



The Governance  
Institute

# Charity Law and Governance

**Sample mark scheme**

January 2016

# Section A

Question number	Answer	Mark
1	A – Community Interest Company	(1)

Question number	Answer	Mark
2	Accept <b>one</b> of the following: <ul style="list-style-type: none"> <li>• Charity Commission for England and Wales</li> <li>• Charity Commission</li> </ul>	(1)

Question number	Answer	Mark
3	True – The company directors in a charitable company are its trustees.	(1)

Question number	Answer	Mark
4	Any <b>four</b> of the following. <ul style="list-style-type: none"> <li>• To determine whether or not institutions are charities.</li> <li>• To encourage and facilitate the better administration of charities.</li> <li>• To identify and investigate the apparent misconduct or mismanagement in the administration of charities</li> <li>• To take remedial or protective action in connection with misconduct or mismanagement.</li> <li>• To determine whether public collection certificates should be issued and remain in force.</li> <li>• To obtain, evaluate and disseminate information in connection with the performance of the Commission's functions of the meeting of its objectives.</li> <li>• To give information or advice, or make proposals, to Ministers, on matters relating to the Commission's functions or objectives.</li> </ul> <p><b>Accept any appropriate wording for each function (answers do not have to repeat functions from the Charities Act verbatim)</b></p>	(4)

Question number	Answer	Mark
5	True – Charity trustees have to have regard to Charity Commission guidance on public benefit.	(1)

Question number	Answer	Mark
6	The Charity Commission is a corporate body (1) established under statutory authority (1). <b>Do not accept any answers stating what the Commission does – it must be the legal basis of the Charity.</b> <b>Accept any other appropriate answers.</b>	(2)

Question number	Answer	Mark
7	C – The promotion of democracy and freedom	(1)

Question number	Answer	Mark
8	Any <b>four</b> of the following. <ul style="list-style-type: none"> <li>• Register of Directors (accept Trustees)</li> <li>• Register of Directors' Residential Addresses (accept Trustees)</li> <li>• Register of Members/Shareholders</li> <li>• Register of Secretaries</li> <li>• Register of Charges</li> </ul>	(4)

Question number	Answer	Mark
9	Office of the Scottish Charity Regulator <b>Do not accept the acronym OSCR only</b>	(1)

Question number	Answer	Mark
10	Any <b>four</b> of the following. <ul style="list-style-type: none"> <li>• Registered office address</li> <li>• The fact it is a registered charity</li> <li>• Statement that it is a limited company</li> <li>• Registered company number</li> <li>• Place of registration as a company</li> <li>• If directors/trustees names are given, all of them must be listed</li> </ul> <b>Do not accept just 'Office address' or 'Address'.</b>	(4)

## Section B

Question number	Answer	Mark
11	In a charitable trust, the trustees are potentially liable as individuals for all activities (1) because the trust has no legal personality (1) whereas in a charitable company, the company is a separate legal entity to the trustees (1) and therefore liable for its activities (1).	(4)

Question number	Answer	Mark
12	<p>Accept any combination of the following:</p> <ul style="list-style-type: none"> <li>It provides a means of incorporation for a charity (1) which is a benefit because it gives limited liability to the trustees (1) and being a separate legal entity makes administration easier (1).</li> <li>The charity is subject to a single regulator (1) meaning it avoids having to register separately with Companies House (1)</li> <li>It allows Charity Commission registration with an income below £5,000 a year (1), otherwise the charity would not be able to register with the Commission unless its income was over £5,000 (1).</li> <li>Benefit in terms in perception that CIO is a legal form that was created exclusively for charities (1).</li> </ul> <p><b>1 mark for identifying a benefit of being a CIO to a small charity and further marks for explanation of the benefit.</b></p> <p><b>If candidates have produced a list of benefits with no explanation, award up to a maximum of 5 marks.</b></p> <p><b>Accept any other appropriate answer.</b></p>	(6)

Question number	Answer	Mark
13	<p>Any combination of <b>six</b> marks from the following.</p> <ul style="list-style-type: none"> <li>A summary of the discussion on each item of business (1).</li> <li>The exact wording of any resolution/decision (1).</li> <li>Information used to make decisions (1) and what contributed to the decisions made (1)</li> <li>What action is needed (1) and who is responsible for taking it (1).</li> <li>The names of those present (1) and what capacity people attended in (1).</li> <li>Any declarations of conflicts of interest (1) and a record of the trustee leaving the room (1).</li> </ul> <p><b>Accept any other appropriate answer.</b></p>	(6)

Question number	Answer	Mark
14	<p>Directors have a duty to disclose a direct or indirect interest (1) in a proposed transaction or arrangement (1).</p> <p>They have a duty to obey/comply (1) with any provisions in the company's articles regarding disclosure (1).</p> <p>They have an obligation to disclose a direct or indirect interest (1) in an existing transaction or arrangement (1)</p> <p style="text-align: right;"><b>3x2</b></p> <p><b>Do not accept just 'disclose an interest in a contract' as this changed with the Companies Act in 2006.</b></p> <p><b>Accept any other appropriate answer.</b></p>	(6)

Question number	Answer	Mark
15	<p>The charity's purposes must be 'for the public benefit' (1) and their activities must be appropriate to deliver the appropriate public benefit (1). The beneficiaries must be appropriate to the charity's purposes (1) and the benefit provided to the beneficiaries must relate to the purposes of the organisation (1).</p> <p>Award up to two further marks from the following options:</p> <ul style="list-style-type: none"> <li>• The public can be the public at large or a sufficient portion of the public (1).</li> </ul> <p style="text-align: center;">OR</p> <p>If the beneficiaries are only a portion of the public, the group must not be too small or capriciously determined (1).</p> <ul style="list-style-type: none"> <li>• The poor must not be excluded from benefitting (1).</li> <li>• The benefit must be identifiable/tangible (1).</li> <li>• The benefit must be weighed against any detriment or harm (1).</li> </ul> <p>Alternative wording for the first sentence above:</p> <ul style="list-style-type: none"> <li>• The charity must have purposes that are for public benefit.</li> <li>• The charity must have purposes that are for charitable public benefit.</li> <li>• The charity must provide charitable public benefit.</li> <li>• The charity must provide public benefit.</li> </ul> <p><b>Accept any other appropriate answer.</b></p>	(6)

Question number	Answer	Mark
16	<p>The amendment of an objects clause will require the approval of the Charity Commission (1). This approval must be received prior to the amendment being made (1). The amendment of the objects is an amendment of the Memorandum and Articles of a charitable company (1) and so it requires the approval of the company members (1). This approval must be given by a Special Resolution (1). The amendment of the objects in a charitable company will not take effect until it has been registered at Companies House (1).</p> <p><b>Marks can also be gained if the candidate includes some detail about how the Special Resolution can be put to members.</b></p>	(6)

# Section C

Question number	Indicative content	
17	<p>Answers need to show an understanding of governance codes that are available and an awareness of their practical application by a charity. This question can be answered in a number of different ways. Whilst the indicative content is set out below, not all of it would need to be covered to achieve a good mark. However, a good answer will need to show some awareness of the UK Governance Code and understanding of Good Governance: a Code for the Voluntary and Community Sector.</p> <p><b>Answers could include the following content.</b></p> <ul style="list-style-type: none"> <li>• UK Corporate Governance Code – background; history and types of organisation that it is applied to</li> <li>• Understanding and explanation of the key principles of the UK Corporate Governance Code</li> <li>• Concept of comply or explain</li> <li>• Understating that adoption of a code is voluntary for a charity (unless required by a regulator)</li> <li>• Good Governance: a Code for the Voluntary and Community Sector – background, history and key principles</li> <li>• National Housing Federation (NHF) Code of Governance</li> <li>• Nolan principles</li> <li>• Other codes of governance</li> <li>• Discussion on why it can be useful to adopt a code; points awarded for any well set out reasoning</li> <li>• Informed discussion on the application of the UK Corporate Governance Code</li> <li>• Reasoned and informed arguments for and against adopting the UK Corporate Governance Code</li> <li>• Reasoned and informed arguments for and against adopting another Code.</li> </ul>	
Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1</b>	1–5	<p>Answers will comprise a list of recalled knowledge on any codes without attempting to relate them to the charity being considered. Alternatively, the answer does not show any understanding of the UK Governance Code and instead refers only to other codes.</p> <p><b>Award up to a maximum of only 4 marks if the answer comprises a list of recalled knowledge on the topic and does not attempt to address the requirements of the question.</b></p>
<b>Level 2</b>	6–10	<p>Answers at this level will demonstrate:</p> <ul style="list-style-type: none"> <li>• knowledge of the UK Corporate Governance Code, Good Governance Code and any other relevant codes</li> <li>• an application of the codes to a charity</li> <li>• some attempt to consider the advantages and disadvantages of adopting any code.</li> </ul> <p>Answers may not specifically apply to the charity in question and would be less clear in considering the advantages and disadvantages; and not show that the Good Governance Code is the usual code adopted</p>

Level	Mark	Descriptor
<b>Level 3</b>	11–15	<p>Answers at this level will demonstrate:</p> <ul style="list-style-type: none"> <li>• an understanding of the UK Corporate Governance Code; Good Governance Code and any other relevant codes</li> <li>• an application of the codes to the charity in question, e.g. with reference to its size, legal form and nature</li> <li>• balanced arguments on the advantages and disadvantages of adopting the UK Corporate Governance Code (equal weight will be given to both the advantages and disadvantages)</li> <li>• balanced arguments on the advantages and disadvantages of adopting another Code (equal weight will be given to both the advantages and disadvantages)</li> <li>• a clear understanding that the Good Governance Code is the usual code adopted by charities, although the answer does not need to reach this conclusion, provided justifiable reasons are given in the answer.</li> </ul>

Question number	Indicative content	
18	<p>This question can be answered in a number of different ways. Whilst the indicative content is set out below; not all of this would need to be covered to achieve a good mark.</p> <p><b>Answers could include the following content.</b></p> <ul style="list-style-type: none"> <li>• Improvements around the administration of the meeting, e.g. where and when meetings are held, length of meetings, refreshments.</li> <li>• Frequency of meetings – whether less or more meetings per year would improve board performance.</li> <li>• Improvements to the information provided to the trustees – ensuring that there is adequate notice of meetings (including papers), clarity in the papers for meetings (including recommendations and decisions sought), background and history of the agenda items, board information needs and other ways of providing information.</li> <li>• Induction and training for trustees and skills audits of trustees.</li> <li>• Board performance review – implementation of agreed outcomes.</li> <li>• Code of conduct for trustees (or equivalent) – whether it is a good idea to have one.</li> <li>• Usefulness of role profiles for trustees and officers of the charity – terms of reference of the board, matters reserved for the board.</li> <li>• Board agreement regarding objects, vision and strategy, and the board understanding its own role in setting strategy.</li> <li>• Types of conflict that may arise and methods for dealing with conflict.</li> <li>• The impact of boardroom behaviour – importance of constructive challenge, ways of improving team behaviour.</li> <li>• The importance of trustees understanding their duties.</li> <li>• Explaining the role of the board in an organisation.</li> <li>• Importance of support for the board and chair.</li> <li>•</li> </ul>	
Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1</b>	1–5	<p>A few factors listed in the indicative content are described <b>or</b> one factor is discussed in some detail. The answer is likely to be in the form of a list. There is very little reference to things that Natalia could do to improve the workings of the board. There is no discussion and points made are superficial/generic and not applied/directly linked to the requirements of the question.</p> <p><b>Award up to a maximum of only 5 marks if the answer comprises a list of recalled knowledge on the topic and does not attempt to address the requirements of the question.</b></p>
<b>Level 2</b>	6–10	<p>Answers refer to some of the factors listed in the indicative content and will show some understanding of issues that affect boards and the things that can make them more effective, but will tend to list these rather than considering them in any depth. Answers will attempt to apply some of the indicative content to the requirements of the question, but links will be tenuous.</p> <p>There will be an emphasis on explaining suggestions rather than providing advice (the ‘what’ without the ‘how it can benefit’).</p> <p>Higher marks can be awarded at this level for reference to duties of trustees and how these may be affected by poor boardroom practice.</p>

Level	Mark	Descriptor
<b>Level 3</b>	11–15	<p>Answers show a detailed understanding of any of the indicative content which is clearly applied to the requirements of the question. Whilst answers may list a number of factors, they will clearly address the need to 'advise' and so will concentrate on a small number of changes that could be made, and will give fuller consideration of these.</p> <p>Higher marks can be awarded for demonstrating an understanding of the legal duties of trustees and how these may be affected by poor boardroom practice and for acknowledging the difficulties of changing boardroom behaviour.</p>

Question number	Indicative content	
19	<p>This question can be answered in a number of different ways. Whilst the indicative content is set out below; not all of this would need to be covered for a good mark to be achieved.</p> <p><b>Answers could include the following content.</b></p> <ul style="list-style-type: none"> <li>• This is a Charitable Incorporated Organisation (CIO), so various legal rules apply to it and to its trustees and members that don't apply to other legal forms of charity. For example, CIO trustees have a specific legal duty to apply the CIO's funds and assets to the CIO's charitable purposes, or it may be mentioned that if the trustees were to explore a merger with another charity, in order to make use of the funds raised to date and close down this charity (which is not sustainable), that merger might need to be with another CIO.</li> <li>• There is an absolute legal requirement for a charity to act within its own objects (charitable purposes).</li> <li>• The funds raised to date are restricted funds, i.e. raised for a particular purpose and therefore required by law to be used only for that purpose.</li> <li>• The limitations of the charitable purposes.</li> <li>• Public benefit issues including charging high fees for services, limited beneficiary group (the geographical limitation) and the private benefits issues (the commercial benefits to the business partner and its owners).</li> <li>• Trustees' duties and their correct discharge in the scenario outlined in the question.</li> <li>• This charity's objects specifically require it to advance arts education through building a new arts centre, for the benefit of local people. The consultant's recommendations would be likely to take the charity beyond those boundaries.</li> </ul> <p>To access to higher marks, answers would show some analysis of the scenario in the question with some application of legal principle.</p>	
Level	Mark	Descriptor
	0	No rewardable material.
<b>Level 1</b>	1–5	<p>A few factors listed in the indicative content are described <b>or</b> one factor is discussed in some detail. The answer is likely to be in the form of a list. There is very little reference to difficulties the trustees need to consider when reviewing the consultant's recommendations. There is no discussion and points made are superficial/generic and not applied/directly linked to the requirements of the question.</p> <p><b>Award up to a maximum of only 5 marks if the answer comprises a list of recalled knowledge on the topic and does not attempt to address the requirements of the question.</b></p>
<b>Level 2</b>	6–10	<p>Answers have applied some relevant legal principles to the situation in the scenario (more than just recall of knowledge, e.g. 'a charity must act within its own objects is recall, whereas 'a charity must act within its own object' demonstrates the understanding expected to gain marks at this level). However, there is little attempt at discussing the difficulties the trustees need to consider – the issues facing the trustees in bridging the funding gap are explained, but the difficulties they need to consider when specifically reviewing the consultant's recommendations are referred to superficially or not at all.</p>

Level	Mark	Descriptor
<b>Level 3</b>	11–15	Answers have discussed relevant legal principles to the situation in the scenario and the importance and implications of the charity being a CIO. There are detailed observations on what the key duties of trustees in this scenario are (i.e. not merely recite a list of trustee duties but show how they apply to the scenario in the question). The difficulties facing the trustees in the scenario are discussed in depth, clearly linking the issues they face in bridging the funding gap with the difficulties presented by the consultant's recommendations.