

Charity Governance Code Refresh
c/o The Policy Department
CGI

28 February 2020
Via email

Dear Sir/Madam,

Charity Governance Code refresh

On behalf of The Chartered Governance Institute (the Institute) I am pleased to provide feedback on the Charity Governance Code refresh.

The 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.

The Institute 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 the Institute to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our wealth of expertise and experience has informed our response.

General comments

The Institute is delighted to be closely involved in the work of the Charity Governance Code and is proud of its development since the initial idea back in 2003 (and the first published version in 2005).

Governance has evolved and expanded in those years and it is only right that the 2020 iteration is updated to reflect those changes. Furthermore, it is the Institute's view that the Code should continue to stay ahead of governance developments (where possible) by learning from other sectors, adapting and applying trends to benefit the charity and wider voluntary sector.

While the Institute agrees that a refresh is more apt, at the moment, than a radical overhaul we do urge the Code's steering group to remain vigilant to the need to introduce a more wide-ranging update when the circumstances require, rather than sticking to a pre-arranged schedule of updates which may not keep pace with the sector's challenges.



In our view, the Code continues to represent aspirational but practical recommendations, in the main. However, there are some areas that do require attention now, as identified by the steering group. The need to reflect those necessary changes must be balanced against the feedback received asking the steering group not to introduce too much change as the sector is still working through introducing and implementing the Code. Further time is required to allow the Code to bed in. The refresh proposed manages that delicate balance.

Specific questions

As a member of the Code's steering group, the Institute has limited itself to answering those questions which relate to improving the Code for the purpose of advancing governance in the sector.

9. Does the current Charity Governance Code outline good governance practice and how it can be applied to charities?

To a large degree, yes. However, the sector, and the world, has changed since 2017 and some areas require updating to address those changes. Specifically, the issues of culture, climate change and accountability pose significant challenges for the sector, and the Code should reflect on what it currently contains on those issues and how it could be amended to support developing good governance practice.

Poor governance was identified as playing a part in several recent examples of charity failures, with the Charity Commission augmenting its requirements regarding the reporting of serious incidents, revised guidance on the management of relationships with non-charitable bodies, continuous messages to meet the public's expectations and a report to come on chief executive remuneration. These developments should be reflected in the revised Code, but there is no need to replicate what is published by the Commission, just a need to provide additional good governance guidance.

10. Given that the Code was only last updated in 2017, do you agree that we are right to limit changes to the Code at this stage and only focus on urgent items? Please provide comments for your response.

As detailed above, there is a balance to be achieved between introducing amendments to reflect the changing operating environment for charities and evolving good practice in other sectors, with that of allowing sufficient time for trustees to embed good governance in their charities. To a large degree the refresh achieves that balance.

An aim of the 2017 version of the Code was to be aspirational, and that aim should not be lost by limiting the scope of the refresh, especially if the consultation feedback highlights specific areas that need addressing now rather than in 2023.



- 11. We have identified the following areas where the Code might benefit from immediate changes. The following questions explore these areas:**
- i. Should the Integrity principle say more about charities' ethical principles and the right to feel safe? If yes, what might it say or require?**

Recent media stories, and the stance of the Charity Commission, suggests the Code is not currently sufficiently strong on the area of charity ethics. It is right that the steering group look at those aspects of the Code that currently cover the issue and where else it may need to be introduced. The Institute does not agree that the Ethical Principles should be incorporated into the revised version, but a footnote on them should suffice, as is currently the approach taken with the Nolan Principles. Reaction to the Ethical Principles has been mixed and many in the sector have questioned the likely longevity of them. The Nolan Principles have existed for a number of years and continue to be relevant to the sector, and the existing approach to reference them in the Code appears to have been adequate.

The concept of the 'right to feel safe' however is more complex. Every individual wants to go to work, or volunteer, or receive a service in an environment in which they feel safe. Legal and regulatory requirements set minimum standards and some organisations will choose to go further. However, 'feeling safe' can be subjective and meeting the needs of every individual in this regard may be unduly expensive or complicated for some charities to implement. The cultural aspects of good governance might be one way to improve the working environment and introduce proportionate response to specific stakeholder needs, which in turn enhances the experiences of staff, volunteers, clients and others who come into contact with the charity.

- ii. Should the Diversity principle be renamed, for example to 'Diversity and Inclusion' or 'Equality, Diversity and Inclusion' to reflect good practice in this area? Please explain your response.**

This is an area that continues to be a hot topic in all sectors of the UK economy, and represents a number of challenges. The first challenge is defining the terms in a way that is meaningful for the majority of charities. We would urge the Code to remain open to the term 'diversity' by viewing it in its widest sense, not limited to those protected characteristics or differences we can see.

Equality is probably not the right term to include as treating people equally will not always address the issues of improving diversity and inclusion. 'Genuine equality means not treating everyone the same but attending equally to everyone's different needs', as such either 'equity' or 'fairness' might be a more appropriate term to add to 'diversity and inclusion'.



iii. Is there any additional or different recommended practice that should be included as part of this principle regarding diversity? Please provide further information.

Diversity Action Plans have been used in the sports sector to improve diversity, following the introduction of the mandatory code for sports governing bodies. This could be something that the Code includes as a way to support the sector, especially if they are published openly.

Following the government's requirement that some organisations report on gender pay gaps, the Code could recommend a similar, but voluntary, approach for all large charities to report these ratios, along with data on the number of employees, volunteers and clients from different sectors of society (ethnicity, gender, educational achievement). Reporting on such figures may encourage boards to think more about what can be done to change the balance (where necessary) and improve the diversity of the organisation from the bottom-up.

'Blind' selection processes could be introduced to help counter any unconscious bias in trustee recruitment, and consideration should be given to other processes that are more welcoming to a diverse range of potential candidates.

It must not be forgotten, however, that the trustee role is a serious one with considerable responsibilities. The appropriate mantra might therefore be 'recruit for aptitude, train for competence'. Professional development has to go hand in hand with any drive to improve diversity in order not to risk leaving anyone in a situation where they do not feel confident in their role.

12. Are there any other urgent changes that are required to the Code at this stage? Please provide further information.

As detailed above, there may be some benefit to including specific recommendations about reporting serious incidents to the Commission and being more explicit about the board's role in developing and instilling a healthy culture and good behaviours. There might also be a case to state clearly that, while governance starts in the boardroom, it needs to be embedded throughout an organisation if it is to be effective and add value.

13. Do you have any suggestions for guidance or websites that might be helpful for charities trying to implement the Code that we could signpost to? Please provide further information identifying to which principle the guidance or website relates.

It is clear that those charities without access to a governance professional struggle to implement the practical aspects of the Code. The demand for guidance and support is undiminished from the first version in 2005. It is not right, nor feasible, for the Code to provide answers to every governance concern the sector may raise. The Institute appreciates that many users of the Code are eager for resources to be available to aid implementation of the Code's principles and recommendations. However, there are lots of resources already available, many for free, including the Institute's own guidance notes. A simple web search will produce an assortment of documents to assist with the implementation of good governance (with varying degrees of quality). But we must add a note of caution; simply cutting and pasting a document from a



website does not equate to good governance. The real value comes from discussing the issue and the specific needs of a charity, and creating a governance framework and supporting documents that are effective and proportionate, as agreed by the board.

Given the Code's limited resources, the Institute does not believe that the Code should be seen to endorse one document over another, especially if readers are likely to assume that the Code has quality checked that resource. The Code website already signposts to other organisations where resources may be available to implement the Code. This could be expanded to include more websites from within the sector and other sectors where the experience may be insightful.

14. Are there any issues on the horizon or areas that the Code should consider in the longer term? Please provide further information.

Other sectors are dealing with a growth in topics that are being grouped under the governance umbrella. The Code would do well to remain alert to those developments and exercise wise judgement as to whether it will mirror those trends. Some aspects, however, are more pressing and obvious. Environmental, sustainability and governance (ESG) is a developing theme in the corporate sector and given the changes in public expectations and demands it is something that will transfer to the charity sector, to a degree.

The challenge of managing and utilising data and digital technology is another area that needs to come under the oversight of the board, and therefore is inherently a governance matter. The digital code goes some way to promote the use of digital, but the risks and opportunities are broader than that and the next version of that code needs to deal with the ethical matters presented by those opportunities.

A new Charities SORP will also present an impetus to review the Code, in due course.

15. Do you have any other comments you would like to make about the Charity Governance Code refresh?

The sector has experienced its perennial debate as to whether the governance structures that prevail in charities are 'fit for purpose'. Experience, and headlines, from all sectors demonstrate that governance failures can occur, regardless of the type of board, accountability, oversight or public expectation. The common denominator in each instance is people. The human factor can be held accountable for many (if not all) governance failures.

The Charity Governance Code was one of the first to espouse better boardroom behaviours, but alone it cannot effect real and lasting change in trustee and senior manager behaviour that sets an example to others involved in the charity. The Institute's guidance on improving charity boardroom behaviours (<https://www.icsa.org.uk/knowledge/resources/improving-charity-boardroom-behaviours>) was ground breaking in trying to promote positive trustee behaviours, but those actions need to be reinforced and supported by the right training and development opportunities, not to mention appropriate policies being implemented and followed. The Code is not the place to detail good behaviours, but it should be explicit on the importance of them. This is something that might benefit from being made clearer within the recommendations.



Ultimately, governance is not binary but a spectrum. The Code should continue to be aspirational for many charities and in some instances the recommendations will simply not apply. The Code should reflect that different charities will have different governance needs and those will change with circumstances. We therefore suggest that the Code's approach should change from 'apply or explain' to 'apply *and* explain' in order to promote better understanding of how effective the governance is and to improve accountability to stakeholders.

I trust the above comments help with the development of any changes to the Charity Governance Code. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours faithfully,

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