



Dear Reader

I simply cannot resist scoring a cheap and obvious point. After years of being told that voluntary and community organisations need to sort out their governance we are first plunged into crisis by the complete failure of governance of the financial markets and then we witness the debacle of Parliament's inability to govern itself with MPs scrambling to pay back money they should not have claimed. Who needs to sort out their governance now?

ARVAC's Governance Pages are 3 years old and we are going to celebrate their success in June. They were funded by the Big Lottery Fund to draw on the various studies into governance and small organisations that took place at the turn of the century and to present the findings as straightforward information to those on the management committees of small

voluntary organisations. The aim was to present complex information in a clear and accessible way in response to a need for those governing small organisations to have equal access to governance resources as those governing larger organisations. Should we suggest that ARVAC offers its services too to the City and to Westminster? Maybe not.

Unfortunately this is no time to gloat.

This issue of the bulletin is dedicated to exploring where we have got to in the last three years and to looking to the future of governance in the voluntary and community sector and its effects on small organisations. It hears from four contributors with differing views and unintentionally also turns out to be advertising the latest report of New Philanthropy Capital.

According to Kevin Nunan the picture is not good. He argues strenuously that power is shifting away

from trustees when it matters most and support is lacking where it is most needed.

In her contribution Anne Moynihan reminds us that one size still does not fit all but that this advice may not yet be heeded sufficiently by policy makers and funders. Karen Heenan's contribution is making the case for the Charity Trustee Network and James Sinclair Taylor provides another piece of the jigsaw by making sense of recent changes to the Companies Act explaining their impact on charities.

Voluntary and community organisations are facing grim times and ARVAC's support for them, with governance as with training, by leading the debate and with all our other work can only be strong if it has your support.

Thank you.

Jurgen Grotz
(editor)

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Kevin Nunan

SUPPORTING EFFECTIVE CHECKS AND BALANCES

Another survey of governance has just been published by New Philanthropy Capital, concluding with very similar recommendations to earlier reports (e.g. On Trust, 1993; Juggling on a Unicycle, 2000; Lighter Touch 2002) that resources are needed for support to trustees, opportunities for reflection and self assessment are valuable and should be resourced by funders and that learning from each other is important.

You might conclude that what is needed is not more surveys but some research on why the same messages, so consistently stated, are consistently not acted upon. There has been a recent opportunity to get this right, first with the Governance Hub, then Future Builders, Capacity Builders, the Big Lottery Fund's Basis and now the Governance and Leadership Programme.

Initially things looked promising. In 2002 the Active Communities Unit of the Home Office decided to develop an evidence-based national strategy for the forthcoming Governance Hub and commissioned a range of projects on governance and small organisations. The results, summarised by Ben Cairns in 'A Summary of the ACU's Pilot Studies of Governance Support for Small Voluntary and Community Organisations' informed the strategy that was taken forward by the Governance Hub. Imperfect as it was, lumbered with the Code of Governance as a legacy project from NCVO and tasked with developing

the National Occupational Standards for Trustees as a reflection of the national obsession with "workforce skills", it now seems like a high water mark of Governance Development.

Capacity Builders and Basis schemes have drifted towards 'projectitis'. Many of the minor projects given the go ahead either do not reflect or actually fly in the face of the oft-repeated litany of recommendations from earlier reports. There is little attempt at national consistency. The Governance Hub may have had its critics but at least it involved the 'small' sector - where 90% of trustees (by number) are to be found. When the Hub was killed off the only infrastructure organisation for and of trustees, Charity Trustee Networks, found itself usurped by the Chief Executives' professional body the Association of Chief Executives of Voluntary Organisations (ACEVO) as the Hub died and transmogrified into a "programme" with "leadership" taking equal billing with "governance". All this, despite almost three quarters of a million pounds having already been sunk into a Third Sector Leadership Centre, which made little attempt to disguise the NCVO/ACEVO view that leadership was the role of the managers; of their ambassadors only one was a trustee, with the rest being exclusively senior managers. Their message was clear, although the project ended in fiasco when the plug was pulled on the Centre amid in-fighting.

Governance Pages

www.governancepages.org.uk

Management hegemony is the well known theory of the accumulation of all power by managers at the expense of owners/ stakeholders and the board. Now, daily we listen to hand wringing on the radio as shareholders, regulators and the public find they can do little to rein in the managers. In such a climate Chief Executives find it all too easy to approve substantial membership payments to their own professional association out of their organisations' coffers (as staff unions look on enviously) while doing little to resource their own boards. The membership income of ACEVO and CTN (and hence their ability to support those members) stand in stark witness to this fact. If a central plank of good governance is a system of checks and balances to ensure accountability, then it follows that there should be a balance of power and hence a balance of resourcing of support. No, the third sector won't be bringing down the world economy, but a similar trend of weakened non-executives unable to hold executives to account will, in its own modest way, inexorably undermine trust and confidence in our sector as well.

The brief hopes of consistent support for governance are fading. As we mark the third anniversary of Governance Pages it is

timely that this survey of governance has been published by New Philanthropy Capital. Governance Pages came from a desire to act on those surveys of governance that emerge from time to time and to do something for the 90% of trustees who will not be best served by talk of 'leadership'. Even talk of 'performance' is irrelevant, being the luxury of a tiny minority of governing bodies. For most trustees the question is about 'function'; 'what do we do?' and 'how do we do it?'. Governance Pages is a modest endeavour to address those questions. Governance surveys seem destined to be marked out as the most consistent, yet the most consistently ignored, research in the third sector. It would be nice to think that there will be action following this latest survey. Funders need to see the executives and non executives as two halves of a system of checks and balances that ensures accountability and allocate resources to support and development accordingly.

Kevin Nunan is the developer and administrator of ARVAC's Governance Pages Project

Governance Pages

www.governancepages.org.uk

Anne Moynihan

GOVERNANCE — DOES ONE SIZE FIT ALL?

The National Council for Voluntary Organisations (NCVO), as the lead agency for the National Support Services, leadership and governance workstream, is seeking to ensure that *'policy makers, funders, infrastructure organisations and support providers will be more aware of the need for governance systems and regulation proportionate to the size and needs of the organisation'*. As a first step, NCVO commissioned Compass Partnership to:

- Review previous work and current thinking on proportionate governance paying particular attention to the needs of smaller voluntary and community sector organisations;
- Gather the views of a small number of stakeholders on emerging thinking;
- Submit a report that could be used as the basis for consultation with a wider group of interested parties.

This article summarises the findings from the draft, Proportionate Governance Report which is currently out for consultation.

Background

Concerns about the governance of voluntary and community organisations (VCOs) increased during the 1990's and in 1992 NCVO, in partnership with the Charity Commission, published a report, *On Trust*, which looked specifically at the training and support needs of trustees. The wider impact of the report was that it initiated the debate about the need for good governance to ensure the efficiency, effectiveness and accountability of VCOs.

Since the 1990's the advice and information on governance that is available to VCOs has increased dramatically. There is now a large volume of good practice guides, codes, model documents, tools and standards produced for sector organisations and those that support them. During this time it has also become accepted wisdom that all voluntary and community organisations should have good governance. However, much of the material that has been produced, is arguably, more suitable for medium and large sized organisations. This is in part because much of the material assumes that the models of governance apply to organisations of all sizes, all of the time.

The problem that is created for smaller organisations is that it is hard to argue against the new expectations of governance. However, taken together these expectations of governance are not appropriate for organisations of all sizes and are often seen as a distraction from what the organisation is striving to achieve.

This problem is exacerbated further by the fact that some funders and infrastructure bodies expect, albeit sometimes implicitly, that all organisations should have the same high standards and practices of governance. There is therefore a real danger that they have inappropriate/disproportionate expectations of smaller organisations.

While the concept of proportionate governance has been identified and analysed by other writers, there is still much work to be done to establish more precisely what proportionate governance means in practice.

What is meant by proportionate governance?

Proportionate governance needs to be seen within the context of how governance (overseeing) and management (doing) become separated as an organisation grows and evolves.

When organisations are small there is often no distinction between the 'doing' and 'overseeing/governing'. As organisations undertake more activities and appoint staff the roles and balance of responsibilities change. The people with overall control spend less time doing and more time setting the direction of travel and overseeing what is being done.

The roles and tasks of governance are not necessarily any less onerous as organisations grow, but they do become more specialised. Governance becomes an increasingly distinct function and organisations have to ensure that they make resources available to deliver what is required. The larger an organisation becomes the more it should be expected to model and embrace best practice.

The views of other authorities

- The recent review by nfpSynergy of Good Governance: a code for the voluntary and community sector (the Code) states – ‘The language and style of the Code need to be more accessible’ and ‘Smaller organisations in particular struggled with the resources that need to be put into governance and busy trustees of small organisations often saw governance as a luxury and not a necessity’;
- The Charity Commission recognise the concept and seeks to be a ‘proportionate’ regulator;
- New Philanthropy Capital in their review of charity trusteeship, Board matters (May 2009) states – ‘A large, national charity with many government contracts such as Action for Children should be governed in a very different way to a smaller medical charity that raises much of its income from donations.’
- The Government is seeking ‘to reduce the regulatory burden for charities and their trustees’ (Government Response – Financial Thresholds in the Charities Acts – Proposals for Change);

Analysis of our findings

- Most organisations need and benefit from governance because the very act of doing something creates accountability;
- Proportionate governance is about recognising the benefits of meeting requirements for organisations of different sizes or working in different fields or in different ways;
- The concept of proportionate governance and in particular proportionate regulation is accepted widely;
- As organisations develop they reach thresholds that trigger opportunities to benefit from improving governance and additional requirements to be accountable to stakeholders;
- The need for proportionate governance is growing as the governance requirements of larger organisations become better defined;
- Less accountability, which is often seen as the flip side of proportionate governance, is not universally welcomed;

- Advice on governance of smaller organisations tends to be too prescriptive;
- There is a danger that funders, regulators and organisations and individuals promoting good governance do not recognise the need for proportionate governance.

Application of proportionate governance

The notion of proportionate governance is clear and the need for it is recognised. The challenge is how to apply it in practice.

Our research would suggest that there are at least three possible approaches to the application of proportionate governance:

- A simple approach based on thinking through six questions relating to the key elements of governance;
- A grid approach which recognises the fact that as organisations grow they reach thresholds which trigger requirements for more sophisticated governance systems and practices;
- A risk-based approach, identifying governance requirements in proportion to the risks an organisation may face.

Next steps

NCVO is seeking to consult with a broad range of organisations and individuals on the best ways in which proportionate governance can be applied in a practical way. Once we have clarified the approach/s that need to be pursued, in line with feedback received, we will seek to get endorsement from organisations such as – the Charity Commission, Government, Local Government Association, the Association of Charitable Foundations and other infrastructure/ umbrella bodies.

If you would like a copy of the draft report and/ or would like to make a contribution to the debate please email anne.moynihan@ncvo-vol.org.uk.

Anne Moynihan is Head of Governance and Leadership at the National Council for Voluntary Organisations (NCVO).

Karen Heenan

THE FUTURE OF TRUSTEE SUPPORT

New Philanthropy Capital has just published their report, *Board Matters: A review of charity trusteeship in the UK*,⁽¹⁾ which questions the strength of trustee boards in the charity sector and argues that recruitment, training and evaluation of board members is frequently neglected because charities and funders do not prioritise governance.

One of their key recommendations is that there is a need for a body that is responsible for trusteeship, which could co-ordinate efforts to improve standards, put information about charity governance in one, accessible place and encourage networking.

Charity Trustee Networks is the national charity for trustees. We were established over ten years ago by a group of trustees of other charities, who recognised the value of coming together to share learning and experience. Our aim is to be trustee-led, offering the support that trustees want in the ways that they want it – in short, a ‘bottom up’ approach to supporting trustees. We do this primarily through providing information, signposting and networking opportunities to trustees, through face-to-face and online networks, our website at www.trusteenet.org.uk and e-newsletters.

Our principal beneficiaries are the trustees and management committee members of voluntary and community organisations, small and large, across the country. Through the support we offer to trustees, it is our aim to raise the standards of governance across the sector.

The value of networking

What we hear from trustees is that they value support from each other. We recognise the huge pool of skills, experience and expertise amongst existing trustees and the more that this can be shared with others, the better. It is a simple idea and it works.

The effectiveness of networking has been evidenced in our Independent Evaluation of Trustee Networks⁽²⁾, which found that 4 out of 5 respondents who had attended a trustee network reported that their ability to govern their organisa-

tion has improved through this experience. They identified that the benefits of networking improved their:

- understanding of charities
- network of contacts, and
- knowledge of legal responsibilities.

The research found that network membership helped trustees keep up to date by discussing key issues with colleagues in a way that was ‘safe’, relevant and practical. One third of respondents described concrete changes that they had brought about as a result of their networking experience, including creating a trustee pack, introducing an appraisal system for the CEO and introducing a quality system.

One trustee described their experience of participating in a network as being “very helpful in terms of personal support and in what I have learnt. It is good to talk to other people who have been through a particular situation and learn from their experience. I now feel much more confident if I have a point to make, as well as more informed”.

Kumar and Nunan⁽³⁾ described the importance of networking for trustees of small organisations as important for three reasons. First, they did not feel so isolated and unsupported. Secondly, learning was reinforced by peers. Thirdly, individual learning had a wider impact through the participants’ own networks.

What is important, too, is that encouraging the sharing of learning between trustees is cost-effective and sustainable.

⁽¹⁾ Board Matters: A review of charity trusteeship in the UK – Belinda Vernon, Eleanor Stringer, New Philanthropy Capital, May 2009

⁽²⁾ An Evaluation of Effectiveness – Joy MacKeith, 2003, Charity Trustee Networks

⁽³⁾ Kumar and Nunan, A Lighter Touch: An evaluation of the Governance Project, 2002, Voluntary Action Camden

The value of collaboration

With well over a million trustees and management committee members across the country, local infrastructure organisations play a vital role in delivering support for trustees in their area. Local Councils for Voluntary Service host networks and networking events for trustees. Volunteer Centres broker trustee placements.

We recently led a piece of work on the development of a collaborative trustee support strategy for national infrastructure organisations, entitled “Supporting Trustees Together”. We worked with six partners, including ACRE, Age Concern England, Directory of Social Change, Citizens Advice, NAVCA and YMCA England and, together, we identified areas where we could avoid duplication of effort, share expertise and build capacity, thereby raising the standards of governance across member organisations. With core support structures shared, sub-sectoral infrastructure organisations and umbrella bodies can then tailor that support for the trustees in their own sector. We are currently seeking funding to take this work forwards.

The value of being a trustee

Knowing that there is support available might be one of the factors that could help to influence people to become a trustee. The New Philanthropy Capital report identifies the need to raise the profile of and interest in trusteeship, especially with young people.

In response to this need, CTN is on a mission to tell people about the positive aspects of being a trustee – arising from a survey of 200 trustees. A significant majority of those surveyed said that they had acquired new skills or developed existing skills, met people from different backgrounds, gained in-

sights into other areas of life and made new friends. Over 97% said that their skills and experiences had been valued and nearly 90% that it had helped them with their personal and career development. This last statistic might be particularly important in highlighting the benefit of trusteeship to young people.

As a free service to its member trustees, CTN also offers advertising of trustee vacancies through www.trusteefinder.org.uk, which builds on the excellent work that is done in capturing trustee vacancies by Volunteer Centres across the country and logging them on the national volunteering database, powered by www.do-it.org.uk. CTN is working with partners across the sector to co-ordinate and develop trustee recruitment systems and to promote trusteeship, with the aim of bringing new skills and experiences to boards.

The value of CTN

It is our belief that trustee support needs to be joined up. CTN is well-established as the lead organisation for trustees. We want to ensure the effectiveness of organisations across the sector through encouraging the appointment of the right trustees, with the right support, working in the right policy and governance framework. This is our role and we are confident that our work will meet the need that is highlighted by New Philanthropy Capital in their report.

Karen Heenan is Chief Executive of Charity Trustee Networks

James Sinclair Taylor

GOVERNANCE CHANGE FOR CHARITIES - IMPLICATIONS OF THE COMPANIES ACT 2006

The Companies Act 2006 was drafted with simplifying company law in mind. Whilst this may have been achieved on paper, in practice charitable companies now find themselves having to re-examine their Memorandum and Articles of Association and their supporting governance policies because:

- Director's duties have been codified;
- A charity's governing document may now be at odds with current law;
- There are new rules on conflicts of interest; and
- Charities can now take advantage of de-regulations.

Directors' duties

The 2006 Act codifies the duties of directors (and therefore the duties of all charitable company trustees). They include a duty to:

- Act within the company's powers;
- Exercise independent judgement;
- Exercise reasonable care, skill and diligence;
- Avoid conflicts of interest; and
- Not accept benefits from third parties resulting from being a director or doing or not doing anything as a director.

For a charitable company, directors must also act in the way in which a director considers in good faith would be most likely to achieve the company's purposes. When exercising this duty, directors must have regard to:

- The likely long-term consequences of any decision;
- The interests of the employees;
- The need to foster business relations with suppliers, customers and others;
- The impact of operations on the community and the environment;

- The desirability of maintaining a reputation for high standards of business conduct; and
- The need to act fairly as between members of the company.

Directors of charitable companies must be aware of these statutory duties, however the government has maintained that this list of factors should not lead to "box-ticking" exercises or intricate minute taking at board meetings.

Conflicts of interest

A director or trustee of a charitable company has a duty to avoid conflicts of interest. A difficulty can arise where a trustee of charity 'A' is also a trustee of charity 'B' and both charities carry out similar work. The trustee may become aware of an opportunity as a result of being a trustee of charity A, which would also be important or beneficial to charity B. The trustee then faces a conflict of interest. Similar conflicts may arise with a trustee's other activities. This is prevalent where organisations such as local authorities appoint trustees to a charity's board.

The 2006 Act allows a company director to declare such a conflict and the other directors of the company to pass a resolution to authorise it. Regrettably for charitable companies, the Act requires that directors may only authorise such a conflict if there is a provision allowing them to do so in their Articles; such provision is rarely found unless the Articles have been updated since the arrival of the 2006 Act.

Provisions in the Memorandum dealing with conflicts between a charity and potential personal benefits to a trustee will not cover the sort of conflict of interest outlined above.

In proposed or existing transactions or arrangements the company must declare the nature and extent of any director's direct or indirect interest. Directors may make the declaration at a Board meeting or by written notice sent to the other directors, such as through a Register of Interests (provided it is worded appropriately).

Whilst 'indirect interest' remains undefined, it includes interests to people connected with directors including:

- A partner with whom the director lives in an enduring family relationship; and
- Children, including step-children.

Confusingly, this list of connected persons is not the same as that used in the Charities Act 1993.

Taking advantage of deregulation

- Notice periods for general meetings:
Required notice is now 14 days, but this relaxation is only available if the company's Articles correspond.
- Annual general meetings:
Companies are no longer required to hold AGMs unless the company's Articles require it. Any company that dispenses with AGMs will need to consider the impact on trustee elections.
- Accounts:
It is no longer compulsory to present the company's accounts and reports to the members at a general meeting. This change only applies to accounts and reports for financial years ending on or after 1 October 2007.

Governing Document or Statute?

Charities may now have provisions in their Articles that contradict, or are overruled by, aspects of the 2006 Act which can cause a lot of confusion including:

(i) Proxy voting for all

Before the 2006 Act, many charitable companies excluded proxy voting for members. Since October 2007 all charitable companies limited by guarantee

must allow proxy voting. It is a punishable offence not to notify members in the notice of a meeting of their right to vote by proxy.

(ii) Written resolutions

Members can now pass most resolutions in writing by obtaining 75% approval of members for special resolutions or more than 50% for ordinary resolutions. Before the law changed, 100% approval was required. This change in the law will apply irrespective of what a charity's Articles say.

Governance policies

Organisations should have a job description for trustees which should now include explicit reference to the statutory duties. Charities will also need Codes of Conduct and associated Register of Interests to put in place formal procedures. These will act as reminders to put the Register of Interest before board meetings at least once a year, ensuring conflicts and potential conflicts are identified and handled appropriately.

Payments

The Charities Act 2006 allows payments to trustees for services provided if not prohibited by the Memorandum and Articles. If a charity utilises this provision, it will also need to observe the 2006 Act which requires copies of all directors' service contracts to be available for inspection and for members to attend and take copies of such contracts.

Recommendations

The 2006 Act liberalises the requirements placed on charities. Charitable companies must now review their Memorandum and Articles to ensure it is an accurate reflection of the law and they are in a position to take advantage of these changes.

This article is not intended to be a full and complete description of the law and is not intended to be a substitute for legal advice.

James Sinclair Taylor is Head of the Charity Team at Russell-Cooke LLP.



INVITATION

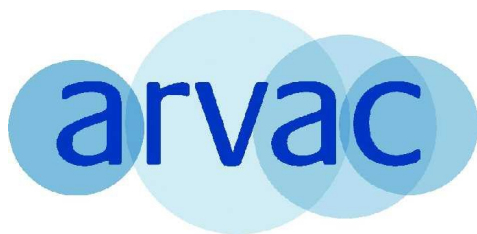
You are cordially invited to join us at the Diana, Princess of Wales Memorial Fund to celebrate three years of ARVAC's Governance pages, hear from invited speakers about the impact of new legislation on the governance of small organisations and network with peers who share your interest in governance and small organisations.

Date: Tuesday, June 09, 2009 from 3:00 PM - 5:00 PM (GMT)

Location: The Diana, Princess of Wales Memorial Fund County Hall
Westminster Bridge Road

To book your place (only 50 are available) please follow this link:
<http://governancepages-emailinvite.eventbrite.com>

For queries contact: Dawn.standley@uea.ac.uk



School of Business and Social Sciences
Roehampton University,
Southlands College
80 Roehampton Lane,
London SW15 5SL

promoting effective community action
through research

About ARVAC

ARVAC (The Association for Research in the Voluntary and Community Sector) was established in 1978. It is a membership organisation and acts as a resource for people interested in research in or on community organisations.

We believe that voluntary and community organisations play a vital role in creating and sustaining healthy communities, and that research plays an essential role in increasing the effectiveness of those organisations involved in voluntary and community action.

We want to hear from you:

Please send us:

- News items
- Details of new publications, resources or websites
- Information about research in progress
- Meetings or events you would like us to publicise
- Comments or opinion pieces you would like to share with other ARVAC members

by e-mail to
j.grotz@roehampton.ac.uk