

Strategy and Partnerships Team, Office for Civil Society
Department for Digital, Culture, Media and Sport
100 Parliament Street
London
SW1A 2BQ

21 May 2018

Dear Sir/Madam,

Civil Society Strategy: Have your say

On behalf of ICSA: The Governance Institute, I am pleased to respond to your consultation on the civil society strategy. ICSA: The Governance Institute is the international professional body for governance, with more than 125 years' experience and with members in all sectors. Our purpose is defined in our Royal Charter as 'leadership in the effective governance and efficient administration of commerce, industry and public affairs' and we work with regulators and policy-makers to champion high standards of governance, providing qualifications, training and guidance.

We are the professional membership and qualifying body supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables ICSA to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our members' wealth of expertise and experience, together with their detailed understanding of charity and company legislation and regulation, has informed our response to this consultation.

General comments

ICSA welcomes the Government's consultation on its civil society strategy and supports its aspiration to make sure that civil society is at the heart of efforts to create a better and fairer society.

Good governance in charities is fundamental to their success. It enables and supports a charity's compliance with the law and relevant regulations. It also promotes a culture where everything works towards fulfilling the charity's vision. Good governance is vital to efforts to preserve and strengthen the best of civil society and to increase its impact. Without good governance, civil society will never be able to fully deliver the positive change desired by those working in it, in partnership with it, or in some way benefitting from it. Strengthening civil society must be done in tandem with strengthening civil society governance. ICSA, as a founder member of the Charity Governance Code (the Code) Steering Group, strongly believes such codes are an important tool in enabling various sectors to be better governed and run in order to achieve their organisational aims and wider objectives for society.

Charity Governance Code

The Code is a voluntary code for charities and not-for-profits, to help them to develop high standards of governance. It is overseen by a cross-sector collaboration with an independent chair, Rosie Chapman. The group's purpose is to review, develop, promote and maintain the Code for the sector. The steering group's members are ACEVO: Charity Leaders Network; Association of Chairs; ICSA: The Governance Institute; NCVO: National Council for Voluntary Organisations; Small Charities Coalition and WCVA: Wales Council for Voluntary Action. The Charity Commission is an observer on the group.

The Code, first produced in 2005, was as a result of directly expressed needs in the sector. Those needs still exist today and the calls for good governance are even louder. Perceived public weaknesses in the way charities are run led to the Steering Group developing and publishing a new and more robust edition of the Code in summer 2017 (www.charitygovernancecode.org). As with the original version, it is vital that the Code is developed by and for the sector, and the current iteration was produced following a public consultation which attracted over 200 responses.

If those charities and not-for-profit organisations underpinning civil society are to succeed in their collective mission to enrich society and the lives of people and planet, their underlying governance arrangements need to be given more support: from government, funders, donors, trustees, volunteers, staff, and the public.

ICSA therefore suggests that the final Civil Society Strategy should include firm commitments to support the continuous improvement of the sector's governance by:

- Supporting sectoral and regulatory efforts to introduce good governance measures that are proportionate and sector-specific. Given the public benefit or social cause ethos of the organisations covered by the consultation, and the specific legal requirements placed on charitable organisations, the adoption of governance approaches that do not reflect the unique values of the sector would be inappropriate and likely to be less effective in driving up good governance. The DCMS should work with other Government departments, such as DfE and BEIS to inform and educate those overseeing various aspects of the civil society sector about the specific governance arrangements already in place;
- Informing and educating organisations from various sectors who, as part of the civil society, work with charitable organisations, of the relevant key legal and regulatory requirements. These include, but are not limited to: the use of charitable resources solely for the provision of a public benefit; and the considerations to which charities must have regard, such as connected entities, the avoidance of personal benefit, and applying charitable funds to the fulfilment of charitable objects. It is important that all parties operating in cross-sectoral partnerships appreciate the pressures and obligations which are present in areas outside their normal areas of activity. Wider understanding of the different governance arrangements at work within partnership or collaborative frameworks will be essential if we are to ensure each entity respects the governance and transparency requirements involved and how these may not always align.
- Consistently extolling the benefits of good governance and the need for resources to be spent on achieving it. Helping to educate the wider public, trustees and funders that using charitable funds to improve governance is an appropriate use of resources and, indeed, is imperative for the sector to be successful, accountable and sustainable. This would improve and maintain public confidence in the way civil society organisations are run.
- Ensuring government funding to the sector as a whole, and to individual organisations, includes recognition of the need to cover the full costs of delivering services and other charitable activities, including the costs associated with embedding good governance, such as trustee and board development and evaluation;
- Encouraging the sector to adopt the Charity Governance Code, and committing to support its ongoing development and legacy in building a strong, vibrant and safe civil society.

Governance Professional

Depending on the size and complexity of the organisation in question, the board is likely to play a very different role in terms of the organisation's performance and effectiveness. As with commercial entities, the role of the board will fluctuate in times of growth, consolidation and challenge. In a large organisation, the board will act as a sounding board for the senior managers and monitor progress

against the agreed strategic plan. In smaller organisations (which account for around 80% of charities in England and Wales), the trustees will also be the people delivering the services and activities, so will be more 'hands on' in terms of performance and effectiveness. In both instances, the board is responsible for ensuring the charitable objects are being delivered, and will be accountable for their decisions and actions, including those delegated to staff.

ICSA has previously called for large charities to appoint a governance professional to support trustees in their role. Within large companies, it is recognised that boards, and especially the chair, require access to a professional with knowledge of how boards operate and of the legal, ethical and regulatory environment in order to advise and recommend ways forward.

This individual should not be the chief executive, finance director or legal counsel, as combining that role with that of the governance adviser creates a potential or actual conflict of interest. The roles are subtly, but significantly different and there should be an awareness that the guidance and advice provided by each may well differ according to the circumstances. The governance professional, as the 'conscience of an organisation' will not only consider legal or financial issues in the advice provided, but also supply guidance that considers the ethical and cultural implications of a proposed course of action. The governance professional should be appointed by the board and report to the chair.

At a time when public trust is more precious and transitory, across all sectors, it is vitally important for charities not only to act in accordance with their stated values, but also to be seen to be living those values. Research by ICSA has highlighted the value that can be added to a board by having access to a governance professional for guidance and support (<https://www.icsa.org.uk/knowledge/research/the-company-secretary-report>).

Law Commission Recommendations

The Law Commission's consultations on Technical Issues in Charity Law and subsequent recommendations and draft Bill should be implemented in full. The Law Commission suggested many changes which support the desire to make charity law and regulation easier to understand and implement effectively. This in turn will make it easier for trustees to understand the legislation and regulation covering their organisations and therefore to implement requirements. Ultimately, this will result in charities being better governed and therefore better able to deliver the public benefit desired in a manner congruent with public expectations.

The complex nature of law and regulation can be off-putting to many potential trustees, both young and old and from diverse backgrounds. Measures to make volunteering as a trustee less daunting are likely to help the sector attract more people to the role, or to other positions that help organisations make positive contributions to society.

Answers to specific questions

Section 1 – our civil society

What are the strengths of civil society today?

For many, the sheer size, variety and diversity of organisations in the civil society sphere can be seen as a strength. The range of purposes and mission, and of ways of achieving those social benefit aims within the sector(s) can speak volumes about the wide interests of the public and the issues that are of concern to them. For others, there is some confusion about exactly what the sector encapsulates, and the growth of commercial entities with social benefit aims has added to this.

Within the charity sector, it should be noted that the range of volunteers mobilised formally or informally - whether as trustees or service providers should be viewed as a positive indicator of the state of public engagement with those beyond their immediate stakeholders and interests.

Furthermore, the number of people who have accessed products and services from civil society highlights the wider impact such organisations have on wider society. For example, CAF research reported:

“...more than nine out of 10 households (93 per cent) have used at least one charitable service at some time in the past, with nearly four-fifths (79 per cent) having used a service in the last 12 months, and half (51 per cent) in the last month.” CAF *‘Charity Street: The value of charity to British householders’*¹

How can government help increase the impact of civil society?

The government could help in two ways:

- Firstly, by significantly reducing regulatory and legal burdens placed upon trustees, volunteers and charities. Implementing the draft Bill produced by the Law Commission, as detailed above, is one step that could help reduce the complexity some trustees have to navigate.
- Secondly, more consistent and prominent public comment from government and Ministers honouring, supporting and encouraging civil society organisations and individuals' participation in them and their activities would help raise such activities as being worthy of merit and encourage others to get involved.

How can public trust in civil society be built and maintained?

As a founder member of the Charity Governance Code Steering Group, ICSA would strongly support the adoption and application of the Code by all organisations which are charities. Further information about the Code and how it can be supported are detailed above.

A wider celebration of success stories and of the positive impact that civil society has on the public would also help to balance some of the more adverse media stories that have been highlighted recently. This should be coupled with the sector being more willing and able to engage with people to explain what they do and how they do it and, most importantly, why. There appears to be a disconnect between the way modern civil society organisations, especially charities, are run and the public's understanding of them.

For some, it could be argued that by bringing the rest of the exempt and excepted charities onto the public Register of Charities (including, for example, academy schools), a better understanding of 'charity' can be promoted. The public are very surprised and often significantly concerned when it is pointed out to them that around half of all charities in England and Wales are not on the register at present – because they are too small to register or are either excepted or exempt. The consistent application of charity law to these organisations would also be helpful, especially where a Principal Regulator, other than the Charity Commission is responsible for monitoring compliance with charity legislation.

We interpret civil society as inclusive of all those outside the public sector, who share the mission of building a stronger society and improving lives, regardless of traditional sector boundaries such as charity or private and for profit or not. What are the advantages of using this interpretation in developing this strategy?

The main advantage is that it encompasses a very wide and very diverse range of organisations and activities. This is also the main weakness. There is a significant difference between those organisations which are legally obliged to fulfil a social or public benefit, arising from law or their governing document, and those that wish to work in a manner that is ethical or socially beneficial – defined internally rather than by legislation.

Furthermore, charities are so different from other areas of civil society that some important distinctions must be made and worked within. For example, the nature, depth, breadth and complexity of legal and regulatory control, accountability and restrictions on them are so different and so much more substantive than those which apply to social enterprise organisations – such as Community Interest Companies or private 'not-for-profit' companies.

¹ <https://www.cafonline.org/docs/default-source/about-us-publications/charity-street-report-sept14.pdf>

Given the various entities included in the definition it will be almost impossible to draw out common themes that apply to all, or even a significant number of sub-sectors within it.

Section 2 – People

We believe other respondents will provide a rich variety of examples to provide answers to the questions in this section. As such, we have no comments to make here.

Section 3 – Partnership

Reflecting on your own experience or examples you are aware of in the UK or abroad, how are partnerships across sectors improving outcomes or realising new potential?

Within the UK there are many examples of where public and private sectors and not-for-profit entities have come together to deliver better societies. For example, in the NHS in England there are examples of teaching trusts and pharmaceutical companies collaborating to discover new medicines and expedite their use in hospitals and by GPs. The 'DevoManc' experiment also provides an example of a potentially successful collaborative arrangement across sectors. The Anti-Slavery Partnership is another example - <http://www.aspartnership.org.uk/>.

Section 4 – Place

We believe other respondents will provide a rich variety of examples to provide answers to the questions in this section. As such, we have no comments to make here.

I trust that these comments are helpful and contribute to the Department's deliberations on the civil society strategy. Should you wish to discuss them further or require any clarification, please feel free to contact me on lthomson@icsa.org.uk or on 0207 612 7040.

Yours sincerely,

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