

Charity Trustee Meetings

A Coronavirus Guide

Offices are closed, we are not meeting face to face, but we still need to take decisions. There will be forgiveness for not following procedures to the letter of the law and procedural errors can be put right later.

Both the Charity Commission and OSCR have stated they will be relaxed about technicalities. What matters now is making the best decisions you can, not how you make them. However, this brief guide to trustee meetings aims to help you get the procedure right.

This guide applies to trustee meetings only. If you require guidance on members' meetings in light of the Coronavirus, please see [here](#) for details of the relaxed governance provisions introduced in the Corporate Insolvency and Governance Bill for charitable companies, CIOs and mutuals.

1. Notice

- 1.1 The governing document will most likely state how much notice has to be given and how. If it does not, 'reasonable' notice must be given. What is reasonable depends on the circumstances. In an emergency, it could be a matter of hours.
- 1.2 If you can't give the right amount of notice, call the meeting anyway on as short a notice as is needed. See the end of this document for ways to validate what you decide.
- 1.3 The notice should set out brief details of the matters to be discussed plus the date, time and place and / or the means of logging on remotely.
- 1.4 Send the notice in the way the governing document requires (if it does) but phone around to let people know if you think they might not get the notice that way in time. Many governing documents do not require any particular form of notice for a trustee meeting and notice in those circumstances could be oral.
- 1.5 If everyone attends or agrees to any period or form of notice, proper notice has been given.

2. Quorum

- 2.1 The governing document will nearly always specify how many people need to be present for a meeting to be valid ('quorum'). If it doesn't, the quorum will be a simple majority of those entitled to participate.
- 2.2 The meeting can go ahead and valid decisions can be reached when a quorum is present. You don't have to have everyone there.
- 2.3 The quorum has to be present throughout the meeting.
- 2.4 If you can't make a quorum but have to make urgent decisions to protect the charity, make those decisions anyway and see the end of this document for ways to validate what you decide.

3. Virtual meeting

Video meetings

- 3.1 There is legal authority (*Byng v London Life Association* [1989] 1 All ER 560) that a company general meeting requires the participants to be able to both see and hear each other. Accordingly, video conferences are meetings and permissible unless the governing document states otherwise (which is very unlikely). People participating by video link are 'present' at the meeting.

Telephone meetings

- 3.2 Good modern governing documents permit telephone-only meetings. However, if your governing document does not, *Byng* might be thought to prohibit them if your trustees are actually required to meet (see 4 below).
- 3.3 We think *Byng*, a case from the late 1980s when video and teleconferencing was in its infancy, would be decided differently today in relation to telephone-only board meetings. *Byng* also related to a company general meeting (which will be much more formal than a board meeting and at which telephone-only attendance for hundreds of people may be impractical).
- 3.4 Anyone challenging whether a telephone meeting of a charity board was a valid meeting, or whether a decision taken at it was valid, would need the prior consent of the Charity Commission or the Court to bring proceedings in England and Wales. It is very hard to imagine that either would give consent, especially given the Commission's public statement about the coronavirus.

4. Is the board even required to meet? – 'Meetings' or 'business' / 'proceedings'

Many governing documents do not expressly refer to trustee 'meetings' and may have a general statement such as 'the trustees may conduct their business / proceedings as they think fit'. 'Proceedings' or 'business' need not be 'meetings' requiring everyone to be both seen and heard. If your governing document is drafted in this way, 'proceedings' and 'business' would include telephone calls, and video would not be required.

5. Getting around the problem

If you still think you have a problem, try one of these solutions:

- 5.1 **Unanimous approval:** If all the trustees agree you can hold a meeting by telephone only, then you can. Also, if all the trustees agree any lawful course of action, it will be a valid decision, whatever the governing document says. Get everyone to agree in writing (including by email) if you can.
- 5.2 **Written resolution:** The governing document may allow you to make decisions by majority approval in writing. Make sure you get the right majority to approve (as required in the governing document). Unless your governing document clearly states otherwise, 'written' and 'in writing' would include email. Make sure you are receiving emails from the normal email address of each trustee.
- 5.3 **Ratification:** If the decision still cannot be validly reached, take it anyway if it is important and then ratify it at a subsequent board meeting when you can finally hold one.

6. Minutes

Minute your decisions with great care when taking the most difficult decisions. Set out the matters taken into account, other options considered, and the reasons for taking your decision. Circulate the draft minutes as quickly as possible.

For more advice, please get in touch with our

[Charity team](#)



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