

Guidance note

Matters reserved for the board of trustees (England and Wales)

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Matters reserved for the board of trustees (England and Wales)

This guidance note is written for those charities with established boards of trustees which employ a senior management team and delegate significant, specific functions. The guidance note draws upon a number of documents and legislation in order to develop a specimen list of matters reserved for the board in respect of those decisions that cannot be delegated.

In addition to relevant legislation and regulation, charities must also bear in mind the specific requirements and powers of their governing document, and act in accordance with them, along with being aware of the particular circumstances the charity operates in.

No matter how effective a board of trustees may be it is not always possible, nor desirable, for the trustees to have 'hands-on' involvement in every area of the charity's activities. An effective board controls the charity but delegates day-to-day responsibility to the senior management team, except for those matters that are the sole preserve of the board of trustees. It is therefore incumbent on the board of trustees to make it clear what those 'matters reserved for the board' are.

*Good Governance: A Code for the Voluntary and Community Sector*¹ (the 'governance code') states that in ensuring that the board of trustees provides effective control, they must

'...be alert to those matters that cannot be delegated to individual board members or others'.²

1 *Good Governance: A Code for the Voluntary and Community Sector*, second edition can be downloaded from <http://www.icsa.org.uk/policy-guidance/guidance-and-reports>. The document shall be referred to as 'the governance code' throughout this Guidance Note.

2 See supporting material to Principle 1 of the governance code.

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact the ICSA information centre: **020 7612 7035** | informationcentre@icsa.org.uk

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Matters reserved for the board of trustees (England and Wales)

The overall responsibility, and liability, for the actions of those managing the charity rests with the trustees, it is therefore essential that trustees give both clear guidance and establish thorough reporting systems to ensure that they make the appropriate decisions about the overall direction of the charity and ensuring those decisions are enacted. As each trustee is jointly and severally liable, it is important that decisions are taken by the board as a whole, meeting together in order that they may hear arguments either in favour or against a decision before casting a vote on a proposal.

It is then the responsibility of the chief executive, and senior management team where appropriate, to implement the decisions of the trustees and report back to the board via the agreed monitoring process.

Purpose

ICSA has produced this guidance note to aid trustees and charity secretaries in drawing up such a schedule of matters reserved for the board, in accordance with good governance principles, as stated in the Good Governance: A Code for the Voluntary and Community Sector, and other relevant legislation covering England and Wales.

The relative importance of some matters included in this guidance note will vary according to the size and nature of the charity's activities and structure. Equally, there may well be items not mentioned in this guidance note which some charities would wish to include in their own schedule.

Delegation

Some of the matters included in this guidance note should be the subject of recommendations by the audit, nomination or remuneration committee, where the charity has them. However, full delegation is not normally permitted in these cases, as the final decision on the matter is required to be taken by the whole trustee board.

Matters reserved for the board of trustees (England and Wales)

Urgent matters

In drawing up a schedule of matters reserved for the board it is important to establish procedures for dealing with those issues that have to be dealt with urgently, often between regular board meetings. It is recommended that a telephone, web or video conference meeting should be held in which as many trustees as possible can participate, subject to the specific provisions of the charity's governing document. This allows the trustees the opportunity to discuss the matter, hear different arguments and ask questions. Any trustee who cannot attend should be sent the relevant papers and have the opportunity to give their views to the chair, a fellow trustee, or the charity secretary before the meeting.

If the matter is routine and discussion is not necessary, the approval of all trustees may be obtained by means of a written resolution. In all cases, however, the procedures should balance the need for urgency with the overriding principle that each trustee should be given as much information as possible, the time to consider it properly, and an opportunity to discuss the matter with all the available trustees prior to the commitment of the charity.

Matters reserved for the board of trustees (England and Wales)

Specimen schedule of matters reserved for a trustee board

Except where determined by statute or by the governing document, the governance of the charity is vested in the board of trustees.³ Trustees remain responsible for the oversight and governance of the charity, although executive and management action is delegated to the chief executive.

The following is a non-exhaustive list of those matters that the board of trustees cannot, or do not intend to, delegate.

Matters reserved for the board		References
General enabling provision		
	Subject to its governing document and relevant legislation, the board of trustees may delegate such matters as it considers appropriate.	
Regulations and control		
i	Responsible for registering the charity and providing further information, as requested, to the Charity Commission and Companies House where appropriate, or to advise if the charity ceases to exist.	Charities Act 1993: ⁴ s3B(1), s3B(3) Governance Code Principles 1 & 4
ii	Approval of recommendations to change/ amend the charity's governing document, subject to the approval of the Charity Commission and members, where applicable.	Charities Act 1993: ⁵ s3B(3), s74C(2), s74C(4), s74D(2), s74D(4) Governance Code Principles 1, 2 & 6
iii	Approval of standing orders (by-laws), a schedule of matters reserved for the board and financial reporting for the regulation of its proceedings and business.	Governance Code Principles 1 & 4

³ Further information on the responsibilities of charity trustees can be found in ICSA Guidance Note *The Role and Duties of Charity Trustees*

⁴ As amended by the Charities Act 2006

⁵ As amended by the Charities Act 2006

Matters reserved for the board of trustees (England and Wales)

	Matters reserved for the board	References
iv	Suspension of standing orders (by-laws).	Governance Code Principles 1 & 4
v	Alteration and amendment of standing orders (by-laws).	Governance Code Principles 1 & 4
vi	Ratify any urgent decisions taken by the chair and chief executive.	
vii	Approve a scheme of delegation of powers from the board to committees and their terms of reference.	Charities Act 1993: s82(1) Trustee Act 2000: s11(1), s11(3) Governance Code Principle 4
viii	Require and receive the declaration of trustee interests that may conflict with those of the charity and determining the manner in which such conflicts will be managed.	Companies Act 2006: ⁶ s175 Governance Code Principles 1 & 5
ix	Require and receive the declaration of interests of staff members that may conflict with those of the charity.	
x	Approve arrangements for dealing with complaints.	Governance Code Principle 5
xi	Adopt/review/amend the organisational, management and control structures, processes and procedures required to further the aims of the charity's objects.	Charities Act 1993: s50(1), s61(2) Governance Code Principles 1, 2 & 4
xii	Receive reports from committees, and agree/amend/reject any recommendations presented to the board.	Governance Code Principle 4
xiii	Establish/review/amend terms of reference and reporting arrangements of all committees of the board, including any ad hoc committees. These include the audit committee, the remuneration committee and the nomination committee, where appropriate.	Governance Code Principles 1 & 4
xiv	Authorise use of the seal.	
xv	Ratify/reject instances of failure to comply with standing orders (by-laws).	

⁶ References to the Companies Act 2006 relate to the requirements of charitable companies

Matters reserved for the board of trustees (England and Wales)

Matters reserved for the board		References
Appointments/remuneration/discipline		
i	Nominate and elect a trustee to serve in the positions of chair, vice-chair and treasurer, where appropriate. ⁷	Governance Code Principles 1 & 3
ii	Appoint and dismiss committees and individual members of committees that are accountable to the board.	Governance Code Principles 1 & 4
iii	Put in place effective procedures for the succession planning of the board.	Governance Code Principle 3
iv	Appoint, appraise and dismiss the chief executive officer, where applicable.	Governance Code Principles 1 & 3
v	Appoint, appraise and dismiss the charity secretary, where applicable.	Companies Act 2006: ⁸ s270(3)
vi	Consider, approve/reject proposals from the remuneration committee regarding salary and benefits of the chief executive and other senior management staff, where appropriate.	Governance Code Principles 1, 3 & 4
vii	Agreeing procedures for the effective evaluation of the board and individual trustees, and committees	Governance Code Principle 3
viii	To consider and decide on any proposal to remunerate a trustee, subject to the restrictions of the charity's governing document and the requirements of the Charities Acts.	Charities Act 1993: ⁹ s73A(4), s73B(1), s73B(2) Trustee Act 2000: s1(1)
Strategic and budgetary matters		
i	Responsible for the overall management of the charity, ensuring compliance with the charity's objects and relevant legislation.	Charities Act 1993: ¹⁰ s14B(4) Governance Code Principles 1, 2 & 4
ii	Define and agree the strategic aims and objectives of the charity.	Governance Code Principle 1

⁷ The charity's governing document may provide details as to how this process should be managed, which may involve an election to these positions by the members of the charity, if it is a membership organisation.

⁸ References to the Companies Act 2006 relate to the requirements of charitable companies

⁹ As amended by the Charities Act 2006

¹⁰ As amended by the Charities Act 2006

Matters reserved for the board of trustees (England and Wales)

	Matters reserved for the board	References
iii	Approve/amend proposals for the delivery/cessation of delivery of programmes to further the charitable objects or changes to the charity's activities.	Governance Code Principles 1 & 2
iv	Apply charitable property to the furtherance of the charity's objects.	Governance Code Principles 1, 2 & 5
v	Ensuring that trading and other activities do not compromise charitable status.	Governance Code Principle 1
vi	Approve/amend the charity's policies and procedures for internal control and the management of risk and protection of the charity's property (including insurance).	Governance Code Principle 4
vii	Approve/amend proposals for capital investment or expenditure, including the spending of capital from an endowment fund.	Charities Act 1993: ¹¹ s73B(2), s75(3), s75(4), s75A(3), s75A(4), s75B(2), s75B(3) Trustee Act 2000: s4(1), s5(1), s5(2), s11(3)
viii	Approve/amend budgets.	Governance Code Principles 2 & 4
ix	Approve/reject proposals for the acquisition/disposal of land/buildings, or change in its use, following the receipt and consideration of professional guidance.	Charities Act 1993: s36(3), s36(5) Governance Code Principle 1
x	Approve fundraising and income generation programmes, including funding applications, service delivery contracts and transfer of public collection certificates from one trustee to another.	Charities Act 1993: ¹² s55(3), Governance Code Principles 1, 2 & 4
xi	Agree and review investment strategy, in line with relevant policies.	Trustee Act 2000: s4(1), s5(1), s5(2), s11(3), s15(3) Governance Code Principles 1, 2 & 4
xii	Decide on the number, purpose and mandates of bank accounts and other deposit media.	Governance Code Principle 4

¹¹ As amended by the Charities Act 2006

¹² As amended by the Charities Act 2006

Matters reserved for the board of trustees (England and Wales)

Matters reserved for the board		References
xiii	Authorise delegated powers and limitations to the chief executive and other members of the senior management team, where appropriate.	Governance Code Principle 4
xiv	Decisions relating to court proceedings against or on behalf of the charity.	
xv	Approval and appointment of the charity's professional advisers and consultants and to determine their remuneration.	Governance Code Principles 1 & 4
xvi	Approval of purchasing Trustee Indemnity Insurance from charity funds.	Charities Act 1993: ¹³ s73B(1), s73B(4), s73F(5) Trustee Act 2000: s1(1)
xvii	Approve the transfer of charity property to another charity with substantially similar objects.	Charities Act 1993: ¹⁴ s74(2), s74(4), s74(6)
xviii	Agree changes to the charity's pension scheme or the management of its funds.	
Policies		
	Establish/review/amend/approve key organisational policies including: <ul style="list-style-type: none"> • trustee code of conduct • trustee engagement/agreement to serve letter • employment policy • health and safety policy • environmental policy • communications policy • complaints policy • treasury and investments policy • reserves policy • whistleblowing policy • risk management policy • corporate social responsibility • conflicts of interest policy • communications/PR policy • equal opportunities policy. 	Trustee Act 2000: s15(3) Governance Code Principles 1, 2, 5 & 6

¹³ As amended by the Charities Act 2006

¹⁴ As amended by the Charities Act 2006

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Audit arrangements		
i	Consideration of the external auditors, in line with legal requirements and those of the charity's governing document.	Governance Code Principles 1 & 4
ii	Approval of remuneration of external auditors, their re-appointment or removal, in line with legislation and the requirements of the charity's governing document.	Companies Act 2006: ¹⁵ s485
iii	Receive and note the annual management letter from the external auditor and agree the proposed course of action, taking into consideration the recommendations of the audit committee, where appropriate.	Governance Code Principles 1 & 4
iv	Receive and note reports from the internal audit function and agree remedial action, where appropriate.	Governance Code Principles 1 & 4
Reporting arrangements		
i	Receive/present/approve the charity's annual report and accounts.	Charities Act 1993: s45(1) Companies Act 2006: ¹⁶ s414, s415, s433, s444(6), s445(5), s450 Governance Code Principles 1, 4 & 6
ii	File the annual report, accounts and SIR with the appropriate regulator(s).	Governance Code Principles 1 & 4
iii	Establish, maintain and retain appropriate financial reporting arrangements and records and approve any significant changes in accounting policies or practices.	Charities Act 1993: s41(1), s41(3), s42(4) Companies Act 2006: s386 Governance Code Principles 1 & 4
iv	Hold an annual general meeting for members, where applicable.	Governance Code Principle 6

¹⁵ References to the Companies Act 2006 relate to the requirements of charitable companies.

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<i>Matters reserved for the board</i>		<i>References</i>
Monitoring		
i	Receive and review such reports as the board requires from committees and individuals with regard to the use of delegated powers.	Governance Code Principles, 1, 2 & 4
ii	Receive and review such reports from members of the charity's staff pertaining to the activities of the organisation in furtherance with the charitable objects.	Governance Code Principles 1, 2, 4 & 5
iii	Receive and review reports from the finance function on the financial performance of the charity against agreed budgets and strategy.	Governance Code Principles 1, 2 & 4
iv	Receive and review reports from the chief executive pertaining to meeting the charity's goals as agreed in the strategic and business plans.	Governance Code Principles 1, 2 & 4

Matters which the board considers suitable for delegation are contained in the terms of reference of its committees.

In addition, the board will receive reports and recommendations from time to time on any matter which it considers significant to the charity.



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