

# Trustee decision making

Trustees grappling with the challenges of the coronavirus are being required to make difficult decisions quickly.

**Sophie Cass** explores some of the key principles of good decision making.



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My practice is wide and covers the full range of charity governance matters, specialising in trusts and permanent endowment; faith-based organisations; and charity legacies as part of the Legacies team.

As the coronavirus crisis unfolded, more and more people found themselves working and volunteering remotely. With difficult decisions needing to be taken, often urgently, it became particularly important for charity trustees to have a clear grasp of how to make good decisions.

For trustees making decisions during these current circumstances, a reminder of some key points may be helpful. The Charity Commission has indicated that it will be understanding where, due to coronavirus restrictions, trustees are unable to follow their usual decision making processes (for example, holding virtual meetings or making a decision by email). But decisions will need to stand up to scrutiny.

Here are some of the issues that can arise:

## An informed decision

The Charity Commission's helpful guidance '**It's your decision**' is a useful checklist for trustees to follow. The guidance highlights the importance of trustees making sure they are sufficiently informed, and take all relevant factors into account.

A recent pre-coronavirus case illustrates the importance of making an informed decision. In 2019 the trustees of St Margaret's Hospice Care made the difficult decision to close an in-patient unit, which triggered complaints to the Charity Commission. As part of the decision-making process, the trustees had taken various steps including consulting with staff and volunteers, undertaking research, and taking advice from experts in palliative/end of life care. The Charity Commission opened a regulatory compliance case to assess the decision-making process, reviewing relevant documents and information. The commission concluded in January 2020 that the trustees had acted appropriately. It said that their decision was 'properly made and within the range of decisions that a reasonable trustee body could make'.

## Can you delegate decision making?

The key thing to remember about the

delegation of trustee decision making is that no matter who is making the decision, the trustees will always retain ultimate responsibility and accountability for all decisions made. Many charities will have power to delegate decision making to staff, committees, or individual trustees – the first port of call will always be to check your governing document and make sure that you follow any process set out within it for delegation.

When delegating, trustees should make sure that there are clear and robust reporting procedures and lines of accountability; best practice would be to set out the scope of a delegation (and how the trustees can end such delegation) in writing.

## Power of the chair

You may hear reference to 'chair's action', which is where a chair of trustees has wide-ranging discretionary powers that can be exercised between trustee meetings. However, tread with caution. Such powers do not exist as a matter of course, and the chair of your trustee board will have very few powers other than those specifically given in your charity's governing document.

## The importance of minutes

The Charity Commission has always emphasised the importance of minuting trustee decisions – and there is useful practical guidance on what minutes should cover in the commission's 'It's your decision' guidance. Where, as mentioned above, trustees are unable to follow their usual decision-making processes, the minutes should record the reasons for taking alternative approaches to decision making, and record that this has been done to ensure continuing good governance of the charity during the crisis.

### FIND OUT MORE

You may find these guides to **Charity Trustee Duties and Coronavirus**; and **Charity Trustee Meetings and Coronavirus** helpful.