

Your potential, our expertise

Association Matters

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Trade association and membership organisation governance

High-profile governance failures in 2016 have brought the issue of governance into sharp focus in the not for profit sector. This applies not only to trade associations and membership organisations, but also charities, education institutions and other public benefit entities. Good governance can aid the effectiveness of an association, ensure actions are taken in its best interests and ultimately meet its objectives in the best manner possible. It should be seen as the cornerstone of any association's framework. This article explores a number of key areas for good governance.

Board induction and training

- Review the induction process and information provided for new board members.
- For charities, ensure that new trustees are eligible to act, particularly in light of the new automatic qualification powers brought in by the Charities (Protection and Social Investments) Act 2016.
- Actively review training needs on a timely basis and understand where knowledge gaps exist.
- See board training as an ongoing commitment to the board being up to speed with the sector as it changes and develops over time. It is not just training on day one of joining.

Board size, skills mix and diversity

- A board of at least five, but fewer than 12, trustees is typically considered good practice. Many trade associations and membership organisations have a two-tier structure (for example, a voting membership and an executive council). This recommendation refers to the executive council or equivalent.
- Undertaking an annual skills audit of the board can also aid efficiency. It highlights the experience of the current board and where further experience may be required. This is particularly important with the recent changes to accounting requirements and fundraising practices and review. Recent publications by the Charity Commission reveal a significant shortage in board skills at many organisations, covering such areas as IT, fundraising, cyber-security and legal. How does your trade association or membership organisation compare?
- Consider the diversity of the current board. Diversity can be considered in many ways (educational background, age, etc), so consider all those relevant to your organisation and report on them against the code.
- Ensure that board performance is reviewed at least annually. The new code recommends a board appraisal every year, with an external appraisal conducted every three years for larger organisations (with an income above £1 million). Many boards that we work with who have never undertaken a self appraisal find the process difficult at first. However, some years later they report that they wonder how they ever functioned efficiently without the review, particularly as they routinely review many other areas of the organisation.

Trade association and membership organisation governance

Your organisation's governing document

- Whether this is a trust deed, memorandum and articles of association or scheme of arrangement, when was the last time it was reviewed in detail? And have all the board members read it recently?!
- If charitable, has the charity expanded its activities since its last review and could any be ultra vires of the charity's original objectives?
- Is the board aware of its length of terms of office and eligibility for reappointment under the governing document? How do these terms compare to sector best practice? The code recommends a maximum term of office of nine years (three terms of three).

Conflict of interest and related parties

- Declare, document and review any conflicts of interest at least annually.
- Does your organisation now record a declaration of interests from all key management personnel, alongside the board? Transactions with these interests represent related parties under FRS 102 (and if charitable, the Charity SORP FRS 102).
- Is there a recognised process and policy for dealing with potential or actual conflicts of interest if they are identified?

Terms of reference

- Are terms of reference in place for each of the organisation's key committees and the board? Have these been recently updated or reviewed?
- Do the terms of reference for the committees duplicate or omit any tasks or responsibilities?
- How do these terms of reference operate in practice? Could there be committees who are operating over and above their agreed terms of reference ('responsibility creep')?

Policies, procedures and management information

- Are there formal written policies for each of the organisation's key areas and operations, including any new operations or changes in legislation or best practice in the sector? Recent headlines and new legislations are a good indicator here. A safeguarding policy? A whistleblowing policy? A suite of GDPR-compliant policies?
- Is the information received by the board and each of the committees relevant, timely and manageable?

We can assist in reviewing your compliance with the new Governance Code and best practice. We can also provide board training or undertake a partial or full organisational governance review. Additionally, we can review the strategic direction of your organisation and how governance may play a key role in this. Please contact Luke Holt, Partner at Kingston Smith, on lholt@ks.co.uk for further details.

GDPR – FAQs

The General Data Protection Regulation (GDPR) came into effect on 25 May 2018. It affects how organisations communicate with their audiences, how they process personal data and who they share it with. It will operate alongside the existing law called Privacy and Electronic Communications Regulations (PECR), which governs how organisations handle, specifically, their electronic communications.

Amidst all the confusion, the same questions seem to be on everyone's lips at the moment. So we've compiled a list of frequently asked questions for you.

1. **What happens regarding the GDPR in the UK after Brexit?**
Organisations in the UK will still have to be GDPR-compliant. Domestic legislation will apply not only within the UK's border but beyond them in the EU.
2. **Can you collect personal data on your members?**
Yes, you can collect basic information, such as name, address and contact details, provided you comply with the rules. You must keep it secure, delete it after their membership has expired and only use it for the purpose it was collected for.
3. **Can you email a member inviting them to an event using the email address they provided?**
Unless you have explicit consent from the member to send them marketing emails, under the PECR you can't use an email address provided for operational matters for marketing purposes.
4. **Can you use the email address provided by a member to inform them about the direct debit on their account?**
Yes because a direct debit notification is an operational matter and related to a contractual obligation.



5. You have been receiving emails from organisations asking you to opt in. We keep telling you this is illegal. Why?

Under the PECR, you can't send an email to someone asking for their permission to send them marketing emails. Sending an email in the first place is marketing. The Information Commissioner's Office (ICO) fined Honda and Flybe for doing just this. The fact that you are trying to obtain consent means you don't have consent for marketing ecommunications.

Conversely, if you already have the member's consent, you don't need to get their consent again.

6. Why must some companies rely on the 'legitimate interest' principle and postal communications only, and not 'soft opt-in'?

In the UK, charities and not for profit organisations must comply with the Fundraising Regulator as well as the ICO. The Fundraising Regulator has set stricter legal standards for charities and those conducting fundraising than other organisations. Check their guidelines and the legal status of your organisation (i.e. limited company, charity, etc) before setting your policies to ensure full GDPR-compliance.

7. When holding an event, do you need consent from the attendees to take photos?

For small events, or if feasible, explain how the photos will be used and get written consent from attendees. If it's not feasible, use the method below.

For larger events, at the very minimum, inform attendees before the event that you will take photos and how you will use them. Mention it in the invitation and marketing materials, and have signs at the entrance.

8. Is verbal consent over the phone sufficient?

No. You must be able to evidence when and how consent was obtained. This applies across all marketing platforms. If you can, record calls, notifying the caller upfront that the call is recorded. Alternatively, send an email afterwards confirming that the caller opted in. Save the email in the data subject's file.

9. Does consent last for a lifetime?

No. Explicit consent lasts for the duration of the contract, membership or donation activity that consent was given for. After this period, you should refresh the data subject's consent.

10. How long should your data retention period be?

The GDPR does not suggest a time limit for retaining personal data. You need to look at the different types of data you store and process, and where you store it. Decide if there is a legal or operational need to keep that data. If there is, fine, as long as you can justify it.

However, when there is no longer a legal or operational need to retain it, then that is the end of the retention period. Delete the personal data from all electronic platforms including personal devices, and securely destroy any hard copies. Don't be tempted to hold onto data 'just in case'. For all personal data you hold, you need a policy with hard deadlines for the retention period.

Do you have further GDPR-related questions?

Have we missed anything? Have you got a burning question about the GDPR not answered here? Give us a call for a no-obligation chat about your GDPR concerns. Contact us at gdpr@ks.co.uk.

MemberWise Lunch & Learn invitation

– harnessing good governance to maximise your effectiveness



Join us for a Lunch & Learn on realising your organisation's potential simply through applying good governance.

As a membership organisation or trade association, you need an effective governing body. This session will show you how to maintain a robust governance framework by embedding the principles of the new Charity Governance Code into your organisation.

Finance professional Howard Beeston will give a first-hand account of dealing with leadership and board effectiveness within a membership organisation. Howard has decades of experience in strategy formulation, business planning and financial management in a wide range of industries. His multi-faceted career spans Battersea (one of the UK's oldest and most famous animal rescue centres), the Royal Academy of Engineering and the British Olympic Association.

Kingston Smith partner Luke Holt will draw on the practical experience outlined by Howard. He will apply the invaluable principles of the governance code to membership organisations and trade associations.

Speakers: Finance professional Howard Beeston and Luke Holt, Partner at Kingston Smith

Date: Thursday 28 June 2018

Time: 11.30am registration, 12.00pm start. Finish 1.15pm, followed by lunch until 2.30pm

Venue: Kingston Smith, Devonshire House, 60 Goswell Road, London EC1M 7AD

Cost: Free

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Kingston Smith speakers

We would be very happy to present to your members at your meetings or conferences, on any topics that might be of interest to them. These could include GDPR, HR, governance, tax & financial and risk & regulatory issues. We do not use jargon and we try to put things across in a relaxed easy manner – whether it be in a short 30-minute presentation or a full day's training session.

Please do not hesitate to get in touch if this is of interest, we would be delighted to help.

More information about Kingston Smith's services to trade association and membership organisations can be found at: www.kingstonsmith.co.uk/tradeassociations

www.ks.co.uk



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