

Governance building blocks

We know that excellent governance underpins excellent charitable outcomes, and we're here to help you achieve that.



Governance can mean different things to different people. We focus on the **legal, regulatory and best practice** requirements for charities. But this is more than a dry paperwork box ticking exercise.

Perhaps you are looking for an **inclusive trustee induction programme** – to help you attract a diverse and experienced leadership team that will best deliver for your beneficiaries. We can design it for you.

Are you worried that your **governing document is out of date** and those that need to understand and use it can't? We can modernise it so that it's **accessible and user-friendly**.

Has your organisation grown and you're not sure the right people are making the right decisions at the right level? Let's put in place a workable **scheme of delegation** and a **governance framework**. With time saved on knowing who makes the decisions, your teams can focus on **reaching the community you serve**.

How we can help

In this guide we first consider a **governance review**. This is a great starting point if you want to look at your organisation as a whole. You might be thinking it's been a while since your governance arrangements were reviewed and you want the top-level view of any **risk areas** or key things to focus on. We provide you with a roadmap towards best governance practice detailing the next steps to take.

This guide then goes into more detail about particular areas of governance. If you know you need help with a specific matter, use the building blocks graphic opposite to navigate to that section.

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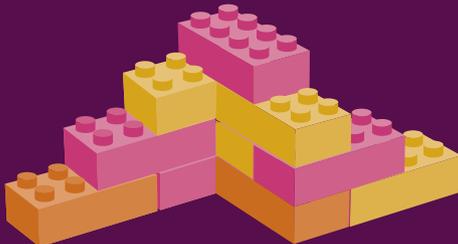
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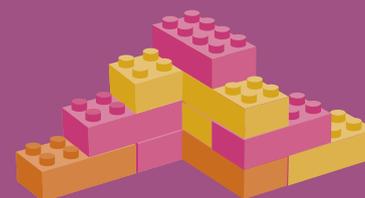
Governance review

We'll be looking at **governance across your organisation**, working with you to map out the areas that are going well and those that need more focus. We'll start by learning more about your organisation by meeting with you. After this, we'll make a suggestion of what our review could cover and propose the cost. We'll then conduct a **desktop audit**, reviewing the documents that you send us, and produce a **report**. This will include an **action plan** with discussion points and recommendations – highlighting areas that need to be prioritised and those that can wait.

You might have certain things in mind that you want us to look at. Often a review of the board is a good starting point – looking at its composition, relevant policies and procedures and how any conflicts are managed, see [here](#) for more details. An external evaluation of board performance every three years is a requirement for larger charities under the Charity Governance Code. We can use the governance review as an opportunity to fulfil this and more widely assess your organisation's performance against the Code. See [here](#) for more details of our Charity Governance Code health check.

Build your governance review

Have a look at the rest of the guide – you can pick areas to build the governance review you need. We're sensitive to making your budget work – there are areas you'll be able to work on internally, free resources that we can signpost you to, and we'll flag where we think you need our help for the follow up work.





Case study

We carried out a review for the **Jewish Museum** which has an income of around £2m per year. The trustees wanted a ‘health check’ to make sure their governance arrangements were up to date, compliant and good practice. We helped them with:

- ✓ **Modernised articles of association**
incorporating good practice recommendations from the Charity Governance Code and the Accreditation Scheme for Museums.
- ✓ **Policies and procedures**
looking at their operations we highlighted the essential policies and the optional ones to consider for good practice.
- ✓ **Trustees**
we reviewed, updated and redrafted their code of conduct, conflicts of interest policy, role descriptions and scheme of delegation.
- ✓ **Members**
we advised on the role of members, their rights and responsibilities, and gave guidance on meetings and resolutions.

- ✓ The **trading subsidiary** had been set up a while ago, so we carried out a health check against the Charity Commission’s requirements, including new articles of association, a fresh framework agreement with the charity and gave tax and trading advice.

- ✓ **Risk management policy and register**
once we understood the operations, we worked with the team to look at risk management, including a new policy and register.

We consolidated this into a governance handbook for the organisation and a board pack for the trustees which will help with induction for new trustees. We then trained the board on the new arrangements to embed good governance.



Bates Wells was an excellent partner in our governance review. Their support was highly professional, focused and pragmatic. Lawrie Simanowitz got immediately to the heart of the issues and offered sound counsel throughout; Hannah Lyons is extremely competent and responsive. Together, they ensured the work was well-targeted, thoughtful, and provided a strong platform for the future. We very much enjoyed working with them. I wouldn’t hesitate to recommend them.
Nick Viner, Chair of Trustees
The Jewish Museum



Incorporation

Many charities, such as trusts or unincorporated associations, have an **unincorporated legal form**. This may have the advantage of simpler administration, but there is a **significant disadvantage** that an unincorporated charity does not have a 'separate legal personality'. Therefore, any liability to a third party – such as under a contract, for personal injury, employment claims etc has to be met by the individuals who incur the liability – normally the trustees. Usually, the trustees are reimbursed from the charity's assets. However, if these (together with any insurance) are insufficient to meet any claim then the trustees could be out of pocket.

Nowadays we would only advise that a charity is established in an unincorporated form where it does nothing but grant funding, or its operations are very simple. If you are a trustee of an unincorporated charity then incorporation might be something you want to consider. It's the process where we set up a new charitable incorporated entity and transfer the assets and liabilities to it from the existing unincorporated charity.





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Case study

One of our clients was a **local riding school for the disabled** and we helped the trustees weigh up the pros and cons of incorporation and what legal form was more suitable: a charitable incorporated organisation or a company limited by guarantee. Once the trustees had decided to proceed we led them through the process. As it was a small organisation, **mostly run by volunteers**, they were keen to do what they could themselves to **keep costs lower**. There were a few knotty issues along the way but we were able to provide our expert help to smooth these through.

Our help included:

- ✓ Project management to make it clear who needed to do what and by when.
- ✓ Assisting with due diligence to identify what was to transfer and how this could be done.
- ✓ Helping the client to complete the Charity Commission application themselves.
- ✓ Managing the land transfer.
- ✓ Drafting the incorporation transfer agreement and liaising with the Charity Commission over necessary consents.
- ✓ Helping with the trustees' and members' meetings.



Review of governing document

Your governing document may be called memorandum and articles of association, a constitution, rules, trust deed or byelaws. Whatever its name we can review and **modernise** it to ensure it is fit for purpose. We'll discuss your current governance to understand what's working well and what needs to change. Perhaps you need **better ways of engaging** with your members in the **virtual world** or maybe it's not clear how trustees are appointed or removed or how meetings can be held virtually. Our main goal is to give you something in **plain English** and **usable**, to help good governance flow through your organisation.

Case study

UK Deaf Sport (UKDS) is a charity that aims to enable deaf people to reach their full potential in sport. They work to increase opportunities by working in partnership to create sporting opportunities from grassroots to the elite level of sports.

UKDS wanted to make changes to its articles to comply with Sport England's Code for Sports Governance.

We helped by drafting a new set of articles of association for UKDS, giving them an up to date constitution that incorporated changes required by Sport England. We also secured Charity Commission consent for regulated alterations and helped with the wording of resolutions.

The support UK Deaf Sport obtained from Bates Wells was invaluable and our key contacts there Thea and Ben were really supportive and clear in their communication throughout the whole process. I am really pleased with the outcome and that the organisation can now move forward with updated articles which reflect modern day practices and are also compliant with Sport England Code of Governance.

Valerie Copenhagen, Head of Participation, UK Deaf Support



Charity Governance Code health check

The Charity Governance Code is recognised by the Charity Commission as the standard for effective charity governance. Charities are expected to apply, or explain reasons for not applying, the code. Boards of larger charities are expected to review their own performance annually with an external evaluation every three years. We can provide you with a separate **health check**, or we can incorporate this into a governance review.

We will:



Guide you through self-assessment of your current arrangements



Provide a gap analysis, identifying areas of your governance that may require further consideration and guidance



Provide a road map towards best practice and governance effectiveness



The board and trustees

Induction

An effective induction process can help to make sure that new trustees are **empowered to contribute fully and confidently** to your charity's journey. We can help you design a board induction programme and build the pack of key documents that new trustees will need.

Board assessment

Perhaps you are considering whether the board has the right mix of **skills or experience** to make informed decisions about the charity's work? Or whether it is sufficiently **diverse and inclusive** to set the right tone for the rest of the organisation and enable the charity to better reach and represent its beneficiaries? The Charity Governance Code expects larger charities to have an external review of board performance every three years. We can conduct this assessment, at board and individual level, to review performance and effectiveness and make recommendations.

Board policies and procedures

Have a look at the list of policies [here](#). We can also give you the tools you need to make your board meetings run smoothly – including template agendas, and minutes and an annual board meeting cycle.

Training and development

If your board is looking to develop and deepen its understanding on key areas, take a look at the programmes and training we offer [here](#). We can work with you to design sessions on the essential areas, tailored to your charity's operations and build them into your board calendar.





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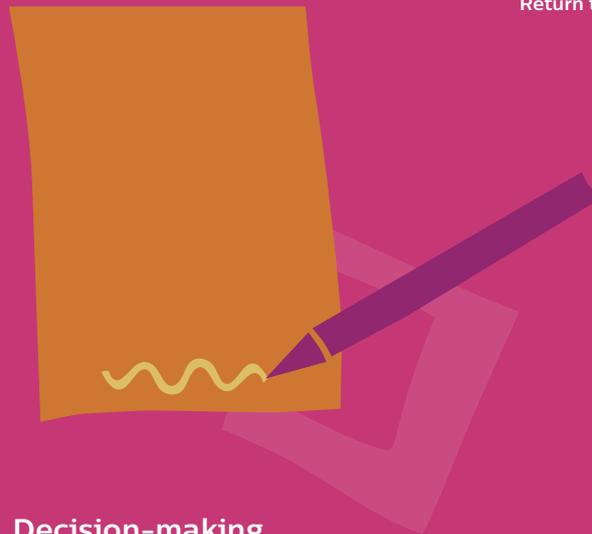
Conflicts of interest

Conflicts of interest are often misunderstood or overstated and can be one of the **knottiest** areas we advise on. Our expertise means we can help you first to work out **whether there is a conflict** and then how to **manage** that in line with your constitution and policies, the law and Charity Commission guidance.

Board dynamics

In the lifecycle of many charities, **disputes** between trustees do arise. Sometimes these can become very **bitter**, with trustees locked in opposition. This damages the charity both internally and externally.

We can help to **mediate tricky situations**, conducting board reviews and individual interviews. We draw out the issues, ensuring there is a **fair process** for all involved and that you follow your governing document and the law. We're there at each step, helping to broker an outcome in the charity's best interests.



Decision-making

If you are taking a **significant decision** for the organisation – for example, buying property, closing a service, moving into a new area of operation – how such decisions are reached is really important. The principles of good decision making include **taking account of all relevant factors** and making sure the trustees are **sufficiently informed**. We can provide you with a decision-making matrix to guide the trustees through the process and meet the Charity Commission's expectations.

Recording decisions properly is also crucial and an area of increasing Charity Commission scrutiny. We can have a look at your board minutes and relevant records and give you guidance to make sure you're on the right track.



Delegation

Scheme of delegation/governance framework

The trustees of a charity are ultimately responsible for a charity's operations. But in most organisations they cannot do everything and delegation will be essential for the charity to run well.

If the trustees delegate their powers, then it must be clear what decisions they will still make, and what they will allow the executive or committees to do on their behalf. We can work with you to put in place a **scheme of delegation**. This will summarise at a high level which decisions are made by the board, such as setting the strategy, and which are delegated to the executive or committees, such as recruiting staff.

The scheme of delegation shows only the top level and it is to be used along with other systems, such as specific terms of reference, budgetary control, and procedures. We can help you to put in place these procedures through a **governance framework**. This sits below the scheme of delegation and sets out what decisions are made at what level in the organisation. For example, this could focus on a particular area of operation, like the trading subsidiary, or on a particular risk area such as safeguarding compliance.

Chief Executive Officer

The relationship between the Chair and CEO is a **key strategic partnership**. When it works well this relationship can model healthy leadership to the whole organisation. Unfortunately, energy and credibility can be lost if the relationship becomes dysfunctional. In essence, the relationship depends on personalities and behaviours but we can guide you on putting in place a **framework to help make this relationship work**: from role descriptions and codes of conduct, through to policies and terms of delegation.

We also offer a **health check** to give you an assessment of your current arrangements for the CEO. Designed to give you comfort that there is clarity over the extent of the CEO's delegated authority, that board level decisions are only made by the trustees and recorded properly and that appropriate arrangements are in place for the CEO's supervision.



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Relationship between trustees and staff

If your organisation is employing staff to carry out day to day management of the charity then it is important for trustees and staff to be clear about the boundaries of their roles.

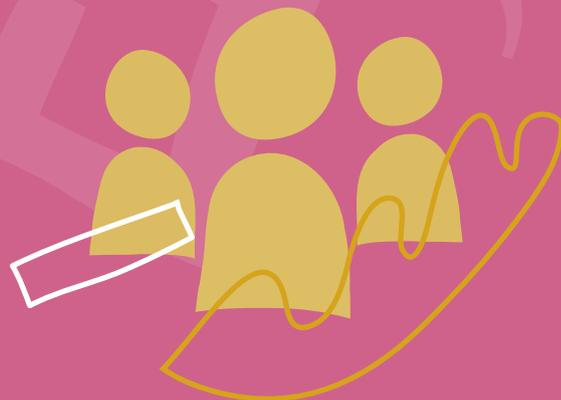
Should the trustees be involved in the recruitment of senior employees, or can you leave this to the CEO? Perhaps some of your trustees are **too hands on**, treading on employees' toes and involving themselves too much in the granular detail? Or perhaps they are too distant, **there for the kudos** alone, and don't understand their role in ensuring that there is appropriate management of staff and effective monitoring of performance?

We can help you address the dynamics between trustees and employees through role descriptions, a code of conduct and guidance, ensuring that these tie in with the scheme of delegation, governance framework and terms of reference for committees.

Committees

Committees can prove invaluable to support effective governance by the trustees. They allow time for issues to be considered in more depth and **give additional support and guidance** both to trustees and the executive. They are also a way of engaging **independent people** to give their perspective and expertise to the organisation, without taking on a formal trustee role.

It may be some time since your committees were established and they **may not reflect the current operations** or needs of the organisation. We can help you assess this and then work to put in place the appropriate structure – looking at committee membership, delegated authority and terms of reference.





Members

Do you have a large constitutional membership and is this working well for your organisation? Such members may be well engaged in the organisation, attending AGMs, appointing trustees and helping to hold the board to account. Or do you want to engage your members in a different way? Perhaps facilitating local groups for sharing of experience and information without formally involving them in the governance of the charity.

We've been there in members' meetings, giving support to the Chair and tackling tricky issues as they arise – to allow for democratic engagement, debate and conclusion. We have experience of different technology for electronic voting and can help you to get it right with proxy voting.

Equality, diversity and inclusion

If yours is a membership charity and you are looking for information about how the Equality Act 2010 might apply to you as a membership organisation, please see [here](#).

Case study

We advised a federated charity with a complex structure with several thousand individual groups nationwide. At a time when we weren't allowed to meet in person, we helped them to address the challenges of remote attendance. The governing documents of the local groups weren't geared up for this, meaning that none of the essential governance meetings could take place. The charity undertook a rapid consultation with its members and we helped to put in place the mechanisms for new model governing documents to be adopted across all tiers of the organisation. This included liaising with the Charity Commission for block approval, so that each organisation did not have to apply individually for consent. These changes allowed the charities to keep on helping their members, at a time when they all needed their community the most.



Trading

Trading subsidiary and trading operations

If it is a while since you established your trading subsidiary, take a look at our [health check](#) where we can guide you through a self-assessment of your current arrangements against the Charity Commission's checklist in its guidance for charities with a connection to a non-charity.

We regularly set up trading subsidiaries where charities are undertaking a new activity. Perhaps you are carrying out **more fundraising and letting corporate partners use your name and logo** to advertise their relationship with you? A trading subsidiary can allow you to manage this income in a tax effective way – meaning more will ultimately reach your beneficiaries.

We can help you structure your trading operations – looking at the different activities and working out whether the more commercial aspects should be carved out and run separately from the core charitable activities. As this will be an **investment of charitable resources**, possibly a programme related investment, we can help you to think about investment duties and the tax implications and make sure it is structured within charity law rules and restrictions.

Case study

We helped an educational charity set up a trading subsidiary as a social enterprise, to carry out some of the more commercial trading that they wanted to keep separate from the charity's work. We established and registered the company and gave advice on how to second some of the charity's employees to the subsidiary on a part-time basis. We guided them on how to manage the relationship, including the appropriate board make-up and drafted a framework agreement setting out the expectations and obligations from both sides. This covered licensing the charity's data, name and branding and how resources would be shared. The subsidiary also needed some start-up financing from the charity so we helped with putting in place a loan and advising on investment duties.





Stewardship of resources

A fundamental duty of the trustees is to safeguard the assets of the charity. This covers everything that a charity has rights to, including investments, cash, land, buildings, intellectual property and reputation.

Ways that we can help you protect these assets include:

- ✔ **Building a risk framework and policy or reviewing your current one.** Mapping the areas you need to think about and putting in place the policies and procedures to make it a living document.
- ✔ **Putting in place an internal financial procedures policy** to guard against fraud and mismanagement.

- ✔ **Reviewing the charity's investment policy.** You might be looking to implement an ethical investment policy or considering a social investment aimed at achieving a financial and a social return.
- ✔ **Unlocking restricted funds.** We can analyse whether restricted funds and endowments can be changed or released to be used more effectively.
- ✔ **Reserves advice** on setting an appropriate policy.
- ✔ **Brand management.** Our dedicated **Branding and Trade marks team** can help you to look after your brand, copyright works, technology and know-how. They can register your trade marks, help with licensing and resolving disputes. Our **'BrandAware'** training can help those across your organisation understand how to look after these key assets.
- ✔ If you have a **property portfolio**, we can advise on the management systems and processes you will need to ensure your legal obligations are complied with and your rights protected.
- ✔ **Data privacy advice to help you safeguard the data you hold.** We'll help you navigate the requirements while realising the opportunities. Beyond GDPR and e-privacy law we advise on freedom of information, confidentiality and more.





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Complaints

Transparent governance welcomes the opportunity for those who come into contact with the organisation to air their complaints, concerns and recommendations. This can allow the organisation to improve and grow and better meet the needs of its beneficiaries. Complaints are often complex and difficult to manage and a poorly handled complaint can be **damaging for the charity's reputation** as well as being very time consuming.

We can design and advise on the operation of **internal and external complaints procedures**. This can include trustee, employee and volunteer codes of conducts, complaints policies and grievance and whistleblowing policies.

When complaints are made against the organisation or against individuals we'll work through your existing procedures with you to ensure a **fair process**. On hand with our **reputation management lawyers**, we'll help you to manage communications and correspondence with regulators, the public and the media.





Regulators

We can help you **map the regulatory landscape** that applies to your organisation and activities. Where should responsibility for each activity sit: who should report, what should be reported and when? When is a matter significant enough that the trustees need to be involved? We can work this into your governance framework policies and procedures to ensure the trustees meet their responsibilities.

Our work covers:

Charity Commission

- ✓ Assisting with filing event related data – such as changes to trustees.
- ✓ Advising on how to complete the annual review.
- ✓ Helping you to respond to Charity Commission correspondence, inquiries or investigations.
- ✓ Serious incident reporting – creating a policy, making a report or establishing bulk reporting with the Commission.

Companies House

- ✓ Assisting with filing event related data or annual reporting obligations.
- ✓ Keeping company records up to date, such as the register of members.

- ✓ Company information disclosure requirements.
- ✓ Identifying and recording people with significant control.

Fundraising Regulator

- ✓ Assisting with a Fundraising Regulator investigation.
- ✓ Creating fundraising policies, including a complaints policy, a vulnerable donor policy and an acceptance and refusal of donations policy.

Gambling Commission

- ✓ Assisting with applying for a society lottery operating licence.
- ✓ Advising on obligations under the Gambling Act, including a gambling policy.





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HMRC

- ✓ Assisting with registration.
- ✓ Advising on how to meet the fit and proper person test for trustees.

Information Commissioner

- ✓ Advising on whether registration with the ICO is required and assistance with annual renewal.

Financial Conduct Authority

- ✓ Registration of community benefit or cooperative societies.
- ✓ Assisting with filing event related data or annual reporting obligations.

Regulator of Social Housing

- ✓ Registration as a registered provider of social housing.
- ✓ Advising on reporting requirements and assistance with adhoc filing.

Care Quality Commission

- ✓ Advising on reporting requirements and guiding engagement with investigations and/or inquiries.

Disclosure and Barring Service

- ✓ Advising on DBS checks: when a new one is needed, what roles fall within regulated activity and how to report to the DBS.

Ofsted

- ✓ Advising in relation to safeguarding investigations and enforcement action.

Electoral Commission

- ✓ Ensuring your campaigning stands up to regulatory scrutiny.

Find out more about our politics, elections and campaigning services [here](#).

Case study

We advised a leading health charity after they had appointed someone inappropriate, who subsequently had contact with children in their services. We guided them through their responsibilities to report a serious incident to the Charity Commission and the CQC and the follow up correspondence with the regulators.



Policies

These policies can be tailored to your organisation. If you're at the start of your governance journey and looking to put in place the essentials, we've marked the most important ones with an asterisk (*).

Governance and finance	People	Operations	Data and privacy
Conflicts of interest policy* (including register of interests)	Safeguarding and well-being policy*	Social media policy*	Privacy notice*
Risk management policy* (which can include a risk register)	Equality, diversity and inclusion*	Brand guidelines policy*	Data protection policy* (including security measures)
Serious incident reporting policy*	Volunteers policy*	Overseas payments/grants policy*	Data retention policy*
Trustee and volunteer expenses policy*	Health and safety policy* – it is a legal obligation to have a health and safety policy if your organisation has five or more employees.	Fundraising and event management policy (including guidelines to volunteers and dealing with complaints).	Privacy policy
Reserves policy*	Employee-related policies* (could be contained in a staff handbook) including:	Vulnerable donor policy	
Internal financial procedures policy	<ul style="list-style-type: none"> • Disciplinary procedure* • Grievance procedure* • Email and access to the internet policy* • Whistleblowing policy* • Equal opportunities policy* • Flexible working policy • Contract management policy 	Acceptance and refusal of donations policy	
Investment policy		Gambling policy	
Social investment policy		Grant making policy	
Board development and training policy (including induction)		Bribery Act compliance and fraud policy	
Trustee code of conduct		Hospitality policy	
		Complaints policy	



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Case study

The **Stephen Hawking Foundation** was established to facilitate research into cosmology, astrophysics and fundamental particle physics, as well as Motor Neurone Disease.

We advised the charity on a range of issues including governance and the composition of the trustee board; updating articles of association; grant-making policies and procedures; and fundraising and donations.



The Stephen Hawking Foundation is very pleased with the quality and calibre of all legal advice received to date. Thanks to a great legal team, we are confident the Foundation will continue to flourish.

Executive Director, Stephen Hawking Foundation



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Get in touch

To discuss your requirements and book in your governance review please speak to your usual contact Bates Wells at teamcharity@bateswells.co.uk or on 020 7551 7777.



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