Charity governance code 2017: what next for trustees?

The launch of the new Charity Governance Code 2017 introduces a number of significant governance changes for trustees and charities, with a focus on regular performance reviews of boards, trading subsidiaries and tight controls on length of service of trustees, explains Judith Miller, partner at Sayer Vincent

4 Oct 2017

Judith Miller
Partner, Sayer Vincent
View profile and articles. (/judith-miller)

The new code is about 'stretch' and that's intentional. The refreshed Charity Governance Code for the sector issued in July replaces the Code of Good Governance. This is the third version of the code, which is now in its 12th year.

Effective governance enables the delivery of a charity's objectives and creates the environment for success. While the responsibilities of trustees have not changed fundamentally, the external environment has become more challenging and critical.

Many commentators are looking for greater awareness of an appropriate tone at the top of organisations filtering throughout, including improved risk management, the ability to demonstrate the impact of your work and greater diversity and challenge from within your governance structure.

The starting point for charity trustees is CC3 The Essential Trustee published by the Charity Commission. While CC3 sets out the legal requirements surrounding the duties of trustees, the Code is different.

Principles and recommended practice

The intention is that it sets out a set of 'principles and recommended practice'. Compliance with the Code is not a legal or regulatory requirement, rather it is there to guide and support trustees to work towards best practice in charity governance.

As a result, the message is 'apply' or 'explain', rather than 'comply' or 'explain' as in other codes. So, the message is focused on continuous improvement. Boards should periodically check how they are doing against the Code, pushing to improve their standard of governance over time.

Proportionality is important too. Given the fact charities vary in size and complexity, what is right for one charity may not be right for another. This is in part recognised through the publication of two Codes – one for larger and one for smaller charities. A larger charity is one that is audited and typically with an income of over £1m.

Why was the Code refreshed and who was involved?

The cross-sector steering group, chaired by Rosie Chapman, was made up of six organisations, representing the Association of Chief Executives of Voluntary Organisations (ACEVO), Association of Chairs, ICSA: The Governance Institute, NCVO Charities Evaluation Services, Small Charities Coalition and the Wales Council for Voluntary Action (WCVA).

Originally published in 2005, the previous version of the Code was last updated in 2010. During the last decade many have been critical of charity governance and there have been the obvious high-profile cases populating headlines from time to time.

The original draft was issued in November 2016 during Trustee Week, with the consultation period open until early February 2017.

At its launch in July this year, Chapman said of the Code that, 'for the first time it sets out clear aspirations for a charity board to meet… it will be an essential tool for charities to use and will greatly assist them to develop and grow in their effectiveness'.

> *Good governance is no longer an optional extra. It's essential to charities' effectiveness and probably to their survival too'*

The Charity Commission, an observer of the Steering Group, has endorsed the new Code and withdrawn its own Hallmarks of an Effective Charity and is signposting organisations to the Code. It also said at the time of the launch of the Code that 'good governance is no longer an optional extra. It's essential to charities' effectiveness and probably to their survival too'.

How is the Code structured?

The Code has been repositioned as a tool with an underlying assumption and seven principles. Each of the seven principles has a brief description and then you have the why and the what – the rationale, key outcomes and recommended practices.

The underlying assumption is the foundation of good governance. As you might expect this focuses on trustees knowing and understanding their roles and responsibilities with a commitment to good governance and continuous improvement. This runs in parallel with the need for trustees to be committed to effective delivery of public benefit.

The seven principles are set out below with some key questions boards should ask themselves:

1. Organisational purpose – are we clear about our aims? How well do we understand our operating environment? Is our business model sustainable? How do we know we are making a difference?

2. Leadership – are we providing strategic leadership? Do our values underpin everything we do?

3. Integrity – are we acting in line with our values? Are we sufficiently independent in our decision-making and not unduly influenced by any personal interests? Are we safeguarding and promoting the reputation of the charity?

4. Decision-making, risk and control – how well do we make decisions? Are we adequately informed, do we consider our options and decisions sufficiently rigorous? Do we delegate well? Might our board be too risk averse and over-cautious? Could this be a risk in itself? Are we focused on strategic risk rather than day to day operational risk?

5. Board effectiveness – are we a well-balanced board which works as a team? Does our board recruitment process work for us? Do we consider development needs of trustees and review performance?

6. Diversity – are we sufficiently diverse? Do we think different backgrounds, different skills and consider diversity of thought too?

7. Openness – do we lead in a way that is transparent?

Key changes

At the heart of effective governance are behaviours, attitudes, values and culture. For this reason, it is vital that the Code comes alive within organisations, with active discussion and debate, rather than taking a tick box approach to review.

It is also vital to remember that a once effective governance framework may no longer be appropriate if you are at a different stage in your life as a charity.

As well as one size not fitting all charities, one size will not fit you for all time.

Significant changes

The more notable changes are that:

- you are expected to review the performance of the board and individual trustees annually, and that every three years this is performed by an external evaluator in the case of larger charities;
- where a group exists, the rationale, benefits and risks of the arrangements with trading subsidiaries is set out and that this is reviewed regularly;
- trustees are not expected to serve more than nine years unless there is good reason; and
- as well as auditing skills, you should address experience and diversity in all its forms and recruitment should be designed to address any gaps.

The Code also contains a couple of timely reminders in principle 1 on organisation purpose.

Firstly, that trustees should consider the benefits and risks of partnership working, merger or dissolution where others are fulfilling similar charitable purposes more effectively and/or where your charity's viability is uncertain.

Secondly that boards need to evaluate the impact the charity is having by measuring and assessing results, outputs and outcomes.

What next?

If you have not done so already circulate it among the board and set a date to review your own next steps.

At a glance: the Charity Governance Code key factors

- designed as a tool;
- intended to be aspirational;
- expected trustee board will revisit and reflect on the Code periodically;
- about stretch and continuous improvement;
- about proportionality;
- about having an annual review; and
- not a regulatory requirement.

Five to do's

- assess how you are doing against each principle and identify gaps;
- prioritise improvements for action;
- explain how you are reviewing your governance in your annual report;
- set the date for your next annual review against the code; and
- include the Code as well as CC3 The Essential Trustee in your induction pack.

The code can be found at www.charitygovernancecode.org (http://www.charitygovernancecode.org/).

About the author

Judith Miller is a partner at charity specialists Sayer Vincent (http://www.sayervincent.co.uk)