

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.

The Governance Hub's *Good Governance: A Code for the Voluntary and Community Sector*¹ states that:

'In all but the smallest of organisations, the Board will need to delegate part of its work to others in a clear, practical and legal manner. Delegations may be made to individual trustees, sub-committees, the chief executive, other staff, volunteers or agents and consultants.'²

The overall responsibility and liability for the actions of those managing the charity lies 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 in 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 Code of Good Governance 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.

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.

¹ *Good Governance: A Code for the Voluntary and Community Sector* 2005 can be downloaded from www.governancehub.org.uk.

² See section F4 of the Governance Code.

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 management of the charity, although executive 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> <ol style="list-style-type: none"> 1. Responsible for registering charity and providing further information, as requested, to the Charity Commission and Companies House where appropriate, or to advise if charity ceases to exist. 2. Approval of recommendations to change/amend the charity’s governing document, subject to the approval of the Charity Commission, and members where applicable. 3. 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. 4. Suspension of standing orders (by-laws). 	<ol style="list-style-type: none"> 1. Charities Act 1993⁴ s3B(1), s3B(3) 2. Charities Act 1993⁵ s3B(3), s74C(2), s74C(4), s74D(2), s74D(4), Code of Good Governance B1, C1(a), C2(a-h), C5, E13(a), (b), (c), F5, F7 3. Code of Good Governance B1, C1(a), C2(a-h), C5, E13(a), (b), (c), F5, F7

³ Further information on the role and duties of charity trustees can be found in ICSA Guidance Note 070613 – www.icsa.org.uk/index.php?option=com_content&task=view&id=461&Itemid=0.

⁴ As amended by the Charities Act 2006

⁵ As amended by the Charities Act 2006

<ol style="list-style-type: none"> 5. Alteration and amendment of standing orders (by-laws). 6. Ratify any urgent decisions taken by the chair and chief executive 7. Approve a scheme of delegation of powers from the board to sub-committees and their terms of reference. 8. 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. 9. Require and receive the declaration of interests of staff members that may conflict with those of the charity. 10. Approve arrangements for dealing with complaints. 11. Adopt/review/amend the organisational, management and control structures, processes and procedures required to further the aims of the charity's objects. 12. Receive reports from sub-committees, and agree/reject any recommendations presented to the board. 13. Establish/review/amend terms of reference and reporting arrangements of all sub-committees of the board, and any <i>ad hoc</i> committees. These could include the audit committee, the remuneration committee and the nomination committee, where appropriate. 14. Authorise use of the seal. 15. Ratify/reject instances of failure to comply with standing orders (by-laws). 	<p>7. Charities Act 1993 s82(1), Trustee Act 2000 s11(1), s11(3), Code of Good Governance C7</p> <p>11. Charities Act 1993 s50(1), s61(2), Code of Good Governance B1, C1(a), C2(a-h), C5, E13(a), (b), (c), F5, F7</p> <p>13. Code of Good Governance F8</p>
<p>Appointments/remuneration/discipline</p> <ol style="list-style-type: none"> 1. Nominate and elect a trustee to serve in the positions of chair, vice-chair and treasurer where appropriate.⁶ 2. Appoint and dismiss sub-committees and individual members of sub-committees that are accountable to the board. 3. Put in place effective procedures for the succession planning of the board. 	<p>1. Code of Good Governance E3, E5, E12</p> <p>3. Code of Good Governance E3</p>

⁶ 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.

<p>4. Appoint, appraise and dismiss the chief executive officer, where applicable.</p> <p>5. Appoint, appraise and dismiss the charity secretary, where applicable.</p> <p>6. 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>7. Agreeing procedures for the effective evaluation of the board and individual trustees, and sub-committees.</p> <p>8. 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>4. Code of Good Governance B1(e), D17</p> <p>5. Companies Act 2006⁷ s270(3)</p> <p>6. Code of Good Governance D17</p> <p>7. Code of Good Governance E1(a-d)</p> <p>8. Charities Act 1993⁸ s73A(4), s73B(1), s73B(2), Trustee Act 2000 s1(1)</p> <p>Nomination Committee recommendations</p>
<p>Strategic and budgetary matters</p> <p>1. Responsible for the overall management of the charity, ensuring compliance with the charity's objects and relevant legislation.</p> <p>2. Define and agree the strategic aims and objectives of the charity.</p> <p>3. 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>4. Apply charitable property to the furtherance of the charity's objects.</p> <p>5. Ensuring that trading and other activities do not compromise charitable status.</p> <p>6. 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>7. Approve/amend proposals for capital investment/expenditure, including the spending of capital from an endowment fund.</p>	<p>1. Charities Act 1993⁹ s14B(4), Code of Good Governance¹⁰ B1(a), B1(c), B1(d), B2, C1(b)</p> <p>2. Code of Good Governance B1</p> <p>3. Code of Good Governance B1(g)</p> <p>6. Code of Good Governance B1(f), B1(g), C6</p> <p>7. 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>

⁷ References to the Companies Act 2006 relate to the requirements of charitable companies

⁸ As amended by the Charities Act 2006

⁹ As amended by the Charities Act 2006

¹⁰ The full title is: *Good Governance: A Code for the Voluntary and Community Sector – Governance Hub 2005*

¹¹ As amended by the Charities Act 2006

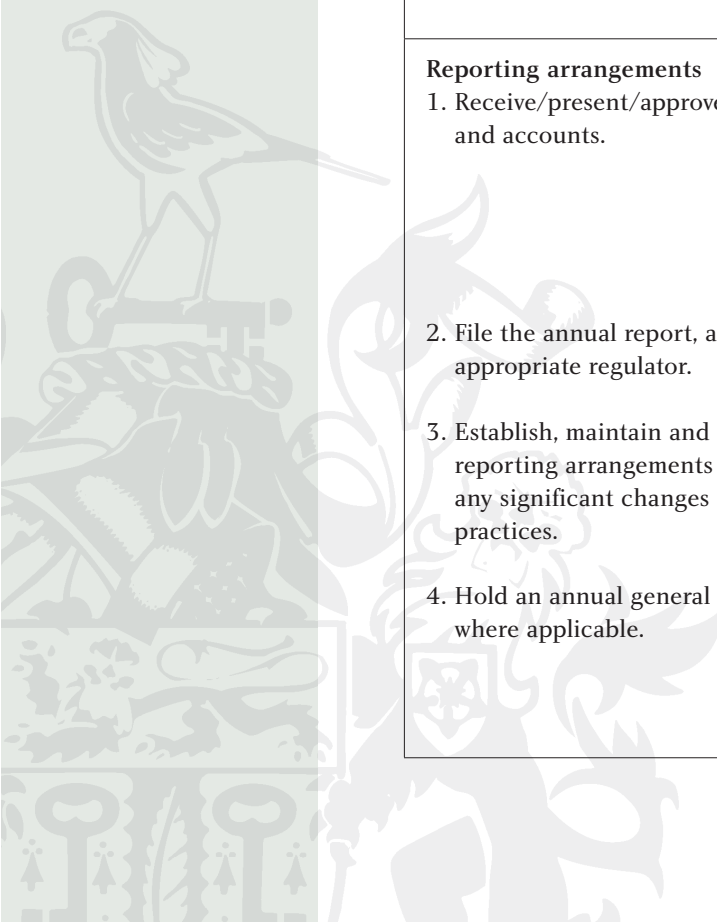
<p>8. Approve/amend budgets.</p> <p>9. Approve/reject proposals for the acquisition/disposal of land/buildings, or change in its use, following the receipt and consideration of professional guidance.</p> <p>10. Approve fundraising and income generation programmes, including funding applications, service delivery contracts and transfer of public collection certificates from one trustee to another.</p> <p>11. Agree and review investment strategy, in line with relevant policies.</p> <p>12. Decide on the number, purpose and mandates of bank accounts and other deposit media.</p> <p>13. Authorise delegated powers and limitations to the chief executive and other members of the senior management team, where appropriate.</p> <p>14. Decisions relating to court proceedings against or on behalf of the charity.</p> <p>15. Approval and appointment of the charity's professional advisers and consultants and to determine their remuneration.</p> <p>16. Approval of purchasing Trustee Indemnity Insurance from charity funds.</p> <p>17. Approve the transfer of charity property to another charity with substantially similar objects.</p> <p>18. Agree changes to the charity's pension scheme or the management of its funds.</p>	<p>8. Code of Good Governance B1(b)</p> <p>9. Charities Act 1993 s36(3), s36(5), Code of Good Governance B1(g)</p> <p>10. Charities Act 1993¹² s55(3), Code of Good Governance B1(g)</p> <p>11. Trustee Act 2000 s4(1), s5(1), s5(2), s11(3), s15(3), Code of Good Governance B1(g)</p> <p>12. Code of Good Governance B1(g)</p> <p>15. Code of Good Governance D8</p> <p>16. Charities Act 1993¹³ s73B(1), s73B(4), s73F(5), Trustee Act 2000 s1(1)</p> <p>17. 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; 	<p>Trustee Act 2000 s15(3), Code of Good Governance B1(b), B1(g), C3, C14</p>

¹² As amended by the Charities Act 2006

¹³ As amended by the Charities Act 2006

¹⁴ As amended by the Charities Act 2006

<ul style="list-style-type: none"> • complaints policy; • treasury and investments policy; • reserves policy; • whistleblowing policy; • risk management policy; • corporate social responsibility; • conflicts of interest policy; • communications/PR policy; and • equal opportunities policy. 	
<p>Audit arrangements</p> <ol style="list-style-type: none"> 1. Consideration of the external auditors, in line with legal requirements and those of the charity's governing document. 2. Approval of remuneration of external auditors, their re-appointment or removal, in line with legislation and the requirements of the charity's governing document. 3. 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. 4. Receive and note reports from the internal audit function and agree remedial action, where appropriate. 	<p>2. Companies Act 2006 s485</p> <p>Code of Good Governance C1(c), C5 Audit Committee recommendations</p>
<p>Reporting arrangements</p> <ol style="list-style-type: none"> 1. Receive/present/approve the charity's annual report and accounts. 2. File the annual report, accounts and SIR with the appropriate regulator. 3. Establish, maintain and retain appropriate financial reporting arrangements and records and approve any significant changes in accounting policies or practices. 4. Hold an annual general meeting for members, where applicable. 	<ol style="list-style-type: none"> 1. Charities Act 1993 s45(1), Companies Act 2006 s414, s415, s433, s444(6), s445(5), s450, Code of Good Governance C1(b), C5, H4 2. Code of Good Governance C1(b), H4 3. Charities Act 1993 s41(1), s41(3), s42(4), Companies Act 2006 s386, Code of Good Governance C1(c) 4. Code of Good Governance H6 <p>Audit Committee recommendations</p>



<p>Monitoring</p> <ol style="list-style-type: none"> 1. Receive and review such reports as the board requires from the sub-committees and individuals with regard to the use of such delegated powers. 2. 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. 3. Receive and review reports from the finance function on the financial performance of the charity against agreed budgets and strategy. 4. Receive and review reports from the chief executive pertaining to meeting the charity's goals as agreed in the strategic and business plans. 	<ol style="list-style-type: none"> 1. Code of Good Governance B1(f), F, F5, F7, F9(a-c) 2. Code of Good Governance B1(b), B1(g) 3. Code of Good Governance B1(b) 4. Code of Good Governance B1(b), E13(a), (b), (c)
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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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