



**CHARITY COMMISSION
FOR ENGLAND AND WALES**

New code of governance consultation – a response from the Charity Commission for England and Wales

About the Commission

The Charity Commission registers and regulates charities in England and Wales, to ensure that the public can support charities with confidence. Our statutory objectives, functions, powers and duties are set out in the Charities Act 2011 as amended by the Charities (Protection and Social Investment) Act 2016. Our regulatory approach is designed to meet our responsibilities under the law with excellence, given the resources at our disposal.

We consider that we can best fulfil all our statutory objectives by concentrating on the following: promoting compliance by charity trustees with their legal obligations; enhancing transparency and the rigour with which we hold charities accountable; promoting the effective use of charitable resources by raising awareness, supporting trustees and enabling them to comply with their duties; and ensuring that only bodies that properly qualify as charities under the law are registered. We believe this is the best way to promote public trust and confidence in charities and thereby to encourage charitable giving and endeavour in all its forms.

Why the Commission is interested in the Charity Governance Code

Recent events in the charity sector have continued to demonstrate the importance of effective governance in underpinning charities' effectiveness and legal compliance. But the regulator can only enforce compliance with legal requirements and duties. Within our remit and resources we can enable and promote good practice in trusteeship, but these are areas where the sector itself needs to take the lead. The regulator can endorse and promote, but not own or enforce, standards of good practice.

The Commission is currently undertaking research into trustees' awareness of their duties and responsibilities, and sources of support available to them (which we plan to publish later this spring). Initial findings indicate that common issues impacting effective trustee performance coalesce around board composition and management, decision-making and governance, precautions against breach of trust, strategic planning and risk. Conversely trustees do appear to have a broad understanding of their legal and governance responsibilities. These early findings again underscore the point that there is more to effective trusteeship than legal compliance.

This is why we have endorsed and promoted previous versions of the Code and intend to continue to do so for the new version.

Comments on the new draft Code

We welcome this consultation and the opportunity to comment on the new draft. This review of the Code is timely and we welcome the approach that the Code Group is seeking to take, making the Code more rigorous in response to changing needs and public expectations.

We welcome the new Foundation Principle, setting out a shared expectation that as a starting point all trustees understand their roles and legal responsibilities, with particular reference to [The Essential Trustee \(CC3\)](#) and the charity's governing document. There could be more emphasis on

trustees ensuring that they meet this. It *should* be a given that all trustees understand their role and legal responsibilities (as set out in the Essential Trustee and Charity Commission guidance more widely); in our experience most do, but not all.

The Foundation Principle creates a helpful distinction between basic legal and regulatory compliance (enforcement of which is for the Commission and other regulators), and higher levels of achievement of, or aspiration to, good practice and excellence which are at the heart of the Code. These are things to which we encourage all charities to aspire.

The introduction encourages larger more complex charities to publish a statement in their annual report setting out how they apply the Code. We suggest that such a statement, indicating where a charity has applied the Code and explaining where it has not (in line with the 'apply or explain' approach) should form part of the expected approach to openness and accountability. We suggest this should be a recommendation rather than an encouragement. We hope that charities would be open to being 'held to account' by their stakeholders against the Code principles to which they say they adhere.

The Code Group has a difficult balance to achieve in ensuring that the Code is sufficiently rigorous for the largest charities and sufficiently flexible and proportionate to work for small charities too. This Code should aspire to be relevant, useful and provide an appropriate level of challenge for any charity. We note that the Code Group has sought to create some differentiation by highlighting recommended practices that only apply to charities with staff (for example).

The greater emphasis on values and behaviours as a key element of effective governance is timely. We recognise that systems, procedures and actions are objective; values, attitudes and behaviours are more subjective. Perhaps this needs to be reflected more clearly in how recommendations are presented. Conversely, our [research](#) shows that values, and how they are demonstrated in behaviours, are a key driver of stakeholder and wider public trust in charities. Values and behaviours are not normally matters for regulators to enforce; charities need to set their own standards of what is acceptable, and the consequences of unacceptable behaviour. In extreme cases, however, behaviour can have a negative impact on a charity's public benefit or the wider sector. Setting norms and standards should help charities to avoid these extremes. The Code can play a key role in promoting this.

We welcome the expectation that all trustees should be able to explain the charity's public benefit, which builds on the legal requirement to report on public benefit in the trustees' annual report.

We welcome the recommendation on publishing a register of interests. Identifying and dealing with conflicts of interest is vital to effective governance and decision making; demonstrating that you have done so is a key element of accountability and transparency. Similar standards of transparency are required by members of public bodies, including smaller local ones such as parish councils. Our casework shows that conflict of interest continues to be an issue for charities. Making it more visible may help to improve trustees' awareness and understanding, and reduce opportunity for criticism.

We welcome the more detailed approach to board effectiveness, which may help charities to apply it in practice. For example, we welcome the more specific recommendation that trustee appointments should be for a fixed tenure with a normative maximum tenure of nine years. This more directive approach reflects how perspectives have changed in light of recent events.

The consultation draft does not appear to cover a charity's relationship with trading subsidiaries or members of any group structure. Whilst some elements of such relationships fall within the

regulator's remit (as set out in our [guidance](#)), this can be a vital area for good practice. Failure to follow relevant good practice in this sphere can have significant adverse impact.

The Code Group provided a raft of supporting material for the current version(s) of the Code to assist smaller charities (in particular) in implementing its recommendations, such as common processes for a skills audit or a board performance review. Is it intended to replicate and refresh this guidance for the new version of the Code?

As far as possible, the Code needs to be forward looking, anticipating future governance challenges and risks, and enabling charities to deal with them. It needs to be sufficiently adaptable and flexible to meet such challenges in between the kinds of major review that the Code Group has instituted in this consultation.

We recognise, however, that this is the sector's Code. The Commission does not aspire to own or enforce it, or pronounce on what it should say. We intend to continue to endorse and promote it as the standard of good governance practice to which all charities should aspire (unless some other code takes precedence), following and applying its principles proportionately to their circumstances. In line with this we propose to withdraw our publication *The Hallmarks of an Effective Charity* (CC10). We propose instead to refer charities to the Code as setting out relevant standards of good practice. We will consider further how we can take account of charities' consideration and application of the Code in our regulatory interactions with them and in the requirements and expectations for reporting.

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