

TURCAN CONNELL



# GOVERNANCE HEALTH CHECK

FOR CHAIRS

*Use this document as a tool to generate a conversation around governance and review your charity's procedures and processes.*

## Chair's Governance Health Check

### Background

As part of Turcan Connell's role as an ACOSVO Strategic Partner and our commitment to its members and its Chair's Network, together we have created this 'Governance Health Check'. Members of ACOSVO and/or Chair's Network Scotland are encouraged to use this document as a tool to generate a conversation around governance and review your charity's procedures and processes.

To ensure maximum impact and output, we recommend that this Health Check be used in conjunction with Scotland's Third Sector Governance Forum's [Governance Code](#). The Code was created for Scotland's third sector, by Scotland's third sector and is an excellent resource for all matters governance. Other useful resources include the Office of the Scottish Charity Regulator's (OSCR) guidance on [Good Practice for Charity Trustees](#) and Scottish Council for Voluntary Organisations' (SCVO) [Good Governance Checkup](#). Where appropriate, other links have been included below to external resources.

### Templates and how to use them

**Appendix 1: Good Governance Checklist** – this is the “health check” document. It doesn't contain any answers: instead, it poses a series of questions (not all of which will be relevant to your charity) to help explore areas where there might be further thought given. Sometimes this can flush out areas where extra advice is needed too, but often it simply creates a list of areas for further internal reflection and discussion, or flags areas for potential change and improvement.

**Appendix 2: Governance Perception Questionnaire** – this can be a useful tool to capture perceptions on how the trustees are functioning. This is not about right or wrong answers but is a way to take a measure of current perceptions. The results can be collated and then used as a tool either to reassure the trustees or to flag up action points for exploration later. It is recommended that all answers are given anonymously and whoever is collating the results does not attribute answers to any individual.

Where the templates refer to **trustees**, you should read that as meaning whoever fills the role of charity trustees in your organisation (e.g. directors, committee members etc).

### Next Steps

Once you have used the templates, the results can be used to create a governance report. Depending on the outcome, this report can be used to evidence good governance (and reviewed regularly) or it can be used to flag up areas where further work and investigation are required.

Turcan Connell's Charity Law Team would be happy to have a brief initial discussion with any ACOSVO members who have used the health check to discuss potential next steps, from pointing them in the direction of free resources they might find useful, to providing a quote for more significant legal advice. Further information on Turcan Connell and how to contact us can be found [here](#).

## Appendix 1 – Good Governance Checklist

The purpose of this checklist is to prompt charities to consider areas where they are or are not meeting their legal duties and/or engaging in best practice. In each case, the best way to answer each question is with an explanation or by referring to supporting papers and not simply to answer yes or no: the process should be more than a tick-box exercise.

### (1) Board of Trustees

- a. Is there a clear strategy in place setting out the purpose and direction of the charity and do the trustees know about it and understand it?
- b. Is the Board of an appropriate size?
- c. What does the constitution say about minimum and maximum numbers of trustees, and does the Board comply with the constitution? Is there flexibility within the constitution to change the number of trustees if that is required?
- d. How many trustees must be present for a meeting to be quorate and is there flexibility to change this if the number of trustees changes? Is a quorum regularly achieved and, if not, why not?
- e. Are Board meetings scheduled well in advance and properly conducted? Is effective notice given to all trustees?
- f. Are Board meetings fully minuted and are Minutes circulated promptly after the meetings?
- g. Does the Board reflect a good balance of skills, knowledge and experience?
- h. Is there an induction process or programme for new trustees?
- i. Is there a periodic review conducted with each trustee?
- j. Are there rotation and tenure arrangements in place for trustees? Do similar tenure and rotation arrangements exist for any Chair or other office-holders appointed?
- k. Have you recently reviewed the format for Board meetings including the information provided to trustees?
- l. Is there a code of conduct for trustees?
- m. Have the trustees a real understanding of risk assessment issues? What steps have been taken to formulate a risk register and is the risk register up to date?
- n. Does the Board regularly discuss financial management with the auditors?
- o. What steps have been taken to ensure that any new trustees are not disqualified from serving under charity law, tax law or company law? Are there powers to remove a trustee should one become disqualified or in other circumstances (e.g. illness, incapacity, etc)?

### (2) **Employment Issues**

- a. Have all employees been issued with terms and conditions of employment and are these up to date?

- b. Have you formulated and do you maintain policies relative to recruitment, grievance and disciplinary procedures?
- c. Are there any other policies which require to be formulated - for example, a policy on internet use or perhaps workplace policies which reflect the ethical basis of your organisation?
- d. Have you considered whether any people engaged by you on a "self-employed" basis may meet the definition of "employee"?
- e. Where you rely upon volunteers, have you considered whether a written "Volunteer Agreement" should be entered into? Have you considered whether your volunteers may legally be classed as "employees"?
- f. Have you put in place a mechanism to deal with applications for flexible working?
- g. Do you employ part-time workers? If so, have you ensured that they are treated no less favourably than full-time workers? Do you employ employees on fixed term contracts? If so, have you ensured that they are treated no less favourably than permanent employees?
- h. Is your organisation affected by a statutory obligation to (a) eliminate unlawful discrimination under Equality Law and/or (b) publish an Equality Policy and/or (c) monitor applicants and employees by reference to protected characteristics under the Equality Act? Have you fulfilled those obligations?

### **(3) Investment Issues**

- a. Do the trustees have a clear view of anticipated cash flows into and out of the charity and how the investments are expected to contribute to this plan?
- b. Have the trustees developed a statement of investment principles and a set of policies that is tailored to the charity's financial circumstances and ethical constraints?
- c. Do the trustees regularly review with their appointed investment managers the suitability of the investment portfolio to meet defined objectives in line with overall policy?
- d. Have the trustees set for their appointed manager(s) specific portfolio mandates with agreed benchmarks?
- e. Are the trustees content that they have or have access to sufficient investment expertise to properly question and if need be challenge the conduct of the appointed portfolio managers?

### **(4) Charity Test Issues**

- a. Does the objects clause (a) reflect the actual activities which the charity carries out; and (b) meet the charity test in terms of the Charities and Trustee Investment (Scotland) Act 2005?
- b. Does the objects clause meet the requirements of United Kingdom tax law in order to qualify for charity tax reliefs?
- c. Does the objects clause permit any part of the charity's funds to be distributed for non-charitable purposes? If so, in what circumstances? Are the rules on remuneration of trustees breached as a result of these provisions?
- d. Do any third parties have the right to control the affairs of the charity in any circumstances (including on dissolution)? Does any such third party include the Crown, the Scottish Ministers or any other government body or agency?

- e. Are [conflicts of interest](#) dealt with appropriately? Is there anything in the constitution which might prevent proper compliance with the rules on dealing with conflicts of interest? Is there a conflict of interest policy in place, or a register of trustees' interests?
- f. Could any part of the charity's assets be used for party political purposes?
- g. What provisions are there in the constitution in relation to dissolution and do they permit any asset to pass to anyone other than another charity or for purposes which are non-charitable?
- h. Has the charity assessed recently whether it meets the public benefit test under charity law, and is public benefit demonstrated through the charity's annual report and accounts?
- i. Are there issues surrounding access to benefits, unduly restrictive conditions or private benefit, or is the charity considered to be "high risk" by OSCR, either because of past events or because of the nature of its activities? What steps are being taken to manage these issues?

## **(5) General Constitutional Issues**

- a. Is it possible to amend the constitution either at the charity's behest or due to a change in law? What flexibility exists within the constitution to achieve this without recourse to external regulators or the courts?
- b. Are the general powers afforded to the trustees appropriate and do they cover every power necessary to permit the charity to operate effectively and efficiently? If not, what powers do you consider to be lacking?
- c. Does the constitution oblige the charity to have its [accounts](#) audited, or are simpler methods of examination of accounts permitted when appropriate?
- d. Does the constitution permit (or prevent) the purchase of trustee indemnity insurance? Is there such an insurance policy already in place?

## **(6) Other Legal Issues**

- a. Is the charity aware of the impact of [Equality legislation](#) on its work with its beneficiaries and the wider public and does the charity comply with the law? (This is also relevant to employee policies under (2) h above).
- b. Does the charity rely on the charitable exemption from Equality legislation in any aspect of its work? Has the charitable exemption been applied properly to those situations?
- c. Does the charity process personal data? What steps have been taken to ensure that the charity complies with [data protection law](#)? Do you have relevant policies and training in place?
- d. What steps has the charity taken to ensure that it complies with the "[references in documents](#)" regulations, under charity law, company law or both? Are all of the prescribed documents fit for purpose and do they comply with the law?
- e. Are the trustees protected from exposure to liability? If so, in what way are they protected and is that protection reasonable and sufficient?
- f. Is the overall structure of the charity's constitution fit for purpose? Is there a [trading company](#) and is it used properly?
- g. How would you describe the working relationship between the Board and the Chief Executive and/or between the Chair and the Chief Executive?

## Appendix 2 – Governance Perception Questionnaire

The purpose of this questionnaire is to take a “snapshot” view of YOUR thoughts on how the charity is governed. It is about perceptions and not about right or wrong answers.

Please do not dwell too long on each question. Give the first answer that reflects your immediate and honest reaction to each statement below. Answer each statement with a **YES** (if you agree with the statement) or **NO** (if you disagree with the statement).

	YES or NO
The charity has the right mix of skills and experience among the trustees for a charity of our type and scale.	
The trustees understand the charity’s sector and funding environment.	
The trustees have overall control and direction of the charity.	
The trustees feel able to hold the Senior Management Team to account.	
The trustees are able to exercise independent judgement when weighing up plans and proposals.	
I understand my role and responsibility as a trustee of the charity.	
The trustees of the charity take ownership for their own induction & training.	
As trustees, we review the skills we need around “the board table” on a regular basis.	
The trustees receive regular, full, and up to date financial information to help us understand the charity’s financial position.	
The charity has a risk management process in place, which identifies risks and tries to manage them.	

The charity has enough capacity to deal with any period of growth or expansion.	
The trustees have a direct relationship with the charity's auditors and the auditors have met with the trustees within the last year.	
We have an audit committee at the charity.	
We seek advice from external experts when we face a problem that we can't deal with internally.	
The trustees are willing and prepared to take difficult decisions if the charity were to hit a difficult period.	
The trustees have a fair grip on the charity's cash-flow.	
The charity has enough resource in place to manage our core functions.	
I sometimes feel under-qualified to be a trustee of the charity.	
I sometimes disagree with my fellow trustees on some decisions.	