

# Wales Council for Voluntary Action

Supporting charities, volunteers and communities

## 5. Trustees and governance

### 5.3 Governing body structures and honorary officers



## The Governing Body

Every organisation should have a control structure, and those people who have legal and financial responsibility for its operation are known as the 'Governing Body' (GB). In the voluntary sector the GB can be known by many names including:

- boards of management, trustees or directors
- management committee
- council of management
- executive committee
- etc.

No matter what the GB is known by, it is legally responsible for the operation of the organisation. The legal structure of the organisation dictates the type of GB that will be in place:

- An unincorporated association – the GB will either be an elected group of people which is separate to the organisation's members, or the GB will be the organisation's whole membership if no separate group exists.
- A trust – the GB will be the trustees named in the trust deed.
- A company limited by guarantee/shares or a community interest company (CIC) – the GB will be the company directors that are named in the Memorandum of Association.
- A charitable incorporated organisation (CIO) – the GB will be the trustees named in the Constitution.
- An industrial and provident society – the GB will be the committee of management named in the Rules.

If the organisation is an unincorporated association, a company or an industrial and provident society, *and* it is also a registered charity, those individuals that comprise the GB will also be known as 'trustees' (a CIC cannot register as a charity though). This is because charity law says that any '*... persons having the general control and management of the administration of a charity*' are charity trustees (Section 97(1) of the Charities Act 1993).

This can appear confusing, but if you think of charitable status as being laid on top of your existing legal structure (a company for example), then it is easy to see that the committee members or directors are also the trustees, as the directors form the GB and have the general control and management of the organisation.

## Who sits on the GB?

The organisation's governing document typically sets out the composition and procedures of the GB, and specifies its first members. The process of appointment, rotation, retirement, and resignation, are carried out in accordance with the governing document. Members of the GB do not always have to be members of the organisation, but they usually are. Appointments can be made by the members in general meetings or by the GB itself. The governing document will often specify certain **honorary officer** positions such as Chair, Vice Chair, Secretary and Treasurer, but it is important to remember that these posts do not enjoy any greater powers or legal responsibilities (beyond those specified in the governing document) than the other members of the GB (see below).

The governing document may also permit the GB to invite other people to serve on the GB – this is known as 'co-option'. They may be members of the organisation but can come from outside, and are generally co-opted because they have particular skills or knowledge.

**NB.** A very small organisation may meet informally and have no elected GB. Many organisations with modest aims and activities run very successfully like this. In this instance, the entire organisation will be the GB and everyone will be responsible for the organisation's affairs.

## The GB and sub-committees

It is perfectly legitimate for GBs to delegate certain authority and functions to dedicated sub-committees. Once again they can be known by a variety of names, such as working groups, but they are always answerable to the GB. These may be set up to address certain projects or specialist areas such as finance, staff, etc. Legal responsibility for the actions of these sub-committees always remains with the GB.

In order to exercise their powers of delegation properly, the GB must always ensure that there are clear written terms of reference for any work and responsibility that is delegated to sub-committees. This should include a clear system of monitoring and reporting to check that the delegated functions are being discharged in accordance with the terms of reference. By keeping strict controls on delegation, the GB will meet its legal obligations, limit the chance of things going wrong (and attracting legal liability), and promote the smooth management of the organisation.

As with the names of GBs generally, confusion can sometimes arise over the names of sub-committees within the organisation. It is important to distinguish between the GB and any sub-committees that may appear to exercise management control.

For example, if the GB is called something like the Council or Board, you may also find that a sub-committee is called the Committee, Management Committee, Executive Committee etc. These sub-committees will be exercising delegated authority and functions, but it is the GB that has the overall legal and financial responsibility for the organisation. If you are unsure about the exact situation in your organisation you will probably find the answer in your governing document. Failing this, you can seek advice from us.

## Branches and groups

In larger organisations you may come across branch structures – this has implications for the way in which the GB operates. A branch can be:

- **Integral** where only one organisation exists and the branch is merely established as a separate area of operation. Typically these are controlled by people who are not members of the GB, but are a specific management group exercising devolved powers of the GB. They may be known as branch committees or some other similar description. In these situations the GB should ensure that delegation is managed properly with clear terms of reference, adequate reporting and accounting systems and, where necessary, an appropriate branch constitutional document dealing with appointment of committee members, meetings etc.
- **Independent** of the main organisation but affiliated to it in some way, usually through a formal affiliation agreement. This is in the nature of an umbrella organisation such as the Citizens Advice Bureau or YMCA network. In these situations the GB of the parent organisation should ensure that the independent affiliated organisations abide by the terms of the agreement, and do not do anything to damage the reputation of the parent organisation as a whole.

A **group** exists where one charity exercises legal control over another. Most commonly this is seen with charitable trading companies, where a charity sets up a legally separate trading company but exercises control over it through its dominant share holding (acting as the 'parent' organisation).

These relationships can be complex, particularly where the level of control exercised by the parent organisation is allowed to drift. If this occurs, the GB of the parent organisation can lose legal control over the branch or group, typically where branches have operated for some time and the people running it seek independent managerial control. In these situations it is important to identify which is the actual GB.

GBs should be clear about the lines of authority and control when they operate branches and groups. Where there is confusion, the main test to identify the exact legal relationship relates to the level of control exercised by one organisation over another. This can be assessed in a number of ways:

- by looking at the governing document

- any other agreements or constitutional documents that exist between them
- the power to appoint or remove GB/committee members
- shared accounting systems
- use of the parent organisation's name.

Branch and group structures have certain tax, VAT and accounting obligations depending on the exact relationship. These are outside the scope of this information sheet, but further information can be obtained from your local CVC or WCVA.

## Responsibilities of the GB

The responsibilities of the GB are wide ranging and are dealt with in more detail in our information sheet 5.2 [Trustee duties and responsibilities](#). A proper understanding of these responsibilities will help to clarify how the GB should operate, and the appropriate structures to achieve this. [Good governance: a code for the third sector in Wales](#) codifies these responsibilities and states:

‘Good governance is essential for the success of any organisation... Board members play a vital role in serving their causes and communities... Boards set the long term vision and protect the reputation and values of their organisations. To make a difference a board needs to have proper procedures and policies in place but it also needs to work well as a team and have good relationships within the organisation’.

The [Trustee and Management Committee National Occupational Standards](#) complement the above Code, and set out the skills and knowledge needed to put it into practice. [Hallmarks of an Effective Charity](#) (CC10) also sets out the standards that the Charity Commission requires of an effective charity GB.

## Operation of the GB

Beyond the procedures and requirements set out in the governing document, the GB needs to adopt practices which ensure its smooth and efficient running. Since its members have collective responsibility, it follows that they should work in a collective and co-operative manner. This can be achieved by ensuring:

- comprehensive induction for new GB members
- appropriate procedures for information exchange, including the calling of meetings, reporting, etc
- clear delineation of roles and responsibilities
- appropriate policies to cover such things as conflict of interest, etc
- mechanisms for dispute resolution
- proper record keeping (particularly minutes)
- adequate administrative and secretarial support
- ongoing training and development.

Whilst it is open to the GB to set down administrative procedures that do not conflict with the governing document, some organisations also have specific powers to make rules that relate to the general running of the organisation and the GB. These have legal effect and can be known variously as bye-laws, standing orders, regulations, rules, etc.

## The honorary officers group

It useful to have a small group of **honorary officers** who:

- undertake delegated specialist functions
- make delegated decisions on behalf of the GB
- deal with matters needing attention between meetings of the full GB
- take a lead in preparing the business for GB meetings
- act as an effective link between the staff and the GB
- share with the chief executive officer (CEO) the task of representing the organisation in public
- sit on recruitment, disciplinary and appeal panels.

## Composition of the officers group

The honorary officers appointed commonly include a Chair, Vice-Chair, Secretary and Treasurer. Their role and method of election is typically set out in the governing document, but if it is silent the GB can still decide among themselves to create such roles. They are usually elected by the members of the GB, but sometimes the governing document will require they are elected by the membership at a general meeting.

## Role and responsibilities

Honorary officers do not enjoy any more power or responsibility than their fellow GB members, except where this is specified by the governing document or prescribed by law. They can only act on behalf of the GB if they are authorised to do so in this manner, otherwise the honorary officers should act only in an advisory capacity.

**Please note** that it is important that each honorary officer post has a role description, to ensure that everyone is clear about their roles and responsibilities. [Good governance: a code for the third sector in Wales](#) sets out guidance on clarifying roles, delegation and monitoring. The key elements of each role are set out below.

## The Chair

The Chair has an important and substantial role in leading the organisation by:

- acting as a figurehead of the organisation and setting its direction
- representing the organisation publicly and speaking on its behalf
- taking an overview of the organisation and its work

- ensuring the governing document and policies are complied with
- exercising specific and delegated authority
- authorising action to be taken between meetings of the full GB
- ensuring the effective working of the GB
- leading and managing GB and general meetings
- preparing the agenda for meetings (usually with the secretary) and disseminating necessary advance information
- working with, supervising and supporting the CEO
- acting as the channel of communication between the trustees and staff
- signing cheques and legal documents
- supporting and encouraging other GB members and staff.

Confusion often arises over what is often known as ‘**Chair’s action**’. If an urgent decision is required between GB meetings, the Chair can only exercise unilateral decision-making powers if the appropriate authority is given in the governing document or delegated by the GB. A Chair does not otherwise have an intrinsic right to make individual decisions. Generally, if there is uncertainty over an issue, the Chair should consult with other honorary officers, GB members or senior staff. Any such decisions should be reported to the GB or relevant group at the next available meeting.

The Chair exercises a fundamental role in relation to meetings. Generally he/she will chair both GB and general meetings of the organisation’s members, but this is not always the case. Sometimes a separate Chair can be appointed for general meetings - the governing document will generally set out the rules on this. In meetings, the Chair should ensure:

- the meeting is properly convened, legally conducted and accurately minuted
- minutes of any previous meetings are approved
- any actions agreed in a previous meeting are reported on
- the agenda is followed and all the business concluded
- the participants act democratically and in a co-operative manner
- no one person dominates proceedings
- points of procedure and law are clarified where necessary
- disagreements are controlled and resolved where possible.

Further information on meetings can be found in our information sheets:

- [Effective Meetings](#) (2.3)
- [Effective Annual General Meetings](#) (2.4)

## **The Vice-Chair**

Some organisations have a Vice-Chair. This person stands in for the Chair when required and can help with decisions between meetings. Sometimes the Vice-Chair can help with the organisational side of meetings and may also have responsibility for specific functions such as personnel.

## The Secretary

The Secretary provides administrative support to the GB. A distinction should be drawn between the honorary role of Secretary in an unincorporated organisation, and the legally defined role of Company Secretary in a company.

In an unincorporated organisation there is no obligation to have a secretary unless the governing document requires it. However, most organisations do have a secretary, and in those that have paid employees the role is often undertaken by a senior member of staff. The honorary Secretary's tasks include the following:

- **Meetings:** helping to set agendas (in conjunction with the Chair); sending out the agendas and board papers; booking the meeting room; checking that a quorum is present; taking and circulating minutes, and attending to other administrative matters.
- **Documents:** maintaining membership lists and other organisational records; safeguarding key documents; arranging for the production of the annual report; sending out documents and returns to regulators; keeping internal policies up to date, and ensuring there is adequate insurance cover.
- **Administration:** dealing with correspondence, press and publicity, and providing secretarial services to the GB generally.

Previously company law required that a limited company had a **Company Secretary**, but since the Companies Act 2006 was implemented it has removed the requirement for a dedicated Company Secretary to be appointed. One can still be appointed voluntarily, but if a decision is made not to appoint one the duties will still have to be carried out either by a director or someone authorised to do so. The Company Secretary can be a member of the GB, an employee or a third party. It is not necessary to have a separate elected honorary Secretary unless the governing document requires it.

The specified legal duties that a company must fulfil are set out in legislation and the company's Articles of Association, and the Company Secretary can attract liability for failing to discharge them. These duties are extensive but include:

- keeping the Register of Members and Register of Directors up to date
- ensuring the annual general meeting (AGM) is held within the specified time limits, and other general meetings are called with due notice
- keeping the minutes for all relevant meetings
- notifying Companies House of any changes of directors, address etc
- filing the annual return and accounts
- ensuring the company's stationery contains the prescribed company information
- making sure that the company documents are kept safely etc.

## The Treasurer

Once again there is no legal obligation to have a Treasurer unless specified in the governing document, but it is considered best practice to do so and most funders will require it. In smaller organisations the Treasurer will deal with all aspects of finance, but as it grows certain functions are often delegated to other individuals and sub-committees.

It is important to note, however, that ultimate legal responsibility rests collectively with the whole GB. Consequently, the Treasurer should not have sole control of the finances as this can limit the opportunity to identify mistakes, impending financial problems and in the worse instance, fraud.

The responsibilities of the Treasurer can include:

- taking the lead in planning and overseeing the financial affairs of the organisation
- ensuring the organisation is solvent and financially viable
- ensuring there are proper systems for budgeting, financial control and reporting
- preparing the annual accounts and other financial reports
- reporting, interpreting and explaining necessary financial information to the GB
- ensuring that the accounts and financial systems are audited or inspected as required by law
- ensuring all tax, VAT and National Insurance obligations are complied with
- managing fixed assets and stock
- acting as a signatory for cheques, invoices, contracts and other relevant documentation.



## Further information

[Good governance: a code for the third sector in Wales](#)

[www.wcva.org.uk](http://www.wcva.org.uk)

[Trustee and Management Committee National Occupational Standards](#)

[Hallmarks of an Effective Charity](#) (CC10)

[Internal Financial Controls for Charities](#) (CC8)

[Charities and Meetings](#) (CC48)

[Managing your charity.](#)

[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

The Institute of Chartered Company Secretaries and Administrators

[www.icsa.org.uk](http://www.icsa.org.uk)

### Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

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