



Review programme

Charity Commission's response to the reviewers' findings

Strategy development, implementation and review

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Foreword

This is the Commission's formal response to the findings of the review project looking at strategy development, implementation and review, which was delivered by the Institute of Chartered Accountants in England and Wales (ICAEW).

Strategic planning is vital to the success of a charity and I would encourage trustees to take time to read the findings.

The review project was undertaken as a collaboration between the Commission and ICAEW as part of our Partnership Strategy. It provided an opportunity for charities to volunteer for free reviews of an aspect of their governance from expert practitioners. The collated findings of those reviews provide an interesting snapshot of the sector which helps inform our, ICAEW's and other sector lead bodies' understanding of the governance health of charities.

Our response sets out how the key issues identified in the project findings can be addressed. Not all of the issues are for the Commission to take forward. Although responsibility for strategic planning within charities is ultimately a matter for trustees, we believe sector lead bodies also have a role to play in helping to meet these challenges.

The project would not have happened without the reviewers who gave their time freely, or the commitment of ICAEW. We are very grateful to the Institute for the investment of time and resource it made to the project. Our particular thanks go to Nick Brooks, Chair of the Voluntary Sector Group and his team at ICAEW for their leadership and enthusiasm.

William Shawcross

Chairman
Charity Commission

A. General Conclusion

The Commission did not select, nor knows the identity of, the charities that were reviewed. The individual performance of those charities was not the focus of the project. However, the charity's overall ratings of the themes emerging from the collated findings provide an interesting indicator of where the wider sector may stand in the vital area of strategic planning.

The reviewers' findings suggest that charities with formal strategies in place are better equipped to meet economic pressures. However, the effectiveness of strategic planning processes can be compromised by a number of factors, including a lack of appropriate skills and experience on the board, and ineffective relationships between boards and staff (particularly CEOs).

Perhaps the most important finding was that strategic planning was on the governance agenda of over half the charities reviewed, but that not all of these linked strategy to risk assessment. This suggests that we need to consider not just the number of charities undertaking strategic planning but the quality of the processes they are using.

The finding that a significant majority of the larger charities reviewed had strategic plans in place compared to fewer than half of the smaller charities correlates with the Commission's casework experience. Sometimes small to medium size charities do not have the skills or capacity available to carry out the analysis needed in order to formulate a strategic plan, for example, risk analysis or investment management skills.

A key finding which, again, is consistent with the Commission's experience is the risk of trustees becoming over-reliant on a CEO or another key individual. This is a very common area which can lead to severe governance breakdown and which places trustees in a vulnerable position.

As with the previous ICAEW review which looked at charities and financial controls, an important message emerges here that charities are still not accessing the extensive range of information, advice and guidance which already exists.

We believe that the main challenge highlighted as a result of the reviewers' findings is how sector support bodies and the Commission can become more effective in making trustees aware of their responsibility to seek support when they need it or where they do not have the required skills in-house.

B. Summary of actions to be taken or promoted by the Commission

Collaborations and mergers

1. We will use our discussions with bodies which represent, or have influence over, funders and service commissioners as opportunities to raise awareness about: (a) the need for proportionate risk management; and (b) suitable indicators of assurance.
2. We will consider the emphasis we place on strategic planning in our guidance to trustees as part of our current review of key documents.
3. We will help promote a discussion between sector lead bodies, experts and practitioners about whether there is a simple solution for raising awareness of, and improving access to information on, collaboration and mergers as elements of strategic planning.

Role and responsibilities of the trustee

4. We will continue to work with sector lead bodies to raise awareness of trustees' roles and responsibilities.
5. We are already strengthening our guidance on trustees' roles and responsibilities as part of our current review of key documents.
6. We will encourage sector lead bodies to look at what can be done to improve trustees' skills in creating effective relationship with management teams.
7. We will consider how we can strengthen our guidance on user trustees at the next review of Users on Board.
8. We will draw attention to the recommendation that research is needed on the causes of in boards' shortcomings in the areas of governance and strategy, and continue to encourage charities to make use of existing guidance and research.

Relationship between risk and strategy

9. We will consider how we can strengthen the link between strategy, risk and impact as we review our guidance.

C. Detailed response to key findings

Collaborations and mergers

We have no direct evidence that funders and commissioning bodies prefer larger over smaller charities. However we do know, from our conversations with the sector, that some service commissioners will only award significant contracts to local consortia of charities. This is not itself an area of regulatory concern – there may be good operational reasons for these forms of collaboration. Our regulatory interest is confined to highlighting to the trustees of a charity involved in consortia that:

- (1) their decision to commit to working as part of a consortium is properly informed, is in the interests of the charity, and balances the needs of current and future service users; and
- (2) they need to use clear models of collaboration that take account of each participating charity's requirements under charity law, as well as setting out its respective role, responsibility and liability under the arrangements.

The Commission already provides a wide range of guidance on collaborations and mergers from this perspective: [Collaborations and mergers \(CC34\)](#).

But we believe that small charities should not be excluded from funding simply on the basis of their size. Funders and service commissioners have a duty to manage risk in their dealings with charities, but we would expect this to be a proportionate approach on both sides. All charities, regardless of size, should be able to demonstrate that they are managing adequately the risks which are relevant to them. The methods they use to provide assurance will be determined by their size, and the complexity of their operations. For their part, funders and service commissioners should look for levels of assurance proportionate to the size of funding and the known main risks associated with the activity being funded.

It is not in the interests of the sector to force charities into collaborations and mergers. However, we do expect all charities to consider routinely the possibility of collaboration and merger as part of their strategic planning.

The expertise relating to the process of establishing a model of collaboration or pursuing a merger lies elsewhere than with the Commission. The preparatory work for this review project revealed that there is already a significant body of information, experience and guidance available to the sector from a number of sources. The challenge for the sector appears to be to raise awareness, in the first place, of the need to consider these strategic possibilities, and then to provide easier routes to the sources of information. We agree with the reviewers' suggestion that umbrella bodies may have a role to play here.

We note the recommendation that we should be more stringent in using the registration process to refuse registration where the organisation is very similar to an existing charity. We already require charity promoters to consider more carefully their options – for example by directing them to charities that might be able to provide a more suitable home for the funds they want to raise. Our guidance relating to registration - [CC21](#) and [CC22](#) – was recently revised (June 2014) to help trustees consider carefully the suitability and viability of their plans. We have also changed the online application form so that it requires more detailed information to be provided about the feasibility of an organisation and its ability to demonstrate public benefit. But registration is not the conferring of charity status – it is recognition of the fact that the legal conditions for such status already exist. We have no power to refuse registration to a charity legally established, and we do not know that the public would support a fettering of their freedom to set up charities. But, on a more practical note, there is currently no opportunity for legislative change in this area.

Further action:

1. We will use our discussions with bodies which represent, or have influence over, funders and service commissioners as opportunities to raise awareness about: (a) the need for proportionate risk management; and (b) suitable indicators of assurance.
2. We will consider the emphasis we place on strategic planning in our guidance to trustees as part of our current review of key documents.
3. We will help promote a discussion between sector leaders, experts and practitioners about whether there is a simple solution for raising awareness of, and improving access to information on, collaboration and mergers as elements of strategic planning.

Role and responsibilities of the trustee

We are not surprised by the finding relating to trustees' appreciation of their role. We see cases every day where trustees do not contribute to the board or do not have the skills to make effective contributions.

Over-reliance on a trustee or the CEO can cause major problems in charities and is also a very common issue in our casework. Trustees often wrongly assume that the appointment of a trustee with a particular expertise, or the employment of a CEO, will absolve them of their ultimate responsibility for the some or all aspects of the administration and management of the charity. In the course of our casework, we regularly advise trustees to ensure that job descriptions are in place which clearly differentiate between the respective roles of employee and trustee. Trustees need to be aware of their legal responsibilities and potential liability if they are not in control of the charity's administration and management.

We are already in discussions with leading bodies in the sector about how we and the sector can reach all trustees with simple messages to raise awareness about trustee roles and responsibilities.

We have also made changes to the distribution of our quarterly trustee newsletter, CC News. CC News updates trustees on changes to guidance and includes reminders and alerts about trustee duties and responsibilities. We are now sending the newsletter to all trustees for whom we have email addresses in order to ensure that as many trustees as possible have access to regulatory updates. Previously, the newsletter went to one contact in each charity.

We note the review's findings about the need for trustees to develop 'soft skills' in the area of interpersonal skills. We agree that this is likely to help improve the effectiveness of boards. As this is outside the Commission's remit and area of expertise, we believe that there will other bodies serving the sector which are best placed to consider this issue.

Having service users on the Board has obvious benefits in terms of first-hand experience. The Commission recognises this in its guidance [_Users on Board \(CC24\)](#). Service users can bring a valuable insight to the Board which can aid strategic thinking. However, there is a risk that a user trustee can be seen as (or consider themselves to be) simply the 'representative' voice of the user. This is not the case. The legal role of user trustees is no different from any other trustee. They must act solely in the interests of the charity, and take equal responsibility for the decisions made by the board. This means they must be able to engage with the full range of issues considered by the board. Therefore, the recruitment of user trustees should also take account of the wider skills needed by the trustee body. It may be necessary for charities to consider the balance of service user trustees to non-service user trustees on their boards. If the ratio is wrong then this could place the charity at risk.

We note the review's recommendation that we should undertake research to explore further the causes of the shortcomings in boards' effectiveness in the areas of governance and strategy. We do not have any immediate plans to commission research on this topic. Instead we will encourage sector bodies to consider carrying out research in this area. We will also continue to encourage the use of existing guidance and research available on our web pages.

Further action:

4. We will continue to work with sector lead bodies to raise awareness of trustees' roles and responsibilities.
5. We are already strengthening our guidance on trustees' roles and responsibilities as part of our current review of key documents.
6. We will encourage sector lead bodies to look at what can be done to improve trustees' skills in creating effective relationship with management teams.
7. We will consider how we can strengthen our guidance on user trustees at the next review of Users on Board.
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Relationship between risk and strategy

We agree that there should be a clear linkage between strategy, risk and impact.

We note the recommendation that charities should use scenario planning techniques to test and challenge their strategies. We believe it would be helpful if the sector could develop, and signpost, practical tools and models of strategic planning. This is already covered by action point 3 above.

Further action:

9. We will consider how we can strengthen the link between strategy, risk and impact as we review our guidance.

Other themes

- **Stakeholder/related party issues**

We note the findings regarding the proper identification of close stakeholders, including members. We agree that this is an important factor as part of strategic planning, particularly where a collaboration or merger is under consideration.

The views of members and 'friends' bodies need to be captured, since the future support of these groups of people is likely to be critical to the success of the collaboration or merged charities. However, any conflicts of interest which arise must be managed, particularly where there is a trustee drawn from either of these groups – trustees can only act in the interests of their charity and disregard any other loyalties or interests.

Where a charity has a trading subsidiary, the trustees should remember that its existence and role are subservient to those of their charity – it is a means to an end, not an end in itself. When planning strategically, trustees would be right to take into account the commercial interest it has in its trading subsidiary. But they are not concerned with protecting its interests, except to the extent that the subsidiary's interests would continue to further directly those of the charity in the future. Trustees who also sit on boards of their charity's subsidiary trading companies must also manage the conflict of interest that arises. In some cases it will be necessary for them to absent themselves from certain discussions and voting processes of the board.

Charity trustees are under a general legal duty to use and understand their governing document. Some older governing documents may be difficult to understand in terms of membership and other provisions. If trustees are in any doubt about the provisions of their governing document they should take professional advice. We strongly recommend that trustees review their governing documents regularly to ensure they remain fit for purpose. Where the charity belongs to a federation or grouping which has agreed a standard governing document with the Commission, we strongly advise it to 'upgrade' to the latest version. Alternatively, there are other standard documents available, including our own [model documents](#) which contain up-to-date administrative provisions.

We note the review's recommendation that we should clarify guidance on conflicts arising with friends and subsidiaries' boards. However, we have recently revised our guidance on [Conflicts of Interests](#) which we believe already provides practical guidance in this area.

- **Informing the Board**

We share the reviewers' concern about the quality of the board papers they observed. We agree that trustees should properly appraise the performance of staff against measures which include the level and quality of reporting to the board.

As we highlight in our guidance [It's your decision: charity trustees and decision making](#), boards can only make effective decisions if they are properly informed. If the board is unhappy with information supplied to it by its management team, it should not ignore the situation. If necessary, outside professional help and assessment can be used. The cost of obtaining outside help or professional advice is a legitimate expense for the charity.

- **Mission creep**

Mission creep is not unusual in charities and funding agreements often contribute to this. Trustees need to ensure that funding agreements are negotiated professionally ensuring the best possible outcome for the charity within the objects it is legally obliged to further. If the trustees lack the skills to negotiate effectively, then outside help should be sought.

Trustees are acting in breach of trust if they enter into funding agreements which cause their charity's activities to go outside its objects. It may be appropriate for the trustees to widen their objects to permit new activities, and this can be good practice as part of a routine review of the governing document (see our comments above). This should be done before entering into funding agreements which are wider than the current objects. However, changing the objects too frequently might suggest that the charity is simply chasing funds and has no real long-term strategic plan, which is likely to have a negative impact on future sustainability.