



# Decision making

(November 2018)

## Governance v Management

Decision making by the committees in charge of a voluntary/community group is vital if it is to get anything done! This factsheet is aimed at charity trustees as they have a legal framework that sets out what their responsibilities are, and the limits and conditions on certain decisions, such as selling or leasing land. However the good practice set out for trustees can be copied by voluntary/community groups who are not charities to ensure decisions are made in the best interest of the group and in as transparent a way as possible.

Decisions made by trustee boards are about governance (i.e. making sure things happen) as opposed to management (making things happen). For small charities the board will also be active volunteers and so meetings will need to take place to agree day to day decisions e.g. the arrangements for a fun day or the rota of volunteers on the phone. If you can it might be better to have two meetings, one to look at the strategic governance issues (i.e. trustee meeting) and then another to look at running your services.

Governance is about:

- Setting and monitoring strategic aims and direction
- Ensuring there is strong management of its money, assets and reputation
- Having effective systems, safeguards and controls

## Decisions and charity law

You and your fellow trustees are ultimately responsible for all that your charity does –**the buck stops with you**. Charity law makes it clear that you have an individual and collective responsibility. You have to:

- make sure you can take the decision you are being asked to make (check your constitution/articles)
- take an active part in decision making,
- make sure that the view you take on an issue is in the best interests of your charity,
- accept and support any decision taken by the board of trustees, even if you were against it
- if you consider that the decision taken by the trustees is not in the best interests of the charity and even illegal then you must do something about it e.g. whistleblow to the Charity Commission and any other regulator (e.g. HMRC).

## **What helps make a good decision**

**Clarity** - It is clear what the issue is that needs a decision. This means having the information about the issue and possible options. You will need time to digest the information so it's imperative that the information is sent to you well before the meeting (obviously the more important the issue the more information and detail you need and time to consider). If you don't have it you should delay making a decision until you do. For some decisions you may need a professional opinion (e.g. a lease)

**Debate** – It is important that all relevant options and any risks are considered. The more people involved in the discussion the more certain you can be that the issue has been fully considered. The chair of the meeting should try to ensure that everyone understands the issue and options and have had their say if they want one. Don't be afraid to ask the seemingly stupid question (you may find that others were thinking the same!)

**Collective** – most decisions should be made at a trustee meeting and so those taken outside of a meeting or by a minority of trustees should be avoided (unless the full committee has agreed to some clear delegated decision making and reporting back). This is because every individual trustee is liable for a decision taken by the charity.

**Decision** – make sure the decision is clear and unambiguous. Decisions should also make it clear who will take the action decided on and perhaps when by. Because trustees have a collective responsibility, try to get consensus and only use voting if absolutely necessary. Decisions need to be recorded clearly in the minutes with some explanation of the reasons why taken (again the more important or significant the decision the more detail will be needed).

**Review** – it is always good practice, and even may be necessary, to report back that the action decided on has been carried out and what effect, positive and negative, it has had.

## **Charity Commission guidance**

The Charity Commission has guidance for trustees on decision making ([www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making](http://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making)). For all strategic and important decisions (i.e. those that will affect your users, things you own or future direction) the Commission expects that trustees:

### **1. act within their powers**

Make sure any decision is within the charity objects and any powers and clauses in the charity constitution/articles. Sometimes you may need the Charity Commission's permission.

### **2. act in good faith and only in the interests of the charity**

'Good faith' means genuine, honest intention or motives; trying to do the right thing, in the interests of the charity. In contrast, the opposite would be bad faith. Bad faith could include:

- acting in a way that the trustees didn't honestly believe was in the interests of the charity
- intentionally benefiting someone in a way that is not in the charity's interests
- deliberately using a power for a purpose for which it was not intended

### 3. make sure they are sufficiently informed

As above make sure you have all the information you need. Depending on circumstances this will depend on:

- the cost or value involved
- the complexity of the issue
- any controversy affecting the issue
- the impact of the decision
- how far reaching it is, and
- how urgent it is

Sometimes you might need (for some issues such as buying/selling land or leases of more than 7 years you **must**) take advice. If you do you should do what you can to ensure that the adviser has sufficient expertise and is adequately and accurately informed about the matter. Whilst trustees remain responsible for the decision they take, if they have considered and acted on appropriate advice, this is likely to protect them.

### 4. take account of all relevant factors

There may be a variety of factors to consider depending upon the circumstances and the importance of the decision, for example:

1. Is the proposed decision in the best interests of the charity? (This is always likely to be a key consideration.)
2. If the proposed decision affects the charity's activities, is it consistent with the charity's objects?
3. Have the trustees had regard to the commission's public benefit guidance?
4. Do the trustees have all the powers they need to make and then carry out the decision?
5. Are there any alternatives to consider?
6. Do the trustees have sufficient professional or specialist advice to enable them to make an informed decision? If they propose not to follow it in any regard, why is it in the best interests of the charity not to do so?
7. What are the risks/benefits of the proposed decision?
8. How could this affect the charity's reputation? Are there any steps the charity should take to manage or mitigate reputational risks?
9. Will the decision affect the future ability of the charity to further its purpose effectively? If it will have a negative impact, can it still be clearly justified as being in the charity's interests?
10. Does the charity have sufficient funds to carry through the decision and continue past implementation?
11. If the trustees have consulted the charity's stakeholders, what have they learned from that consultation? How much weight should they give to stakeholders' views?
12. If the trustees commit to the proposed decision, will there be any opportunity to withdraw at a later stage without incurring costs or penalties which may be unaffordable?

## 5. ignore any irrelevant factors

You have to decide what is relevant or irrelevant based on your charity's objects, what it is trying to achieve and what is in the best interest of the charity. So your own personal likes and dislikes must be disregarded. Also outside campaigning or pressure should be ignored unless you believe it will have a negative impact on the charity's reputation.

## 6. manage conflicts of interest

A conflict of interest is any situation where your personal interests could, or could **appear** to, prevent you from making a decision only in the charity's best interests (see the Commission's separate guidance by following the link above). For example, if you (or a person connected to you, such as a close relative, business partner or company):

- receive payment from the charity for goods or services, or as an employee
- make a loan to or receive a loan from the charity
- own a business that enters into a contract with the charity
- use the charity's services
- enter into some other financial transaction with the charity

Even when you receive no financial benefit, you could have a conflict of loyalty. For example if your charity has business dealings with your employer, a friend, family member, or another body (such as a local authority or charity, or a charity's trading subsidiary) that you serve on.

## 7. make decisions that are within the range of decisions that a reasonable trustee body could make

The trustees must decide which option is in the best interests of the charity. The courts and the Commission cannot judge whether the trustees' decision was 'right', or the 'best decision' or not. The Commission can only consider whether the decision was within the 'range of decisions' that a reasonable trustee body could have made, and whether the trustees have followed proper processes and the principles in their guidance. Trustees should identify the options open to them.

They should take time to stand back from their decision and consider:

- have they given enough time and consideration to this decision
- have they missed anything
- have they taken and considered professional or other specialist advice or read any relevant guidance where they should have done so, and if they have not followed the advice or guidance, can this be justified
- is this the kind of decision the charity's beneficiaries or supporters would expect the trustees to make (and if not, how much weight should the trustees give to these views)
- can the trustees justify the decision in the circumstances
- could this decision appear inconsistent with decisions the trustees have made in the past, and if so, can the difference in approach be explained
- what grounds could anyone have for saying the trustees had acted unreasonably

## **Charity Governance Code** ([www.charitygovernancecode.org](http://www.charitygovernancecode.org))

This updated code is now what the Charity Commission expects charities to follow or explain why not. Principle 4. Decision making, risk and control is:

The board makes sure that its decision-making processes are informed, rigorous and timely, and that effective delegation, control and risk-assessment, and management systems are set up and monitored.

It lists 4 outcomes of good decision making:

1. The board is clear that its main focus is on strategy, performance and assurance, rather than operational matters, and reflects this in what it delegates.
2. The board has a sound decision-making and monitoring framework which helps the organisation deliver its charitable purposes. It is aware of the range of financial and non-financial risks it needs to monitor and manage.
3. The board promotes a culture of sound management of resources but also understands that being over-cautious and risk averse can itself be a risk and hinder innovation.
4. Where aspects of the board's role are delegated to committees, staff, volunteers or contractors, the board keeps responsibility and oversight.

## **Dealing with conflict**

Sometimes feelings can run high and can result in conflict, either openly or hidden. It is a vital skill of a chair to enable everyone to have their say and to try and reach a decision by consensus. A chair may need to remind people that they must always act in the best interests of the charity and even challenge someone to explain why it is in the charity's best interests to adopt their idea. If a dispute develops the chair may need to remind people to think about the beneficiaries and their needs and what will create the best outcome for them. If a discussion gets too heated it might be a good idea to take a break (even if only for refreshments) but sometimes a decision may be better held over to another meeting to allow time for members to calm down. It might also be an opportunity to collect more evidence and advice on the issue to help the committee come to a decision. If behaviour becomes too disruptive the chair may need to ask the person to leave the meeting (this is easier to insist on if your charity has a clear code of conduct (see our [factsheet](#)) that sets out expected behaviours). Remember that although a trustee can ask for their opposition to a decision to be noted in the minutes they are then expected to abide by it, and it will not absolve them of responsibility if it subsequently turns out to be an illegal or bad decision.

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Registered charity No. 1081381