000 plus charities, indicate that there are over 950,000 trustee positions fulfilled by some 700,000 individuals. The high level summaries from the report indicates that the average time a trustee spends each week on their charity was 4.88 hours; two thirds of Trustees are male and over 92% are white with 55-64 being the average age. The report therefore has highlighted the issue of diversity at Board level in charities; as well as skills shortages with Trustees reporting a lack of relevant legal, digital, fundraising, marketing and campaigning skills at Board level, and most recently cyber crime knowledge.



The recommendations arising from this research were around four key themes:

1. **Recruitment of trustees** – the need for trustee boards to actively embrace Board diversity encompassing not only skills and experience on Boards, but different people from all aspects of society to bring fresh perspectives and ideas.
2. **Provision of advice and support** - the need for advice and support in the charity sector to be much more comprehensive and to better support the variety of objectives, activities and therefore the needs of these trustees.
3. **Development of a digital advice, support and communications strategy** – recognition of the need for charity regulators, umbrella bodies and stakeholders to support the charity sector through access to digital support and advice.
4. **Collection of additional information by the Charity Commission** – the Commission should enhance its knowledge and information to have email addresses for all trustees, their gender, age and their other charity roles so as to gain a better understanding of trustees and in order to be able to communicate directly with them.

We can expect that the Charity Commission will focus attention on data collection to be able to enhance its communication strategy to all trustees individually in the future. It was clear from Mike that they struggle to communicate directly to trustees at the moment as they only have one key email contact for each charity.

The 2018 Charity Commission Annual Return will require more information to be completed by charities and future trends will be more digitally focused with continual updates of data rather than completion of a purely annual return.

Finally, Mike did raise the issue of the Charity Commission charging charities fees in the future and we can expect to see a consultation on this in the New Year – so look out for this.

How to tell if you have an effective Board



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Following our governance theme in this newsletter, we thought we could provide some top tips on how to consider and review the effectiveness of your Board of Trustees.

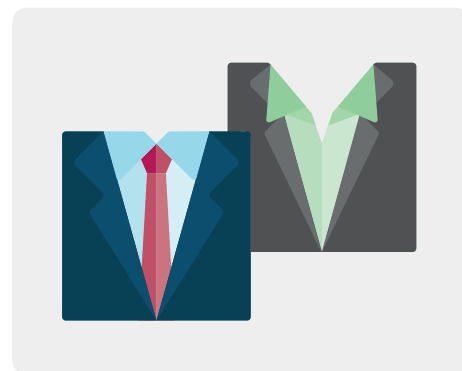
This is partially in light of the Charity Governance Code requirement for all Boards to undertake an annual review, and partly for Boards to think about how they can use their limited resources more effectively. There are some questions that a Board should consider in this process which focus on actual dynamics around the Board table, as well as the information flows and decision making process. We would recommend that there is a formal process - perhaps the use of an anonymous questionnaire if there are concerns around openness and transparency, which should encompass a review of the following aspects of the Board function:

- **Board composition:**

- Right mix of skills and experiences; and of course diversity
- Adequate succession planning
- Roles and responsibilities description for each individual, and also for specific roles like Chair, Vice Chair and Treasurer
- Terms of reference for each sub committee
- Training requirements and needs of individual Board members understood and addressed
- Appraisals of individual Board members and their contributions

- **Meetings and strategy**

- Clear agendas with easy identification of items for decisions, for noting and for discussion
- Enough time allocated to cover agenda and proper discussions for informed decision making
- Board papers are clear – not too short or too long and are a good basis for effective decision making – not reiterated but high level summaries as it is assumed all papers have been read
- Clear tie into mission, strategy and accountability for Board papers
- How does the Board measure criteria for success to understand strategy delivery and focus in the future
- How is oversight of strategy, management and internal controls managed





- Appraisal process of the CEO and accountability for delivery of strategy
- Anything missing from the agendas?

- **Board dynamics**

- Key Board relationships with Chair, other Trustees, CEO
- Interaction and management of relationship with senior management team
- Effectiveness of discussion to allow questioning, challenges and debate – any over dominance by group or by an individual in decision making process?
- Ability to have reasoned discussion
- Board effectively and regularly communicate with the staff and senior management team

- **Effectiveness of the Chair**

- Do they have the right skills, experience and knowledge to engender effective leadership?
- Seen to be well informed and prepared for the meetings and seen to act independently to the senior management team and particularly the CEO
- Relationship with other Board members is open and constructive
- Encourages participation and healthy debate and an ability to deal with difficult or challenging situations.

Charity Commission Update



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Converting a charitable company to a Charitable Incorporated Organisation (CIO)

From 1 January 2018, charitable companies will be able to convert to CIOs, if they so choose.

We are aware of some charitable companies which no longer wish to be registered as companies and comply with filing at Companies House, so these organisations can finally move forward. There will be a phased implementation timetable (by income bracket) as detailed below:

Date	Annual income
1 January 2018	Less than £12,500
1 March 2018	Between £12,500 and £25,000
1 May 2018	Between £25,000 and £100,000
1 June 2018	Between £100,000 and £250,000
1 July 2018	Between £250,000 and £500,000
1 August 2018	Greater than £500,000

Companies will not be able to convert early and will need to wait to apply in the correct period based on their income.

Ironically, The Index of Company Names (Listed Bodies) Order 2017, will require all CIOs to be listed on Companies House database for the purposes of protecting their Business Names. So all CIOs will now have a record at Companies House.



Changes to the Annual Return for periods ending on or after 1 January 2018

After an extensive consultation with charities throughout the autumn, the Charity Commission has made a number of amendments to the content of the Annual Return for 2018 (AR18).

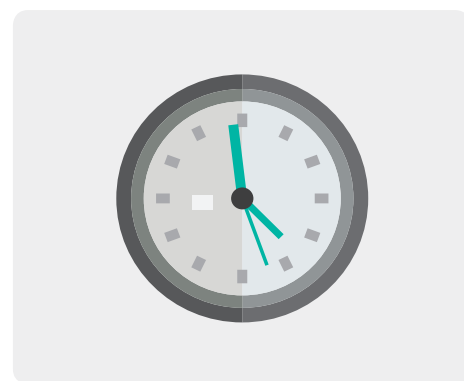
These changes will apply for all charities with years ending on or after 1 January 2018. Although the digital service underpinning AR18 is not currently available, it is expected to be within the next few months.

The Annual Return will be limited to gathering financial and regulatory information that is relevant to each charity. It is estimated that, on average, charities will answer 15 fewer questions than in the past.

- Changes to registered details will no longer be included in the Annual Return. Instead charities will need to use a new online 'update charity details' service to update this information throughout the year.
- Information about income from outside the UK will now be required. The Commission recognises that some charities will need to make changes to their financial systems to collect the information required. As a result, some questions in this area will be voluntary for 2018, becoming mandatory in 2019, and income thresholds will determine what information will be required.
- There is now a voluntary requirement to report on methods of money transfer overseas, again becoming mandatory for subsequent Annual Returns.
- Information about the total remuneration received by staff members, including salary, bonuses, pension contributions, private health care and other benefits in kind, will be required. The number of individuals receiving packages of £60k upwards (in bands of £10k) will be made public, but for those that have always filed accounts this will not be additional to what can already be determined. Information about the highest paid employee will also be required, although this will not be made public.

Questions considered during the consultation that will not make it in to the revised return include:

- Information about the amount of gift aid claimed by a charity from HMRC, which the Commission says is not collected by HMRC on an annual cycle or in a format which matches Commission requirements. It is now planning to discuss with HMRC how bulk data relating to gift aid can be supplied.
- Use of rate relief, despite initial research indicating there is some abuse of this relief. The regulator says it accepts that the question in its current form does not provide information to address possible abuse of charitable status, and will continue to explore the issue.



The Budget and Making Tax Digital Update



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Gift Aid donor benefit rules – following the review of the Gift Aid donor benefit rules, the Chancellor announced the simplification of those rules by reducing the current three monetary thresholds to two.

Under the new limits the benefit threshold for the first £100 of the donation will remain at 25% of the amount of the donation. For larger donations, charities can offer an additional benefit to donors of up to 5% of the amount of the donation that exceeds £100. The maximum value of the benefit a donor can receive continues to be £2,500. These changes will come into effect from April 2019.

In addition, all existing extra-statutory concessions in respect of the donor benefit rules will be brought into legislation.

VAT - There was some concern that as a result of the Office for Tax Simplification's recommendations, the VAT registration threshold would be significantly decreased in the Autumn Budget. However, the Chancellor announced that he would not reduce the threshold but rather freeze the existing one of £85,000 for 2 years from April 2018. During this time the Government plans to consult on the design of the registration threshold.

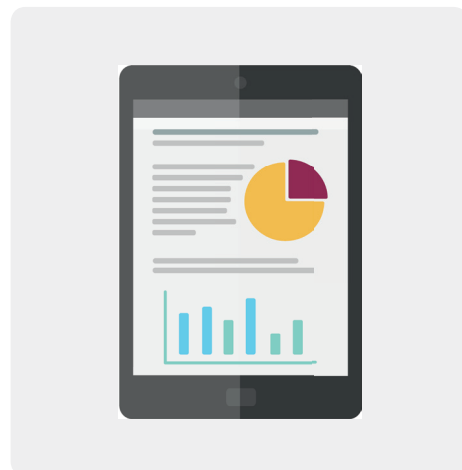
The Chancellor also announced the following changes to VAT refunds:

- **Combined Authorities** – Through Finance Bill 2017-18, legislation will be amended to ensure UK Combined Authorities and certain fire services in England and Wales will be eligible for VAT refunds.
- **Scottish Police and Fire Service VAT** – Through Finance Bill 2017-18, legislation will be amended to ensure that Scottish Police and Fire Services will be eligible for VAT refunds
- **Accident Rescue Charities Grant Scheme** – A grant will be provided to help accident rescue charities meet the cost of normally irrecoverable VAT.

Update on 'Making Tax Digital' (MTD)

The Charity Tax Group has reported on their meeting with HMRC on MTD. HMRC confirmed that MTD for Corporation Tax has been deferred until an undetermined future date. When introduced, charities will be exempt, but their subsidiaries will have to comply with MTD.

HMRC have also confirmed there is no equivalent charity exemption in respect of MTD for VAT. MTD will therefore apply in relation to VAT reporting from April 2019 for charities and their subsidiaries which are compulsorily registered for VAT.



VAT registered businesses, including charities and their subsidiaries, with turnover below the VAT registration threshold (i.e. those that have registered voluntarily) can continue to file their VAT returns under the current system until at least 2020.

HMRC will be piloting MTD from Spring 2018 and is keen to ensure a wide range of different organisations, including charities, take part in that pilot.

For advice about charity regulations speak to our Charities team to see how we can help you. For further information about Price Bailey visit us at pricebailey.co.uk.

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