



Effective Governance in the Modern Charity

Contents

1. What matters need to be reserved for Trustees?
2. Rules around decision-making
3. How to ensure effective delegation to inform Trustees meetings and decision making?
4. Meeting rules and etiquette
5. Making decisions and managing risks
6. The consequences of improper decisions
7. The Governance Code, EDI and ESG

What matters need to be reserved for Trustees?



‘The board is ultimately responsible for the decisions and actions of the charity but it cannot and should not do everything. The board may be required by statute or the charity’s governing document to make certain decisions but, beyond this, it needs to decide which other matters it will make decisions about and which it can and will delegate.’

‘Trustees delegate authority but not ultimate responsibility, so the board needs to implement suitable financial and related controls and reporting arrangements to make sure it oversees these delegated matters. Trustees must also identify and assess risks and opportunities for the organisation and decide how best to deal with them, including assessing whether they are manageable or worth taking’.

(Charity Governance Code, Principle 4 - Rationale)

Meeting your responsibilities as a Board

All trustees must take responsibility for and use their skills and experience to inform decisions that benefit the charity.

This is called **acting with reasonable skill and care**.

Strategy

- Development of strategy
- Track progress towards strategy
- Monitor and seek evidence of impact

Finance and funding

Trustees must take steps to make sure that your charity's money is:

- safe
- properly used and accounted for.

Trustees must make sure funds are secured ethically and legally in a way that supports the charity's values.

Managing people

- Follow employment law
- Working with the CEO
- Volunteer management

Assessing and managing risk

- Ongoing process
- Identify risks, record and monitor them
- Scenario planning in the event that a serious risk occurs
- Audited charities must make a risk management statement in their annual report

Equity, diversity & inclusion at board level

Understanding how the board and the charity operates in its processes, systems, policies and behaviours to become more effective

Reporting

Statutory reporting to:

- Charity Commission
- Companies House

To consider **Serious Incident Reporting** when things go wrong

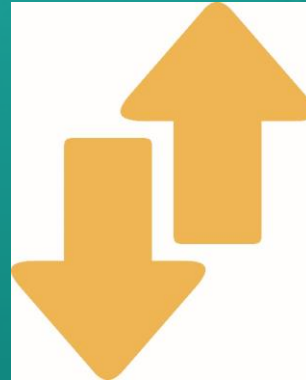


- Each trustee is jointly and severally liable
- Important that decisions are taken by the board as a whole
- Trustee meetings are important

It is then the responsibility of the CEO and the senior management team to implement decisions and report to the Board

- Responsibility for the overall management of the charity, ensuring compliance with the charity's objects and relevant legislation.
- Define and agree the strategic aims and objectives of the charity.
- Approve/amend proposals for the delivery/cessation of delivery of programmes to further the charitable objects or changes to the charity's activities.
- Ensure that trading and other activities do not compromise charitable status.
- Approve/amend the charity's policies and procedures for internal control and the management of risk and protection of the charity's property (including insurance).
- Authorise delegated powers and limitations to the chief executive and other members of the senior management team, where appropriate.

Strategic matters



Regulations and control:

Trustees are responsible for reporting to the Charity Commission and any other regulators



Trustees must authorise use of the seal!

- Approval of recommendations to change/amend the charity's governing document
- Approval, suspension, alteration and amendment of standing orders (by-laws). Ratify or reject instance of failure to comply with bye-laws.
- Ratify any urgent decisions taken by the chair and CEO.
- Approve a scheme of delegation of powers and establish / review / amend sub-committee terms of reference.
- Receive the declaration of trustee interests and key staff members and determine the manner in which any potential conflicts will be managed.
- Approve arrangements for dealing with complaints.
- Adopt/review/amend the organisational, management and control structures, processes and procedures
- Receive reports from committees and agree / amend / reject.

- Nominate and elect a trustee to serve in the positions of chair, vice-chair and treasurer, where appropriate.
- Appoint and dismiss committees and individual members of committees that are accountable to the board.
- Put in place effective procedures for the succession planning of the board.
- Appoint, appraise and dismiss the chief executive officer, where applicable.
- Appoint, appraise and dismiss the charity secretary/governance professional, where applicable
- Consider, approve/reject proposals from the remuneration committee regarding salary and benefits of the chief executive and other senior management staff, where appropriate.
- Agree procedures for the effective evaluation of the board and individual trustees, and committees.
- Consider and decide on any proposal to remunerate a trustee, subject to the restrictions of the charity's governing document and the requirements of the Charities Acts.

Appointments, remuneration, discipline



Budgetary matters

To apply charitable property to the furtherance of the charity's objects including making social investments.



- Approve/amend proposals for **capital investment or expenditure**, including the spending of capital from an endowment fund and making social investments.
- Approve/amend **budgets**.
- Agree and review **investment strategy**, in line with relevant policies – including bank mandates and deposit accounts.
- Approve/reject proposals for the acquisition/ disposal of land/buildings, or change in its use.
- Approve the **transfer of charity property** to another charity with substantially similar objects.
- Approve **fundraising and income generation** programmes.
- Decisions relating to **court proceedings** against or on behalf of the charity.
- Approve and appoint of the charity's **professional advisers** and consultants and determine their remuneration.
- Approve the purchasing of **Trustee Indemnity Insurance** from charity funds, where permissible.
- Agree changes to the **charity's pension scheme** or the management of its funds.

Policies:

Core policies to be approved by the board of trustees include:

- trustee code of conduct
- trustee engagement/agreement to serve letter
- employment policy
- health and safety policy
- environmental policy
- complaints policy
- treasury and investments policy
- reserves policy
- whistleblowing policy
- risk management policy
- corporate social responsibility
- conflicts of interest policy
- communications/PR policy
- equal opportunities policy.
- safe guarding



Audit arrangements

- Appoint, review or remove auditors in line with legislation and governing document
- Approve remuneration of external auditors
- Receive and note the annual management
- letter from the external auditor and agree
- the proposed course of action
- Receive and note reports from the internal
- audit function and agree remedial action

Matters which the board considers suitable for delegation are contained in the terms of reference of its committees.

Reporting arrangements:

- Receive/present/approve the charity's annual report and accounts.
- File the annual report, accounts and Serious Incident Report (SIR) with the appropriate regulator(s).
- Establish, maintain and retain appropriate financial reporting arrangements and records.
- Approve any policy changes.
- Hold an annual general meeting for members, where applicable.

Monitoring:

Receive and review such reports as the board requires from:

- committees and individuals
- members of the charity's staff
- the finance function
- the chief executive

Charity Commission Guidance – CC27 (updated June 2023)

It's your decision:
charity trustees and
decision making

Key themes:

1. Clear and robust reporting procedures if delegating to staff or sub-committees
2. Recording decisions properly – so there is no doubt about what was decided and why

Rules around decision-making

Trustees must:

- Act within their powers, as set out in the governing document.
- Act in **good faith** and only in the interests of the charity;
- Take note of any conflicts of interests and managing those;
- Made sure they had enough **information** before making the decision;
- Taken account of all **relevant factors** by considering the decision from a number of perspectives;
- Ignored any **irrelevant factors**;
- Only made the decision if it falls within the range of decisions that a reasonable trustee body can make.

Acting in good faith

Good faith' means genuine, honest intention or motives; trying to do the right thing, in the interests of the charity.

Bad faith could include:

- acting in a way that the trustees didn't honestly believe was in the interests of the charity
- intentionally benefiting someone in a way that is not in the charity's interests
- deliberately using a power for a purpose for which it was not intended

If trustees have acted in bad faith:

- they may not be entitled to reclaim from the charity any associated expenses that they have incurred
- their decision could be challenged in law
- the commission might need to become involved the trustees might have to repay the charity for any losses they had caused

How do trustees make sure they are sufficiently informed?

Trustees need to be able to demonstrate that their decisions are based on sufficient and appropriate evidence. They need to consider factors such as:

- the cost or value involved
- the complexity of the issue
- any controversy affecting the issue
- the impact of the decision
- how far reaching it is, and
- how urgent it is

Advice may need to be taken from a suitably qualified person.

Trustees may consult key stakeholders about important decisions but the final decision must be made by the trustees.

Minutes, reports or other formal records should show, if appropriate, how the trustees obtained information and advice, and the options they explored.

Risk assessments can help to inform the trustees in decision-making.

Decision making – taking account of all relevant factors

1. Is the proposed decision in the **best interests** of the charity? (This is always likely to be a key consideration.)
2. If the proposed decision affects the charity's activities, is it consistent with the charity's **objects**?
3. Have the trustees had regard to the commission's **public benefit** guidance?
4. Do the trustees have all the powers they need to make and then carry out the decision?
5. Are there any **alternatives** to consider?
6. Do the trustees have sufficient professional or **specialist advice** to enable them to make an informed decision? If they propose not to follow it in any regard, why is it in the best interests of the charity not to do so?

Decision making – taking account of all relevant factors

7. What are the **risks/benefits** of the proposed decision?
8. How could this affect the charity's **reputation**? Are there any steps the charity should take to manage or mitigate reputational risks?
9. Will the decision affect the **future** ability of the charity to further its purpose effectively? If it will have a negative impact, can it still be clearly justified as being in the charity's interests?
10. Does the charity have **sufficient funds** to carry through the decision and continue past implementation?
11. If the trustees have consulted the charity's stakeholders, what have they learned from that **consultation**? How much weight should they give to stakeholders' views?
12. If the trustees commit to the proposed decision, will there be any opportunity to **withdraw** at a later stage without incurring costs or penalties which may be unaffordable?

Trustees should not allow personal prejudices to sway their judgment; to do so would be a breach of duty.

For example:

Trustees who were selling land that was surplus to their charity's needs disliked the highest bidder and accepted the next highest offer. They allowed their personal prejudices to affect their judgment, and the charity lost money as a result. The trustees' decision was not based on any objective concern such as an identifiable risk to the charity's reputation.

Trustees deciding which supplier to use for a particular service must objectively weigh up the different options and decide which represents the best deal for the charity. They should not be influenced by the impact that their decision might have on a close friend or relative's business.

Irrelevant factors in decision-making



A charity for the relief of financial hardship received a substantial offer from a developer wishing to purchase land which the charity let to provide its income. There was local opposition to development of the site on conservation grounds. The trustees had to disregard these objections as they had no bearing on the objects of the charity. (They might, however, have needed to consider whether there was any risk of adverse publicity or loss of confidence or support from local partners or funders, and what the impact of this could be.)

Irrelevant factors in decision - making



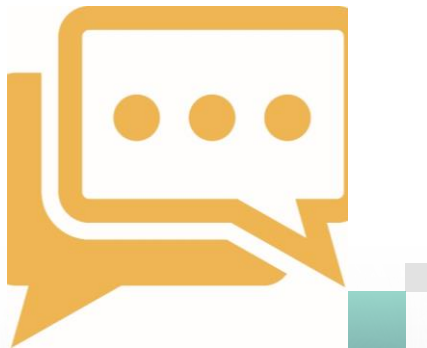
Effective Delegation to inform Trustee meetings and decision-making

The scheme of delegation **empowers** and **enables timely and effective action** by volunteers and staff working in partnership for the benefit of the charity and its beneficiaries although ultimate responsibility rests with the board of trustees.



Sub-Committees

- For example – Audit Committee, Finance Committee, Remuneration Committee
- Terms of reference agreed by the Board of Trustees
- Sub-committees can include people from outside the trustee board.



Staff and Volunteers

- Check your governing document:
- May be able to delegate day-to-day management of the organisation and all its operations to employed staff and / or volunteers
- Depends on size of the charity



Documenting your delegation

- Scheme of delegation
- Trustees can delegate, monitor and if necessary withdraw the delegated authority if it's considered in the best interests of the charity and it's beneficiaries

Key questions for trustees managing their charity's connection to a non-charity

Recognise the risks

How does the connection with the non-charity benefit our charity?
What are the risks for our charity?
Have we assessed and addressed the risks?
When is the next review of the risk assessment?

Operate independently

Are we free to make our own decisions in the best interests of our charity?
Do we know when we wouldn't agree funding or other arrangements with the non-charity?

You must only further your charity's purposes for the public benefit, not the aims of the non-charity

You must act only in your charity's best interests

Don't further non-charitable purposes

Do we understand the scope and limits of our charity's purposes?
Is funding from or to the non-charity restricted to furthering our charitable purposes?
If we invest in a subsidiary - can we justify the investment, do we monitor our investment?

Protect your charity

Are we satisfied that our arrangements with the non-charity protect our charity's assets, beneficiaries and reputation?
Do we have appropriate written agreements?
Do we protect our charity's position when:

- sharing our resources with the non-charity
- sharing the non-charity's resources
- communicating jointly?

Avoid unauthorised personal benefit and address conflicts of interest

Have we identified and addressed any conflicts for any of our trustees who:

- are appointed by the non-charity
- are on its Board
- work at the non-charity
- have another link to it?

Have we got approval for any trustee benefits that come from the connection?

Maintain your charity's separate identity

If we share our identity with the non-charity, how is this in our charity's best interests?
Have we identified and addressed the risks?
Do our donors know which organisation is asking for their support?
How do we help people outside our charity to understand that we are separate from the non-charity?

Meeting rules:

Consider the following:

- frequency
- who attends
- how many trustees are needed for a quorum (the minimum number of trustees needed to make decisions properly)
- dealing with conflicts of interest
- agreeing meeting dates well in advance and whether they should be in person or online.

Minutes should include the following:

- the name of the charity
- the type of meeting
- the date and time of the meeting
- the names of those present
- who chaired the meeting
- what capacity people attended in, such as trustee or staff member
- any absences for agenda items due to conflicts of interest
- apologies for absence



Constructive debate and challenge are signs of healthy governance reflecting diversity of experience

If a trustee strongly disagrees with a decision they can ask for their disagreement to be minuted. However under the collectively responsibility they can still be held jointly responsible.

The minutes should record exactly what was agreed, particularly for important or controversial decisions. For example:

- the exact wording of any resolution and who proposed it
- a summary of the discussion on each item of business
- information used to make decisions
- how many votes were made for and against, and how many didn't vote
- what action is needed and who is responsible for taking it
- the date, time and venue of the next meeting

Ideally, someone who isn't involved in the meeting should take the minutes. If a trustee is taking the minutes, they should ensure they can also contribute actively to the discussion.

You must make the minutes of trustees' meetings available to all charity trustees. Professional advisers such as auditors may also ask to see them (AGM – members but not the public unless your governing document says so)

Holding meetings online or by telephone

- You must act within the rules of your Governing Document – consider whether any changes are required to your Governing Document to deal with holding a meeting remotely or on a hybrid basis.
- Online meetings can be useful to deal with urgent matters when a quick decision needs to be made.
- Ensure that information shared electronically for meetings is secure.

<https://www.gov.uk/government/publications/changing-your-charitys-governing-document-cc36/charitable-companies-changing-your-governing-document>

<https://www.gov.uk/government/publications/changing-your-charitys-governing-document-cc36/charitable-incorporated-organisations-cio-changing-your-governing-document>

<https://www.gov.uk/government/publications/changing-your-charitys-governing-document-cc36/trusts-and-unincorporated-associations-changing-your-governing-document>

Good practice for virtual board meetings:

- The choice of the right communication channel is vital
- Preparation is key
- Clear instructions on accessing the meeting system or app are essential
- Virtual meetings need to be well structured and avoid unnecessary complexity
- The Chair will need additional techniques to run an orderly meeting, allowing adequate debate and obtaining the sense of the meeting
- “Ground rules” for participants should be circulated to all those joining the meeting in good time beforehand
- Good boardroom practices are even more necessary for virtual meetings than for face to face.

Making decisions and managing risks

Identify the major risks that apply to the charity

1

Make decisions about how to respond to the risks

2

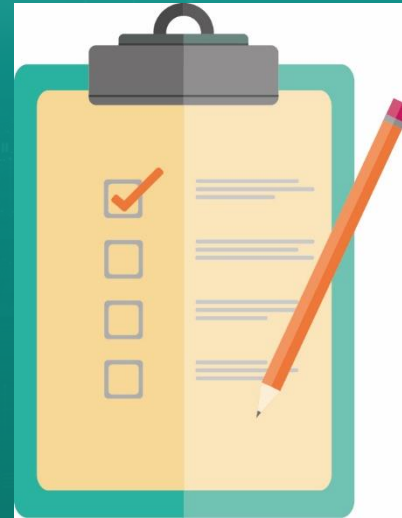
Risk management statement in the annual report?

3

- Linking mission, purpose and strategy will help Trustees plan effectively and manage change.
- Financial risks, operational risks, governance risks, compliance risks, environmental and other external factors (including COVID-19)
- Regularly reviewed and updated as circumstances change



CC26: Charities and risk management





Risk category	Examples
Governance risks	<ul style="list-style-type: none">• inappropriate organisational structure• trustee body lacks relevant skills or commitment• conflicts of interest
Operational risks	<ul style="list-style-type: none">• lack of beneficiary welfare or safety• poor contract pricing• poor staff recruitment and training• doubt about security of assets
Financial risks	<ul style="list-style-type: none">• inaccurate and/or insufficient financial information• inadequate reserves and cash flow• dependency on limited income sources• inadequate investment management policies• insufficient insurance cover
External risks	<ul style="list-style-type: none">• poor public perception and reputation• demographic changes e.g. size of beneficiary group• turbulent economic or political environment• changing government policy
Compliance with law and regulation	<ul style="list-style-type: none">• acting in breach of trust• poor knowledge of employer legal responsibilities• poor knowledge of regulatory requirements e.g. fund-raising, running of care facilities, operating vehicles)

Recent events have changed attitudes towards risk management – many now take account of events that are rare and driven by external factors outside of the charities control as although likelihood is small, there is high impact on the ability to carry out charitable activities.

Impact	Extreme/ Catastrophic	5	10	15	20	25	30
	Major	4	8	12	16	20	24
	Moderate	3	6	9	12	15	18
	Minor	2	4	6	8	10	12
	Insignificant	1	2	3	4	5	6
			1	2	3	4	5
			Remote	Unlikely	Possible	Probable	Highly Probable
			Likelihood				

The colour codes are:

Red - major or extreme/catastrophic risks that score 15 or more

Yellow - moderate or major risks that score between 8 and 14

Blue or green - minor or insignificant risks scoring 7 or less

Remember: risk scoring often involves a degree of judgement or subjectivity;

Where data or information on past events or patterns is available, it will be helpful in enabling more evidence-based judgements.

Identified risks need to be put into perspective



Why is risk management important?

By managing risk effectively, trustees can help ensure that:

- Significant risks are known and monitored, enabling trustees to make informed decisions and take timely action
- The charity makes the most of opportunities and develops them with the confidence that any risks will be managed
- Forward and strategic planning are improved
- The charity's aims are achieved more successfully
- Clear on disclosures and reporting to be made in annual accounts on strategic risks

Managing risk

- Transferring
 - Avoiding
 - Reducing
 - Accepting
- (TARA)



Periodic monitoring of risk:



The trustees can monitor risk by:

- ensuring that the **identification, assessment** and **mitigation** of risk is linked to the achievement of the charity's operational objectives
- ensuring that the assessment process reflects the **trustees' view** of acceptable risk (TARA?)
- **reviewing** and considering the results of risk identification, evaluation and management
- receiving **interim reports** where there is an area needing further action
- considering the risks attached to significant **new activities** or opportunities
- regularly considering **external factors** such as new legislation or new requirements from funders
- considering the financial impact of risk as part of operational budget planning and monitoring

Consequences of improper decisions:

- Financial loss or damage to the charity's reputation
- Personal liability arising from breach of trustee legal duties and / or directors duties under company law
- A trustee may receive an unauthorised personal benefit

Charity Commission involvement:

- Charity Commission may become involved if trustees:
- acted outside the charity's objects and powers
- took into account factors which were irrelevant
- they did not properly manage a conflict of interest
- they took a decision that no reasonable body of charity trustees in possession of the facts could have taken

A serious breach of trust (such as making an improper decision) could indicate misconduct or mismanagement in the administration of the charity.

The commission might also open an inquiry where there is a high risk to the charity or to public confidence in charity more widely. This will include where charity assets, services or beneficiaries are at significant risk of abuse or harm.

Charity Commission Inquiries:

Mismanagement and misconduct
in the administration of charities

Here are some recent examples of
governance failings and breaches of
trust by the charity's

Outcome of One Young World investigation:

Trustees were issued an official warning
and an action plan to address the
governance and administrative failures

RSPCA

- Size, skills and terms of office of the Council
- Members of the Council too involved in day to day issues

RNIB

Lack of robust oversight by the Board of the charity's operations and structure, taking into account the complexity, scale nature and associated risks of its activities

Age UK

Inappropriate delegation on commercial arrangements in a trading subsidiary to the Board level and thereby failing to ensure decisions were in the best interests of the charity

Charity Commission and One Young World compliance case

- poor minute taking
- a lack of evidence that conflicts of interest had been effectively managed;
- unauthorised payments to a connected person employed by the charity's trading subsidiary;
- salary paid to an employee connected to one of the trustees was unauthorised under the requirements of the charity's governing document;
- bonus payments made to the CEO were not covered by an earlier permission to compensate a trustee for their employment and were therefore unauthorised by the Charity Commission.

Charity Commission Inquiries:

The Commission can and will act quickly when it considers it must...

Two recent cases resulted in charity trustees being “designated persons” under the Russia Regulations 2019 which can result in freezing funds and assets of people or entities

World Holocaust Forum Foundation (WHFF)

Charity Commission exercised its statutory powers to freeze the charity’s assets and removed Kantor as a trustee after he was found to be a designated person and had donated money to the charity. Kantor was found to be responsible for misconduct and mismanagement. CC later closed the charity due to reputational damage, limited assets and inquorate meetings following the resignation of the other two trustees.

Genesis Philanthropy Group (GPG)

- Trustees had not taken steps to receive training to adequately identify and manage conflicts of interest and / or loyalty as it has received donations from an overseas entity which previously had shared trustees with CPG .
- Under it’s constitution the trustees’ terms of office had come to an end and there had been no action to reappoint them or new trustees.
- Interim manager requested a wind down as main funding no longer available.

Compulsory in Scotland

Voluntary in E&W

Expect requirements for code to become compulsory and require reporting on in Trustees report

<https://www.charitygovernancecode.org>

Charity Governance code

1. Organisational purpose
 2. Leadership
 3. Integrity
 4. Decision making, risk and control
 5. Board effectiveness
 6. Equality, diversity and inclusion
 7. Openness and accountability
- Assess your governance against the code
 - Use app: <https://thegovernanceapp.org.uk/help-and-support/>
 - Disclose the outcomes in board terms and areas being addressed

Charities Governance Code

- Governance App - new free resource from Directory of Social Change: <https://thegovernanceapp.org.uk/>
- Designed to help charities on their governance review journey
- Charities can register for free and then engage with the whole Board to review their governance
- Each board member completes questionnaire and app collates the results to form holistic picture of entity's governance
- Consists of 70 questions from Charity Governance code
- It's a great way to get started on a governance review – what works well and what may need to be addressed

ESG

- Disclose policies, mainly environmental
- Go beyond s172 to explain how stakeholder engagement informs decision making
- Cover issues and compliance with Charity Governance code
- Explain risk areas and how being tackled

EDI

- Disclose policy
- Disclose metrics and how being addressed
- Disclose ethnicity and gender pay gaps

Trends in reporting:

Key types and additional disclosures which are starting to appear in charity accounts

Go above and beyond SORP disclosures

Accounts evolving beyond SORP to look at impact in new ways

Stakeholder engagement, learning and influence in the strategy is gaining momentum

EDI Policies

There is an increased focus from key stakeholders towards EDI policies and procedures within an organisation and particularly how this is addressed at Board level

Tudor Trust and Equality Diversity and Inclusions (EDI)

The Tudor Trust has ceased its grant making in April 2023 for some 20 months as it was looking to changes to its Board after considering that its Board is ‘white and privileged’. “We recognize that we live in a society that is shaped by white privilege and racism..... We also acknowledge that being a family Trust has given rise to a trustee board that is almost entirely white and privileged. While the profile of the staff of the trust is more diverse, we recognize that, throughout the organization, most of us do not have experience of what it means to be discriminated against because of our color.”

Disclosures and EDI policies are a growing area of attention by the public and the press, and have had increased scrutiny ever since the latest Charity Governance code was updated.

Over 70% of the Top 100 charities in 2022-23 disclosed their EDI policy in their statutory accounts and 10% detail the ethnicity of their Board; also 20% report on their ethnicity gap as well as their gender pay gap.

EDI - Equality, diversity and inclusion

Governance code specifies expectations and steps

Consider disclosures in Trustees report. Why and what will you report and how will you benchmark?

Understand your
systems and culture

Trustees
SMT
Staff

Setting context-
specific and realistic
plans and targets

Clear organisational
approach supported
by appropriate plans,
policies, milestones,
targets and timelines

Taking action and
monitoring
performance

Board regularly
monitors and actively
implements its plans
and targets

Publishing performance
information and learning
Publish progress towards
achieving plans and
targets, including
challenges, opportunities
and learning

6:
Equality,
diversity and
inclusion



Start with your EDI statement and EDI policy

Disclose data like Gender pay gap, ethnicity pay gap, gender and ethnicity of Board, SMT and staff

Consider employee data to be disclosed from highest to lowest pay, sickness, staff turnover, age, disability, religion etc



CHARITY COMMISSION
FOR ENGLAND AND WALES

15 questions trustees should ask

Charity Commission guidance

- CC3 – The essential trustee: what you need to know
- CC8 – Internal financial controls
- CC12 – Managing a charity's finances
- CC19 - Charity reserves: Building resilience
- CC27 – Its your decision: charity trustees and decision making



Find these and more at:

<https://www.gov.uk/topic/running-charity/managing-charity>

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