

Matters Reserved for the Board of Trustees (England and Wales)

This guidance note is written for those charities with established boards of trustees which employ a senior management team and delegate significant, specific functions. The guidance note draws upon a number of documents and legislation in order to develop a specimen list of matters reserved for the board in respect of those decisions that cannot be delegated.

In addition to relevant legislation and regulation, charities must also bear in mind the specific requirements and powers of their governing document, and act in accordance with them, along with being aware of the particular circumstances the charity operates in.

No matter how effective a board of trustees may be it is not always possible, nor desirable, for the trustees to have 'hands-on' involvement in every area of the charity's activities. An effective board controls the charity but delegates day-to-day responsibility to the senior management team, except for those matters that are the sole preserve of the board of trustees. It is therefore incumbent on the board of trustees to make it clear what those 'matters reserved for the board' are.

*Good Governance: A Code for the Voluntary and Community Sector*¹ (the 'governance code') states that in ensuring that the board of trustees provides effective control, they must

'...be alert to those matters that cannot be delegated to individual board members or others'.²

The overall responsibility, and liability, for the actions of those managing the charity rests with the trustees, it is therefore essential that trustees give both clear guidance and establish thorough reporting systems to ensure that they make the appropriate decisions about the overall direction of the charity and ensuring those decisions are enacted. As each trustee is jointly and severally liable, it is important that decisions are taken by the board as a whole, meeting together in order that they may hear arguments either in favour or against a decision before casting a vote on a proposal.

It is then the responsibility of the chief executive, and senior management team where appropriate, to implement the decisions of the trustees and report back to the board via the agreed monitoring process.

Purpose

ICSA has produced this guidance note to aid trustees and charity secretaries in drawing up such a schedule of matters reserved for the board, in accordance with good governance principles, as stated in the *Good Governance: A Code for the Voluntary and Community Sector*, and other relevant legislation covering England and Wales.

The relative importance of some matters included in this guidance note will vary according to the size and nature of the charity's activities and structure. Equally, there may well be items not mentioned in this guidance note which some charities would wish to include in their own schedule.

¹ *Good Governance: A Code for the Voluntary and Community Sector*, second edition can be downloaded from <http://www.icsa.org.uk/policy-guidance/guidance-and-reports>. The document shall be referred to as 'the governance code' throughout this Guidance Note.

² See supporting material to Principle 1 of the governance code.

Delegation

Some of the matters included in this guidance note should be the subject of recommendations by the audit, nomination or remuneration committee, where the charity has them. However, full delegation is not normally permitted in these cases, as the final decision on the matter is required to be taken by the whole trustee board.

Urgent matters

In drawing up a schedule of matters reserved for the board it is important to establish procedures for dealing with those issues that have to be dealt with urgently, often between regular board meetings. It is recommended that a telephone, web or video conference meeting should be held in which as many trustees as possible can participate, subject to the specific provisions of the charity's governing document. This allows the trustees the opportunity to discuss the matter, hear different arguments and ask questions. Any trustee who cannot attend should be sent the relevant papers and have the opportunity to give their views to the chair, a fellow trustee, or the charity secretary before the meeting.

If the matter is routine and discussion is not necessary, the approval of all trustees may be obtained by means of a written resolution. In all cases, however, the procedures should balance the need for urgency with the overriding principle that each trustee should be given as much information as possible, the time to consider it properly, and an opportunity to discuss the matter with all the available trustees prior to the commitment of the charity.

Specimen schedule of matters reserved for a trustee board

Except where determined by statute or by the governing document, the governance of the charity is vested in the board of trustees.³ Trustees remain responsible for the oversight and governance of the charity, although executive and management action is delegated to the chief executive.

The following is a non-exhaustive list of those matters that the board of trustees cannot, or do not intend to, delegate.

Matters reserved for the board	References
<p>General enabling provision Subject to its governing document and relevant legislation, the board of trustees may delegate such matters as it considers appropriate.</p>	
<p>Regulations and control</p> <p>i. Responsible for registering the charity and providing further information, as requested, to the Charity Commission and Companies House where appropriate, or to advise if the charity ceases to exist.</p> <p>ii. Approval of recommendations to change/amend the charity's governing document, subject to the approval of the Charity Commission and members, where applicable.</p> <p>iii. Approval of standing orders (by-laws), a schedule of matters reserved for the board and financial reporting for the regulation of its proceedings and business.</p> <p>iv. Suspension of standing orders (by-laws).</p> <p>v. Alteration and amendment of standing orders (by-laws).</p> <p>vi. Ratify any urgent decisions taken by the chair and chief executive.</p> <p>vii. Approve a scheme of delegation of powers from the board to committees and their terms of reference.</p> <p>viii. Require and receive the declaration of trustee interests that may conflict with those of the charity and determining the manner in which such conflicts will be managed.</p> <p>ix. Require and receive the declaration of interests of staff members that may conflict with those of the charity.</p> <p>x. Approve arrangements for dealing with complaints.</p>	<p>i. Charities Act 1993⁴: s3B(1), s3B(3) Governance Code Principles 1 & 4</p> <p>ii. Charities Act 1993⁵: s3B(3), s74C(2), s74C(4), s74D(2), s74D(4) Governance Code Principles 1, 2 & 6</p> <p>iii. Governance Code Principles 1 & 4</p> <p>iv. Governance Code Principles 1 & 4</p> <p>v. Governance Code Principles 1 & 4</p> <p>vii. Charities Act 1993: s82(1) Trustee Act 2000: s11(1), s11(3) Governance Code Principle 4</p> <p>viii. Companies Act 2006⁶: s175 Governance Code Principles 1 & 5</p> <p>x. Governance Code Principle 5</p>

³ Further information on the responsibilities of charity trustees can be found in ICSA Guidance Note *The Role and Duties of Charity Trustees* [http://www.icsa.org.uk/resources/guidance#text\[tag\]\[cat\]\[Guidance_notes\]page\[6\]](http://www.icsa.org.uk/resources/guidance#text[tag][cat][Guidance_notes]page[6])

⁴ As amended by the Charities Act 2006

⁵ As amended by the Charities Act 2006

⁶ References to the Companies Act 2006 relate to the requirements of charitable companies

<p>xi. Adopt/review/amend the organisational, management and control structures, processes and procedures required to further the aims of the charity's objects.</p> <p>xii. Receive reports from committees, and agree/amend/reject any recommendations presented to the board.</p> <p>xiii. Establish/review/amend terms of reference and reporting arrangements of all committees of the board, including any <i>ad hoc</i> committees. These include the audit committee, the remuneration committee and the nomination committee, where appropriate.</p> <p>xiv. Authorise use of the seal.</p> <p>xv. Ratify/reject instances of failure to comply with standing orders (by-laws).</p>	<p>xi. Charities Act 1993: s50(1), s61(2) Governance Code Principles 1, 2 & 4</p> <p>xii. Governance Code Principle 4</p> <p>xiii. Governance Code Principles 1 & 4</p>
<p>Appointments/remuneration/discipline</p> <p>i. Nominate and elect a trustee to serve in the positions of chair, vice-chair and treasurer, where appropriate.⁷</p> <p>ii. Appoint and dismiss committees and individual members of committees that are accountable to the board.</p> <p>iii. Put in place effective procedures for the succession planning of the board.</p> <p>iv. Appoint, appraise and dismiss the chief executive officer, where applicable.</p> <p>v. Appoint, appraise and dismiss the charity secretary, where applicable.</p> <p>vi. Consider, approve/reject proposals from the remuneration committee regarding salary and benefits of the chief executive and other senior management staff, where appropriate.</p> <p>vii. Agreeing procedures for the effective evaluation of the board and individual trustees, and committees.</p> <p>viii. To consider and decide on any proposal to remunerate a trustee, subject to the restrictions of the charity's governing document and the requirements of the Charities Acts.</p>	<p>i. Governance Code Principles 1 & 3</p> <p>ii. Governance Code Principles 1 & 4</p> <p>iii. Governance Code Principle 3</p> <p>iv. Governance Code Principles 1 & 3</p> <p>v. Companies Act 2006⁸: s270(3)</p> <p>vi. Governance Code Principles 1, 3 & 4</p> <p>vii. Governance Code Principle 3</p> <p>viii. Charities Act 1993⁹: s73A(4), s73B(1), s73B(2) Trustee Act 2000: s1(1)</p> <p>Nomination committee recommendations</p>
<p>Strategic and budgetary matters</p> <p>i. Responsible for the overall management of the charity,</p>	<p>i. Charities Act 1993¹⁰: s14B(4)</p>

⁷ The charity's governing document may provide details as to how this process should be managed, which may involve an election to these positions by the members of the charity, if it is a membership organisation.

⁸ References to the Companies Act 2006 relate to the requirements of charitable companies

⁹ As amended by the Charities Act 2006

¹⁰ As amended by the Charities Act 2006

<p>ensuring compliance with the charity's objects and relevant legislation.</p> <p>ii. Define and agree the strategic aims and objectives of the charity.</p> <p>iii. Approve/amend proposals for the delivery/cessation of delivery of programmes to further the charitable objects or changes to the charity's activities.</p> <p>iv. Apply charitable property to the furtherance of the charity's objects.</p> <p>v. Ensuring that trading and other activities do not compromise charitable status.</p> <p>vi. Approve/amend the charity's policies and procedures for internal control and the management of risk and protection of the charity's property (including insurance).</p> <p>vii. Approve/amend proposals for capital investment or expenditure, including the spending of capital from an endowment fund.</p> <p>viii. Approve/amend budgets.</p> <p>ix. Approve/reject proposals for the acquisition/disposal of land/buildings, or change in its use, following the receipt and consideration of professional guidance.</p> <p>x. Approve fundraising and income generation programmes, including funding applications, service delivery contracts and transfer of public collection certificates from one trustee to another.</p> <p>xi. Agree and review investment strategy, in line with relevant policies.</p> <p>xii. Decide on the number, purpose and mandates of bank accounts and other deposit media.</p> <p>xiii. Authorise delegated powers and limitations to the chief executive and other members of the senior management team, where appropriate.</p> <p>xiv. Decisions relating to court proceedings against or on behalf</p>	<p>Governance Code Principles 1, 2 & 4</p> <p>ii. Governance Code Principle 1</p> <p>iii. Governance Code Principles 1 & 2</p> <p>iv. Governance Code Principles 1, 2 & 5</p> <p>v. Governance Code Principle 1</p> <p>vi. Governance Code Principle 4</p> <p>vii. Charities Act 1993¹¹: s73B(2), s75(3), s75(4), s75A(3), s75A(4), s75B(2), s75B(3) Trustee Act 2000: s4(1), s5(1), s5(2), s11(3)</p> <p>viii. Governance Code Principles 2 & 4</p> <p>ix. Charities Act 1993: s36(3), s36(5) Governance Code Principle 1</p> <p>x. Charities Act 1993¹²: s55(3), Governance Code Principles 1, 2 & 4</p> <p>xi. Trustee Act 2000: s4(1), s5(1), s5(2), s11(3), s15(3) Governance Code Principles 1, 2 & 4</p> <p>xii. Governance Code Principle 4</p> <p>xiii. Governance Code Principle 4</p>
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¹¹ As amended by the Charities Act 2006

¹² As amended by the Charities Act 2006

<p>of the charity.</p> <p>xv. Approval and appointment of the charity's professional advisers and consultants and to determine their remuneration.</p> <p>xvi. Approval of purchasing Trustee Indemnity Insurance from charity funds.</p> <p>xvii. Approve the transfer of charity property to another charity with substantially similar objects.</p> <p>xviii. Agree changes to the charity's pension scheme or the management of its funds.</p>	<p>xv. Governance Code Principles 1 & 4</p> <p>xvi. Charities Act 1993¹³: s73B(1), s73B(4), s73F(5) Trustee Act 2000: s1(1)</p> <p>xvii. Charities Act 1993¹⁴: s74(2), s74(4), s74(6)</p>
<p>Policies Establish/review/amend/approve key organisational policies including:</p> <ul style="list-style-type: none"> ▪ trustee code of conduct ▪ trustee engagement/agreement to serve letter ▪ employment policy ▪ health and safety policy ▪ environmental policy ▪ communications policy ▪ complaints policy ▪ treasury and investments policy ▪ reserves policy ▪ whistleblowing policy ▪ risk management policy ▪ corporate social responsibility ▪ conflicts of interest policy ▪ communications/PR policy ▪ equal opportunities policy. 	<p>Trustee Act 2000: s15(3) Governance Code Principles 1, 2, 5 & 6</p>
<p>Audit arrangements</p> <p>i. Consideration of the external auditors, in line with legal requirements and those of the charity's governing document.</p> <p>ii. Approval of remuneration of external auditors, their re-appointment or removal, in line with legislation and the requirements of the charity's governing document.</p> <p>iii. Receive and note the annual management letter from the external auditor and agree the proposed course of action, taking into consideration the recommendations of the audit committee, where appropriate.</p> <p>iv. Receive and note reports from the internal audit function and agree remedial action, where appropriate.</p>	<p>i. Governance Code Principles 1 & 4</p> <p>ii. Companies Act 2006¹⁵: s485</p> <p>iii. Governance Code Principles 1 & 4</p> <p>iv. Governance Code Principles 1 & 4 Audit committee recommendations</p>

¹³ As amended by the Charities Act 2006

¹⁴ As amended by the Charities Act 2006

¹⁵ References to the Companies Act 2006 relate to the requirements of charitable companies.

<p>Reporting arrangements</p> <p>i. Receive/present/approve the charity's annual report and accounts.</p> <p>ii. File the annual report, accounts and SIR with the appropriate regulator(s).</p> <p>iii. Establish, maintain and retain appropriate financial reporting arrangements and records and approve any significant changes in accounting policies or practices.</p> <p>iv. Hold an annual general meeting for members, where applicable.</p>	<p>i. Charities Act 1993: s45(1) Companies Act 2006¹⁶: s414, s415, s433, s444(6), s445(5), s450 Governance Code Principles 1, 4 & 6</p> <p>ii. Governance Code Principles 1 & 4</p> <p>iii. Charities Act 1993: s41(1), s41(3), s42(4) Companies Act 2006: s386 Governance Code Principles 1 & 4</p> <p>iv. Governance Code Principle 6</p> <p>Audit committee recommendations</p>
<p>Monitoring</p> <p>i. Receive and review such reports as the board requires from committees and individuals with regard to the use of delegated powers.</p> <p>ii. Receive and review such reports from members of the charity's staff pertaining to the activities of the organisation in furtherance with the charitable objects.</p> <p>iii. Receive and review reports from the finance function on the financial performance of the charity against agreed budgets and strategy.</p> <p>iv. Receive and review reports from the chief executive pertaining to meeting the charity's goals as agreed in the strategic and business plans.</p>	<p>i. Governance Code Principles, 1, 2 & 4</p> <p>ii. Governance Code Principles 1, 2, 4 & 5</p> <p>iii. Governance Code Principles 1, 2 & 4</p> <p>iv. Governance Code Principles 1, 2 & 4</p>

Matters which the board considers suitable for delegation are contained in the terms of reference of its committees.

In addition, the board will receive reports and recommendations from time to time on any matter which it considers significant to the charity.

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The information given in this Guidance Note is provided in good faith with the intention of furthering the understanding of the subject matter. Whilst we believe the information to be accurate at the time of publication, ICSA and its staff cannot, however, accept any liability for any loss or damage occasioned by any person or organisation acting or refraining from action as a result of any views expressed therein. If the reader has any specific doubts or concerns about the subject matter they are advised to seek legal advice based on the circumstances of their own situation.

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¹⁶ References to the Companies Act 2006 relate to the requirements of charitable companies.