

## Governance Practices Aide Memoire

### Version 1

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The Confederation is aware of recent governance-related events across the wider charity landscape. These have highlighted the risk of poor practice in one charity damaging the reputation and public perception of the reliability of all charities within the same sector. The Confederation believes it is important for all Member organisations to demonstrate sound governance practices in all their undertakings. This document is an aide memoire for those Member organisations to compare against their established governance practices.

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# Governance Practices Aide Memoire

## Introduction to the Memoire

Governance has evolved to encompass not only fulfilling legal and statutory obligations but to include the embedding of a culture of good leadership and decision-making practice within an organisation. The Charity Commission, similar home nation regulators and other stakeholders expect their various governance codes, though non-statutory, to be followed. Consequently, the Confederation has sought to clarify for member organisations the governance measures it is reasonable and sensible to expect to be adopted in the service charities sector.

This document is an aide memoire for those Member organisations to compare against their established governance practices. It acknowledges the need for flexibility in the procedures adopted and is intended to be complimentary to the Charity Governance Code (and similar home nation documents). A separate Information Note containing more detailed guidance on good governance has been prepared for those Member organisations who are still developing and shaping their individual governance measures.

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## Consistency with Regulatory Bodies

The demonstration of a consistent standard of good governance is an obligation placed on all Member organisations by their respective home nation legislation and regulatory bodies, as it is for all charities outside of the Confederation. Consequently, the starting point for good governance is to comply with the prevailing legal requirements upon Trustees. The Charity Commission has advised in its publication 'The Essential Trustee' ([CC3](#)) that these duties are:

- Ensure your charity is carrying out its purposes for the public benefit
- Comply with the charity's governing document and the law
- Act in your charity's best interests
- Ensure your charity is accountable
- Manage your charity's resources responsibly
- Act with reasonable care and skill

These fundamental obligations have been further described by specialist organisations such as the [NCVO](#) in their publications. Broader legal duties and responsibilities are enshrined in other pieces of legislation and are summarised as those: a) to comply with statutory, contractual, Common law, legislative and moral obligations; b) to discharge a 'duty of prudence', such as ensuring resources are used responsibly and maintaining solvency; and c) to exercise a 'duty of care' over the charity's operations through the decisions taken and activities performed. The Wales Council for Voluntary Action (WCVA) has produced [explanatory information sheets](#) with more details on the explicit laws to which a Trustee in England and Wales must comply, as well as those [legal duties](#) that confer a sanction and those that do not but may impact on personal standing or a charity's public reputation.

The full achievement of good governance includes activities beyond the strictly legal obligations on Trustees. In England and Wales, Trustees should also have regard to the recommended practices described in the Charity Governance Code. The code is not a legal or regulatory requirement. It sets principles and recommended good practice and is intentionally aspirational. It is a tool to support continuous improvement in charity governance.

There are two variants of the Code, one for larger charities with an annual income of £1 million and above and one for smaller charities with a lower income. Both can be downloaded at the [Charity Governance Code website](#). In addition, since 2012 there has been a separate [voluntary good governance code](#) for the third sector in Wales. It appears consistent with the scope of the Charity Governance Code but those organisations operating in Wales may wish to be familiar with it.

In Scotland, governance compliance for charities is set out by the [OSCR](#). The Charity Commission of Northern Ireland has also published its own [governance requirements](#) for charities operating within its jurisdiction. Collectively, the governance requirements from all home nation bodies are generally similar and the measures presented in this aide memoire are intended to be consistent with them.

An organisation's conformity with the Charity Governance Code or similar document can be compared against a governance checklist. Three examples of checklists are:

- A tool from the [Charity Commission in Northern Ireland](#)
- Another prepared by the [Developing Governance Group](#)
- And lastly, one from the [WCVA](#)

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Those Member organisations that are incorporated also require their Directors to ensure compliance with the obligations to [Companies House](#) and the UK Corporate Governance Code on effective business management, as set out by the [Financial Reporting Council](#). Those Member organisations engaged in fundraising must also meet the regulatory and governance requirements in the [Fundraising Regulator's Code of Fundraising Practice](#).

Member organisations with CIO, Royal Charter or other unique legal status are required to abide by the requirements of the charity regulators. Each organisation should also be satisfied they are aware of the governance requirements expected by other regulatory or accreditation bodies, if any, that relate to their particular activities, for example, the Care Quality Commission (health and social care), Homes England (social housing), Arts Council (museums and heritage) or other home nation equivalents.

This aide memoire also incorporates the observations by the government made on governance by Trustees across the entire charity sector and the improvements suggested in a Cabinet Office-funded study '[Taken on Trust](#)', published in November 2017. Similarly, with those made at the same time in the [Charity Commission response](#) explaining the actions they intend to undertake.

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## Good Governance: What is Expected?

It is recognised that governance arrangements within individual organisations may need to vary for a variety of reasons, such as restrictions in their governing documents, size, complexity or particular nature of their charitable activities. Therefore, flexibility in approach is possible providing the underlying intention of operating a regime of good governance can still be demonstrated. This approach is consistent with the flexibility in the Charity Commission's 'apply or explain' doctrine to demonstrate good governance.

In the Charity Governance Code, good governance is categorised under seven principles: organisational purpose; leadership; integrity; decision-making and risk; board effectiveness; diversity; and systems and accountability. The Charity Commission views this code as challenging for charitable organisations to achieve fully and advised it can be tailored to the requirements of individual charity sectors. Such sector-specific guidance should be designed to stimulate a culture of greater oversight and continuous improvement in the services provided to beneficiaries.

Member organisations generally expressed a preference to have practical advice on the governance measures they would be expected to demonstrate. Accordingly, this aide memoire has sought to group together the legal, regulatory and non-binding governance expectations under four practical 'expectations of good governance'. The expectations of capable *Trustees* serving on a well-run *Board* that addresses proactively its *Business* matters whilst ensuring sound *Policies* and practices are pursued in the organisation:

### 1. Trustee Responsibilities and Capabilities

- Measures to ensure a representative, knowledgeable and accountable body of Trustees are established and focused on advancing activities in the best interests of its beneficiaries.

### 2. Board Effectiveness

- Measures to ensure the structure, decisions and operational oversight by a Board of Trustees are properly conducted, well informed and communicated within the organisation.

### 3. Business Management

- Measures to ensure the viability of the organisation, its business planning, financial accounting and risk mitigation are thorough, well-controlled and focus upon increasing the organisation's impact upon its beneficiaries.

### 4. Core policies

- Measures to ensure there are effective operations and a respectful working culture in place through a set of essential policies that are well implemented and reviewed regularly.

Further details on specific measures that could assist a Member organisation to develop good governance arrangements are provided in a separate [Cobseo Governance Practices Information Note](#).

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### Expectation 1: Trustee Responsibilities and Capabilities

The appropriate selection and skill set of each Trustee, including the Chair, are recognised as central to successful leadership, strategic development and organisational performance for the benefit its beneficiaries. Consequently, the preparation of new Trustees and maintaining the performance of established ones are important activities in the achievement of good governance. The Confederation expects Member organisations to have in place governance arrangements that enable Trustees:

- To be fully cognisant of the legal obligations and leadership role they have taken on
- To perform personally both effectively and consistently
- To be confident their contributions and views in the collective board leadership of the organisation are equally influential regardless of any external factors.

To fulfil these expectations a Member organisation should be able to demonstrate it has governance practices in place to recruit and appoint appropriately qualified and experienced individuals as Trustees with an appropriate range of backgrounds and skills and who understand their responsibilities:

- a. Trustee recruitment and diversity** – It would be expected, unless governing documents dictate another approach, the selection of new Trustees should be undertaken through a competitive process. A process that incorporates proactive efforts to secure Trustees who represent a diversity of professional and personal backgrounds.
- b. Trustee terms of reference** – Each trustee has written terms of reference explaining their legal duties, commitments to the board and personal liabilities. This may be expressed within other documents, for example a Code of Conduct.
- c. Trustee induction** – Each Trustee should complete a defined programme of induction, including introduction to the organisation's founding documents; finances, policies and work of the organisation; and CC3, the Charity Commission guidance for Trustees (or similar in other home nations).
- d. Trustee understanding of responsibilities** – A code of conduct or similar confirmation to acknowledge a Trustee understands their individual and collective responsibilities to the board and organisation.
- e. Trustee in public life** – A further measure to promote confidence in the work of charitable organisations, advised by the regulators is for Trustees to adopt the [Nolan Principles on Standards in Public Life](#). The Nolan Principles state the holders of a public office in their behaviour, actions and decision-making should be able to demonstrate: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership.
- f. Trustee training** – Trustees should be able to refresh periodically their knowledge of the scope and breadth of the work of the organisation.
- g. Trustee performance** – A mechanism where the individual performance and commitment of each Trustee is periodically assessed against a set of relevant criteria.
- h. Trustee time limits** – A maximum term on the board for a Trustee should be published, together with a rationale if this term exceeds the period of 9 years suggested by

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regulators. The form of end- and mid-term reselection procedures used by the board should be agreed and published.

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### Expectation 2: Board Effectiveness

The Board of Trustees represents the ultimate responsible body within an organisation. Consequently, demonstrating a board is well-led and cognisant of their duties is an expected component of good governance. Trustees have collective legal and executive authority to set the vision for an organisation, determine strategy, take major decisions, be held to account for the conduct of its activities and be answerable for its achievements to beneficiaries.

To fulfil the important functions of the Board of Trustees a Member organisation should have governance practices in place to demonstrate its board is properly constituted, conducts its business robustly and potential conflicts of interest are addressed:

- a. **Board organisation and documentation** – Trustees should have an organised, informed and constructive approach within the board to discharging their responsibilities. Practical arrangements should define the size and composition of the board, frequency and format of its meetings and a consistent approach to documenting their proceedings.
- b. **Board activities and individual responsibilities** – Trustees should be satisfied their views are welcomed and fairly considered, free to challenge the status quo or received wisdom, and confident the activities of the board focus on the organisation's strategy, performance and assurance. Measures should be described on how the board sets its vision, reviews periodically its governing documents, assigns individual oversight responsibilities, where necessary, and maintains a culture of diversity of thought in its decision-making.
- c. **Board delegations** – A recognition should be demonstrated that a Board of Trustees addresses the strategy and oversight of the organisation and clearly distinguishes itself from those who manage day-to-day operations. Arrangements should be made to define the roles and reporting lines for executive officer(s) and board sub-committees, and the setting of their delegated powers.
- d. **Board reviews** – The Board of Trustees has an important review and revising function. A review process should periodically consider the terms of reference of the board, its sub-committees and Trustees.
- e. **Board discord** – Differences of opinion may arise from time to time and ordinarily would be resolved amicably. Regulators encourage a board to have procedures available to address a board dispute that requires mediation. This may be covered in the Trustee Code of Conduct.
- f. **Board conflicts of interests** – Trustees and executive officers may have potential conflicts of interests between their charitable, personal or professional activities. Where conflicts of interest exist, they should be surfaced promptly and their handling appropriately documented. Individual family or business interests and gifts/hospitality received, where they may affect the organisation, should be registered and a mechanism followed for their updating and disclosure.

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### Expectation 3: Business Management

The business undertaken by Trustees should typically include ensuring the organisation meets its legal obligations, demonstrates a continuing public benefit, maintains its financial viability, manages its risks, allocates resources to best serve its beneficiaries and assesses the impacts achieved. These duties are principally discharged through the decisions and actions of the Board of Trustees and those staff members, for example executive officers, upon whom it has conferred delegated powers.

To fulfil good governance expectations a Member organisation should demonstrate its Trustees regularly and robustly consider strategic development options, assess risks that may challenge the viability or achievements of the organisation, and monitor the overall performance of its charitable activities:

- a. **Strategic business and financial planning** – Trustees should demonstrate they periodically review the strategic business plan of the charity, including estimation of the future needs of its beneficiaries, understanding of the external environment, financial and capability projections and defining the impacts to be achieved. Sound reasons should be demonstrated to justify the planning criteria and time horizon chosen. Periodically, broader sustainability reviews should be undertaken into the continued viability of the organisation, its beneficial purpose, its income forecasts and whether new structural arrangements or collaborations should be pursued.
- b. **Budget setting and monitoring** – There should be a robust annual budget preparation process and a formal mechanism for approval by the Board of Trustees. Further budget oversight and challenge should be undertaken throughout the year.
- c. **Management of risk** – The Board of Trustees should set out the process by which it identifies, records and reports the major risks potentially affecting the organisation. Decisions should be made on the frequency throughout the year these risks are reviewed and checks on the effectiveness of mitigation measures in reducing the likelihood of each risk occurring.
- d. **Financial audit/examination** – Organisations with an annual ‘income’ over £1 million (the current [SORP threshold](#)) must have an annual external ‘audit’ of accounts to ensure public trust and confidence in their operation is upheld. Organisations with smaller incomes should undertake a less intensive, independent annual financial ‘examination’. The Board of Trustees should demonstrate they have a credible process in place to comply with SORP, maintain adequate reserves and investment policies, appoint an auditor (or independent examiner), report the findings publicly and address any financial concerns identified.
- e. **Remuneration** – If an organisation has staff, regulators suggest in the spirit of openness the Board of Trustees should agree and publish their approach to setting the remuneration of its staff.
- f. **Impacts on beneficiaries** – Central to an organisation’s strategy, decisions and performance is for Trustees to maintain a focus on maximising the impacts for its beneficiaries. The Board of Trustees should also be able to demonstrate they have a method to estimate and report the impact of their charitable activities.

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The obligations of Trustees to oversee the practices of their organisation to comply with the legal obligations for [fundraising](#) and [safeguarding](#) of children and adults at risk have been addressed in separate Cobseo aide memoires. Available from the Cobseo web site.

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### Expectation 4: Core Policies

The Confederation is aware policies and clear working practices for some topics are explicitly expected by regulators, notably safeguarding, fundraising, financial management, data protection, whistleblowing and external complaints handling. To support addressing the many obligations within employment and health & safety legislation it would be prudent to adopt policies on the issues they encompass.

To achieve this aspect of good governance a Member organisation should be satisfied appropriate policies and related practices are in place and subsequently, reviewed periodically. As a minimum, Trustees should ensure the following core set of policies are prepared by relevant personnel and are confident they are understood and implemented properly across the organisation:

- Safeguarding
- Fundraising (if appropriate to the organisation)
- Financial management, investment and reserves, fraud control and accounting procedures (including reference to the [SORP](#) financial reporting approach)
- Data protection and privacy
- External complaints handling
- Whistleblowing
- Human resources (i.e. one or more policy documents) – including, where appropriate, recruitment, personal conduct, bullying and harassment, discipline, staff grievance, working arrangements, absence management, pensions and retirement, redundancy, volunteering
- Health, safety and risk management, including lone and remote working. (A helpful policy template is available from the [Health & Safety Executive](#).)

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## Smaller Charities Derogation

Regulators appear to expect all aspects of governance described in their governance codes should be implemented irrespective of the size or complexity of a charitable organisation. It is recognised the amount of documentary information routinely prepared and the formality of meetings and decision-making may be simpler in smaller charities, especially those with no full-time staff. A less expensive and resource-intensive approach to financial oversight, using an annual external financial examiner rather than external auditor, is permissible to the regulators. Notwithstanding these modest simplifications, it is acknowledged by the Confederation all Member organisations should aspire to achieve to the best of their abilities the good governance expectations summarised in this aide memoire.

## Advice, Assistance and Training

The [Charity Commission](#) offers a wide range of advice and guidance for Trustees to assist them to understand and discharge their governance responsibilities. A widely acknowledged initial text for new Trustees is the document entitled '[The Essential Trustee](#)'. Commonly referred to as 'CC3'.

Member organisations operating in Northern Ireland should be aware of the locally available guidance on [running](#) and [managing](#) a charity produced by the Charity Commission for Northern Ireland. These are accompanied by helpful guidance on fulfilling the [compliance and reporting requirements](#) in Northern Ireland.

The WCVA in Wales has prepared a selection of Information Sheets tailored for charities operating in the Principality. They include advice on the principles of governance and Trustees' [recruitment, training, legal duties and liabilities](#). The WCVA also organises specialist training on [governance topics](#).

Member organisations operating in Scotland should also refer to Office of the Scottish Charity Regulator (OSCR). They have prepared [good practice guidance for Trustees and related their advice to the relevant Scottish law](#).

There are various books written specially for Trustees, Board Chairs and Chief Executives on leading and managing non-for-profit organisations. Two respected examples suggested by colleagues in the service charities sector are:

- [Good Governance: a practical guide for trustees, chairs and CEOs](#) by Dorothy Dalton. Published by NCVO. ISBN 978-0-7199-0001-3
- [Managing Without Profit](#), 4<sup>th</sup> edition by Mike Hudson. Published by DSC (Directory of Social Change). ISBN 978-1-78482-022-0.

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Cobseo is a Confederation that actively shares knowledge and activities for the benefit of the Armed Forces community. Training events and Members' events organised or funded by Cobseo are made available for staff, executives and Trustees. A diary of training events is published on [Cobseo.org.uk](http://Cobseo.org.uk).

The Governance Practices Aide Memoire is an evolving document that may change over time upon use from the experiences and suggestions reported by its Members. The latest version can be found at [Cobseo.org.uk](http://Cobseo.org.uk).

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