

Virtual meetings

In the current crisis, charities have had to adapt rapidly to ensure decisions can be made without face-to-face meetings. It is the ideal time to future-proof your governing document so you can meet virtually.

Leona Roche and Oliver Hunt highlight the key issues to consider so that your trustee board and (if applicable) your members can hold virtual meetings.



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One of the best things about being at Bates Wells is the inspiring mix of clients I get to work with. I have trained many on their duties, on essential charity law, and how to comply with company law in practice.



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2020 has been an extraordinary year. It has seen boards and organisations across all sectors having to quickly adapt how they meet and make decisions. In the charity sector, it's likely that there have been more trustee meetings held virtually or electronically than ever before. And in many cases, those meetings will have been called to make crucial decisions in response to the crisis.

Thankfully the government, Charity Commission and other regulators have taken a helpful and pragmatic approach, recognising that trustees have needed to meet urgently in the best way they can, even where, in some cases, virtual meetings may not have been strictly permitted by the charity's governing document – see the commission's **guidance** and the latest on new **legislation**.

In the longer term, the commission will expect charities to comply with the procedures set out in their governing documents for holding trustee and members' meetings. Many charities are now reviewing their procedures and governing documents to give them more flexibility to meet online if it's impossible to meet in person. Organisations are also discovering the benefits of the extra flexibility of meeting virtually, so it is important that governing documents catch up.

In this article, we highlight some important considerations to ensure you can hold valid virtual meetings. Our focus here is on charitable companies, but the broad principles may still be relevant for charities with a different legal form.

Virtual trustee meetings – charitable companies

Telephone meetings

Most modern governing documents are likely to permit trustees to hold a telephone-only meeting. If yours doesn't, we recommend including clear wording for the whole board to meet via telephone.

Video meetings

It's probably less common for governing

documents to refer to visual or video meetings. Provided your governing document doesn't prohibit video meetings, the general law does allow your trustees to meet via video conference (for example, via Skype or Zoom) so long as they can all see and hear each other. Of course, it's much better for your governing document to clearly state that your trustees can meet in this way. It can also set out any specific requirements that you want your trustees to comply with.

Normally, the usual requirements for calling and holding a physical trustee meeting (notice period, quorum, voting) will apply equally to a telephone or video meeting.

Decisions without a meeting

To allow maximum flexibility in times of crisis or urgency, it can be very helpful to allow your trustees to make a board decision outside of a meeting. For example, trustees can indicate their agreement to a proposed decision by telephone, text and/or email. You may wish to require these decisions to be unanimous because they are being made without the usual discussion and debate that would take place at a board meeting.

Virtual members' meetings – charitable companies

In the short term, the Corporate Insolvency and Governance Bill ('the Bill'), which was published at the end of May, is due to give more flexibility to charitable companies (and charitable incorporated organisations) wishing to hold virtual members' meetings, even if they have no express provisions in their Articles of Association. These relaxations are expected to last until at least the end of September 2020.

However, in the longer term charitable companies may well wish to review their Articles with a view to ensuring that they have scope to hold members' meetings remotely even after the crisis is over. The temporary flexibility afforded by the Bill provides a helpful opportunity for organisations to make the necessarily

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permanent changes to their governing documents.

In terms of what is permissible, virtual members' meetings are more complicated than virtual trustee meetings. For starters, there is some doubt, under company law, as to whether a 'fully-virtual' members' meeting is valid (although this is likely to be allowed temporarily, under the Bill). The safest route is to allow for a 'hybrid' meeting – where a physical meeting is still held in an actual place, but other members can also attend remotely using electronic means. Of course, even holding a very small physical meeting during lockdown has proved difficult.

Hybrid meetings throw up various legal and practical issues, especially for those charities with a large membership:

Notice

As well as giving details of the physical venue, a notice of a hybrid meeting should give the details for members to attend the meeting remotely, such as a dial-in number or internet address, and a password or access code. It is also wise for the notice to inform members that the trustees may need to change these details to ensure the effective conduct of the meeting, for example if a technical or security failure occurs.

We also recommend that the notice tells members that if they attend the meeting remotely, and there are unforeseen technical issues that make it impossible for the remote participation to begin or continue,

the meeting may continue without any remote participation. In effect, the members attending remotely will do so at their own risk.

Quorum

It's more flexible if your governing document makes it clear that members attending remotely count in the quorum. However, practical problems could still arise if you have a very large membership and the chair isn't able to see those members attending remotely. How can the chair be confident that the quorum is being maintained throughout the meeting?

Some governing documents only require the quorum to be present at the start of the meeting, while others require a quorum throughout the entire meeting. Another alternative is to require a quorum when each item of business is being voted on.

Voting

Depending on the size of your membership, you may need to use poll votes at a hybrid meeting if a vote by a show of hands would not be possible, or too difficult to count. You'll want to think about encouraging members who plan to attend remotely to submit proxy votes – so that they can still vote if a technical problem means that remote participation needs to be cut short.

Communicating at the meeting

How easy will it be for those members attending remotely to communicate with all the other members, and put comments or questions to the board? This will need to be thought through in advance. How will remote members indicate that they wish to ask a question? Will the electronic facilities enable them to speak so that all attending can hear their question? Or will questions be submitted in writing and displayed on a screen?

There are concerns that hybrid meetings could be a less effective

way of members having dialogue with trustees and holding them to account. During lockdown, temporary legislation in various countries has allowed listed share companies to hold virtual AGMs online (in a similar way to what is now proposed in the UK, under the Bill). Some reports have indicated that these virtual meetings are much quieter and quicker than physical meetings, and make it much easier for boards to not answer member questions. However, giving your organisation the potential to hold electronic meetings in the future is still something worth exploring.

You will have a sense of whether your members will see the introduction of remote participation as a good thing, or as a potential threat to their ability to dialogue with the board and ask challenging questions. It is important that any changes to your governing document take their views into account – we recommend consultation with your members in advance.

FIND OUT MORE

See our briefing on the Corporate Insolvency and Governance Bill and our Coronavirus Guide to Charity Members' meetings.

<https://bateswells.co.uk/2020/05/corporate-insolvency-and-governance-bill-2020/?hub=coronavirus>

<https://bateswells.co.uk/wp-content/uploads/2020/06/Charity-Members-Meetings-A-Coronavirus-Guide.pdf>