

## **Good Governance. A Guide. Resource Pack**

### **Section One. Setting up a voluntary group**

#### **1.1 What to do first**

Any group of people can meet together to pursue a common interest or purpose as long as it is a legal purpose. They do not need permission from any authority to do this. When people intend to form a group like this (other than for profit), the law calls such a group an 'unincorporated association'.

A voluntary group is simply a type of group which will be managed by a group of unpaid volunteers. The legal term for such a group is an 'unincorporated association'. Later in this resource pack, there is information about what it means in practice to be a member of an unincorporated association.

Before a group of people can set up as a voluntary organisation, they will need to call a meeting of all interested parties. It might be a good idea to advertise the meeting so that you get as many interested people to come along as possible. The more people who get involved, the more chance there is of getting a good balance of skills and ideas

This first meeting should decide some important basics, such as:

- (i) Is a new group needed? Are there any existing groups through which the people could work to achieve their aims?
- (ii) Is the group to undertake one clear cut project, or is it to have a number of different purposes?
- (iii) Does the group intend to complete its work in a limited period (eg a 'short-life campaign') or is it likely to last for a long time?
- (iv) Are the people at the meeting all agreed broadly on the purpose of the group and willing to work together to get the group up and running?

It is important that the meeting discusses and agrees the main aims right at the start, so that everybody works together with a common purpose.

Having decided what the group's purpose or purposes will be, the group should then elect from among the people present a steering committee to draw up a draft constitution. It is usually a good idea to base the draft constitution on a 'model' constitution which has already proved useful to other groups. The Charity Advice Service can often provide new groups with a suitable model constitution on which they can begin to draft a constitution for their group.

A first priority for the steering committee is to decide whether the organisation should be a charity or not. If the answer to this is yes, particular care will be required in preparing a draft constitution.

## **1.2 Governing document**

A governing document is needed by new organisations, and it is usually a constitution that is required when establishing a new voluntary organisation. It is advisable to have a constitution whether or not the organisation wants to seek charitable status.

A constitution is a set of rules suitable for establishing an unincorporated association of members. The constitution (once it is agreed by the members) will be a fixed reference point for the organisation. It cannot be changed by an individual, or by a clique, or by the board. Only a clear majority of the members can agree to change the constitution. The constitution could be described as a framework or foundation upon which an organisation is built.

The constitution holds the answers to many questions, so make sure you read your group's constitution!

The board and members of a group can, at any time, look to the constitution to guide them as to the purposes of the group, who is responsible for managing the group, how they are to be elected, who is eligible to join the group, and even how the group can be wound up if it is no longer needed.

When writing a draft constitution, it is worthwhile to take the trouble to ensure that it takes into account not only what your group intends to do in the first year, but that it also allows for the future development of the group.

The constitution is a legal document. Once it is formally adopted (by the group members), it requires quite a lengthy formal procedure to alter it. It is sometimes described as being 'like a contract' between the group's members.

An unincorporated association is a simple type of organisation, and by far the favourite legal structure chosen by new voluntary groups. It is easy to set up and run. Other types of legal structures that may be chosen by voluntary groups are:

- (i) a trust;
- (ii) a company limited by guarantee; or
- (iii) an Industrial and Provident Society.

For further information, see *Notes on Legal Structures* in section 2 of this resource pack. It explains the features of the different structures, and compares the pros and cons of each of the legal structures that voluntary groups may choose from.

## **1.3 What is in a constitution?**

A constitution (or other type of governing document) usually includes the following:

- (i) Date and record of adoption - it is important to record if and when a draft constitution was formally adopted by the members of a group. It is only when the constitution is formally adopted in this way that it becomes legally binding on the group
- (ii) Name of the group
- (iii) Administration - a short paragraph simply stating with whom the responsibility for administering or managing the group rests (usually the elected management board). Affiliation explains if the group is managed by another body or linked closely
- (iv) Objects - the aims or purposes of the organisation. It is important that these are written in such a way as to cover everything a group wants or may want to do. When writing the objects of a charity, particular care is required to make sure the objects are exclusively charitable in law, and not a mixture of charitable and non-charitable objects. Some groups do not want to be bound by the 'legal' language of charitable objects, and are prepared to forego the benefits of charitable status so that they can use their own words in the objects
- (v) Membership states who is eligible to apply for membership of a group (or to automatically consider themselves a member). It may also say that there are different categories of membership, eg full members, associate members, group members. This clause can also provide for termination of membership
- (vi) Management describes how the organisation will be managed (it is usually by a management board); how and when they are elected, and by whom; the number of co-opted members; the minimum number of times they should meet in a year; and what a quorum for their meeting should be. If it is the intention of the organisation at some stage to appoint sub-boards, then reference to this should be included
- (vii) General meetings states when the Annual General Meeting will be held and what business is to be transacted at it, which should always include:
  - Receiving from the board an annual report and statement of accounts
  - Electing the board, and appointing an auditor or an independent person to examine the annual accounts in the coming year

The second part of this clause should make provision for extraordinary or special general meetings of the membership of the organisation - these are usually called when some special business has to be considered

- (viii) Rules and procedures at meetings - this clause may or may not be included but, if it is, it should state:
- Who chairs meetings in the absence of the Chair
  - Whether the Chair has a casting vote
  - That records (minutes) of all meetings should be kept by an office-bearer
- (ix) Finance - this clause should make clear that the funds of the organisation can only be used to further the objects of the association and for no other purpose. It should also state that a bank account should be opened and who is authorised to sign cheques on behalf of the organisation
- (x) Trustees - an unincorporated association cannot hold property in its own name because it does not exist in the eyes of the law. If such a body wishes to own buildings or land, it will need to appoint trustees. Trustees are people who hold property which is not their own, but has been entrusted to them
- (xi) Amendments to the constitution - a constitution may be altered, but only at a special general meeting of which proper notice has been given to the members. In the case of an organisation which is a charity, no changes should be made which would alter the charitable nature of the organisation
- (xii) Dissolution - this states what happens if the organisation decides to wind up, in particular what will be done with any funds remaining after all liabilities have been met
- (xiii) Indemnity - this says that the group will cover or 'indemnify' members or volunteers or employees who suffer a loss (eg are successfully sued by a third party) as a result of work they carried out on behalf of the group. However, to prepare for the event that the group does not have the means to indemnify a person, a suitable insurance policy should be taken out by the group to protect it from obvious risk.

#### **1.4 Potential liabilities<sup>1</sup>**

Any group of people coming together to pursue a joint activity becomes accountable for its actions, and the individuals concerned may be held responsible individually for any group action which results in a civil or criminal offence. This is especially true of unincorporated associations. A good constitution can help to protect individuals because it can be a safeguard against things going wrong so long as members follow its rules!

It is important to consider the issue of liability and responsibilities in the process of adopting a constitution.

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<sup>1</sup> Extract from 'How to compile, adopt and use a constitution - Guide notes for community organisations', published by **ICOM**,

Many community groups only deal with small amounts of money necessary to carry out fairly modest activities and in such circumstances it is unlikely that anything will go wrong as long as there are strict controls on handling cash and proper accounting procedures.

If, however, a group raises large amounts of money, or has responsibility for buying or leasing a building, or employs a worker, these are commitments which carry a higher risk of liability. At the present time, there are increasing numbers of voluntary groups which are taking on responsibilities which are quite daunting. Even if they have paid staff, these groups are managed ultimately by the board members who are unpaid volunteers. In such cases, the members of a group, and especially the management board members, need to be sure of several important aspects of their situation.

The liability of an individual for the actions of a group depends on his/her position and role as a member of that group:

- A general member of a group, whether or not he/she is listed as a member, or whether or not he/she pays a subscription, cannot be held responsible for the actions of a board, even though he/she may have taken part in voting for that board
- A board member cannot expect the general members of a group to help meet a liability which results from the actions of a board. If a General Meeting takes action itself which results in liability, then the members at that General Meeting may be held liable for that action
- Individuals who are elected or appointed as voting members of a board of a group become legally liable for the actions of that board along with the other voting members of that board
- Individuals who represent constituent or affiliated groups, and who are voting members of the board, carry as individuals the same liability as other voting members of the board. A group which appoints a representative to the board of another group may indemnify (or cover) its representative against liability by taking out appropriate insurance and/or may, in its own constitution, take responsibility for any liability incurred by a representative appointed to it from another group
- Whether or not co-opted members have the right to vote should be stated in the constitution so that the voting status and, therefore, the potential liability of those persons, is made absolutely clear. Individuals attending board meetings in an advisory capacity (without the power to vote) do not normally incur a liability for the actions of the board which they attend. Such advisory members may, of course, be held responsible for difficulties arising with an organisation as a result of incorrect advice which they might give

(For further information on liability and how to avoid it, or cope with it, please look at Part 1, Section 4 of this guide.)

## **1.5 Final steps in the process of setting up a new group**

As already discussed, a new community group usually starts because a small group of people met together to deal with a problem, or to discuss ideas for meeting a need, and have decided that the best way forward is to start a group.

The small group may decide to go ahead and work out a constitution and a plan of action to present to a public meeting immediately. More usually, a general public meeting will be called, and that meeting will appoint a temporary board (steering board) to do some preliminary work on organising things, particularly the constitution.

If this model is followed, the temporary (or steering) board will report back to another public meeting having taken action on certain issues or plans, and having produced a draft constitution. The second public meeting can then discuss all suggestions and perhaps formally adopt the constitution.

When a steering group has a draft constitution which is suitable (ie reflects accurately the group's objects, management and membership systems), it may be a good time to call an inaugural meeting.

When all of the members of a group formally agree to the constitution, as prepared by a steering board, the next step will be to submit it for approval to the Inland Revenue if charitable status is deemed desirable (see below). If charitable status is not desired, the organisation can proceed to carry out its work under the management of its elected board without further ado. In other words, without charitable status, the organisation can:

- raise money through membership fees, jumble sales, etc
- organise street or house to house collections, or flag days, as long as the prior permission of the local police is secured
- spend the proceeds on out of pocket expenses, stationery and organising special events in pursuit of the aims of the organisation

However, accurate accounts of all income and expenditure must be kept for presentation at an Annual General Meeting.

<sup>1</sup>Extract from 'How to compile, adopt and use a constitution - Guide notes for community organisations', published by ICOM

## **Good Governance. A Guide**

### **Section Two. What is this guide for?**

#### **2.1 Aims and contents**

All organisations, in all sectors, face issues and problems of governance. This guide is to help people who serve on boards of voluntary and community organisations (large or small) to understand their obligations to:

- Users or beneficiaries
- Members
- Local people
- Communities
- The law
- The voluntary and community sector

This guide aims to identify the governance issues and problems faced by voluntary and community organisations, and to suggest practical solutions to them.

#### **2.2 Contents of this guide**

- Examples of common governance issues and problems in voluntary and community sector organisations, and suggestions for promoting good practice in governance
- Practical solutions to problems of governance
- Examples of the benefits of good governance, to encourage boards to be confident in making decisions, in promoting teamwork, in taking leadership roles, and in fostering good relations with paid staff and with the community
- Examples of the benefits of good governance and the pitfalls of neglecting governance issues
- A glossary of terms used in voluntary and community sector organisations to talk about governance, good practice, management and responsibilities
- A resource pack containing practical resources and factual information relevant to voluntary and community sector organisations based in Northern Ireland. The resource pack also contains model governing documents which may be used by charitable and not-for-profit organisations

<b>FACT</b>
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**In the early 1990s NCVO carried out research into charity trustees in England and Wales. Two thirds were completely unaware that they were charity trustees. How many Northern Ireland charity trustees are aware that they are charity trustees, and what that means?**

### **2.3 The use of the term 'board'**

In this guide the term 'trustee board' is meant to include any body of volunteers who manage a voluntary or community organisation - whether they are called a committee, governing body, council of management, board of directors, board of governors, trustees, collective or any other term.

### **2.5 Problems faced by boards which can lead to poor governance**

People on management boards are often working under pressures - for example, lack of time to devote to volunteering, lack of money, lack of adequate resources, lack of guidance and training, environments threatened by intimidation or political instability. There is uncertainty in voluntary and community sector organisations about the future as far as funding is concerned. There may be a lack of committed volunteers coming forward to organisations.

In such circumstances, people can quickly lose enthusiasm. They may be tempted to cut corners in procedures and policies, such as those covering recruitment, public accountability, finances and ethics. Individuals may appear to be cynical or to suffer from a lack of confidence, failing to impress outsiders or to attract new volunteers or members.

Cycles of fatigue and sloppiness can develop and, indeed, may be exploited by some individuals in order to bully others, to stifle change and new ideas or, worse, to put their own interests ahead of the interests of the organisation or its users.

### **2.6 The benefits of good governance**

Good governance is like a tool kit which can prevent these problems, or repair them before they do real damage to the organisation. Even better, it will reward those organisations which embrace it with real benefits. As well as benefiting workers, volunteers and board members, the organisation's members or beneficiaries may also feel the positive effects of good governance and benefit in their development as individuals and community workers. The voluntary and community sector is often called 'the caring sector' and the sector and the whole community will benefit if voluntary and community organisations are shown to really care about setting (and achieving) high standards of governance.

It is all too easy for boards to step into the pitfalls of apathy and bad practices. Most people involved in voluntary and community work have experienced it at first hand. However, if board members are aware of the problems caused by poor governance, they

can easily change things for the better. Hopefully, the guidelines in this guide will help boards to make good governance a top priority.

NICVA is hopeful that this guide will give you some ideas for promoting good practice and good governance in your organisation, whether you are a board member, a paid worker or a volunteer.

## **2.4 Your views**

Contact NICVA's Charity Advice Service to let us know if you have found this guide useful or if you have an idea for improving it. Contact the Charity Advice Service at:

NICVA  
61 Duncairn Gardens  
Belfast BT15 2GB

Telephone: 028 9087 7777  
Fax: 028 9087 7799  
Minicom: 028 9087 7776  
Email: [cas@nicva.org](mailto:cas@nicva.org)  
Web: [www.nicva.org](http://www.nicva.org)

## **Good Governance. A Guide**

### **Section Three. Key issues in governance and good practice**

#### **3.1 Defining good practice**

Good practice is a keystone of good governance. People in the voluntary and community sector (and other fields) often talk about good practice. Nearly everybody agrees that it's a good idea - but what is good practice really? How can good ideas be turned into action? Below are some simple examples of good and bad practice.

#### **Examples of good practice:**

- (i) Aiming for high standards (eg with regard to health and safety, recruitment, terms and conditions of employment, equality)
- (ii) Finding out what's in the governing document (constitution) of the organisation
- (iii) Finding out about rules or laws affecting the organisation
- (iv) Seeking expert advice if you are not sure what to do
- (v) Having sensible procedures and following them
- (vi) Dealing promptly with potential risks or dangers
- (vii) Regularly assessing risks and, if necessary, insuring against them
- (viii) Being fair, treating everyone with respect

#### **Examples of bad practice:**

- (i) Cutting corners - settling for low standards or having no standards to aim for
- (ii) Being ignorant of the objects and powers of the organisation
- (iii) Failing to find out about rules or laws applying to the organisation
- (iv) Failing to seek advice when it is called for
- (v) Lacking internal controls or ignoring them, either deliberately or as a result of poor planning
- (vi) Ignoring potential risks or dangers
- (vii) Ignoring risks, hoping for the best
- (viii) Not bothering about equality, allowing cliques to develop (whether relatives or friends), bullying of individuals

#### **CASE STUDY A**

A small charity working with pre-school children (aged 3-5) decided to set up an after-schools project for children aged 11-14. However, when they applied for a grant, a grant-making body (quite correctly) pointed out that the objects in the charity's constitution restricted it to working with children aged 3-5! If the trustees had permitted the charity to act 'beyond the scope of the objects of the charity' (the technical term is 'ultra vires' acts), they could have incurred a personal liability.

#### **COMMENT:**

In this case, NICVA's Charity Advice Service assisted the charity to amend its constitution to the satisfaction of its members, and reapply to the grant making body. The grant-making body was then able to agree to provide funding for the new after-schools project.

### **Good practice - key areas which need attention**

The following is a list of important areas which boards should look at. They are taken from *Towards Voluntary Sector Codes of Practice* (Joseph Rowntree Trust 1997). It is a list of eight 'good practice headings' for voluntary organisations that deliver services funded by public bodies:

- (i) Effectiveness
- (ii) Accountability
- (iii) Standards
- (iv) User-involvement
- (v) Governance
- (vi) Voluntary action
- (vii) Equality and fairness
- (viii) Staff management

### **3.2 Turning good practice into action**

It takes a bit of imagination and commitment to turn the ideas of good practice or best practice into action. The checklist below may help boards to examine the areas where they could identify their failings and improve their standards. Often, a few simple steps are all that's required and, once they are taken care of, the board and the organisation can go about pursuing its objects without the burden of unnecessary fears or worries.

#### **Turning good practice into action - some practical suggestions**

##### **(i) Adopt a suitable set of written rules, guidelines or policies**

A set of written guidelines or a simple policy may be helpful - provided that people remember to follow it. Many umbrella bodies publish sets of written rules and codes of practice which could be adapted to suit your group. Typical policies might cover child protection, equal opportunities, anti-discrimination, anti-bullying, etc.

##### **(ii) Attach policies or rules to the governing document**

Guidelines or policies may be attached to your organisation's constitution so they do not get lost. Such an attachment is often called a 'schedule attached to the constitution'. It is a very good way of adding to, or enhancing, the rules contained in the constitution.

However, it must not contradict anything in the constitution! Unlike the constitution, it is usually easy to change a policy or a schedule - the board could change it. A schedule would usually contain rules or guidelines covering day to day practice or policies of the organisation, which may change over time.

**(iii) Reaffirm policies and guidelines regularly**

An organisation's policies or rules should be looked at and reaffirmed at each Annual General Meeting of the organisation. In this way, the members may be fully consulted and aware of the rules/policies of the organisation. Additionally, it is an opportunity to remind people that there are policies, and what they say!

**(iv) Make sure that new board members are shown key documents**

New board members could be given a file containing a copy of the organisation's governing document (constitution, rules, articles and memorandum or trust deed) as well as rules or policy documents belonging to the organisation.

**(v) Out of date or otherwise unsuitable policies should be changed**

Having out of date or unsuitable rules or policies is probably worse than having none.

**3.3 Some examples of areas where codes of practice can be helpful**

- (i) One example of a code of practice for advice giving services which is well thought out was produced by the Advice Service Alliance (Northern Ireland). It is called *Advice Services Alliance (NI) - Standards and Guidelines for Advice Agencies*. Dave Wall (then Chairperson) wrote in the introduction:

*"This guide... sets the minimum criteria for the provision of good advice. It covers guidance on the employment of paid and unpaid staff, accessibility of services to the community, management and accountability of services, and the necessity for information, equipment, funding and guidance on constitutional arrangements."*

- (ii) Another example is the fundraising code of practice produced by the Disability Federation of Ireland. It contained helpful advice for the many hundreds of member organisations within the Federation to make them aware of the law and good practice when collecting money from the public in the Republic of Ireland.
- (iii) In 1999 the Scottish Council for Voluntary Organisations (SCVO) produced a very useful model code of practice for management of voluntary organisations.

**3.4 Trustee boards – key aspects of their role**

- (i) Board composition should be a key concern of organisations. The challenge is to recruit a board that is balanced, competent and representative.

- (ii) Financial management is the responsibility of both Treasurer and board member. It is the responsibility of the Treasurer to oversee, approve and present budgets, accounts and financial statements. It is the role of all board members to ensure the organisation is financially healthy. Every trustee should have some understanding of financial matters in order to raise questions (which may sometimes be awkward ones).

Financial policies may help to ensure strong internal controls, discourage abuses of financial systems and highlight trends or areas where corrective action may be taken (for example, at least two signatories to an account, no relatives/partners as joint signatories, a ceiling (say £50) up to which cheques can be signed by members of staff, or a member of staff and one board member).

Some voluntary organisations have a financial policy which states that there should be quarterly accounts, and may set up a financial sub-committee which meets regularly to discuss financial issues and to recommend any actions which should be taken.

- (iii) Managing change (in both the external and internal environments) - this involves strategic planning and leadership skills
- (iv) Risk assessment - should be a frequent and ongoing task for boards
- (v) Remembering the importance of process, ie the way things are done, as well as getting things done. Ideally, a balance should be reached between developing processes, and actually achieving tasks
- (vi) Valuing 'soft' skills such as communication as well as the 'hard' skills (eg business skills, financial management). Ideally, a balance of 'soft' and 'hard' skills should be achieved by boards
- (vii) Using tools to assist in board development - boards should carry out regular reviews of organisational performance or effectiveness
- (viii) Asking questions - boards' and board members' responsibilities are exercised by asking good and timely questions rather than running programmes or implementing their own policies
- (ix) Encouraging board development - this will enable trustees to develop in their roles
- (x) Maintaining good board/staff relationships - the role of the board is to govern and if the organisation has paid staff, it is usually their job to manage the day to day affairs of the organisation. Roles need to be explored, clarified and strengthened

- (xi) Financial management - the board is responsible for agreeing the budget of a voluntary organisation and monitoring financial performance
- (xii) Delegation - how much of this responsibility can be delegated depends on the size of the organisation. In larger organisations, boards may delegate to staff and/or a sub-committee
- (xiii) Ensure the financial health of the organisation - although it is the responsibility of the Treasurer to oversee, approve and present budgets, accounts and financial statements, it is the role of all board members to ensure the organisation is financially healthy
- (xiv) Provide leadership - boards are meant to enthuse and encourage others to change society for the better. Leadership skills are crucial. Some people are born with charisma, but leadership can be learned and perfected through experience, and within a supportive and positive environment

### **3.5 The role of the board and staff**

Boards of organisations (large or small) which employ staff would agree that this is one of the most demanding areas of responsibility that boards face. Case study B below is an example of a very difficult situation faced by a worker in a small charitable voluntary organisation.

#### **CASE STUDY B**

A worker in a small group has serious concerns about his/her Chairperson. There may be mismanagement or incompetence (or perhaps even fraud) being carried out by the Chairperson of the board of the organisation.

What can a member of staff do in such a situation? They may well be punished if they either criticise the committee internally, or blow the whistle externally?

#### **COMMENTS**

In such a difficult situation, it is always sensible to take advice from NICVA and/or the Charities Branch of the Voluntary Activity Unit, Department for Social Development, and/or a solicitor. Also, a worker should seek advice from his/her trade union. Such advisors will be able to listen to the person's concerns and hopefully offer some sound advice on how best to deal with the concerns.

Fraud cannot be ignored and, indeed, is a matter for the police to investigate. However, other less serious problems may be sorted out satisfactorily. There are many options - for example, by mediation by a third party, by appropriate training for the board, or the staff, by simply seeking advice from an expert. The one thing that a person with concerns should not do, is ignore them. In many cases, this will simply postpone the day of

reckoning and worse damage may eventually result - harming the integrity of the organisation and its reputation.

**Some remedies which may be useful to employees who have serious concerns about irregularities in the management of a charity:**

The worker could discuss his/her concerns in confidence with NICVA's Charity Advice Officer, or with the Department for Social Development's Charities Branch, who may be able to provide guidance to charity trustees who are not aware of the laws they need to comply with.

If the case is one of incompetence or ignorance, then the matter could be raised with the board member concerned and they could be directed toward sources of help and advice. Paid staff may be able to provide support to board members in a non-threatening way and to promote good practice within the organisation as a whole.

Trade union membership may protect workers from bullying, victimisation or unfair dismissal.

Company directors who are failing to comply with the law, may be investigated by the 'Insolvency Service' of the Department of Enterprise, Trade and Investment. If theft or fraud is being committed, then that should be reported to the police (the only body with the powers to investigate such criminal activity).

### **3.5 Board/staff relationships – governance versus management**

The way board members and the co-ordinator or director treat each other's respective powers and roles does more to affect the quality of leadership and governance than any iron-clad agreement on proper boundaries. There is often a lack of clarity about where the role of board stops and that of co-ordinator begins. The debate on governance (the board's responsibility) and management (usually a responsibility of staff) and how the two link together is still being discussed in the voluntary and community sector. A world-famous expert on governance issues, John Carver, has no hesitation in *stating "the role of the board is to govern and not to manage"*.

### **3.7 Common problems which can hamper board/staff relations**

- Board members may be unaware of the true financial state of the organisation they govern. This can arise because, for example, they cannot understand financial statements; or because a senior member of staff is withholding vital information from them; or because they do not have the time to read financial statements

- Board members may learn about important or even troubling developments such as inappropriate financial expenditure or staff struggles via the media, rather than at a board meeting
- Board members may be intimidated by, or in awe of, a senior member of staff. They may be reluctant to develop firm internal controls, or to evaluate the performance of a charismatic co-ordinator until a crisis occurs
- Board members may interfere inappropriately, taking a hands-on approach to the day to day running of the organisation, which should normally be a staff responsibility
- Board members may take a totally hands-off approach, leaving paid officers to get on with it, rubber stamping everything placed before them
- Board members may get into serious conflicts within the board itself - personality clashes, differences of opinion, and power struggles. This can make life very difficult for staff, volunteers and users

### **CASE STUDY C**

In a small charity, a situation developed where volunteers were managing paid staff even though they had no experience of managing or supervising staff. In the same organisation, board members were swapping hats and acting as part-time paid staff themselves. Several problems arose as result of this confusing state of affairs. Staff felt a lack of adequate support from inexperienced volunteer managers. Board members who were also acting as paid staff in the organisation were failing to comply with charity law.

### **COMMENT**

The organisation could have lost its tax exemption (a privilege of charitable status) conferred by the Inland Revenue to organisations which are charitable in law. A clear distinction must be made between paid staff and voluntary board members. The two must not overlap, at least not in a charitable body where trustees are expected to act solely in the charity's interest, otherwise serious conflicts of interest could arise. Occasionally, the Inland Revenue will permit a charity to include a special 'power' in its constitution to allow remuneration of board members in certain limited circumstances, and with strict provisos attached.

## **3.8 The board's role in strategic planning versus operational management**

The board's role is to determine an organisation's mission and purpose, and to guard its ethos and values. In this role, the board has to develop and agree the organisation's policies and strategic plan. The process of building a vision and assembling the means to

carry it out is called strategic planning. Board members provide a critical link to the outside environment surrounding an organisation. Adequate planning time must be set aside. One of the most valuable things a board member can do is to ask good questions and probe other board members and paid officers to keep everyone focused on the main issues.

The board as guardian of the organisation's mission means that board members should be making continuous efforts to link the organisation's programme and services to its basic mission.

### **3.9 Some practical solutions to problems affecting board/staff relations**

- A balance should be struck between the role of the board (overseer and strategic planner) and the role of paid staff (hands on management and operational planner). Good communication is vital. Each needs the other to be effective
- The doctrine of 'no surprises' requires staff to be candid in sharing failures and problems as well as successes with the board. Staff who hide problems from their board may other encourage staff members and other stakeholders to take their grievances directly to the board
- The co-ordinator, along with the Chair of the board should ensure that board members have enough information to understand the organisation's financial condition and any other organisational issues that need to be addressed
- Strong internal controls can help to avoid a crisis. Boards should put in place strict policies regarding reimbursement of expenses (to staff) and out of pocket expenses (to board members)
- The board should be aware that it bears ultimate responsibility for the running of the organisation. Its role is to employ competent staff, but it should also bring an independent and objective mindset in strategic matters to guide the organisation in the right direction, and not simply to rubber stamp matters before it
- Board assessment of the staff (especially of the co-ordinator) is an essential responsibility in good governance. Periodic assessments of the performance of staff, board and organisation should be part of an intelligent planning process. A mixture of praise and constructive criticism from board to staff may be appropriate (and vice versa), and may lead to a mutual trust

#### **CASE STUDY D**

A small charity was set up by members of a family (who carried out a lot of voluntary work for charitable causes). They realised that they could not receive donations towards their work made through tax efficient giving schemes, so they decided to formalise and structure their charity work by setting up a trust and seeking recognition (from the Inland

Revenue) that the trust was a charity for tax purposes. The charitable trust would be able to accept donations made by people using tax efficient methods. The trust was to be managed by the family members.

### **COMMENT**

One could see why the family would want to control the trust they established to facilitate their charitable work. However, it is not good practice to have a charity which is to be managed by people who are all related to each other. In fact it is a recipe for disaster. In this case, the Inland Revenue queried the proposed management structure of the would be trust and refused to accept that it was a legally charitable trust (for tax purposes). This meant that the family had to take advice from the Charity Advice Service at NICVA. They were advised that it would be best, if they really did want to set up a charity, if a fairly broad range of people was invited to participate. They eventually decided not to establish a charity, but instead to lend their support to existing charities.

### **Charities should not be family businesses**

Problems can quickly develop in any voluntary or community association if members of the same family are serving on the board at the same time, or if people are closely related by marriage or even friendship. For example, if the Chairperson and the Treasurer of a community group were partners in a relationship, then that could quickly lead to problems, eg the two could be seen as having too much power in the association. They could be tempted to act like a clique. If they had a conflict in their personal relationship, this could make it very difficult for them to work together as part of a team with the other board members.

It is understandable that people who are friends or relatives may be involved in a community group at the same time, and this is a good thing. However, they should refrain from serving on the board at the same time, as this is a recipe for problems in the future. The most serious problem is corruption, but the potential for lack of confidence among the people in the locality of a board which has relatives in positions of power and trust cannot be ignored.

### **CASE STUDY E**

A medium-sized charity had grown rapidly over a period of ten years, and was key provider of services to people with a specific disability in its area. The organisation began to experience strains and stresses between the founders of the organisation (a husband and wife) whose initiative had got the organisation off the ground. These founders, though they had set up a charity that was democratic (a membership organisation), still liked to be actively involved in the board. In fact, the constitution entitled them to a place on the board for life. It was difficult to persuade people to volunteer for the board, and there were just two other members of the board currently (both good friends of the founders), even though there were up to thirteen places on the board. The new Director of the charity had her own ideas about the way things should be

done. She felt that a recruitment drive for new board members was long overdue. The founders felt alienated and unvalued. The staff of the charity were on the side of the Director. They felt that the founders had too much influence in the way the charity was run.

## **COMMENT**

While the views and ongoing participation of the founders of a charity may well be valuable assets to the charity, there has to be a bit of give and take. Good practice requires that boards should be balanced and should reflect a broad section of society. Though this can be difficult and challenging, it must be a priority for any charitable organisation. Change within a charity, like any other organisation, may be a bit difficult, but it can be done in a positive spirit - valuing all contributions to the work of the charity, past and present, while still looking to the future and the increasing need for charities to be accountable, adaptable and forward-looking.

There are various subtle ways that the founders of a charity or a not-for-profit voluntary organisation may try to deter others from getting too much control of 'their organisation'. But in both charities and not-for-profit organisations, there is a strong onus on them to be accessible and accountable. If anybody can be said to 'own' a voluntary group, it must be the people who benefit from it, and ultimately the general public. When an individual feels a strong sense of ownership of a project, inadequate structures and few democratic systems may be the result. But such a person is losing sight of the bigger picture - the sense of altruism that is the energy base of the voluntary and community sector. Anything that compromises that altruism could harm the sector and its public image.

People founding a voluntary organisation must be aware that letting go is a healthy step in the organisation's development, and must ensure that there are democratic systems in place to allow the organisation to develop in an empowering and accessible way.

### **3.9 The board's legal responsibilities and potential liabilities**

*"... I'm not responsible. I'm only on the committee!"* - quotation from a trustee of a charity that had been systematically defrauded for several years by a worker.

#### **Northern Ireland Trustees' duties and responsibilities**

Trustees in Northern Ireland have to comply with Northern Ireland's trust laws and charity law. You can find out more about these laws by getting a copy of *'Northern Ireland Charities - A Guide for Trustees'* which is published free of charge by:

Charities Branch  
Voluntary Activity Unit  
Department for Social Development  
5th Floor Churchill House  
Belfast BT1 4SD

People are becoming more aware of the fact that they have some onerous responsibilities when they become a trustee of a charity. Board members (trustees) are expected to exercise their powers with the same skill and care that any ordinary prudent person would in the same circumstances. Below is a brief checklist:

- Trustees must act in the organisation's interests, not in their own personal interest, and not in the interests of another organisation
- Failure to meet legal responsibilities may cause an organisation to come into disrepute
- Failure to comply with charity law and tax law requirements may result in loss of tax privileges
- Failure to act prudently may expose trustees to personal liability
- Gross misconduct or imprudence may result in harm to, or even dissolution of, the organisation

**Some positive points to remember:**

- Good board procedures are themselves good risk management procedures
- It is very unusual for a trustee to suffer financial loss as a result of his/her trusteeship
- It is rather more likely that a trustee will suffer financial loss because the charity owes more to third parties than it can cover from its assets
- If trustees know their duties, and act conscientiously and honestly, they are unlikely to face financial loss
- Risks need to be acknowledged, but also kept in proportion

**Trustee liabilities can arise in one of two ways:**

- For breach of contract (including employment contracts, contracts for supply of goods and services, leases and loans) or in tort (a legal term covering civil wrongs, such as negligence and libel), trustees who have acted reasonably and properly can use the organisation's funds to pay its debts and obligations. However, if these funds are insufficient, the trustees may be personally liable
- For breach of trust, trustees of organisations with charitable objects - regardless of whether the charity is incorporated or unincorporated - can be held personally liable for a breach of trust. A breach of trust occurs when trustees act in a way that is not authorised by the terms of the organisation's governing document, or by charity or trust law, or when they fail to observe their duty to act prudently. In this case, the court could require them to make good (repay) any loss to the charity resulting from the breach. It is very rare for this to happen

**Examples of a breach of trust situation**

- Spending a charity's assets on activities outside the scope of the charity's objects (the charitable purposes for which it was established)

- Making a decision with major financial or legal implications without taking proper advice

### **CASE STUDY F**

A small charity got a grant (£6,000) for setting up and running (over a one year period) a drop-in centre for young people in their area. After only one month, the building used by the youth drop-in was closed down due to safety concerns. Also the young people in the area did not seem interested in using the drop-in facility. The board of the charity got together and decided to use the remaining grant money to set up a community drop-in for all ages in another location. The funding body which had made the original grant was not pleased when the board explained what it had done. The funding body asked the board to repay the grant money which had been misused. The charity did not have the money.

### **COMMENT**

The board should have discussed with the funding body the problems they were experiencing in putting their project into practice. They should have at the least asked for the funding body's consent before redirecting funding to another project.

## **Good Governance. A Guide**

### **Section Four – Protecting against liability**

#### **4.1 The board's role in assessing and protecting itself and its organisation from potential risks and liabilities**

Boards must consciously face risks and reduce them to tolerable proportions, eg risks in relation to the organisation's property, legal liability for members or outsiders.

It is understandable that boards neglect this duty, but it is unforgivable. Risk management must be about more than just protecting the board members from individual liability. The organisation, its staff, volunteers and trustees should all be protected.

#### **4.2 What is liability?**

**Legal obligations** are obligations which the courts will enforce. They include legally binding agreements (eg contracts, deeds, trusts) and legal obligations which are imposed by the common law or by statute. Many statutes contain obligations which could be enforced through the civil courts, eg an employer has a statutory duty to provide a safe workplace for employees, and may be sued by an employee for breach of statutory duty.

**Liability** is being held legally liable for actions taken and for defaults (actions not taken). Liability can arise from different sources (for example, legal obligations not being met or tort, ie injury, loss or damage caused to a person through acts such as negligence). In law, every person has a so called 'common-law duty of care' towards others.

There are different sources of liability and there are various ways to try and avoid liability arising in the first place. Try to take sensible steps to minimise potential liability. The checklist below may help.

#### **4.3 Some practical ways of protecting trustees (and organisations) from potential liabilities**

##### **(i) Incorporation**

Limitation of personal liability to third parties is probably the single biggest advantage of incorporation, ie setting up a company limited by guarantee. This is only a benefit if trustees face a real risk of personal liability arising from the organisation's activities. The potential risk of personal liability is likely to be greatest in larger organisations whose contractual obligations are a significant proportion of their assets. The trustees of those organisations have most to gain from the limitation of liability given by incorporation, particularly if much of the

organisation's income is from unpredictable sources such as statutory funding or public donations.

**(ii) Insurance**

All voluntary organisations need to consider whether it is necessary to take out insurance to protect against potential loss or liability. For detailed information on the different types of risks and the insurance policies that can protect against them, see sub-section 4.5 below.

**(iii) Trustee liability insurance (also called Directors' and Officers' insurance)**

This is a special type of insurance which can be costly. It offers some protection to trustees against personal liability, and protects (or indemnifies) the organisation against liability arising from the wrongful actions of trustees, and sometimes of staff or other agents. Some policies offer a choice of protection for trustees, the charity or both. This sort of insurance protects trustees from personal liability arising from their wrongful actions. It does not offer protection for all potential liabilities. Cover is often restricted to “*acts properly undertaken in the administration of a charity, or undertaken in breach of trust, but under an honest mistake*”.

**(iv) Development of risk management procedures**

Effective boards are the ones that adopt sound risk management procedures. The process is very important and can be broken down into steps:

- Identify risks
- Analyse options for eliminating or reducing risks
- Select the most suitable techniques to protect the organisation
- Implement the technique
- Monitor the techniques and modify as necessary
- Risks change constantly, so step (i) above should be repeated regularly

Risk identification should be built into everything that the board and the organisation does, and not considered only in relation to insurance.

**4.4 Four steps which may help in protecting against liability**

**(i) Don't incur liability - don't take unnecessary risks**

Know and understand your duties, and help others to understand theirs too:

- Observe good practice.
- Follow clear policies.
- Act honestly and reasonably.

- Take advice from an expert if necessary.

**(ii) Insure against risks**

- There are many different kinds of insurance policies which provide cover against different liabilities (see sub-section 4.5 below for guidance on the different types of insurance policies).
- Weigh up the risks, and if appropriate, insure against them.
- Review your group's insurance policies/needs regularly.

**(iii) Negotiate**

If possible, include in contracts a clause limiting the liability of members (or members of the committee) to the extent of the assets of the organisation. Many parties to a contract are unwilling to accept such clauses, but some will.

**(iv) Incorporate (if appropriate)**

Incorporation can protect a company's members against personal liability in many instances. But beware, if you sign documents, especially contracts or leases without making it clear you are signing on behalf of a company, then you may be held personally liable if the obligations in the contract are not met. Giving personal guarantees undermines any protection which 'limited liability' offers.

**CASE STUDY G**

A small unincorporated charity received a grant from a funding body. 80% of the grant is released with a further 20% to be paid after the completion of the project. The bank arranged an overdraft facility for the group so they could continue their project as normal till the final instalment of the grant came through. But the funding body concluded that the grant had not been spent in strict accordance with its contract with the organisation, and therefore refused to release the balance of the grant.

The organisation had a substantial overdraft at the bank, and no money or assets to cover it. The board members all resigned, believing that they might be personally responsible for making good this debt to the bank!

**COMMENT**

The board members are correct in thinking that they may be personally liable for the debt incurred by their unincorporated association. But they cannot escape this liability by simply resigning from the board. What they should do is to face up to the problems the organisation is going through, meet and discuss them rationally, take advice from a solicitor or accountant or other expert, and see what can be done to solve or rectify the problems. Perhaps the bank would be willing to work out a manageable repayment schedule for the organisation to follow?

Additionally, the organisation could consider setting up a temporary fundraising group to generate income to make good the debt, eg regular cake sales, jumble sales or other fun-orientated events can bring in income, as long as people are willing to volunteer their time to the organisation. If there are lots of arguments within the board and the organisation as a result of the difficulties experienced by the organisation, then volunteers and supporters can quickly melt away from the organisation, leaving the board to face the problems alone.

#### **4.5 Insurance**

If risks cannot be reduced to an acceptable level, insurance becomes necessary. A stepping stone approach can be used with voluntary organisations purchasing more insurance cover as their activities increase. It is helpful if boards have an understanding of the sorts of risks commonly faced by voluntary organisations, and the types of insurance which protect against these risks.

#### **CASE STUDY H**

A community organisation decided to hire a fire-juggling act to launch their annual community festival. However, the board neglected to consider if insurance would be needed to cover the event. At the last minute, the board realised that the venue would not be insured for evening events. The Treasurer got a quotation from an insurance company. It was expensive. The organisation had very little money, and there wasn't time to shop around other companies. The event was a total success, except for a minor incident when a cigarette singed the curtains. The fire extinguisher was empty (someone had let it off in at New Year). Luckily someone was able to put the flames out with a kettle of water from the kitchen.

#### **COMMENT**

One-off insurance policies can be taken out to cover unusual events. Shop around for a good deal. Don't leave it until the last minute to think about insurance. Think generally about safety, and make sure everything is done to ensure that the people attending the event are safe, and the building is protected.

#### **Risks faced by voluntary organisations**

Anyone occupying property or pursuing any activity has a potential liability to pay damages to a person injured through a defect in the property or its furnishings, or through an act of negligence which causes an accident. If an accident happens on the premises of an unincorporated body, or because of some negligence in its actions, members of the board may be sued (usually one or two are sued in a representative capacity) and will be responsible for the payment of damages if the claim is successful.

For this reason, it is good practice for voluntary organisations to offer a right of 'indemnity' (that is, the right to be 'covered' out of the organisation's funds) to its members, employees, volunteers and board members so that the organisation will cover the cost of any successful claim made against one of these. The 'indemnity' clause which states this is usually to be found at the end of an organisation's governing document. However, if the organisation simply does not have the money to cover its responsibility, then the board members are still personally responsible to pay the damages or losses. That is why it is important to take out appropriate insurance policies - because such policies will normally pay out to cover the cost of such losses or damages.

## **Types of insurance policies relevant to voluntary organisations**

### **Employer's liability insurance**

By law, employers must be insured against claims for injury, death or illness of an employee for a minimum indemnity of £2 million. In practice, most policies carry an unlimited indemnity. Employers have a duty to keep an employee safe from harm. The definition of who is an employee should be kept as wide as possible and should always include voluntary workers. In a dispute, the courts will decide whether volunteers are employees or third parties (outsiders).

Employer's liability insurance will protect employers in the event of a successful claim by an employee who suffers injury, death or illness in the course of their work. A certificate of insurance will be issued by the insurer each year and a copy must be prominently displayed at each premises where business is conducted.

### **Public liability insurance**

Public liability insurance (also called third party insurance) indemnifies an organisation against liability arising from injury to people other than employees, and for loss or damage to third party property. An organisation will be held legally liable if injury, damage or loss arise as a result of its negligence or failure to take reasonable care. This includes liability for the actions of employees or voluntary workers carrying out its business. A claimant must establish negligence if a claim is to be successful

With public liability insurance it is important that the definition of who is an employee matches that in the employer's liability policy, otherwise volunteers could be excluded under both policies. The policyholder decides the amount of cover necessary for any one incident. Normally, cover up to £1 million would be the minimum.

When taking out public liability insurance, organisations should agree a list with the insurer of the sorts of activities that should be covered, and make sure the insurer understands the nature of the activities. The policy may need to be extended in the case of a special event, such as an art exhibition, a show, or an out of the ordinary activity. An extra premium may need to be paid for such extensions. All of an organisation's

activities should be noted (including any activities which do not take place on the organisation's premises) in the business description of the policy to ensure adequate cover. A public liability claim can arise off the main premises of an organisation. For example, an employee may damage someone else's property in the course of his/her duties, or cause an accident involving personal injury.

It is good practice to have a procedure for reporting any accidents or incidents which occur in an organisation.

### **Can a volunteer or member make a claim on his/her organisation's public liability policy?**

A public liability policy will provide cover in the event of an organisation being sued by a third party (outsider). But what if action is brought against a volunteer by another volunteer who has been injured as a result of her/his negligence? Public Liability cover should be extended to include an indemnity to individual volunteers and members of the organisation so that they can be protected if an action is taken against them by another volunteer or member.

### **Can a board member claim on his/her organisation's public liability insurance?**

Insurance cover for claims by an individual board member against other members of the board can be arranged. Because the members of the board of an unincorporated organisation will usually take out the insurance policy in their own names, a difficulty may arise if one of them needs to make a claim. It is best to try and arrange insurance cover in the name of the association or in the name of 'the committee for the time being' than to use people's individual names.

### **Hired premises/contractual liabilities**

When premises are hired for a meeting or short event, the conditions of hire may make the hirer responsible for any damage caused (including fire damage). Conditions of hire should be discussed with the insurance company because many public liability policies exclude contractual liabilities (such as those arising from hiring).

### **Personal accident insurance**

If an accident happens to a board member or an employee, or a volunteer has an accident in the course of their business on behalf of a voluntary organisation, this will not usually be covered by employer's liability or public liability insurance. Personal accident insurance covers accidents not covered under public liability or employer's liability insurance. A person claiming on this sort of policy may receive a sum of money to compensate for his/her injuries and incapacity resulting from the accident. In the event of death, next of kin will receive a payment.

### **Buildings insurance**

If an organisation leases or owns a building, it will need to be insured against damage by fire or 'other perils'. Many leases contain a clause requiring the holder of the lease to insure the building. It is vitally important to get adequate cover, so that if the worst happens and the building needs to be completely rebuilt, the replacement cost (not just the market value) of the property will be covered by the insurance (including demolition and site clearance, architect's fees and other fees, building costs and any VAT which may be payable). It is sensible to get a quantity surveyor to estimate the cost of rebuilding an entire building at current prices. Obviously, cover should be reviewed regularly to make sure it is still adequate. 'Other perils' in the context of buildings insurance covers damage which is unlikely to occur, such as riots or aircraft and is usually not costly.

### **Consequential loss insurance**

This is to cover a situation where, for example, an organisation wants to ensure that it will have a place to house its activities and staff while its building is being rebuilt as a result of a fire. Also, if the organisation suffers a loss of income from having to temporarily suspend fee-paying activities such as educational courses, it will be covered.

### **Contents insurance**

This is to cover damage or loss of property. It is important to make sure the cover is adequate to meet the cost of replacing any equipment, machinery and other items stolen or damaged, including damage by fire. Individual accidental damage is not covered (see **accidental damage insurance**).

Contents insurance covers the value of equipment or other items stolen or damaged in a fire. It may not cover water damage. Flooding may be covered under 'other perils', but that may not include internal flooding from a burst boiler or pipe. With contents insurance, it is important to check precisely what is covered.

Make sure the contents of your premises are adequately valued and that the amount of cover is increased if you add to the contents. It is best to take out a 'new for old' clause for contents. This means if a three year old computer is lost in a fire, a brand new one can be purchased to replace it (as long as the contents have been adequately valued).

### **Accidental damage insurance**

This is to cover individual items of property in the event of accidents. If, for example, liquid is spilled over a computer, destroying it beyond repair, it is not usually possible to claim under the contents insurance. The sort of insurance that can cover such accidents is called accidental damage insurance. Accidental damage insurance covers damage to individual pieces of valuable equipment. It is usually quite expensive and may not be necessary. If it is necessary, users of the equipment could be asked to contribute towards the cost of insuring it.

## **Legal expenses insurance**

Getting legal advice in a dispute can be costly, even if the outcome is one where your organisation is vindicated. Legal expenses insurance covers solicitor's and barrister's fees, court attendance allowances and opponent costs in contracts disputes, property disputes and unfair dismissal disputes.

## **Wrongful advice and information**

A voluntary organisation which provides advice and information (either oral or written) to members of the public could be liable if it gives incorrect advice or information to a person and as a result injury, damage or financial loss is suffered by that person. This applies to free advice given via helplines. An advisor may even be liable in a situation where advice is passed on by a recipient (without the adviser's knowledge) to others.

Professional indemnity insurance covers this sort of risk. Organisations providing advice or information are supposed to take reasonable care that the advice given is correct and evidence of this would be useful in defending a claim.

A disclaimer may be useful, stating that the advice or information provided is not necessarily correct and should not be relied on (see sub-section 4.6 below for further information on disclaimers).

## **Trustee indemnity insurance**

In law, people on the board of a charity are 'charity trustees' and have certain duties and standards to uphold. Trustees (even in a charitable company) can be made personally liable for breach of trust. This can arise if, for example, the trustees fail in their duty of care to act as reasonable and prudent businessmen and women, and as a result cause a loss to the charity.

However, trustee indemnity insurance does not protect trustees from all risks of this kind. For example, the insurance will not cover any fraudulent or dishonest act or any act which the trustee knew to be a breach of trust or duty, or any act committed in reckless disregard of whether it was a breach of trust or not. In non-charitable companies or industrial and provident societies, indemnity insurance will cover a wider range of acts, including acts such as 'wrongful trading' or acts where the directors did not take advice.

Trustee indemnity insurance (also called trustee liability insurance, or director's and officer's (D and O) insurance) may be paid out of the funds of a charity to try and protect the board as far as possible from personal loss or bankruptcy as a result of a breach of trust, or breach of duty as a trustee or company director.

What might be covered are situations where trustees allow the charity's funds to be used for purposes outside the charity's objects and powers, provided they genuinely had reason to believe the purposes were within the objects and powers. Similarly the trustees may be

covered if they allow the funds of the charity to be used for political purposes outside the boundaries permitted by charity law provided they genuinely believed their actions were correct, or had been so advised. Finally, trustees who cause loss to their charity through poor investments could be covered, provided they had taken proper advice and had acted prudently.

### **Fidelity insurance**

This protects organisations which experience theft or dishonesty by volunteers, employees or board members. It provides cover (up to an agreed limit) for fraud or dishonesty of staff and could be extended to include board members or volunteers.

## **4.6 Other methods (apart from insurance) of reducing risks**

### **(i) Disclaimer notices**

It is advisable to provide a disclaimer notice in cloakrooms or car parks, disclaiming responsibility for loss or damage to articles left there. It is not possible to disclaim liability for death or personal injury in this way. Another example is a disclaimer emphasising that advice or information provided is not necessarily correct and should not be relied upon. If this tactic is to be successful, it must be shown that:

- The disclaimer was brought to the attention of the claimant, eg by being prominently displayed in the room where the advice was given, or (if written advice) on the documentation provided or the website where the advice was published
- That it was reasonable to rely on the disclaimer under the circumstances

### **(ii) Clauses in the governing document**

It is good practice to include an 'indemnity clause' in the governing document of unincorporated organisations. This states that the organisation will indemnify (cover or compensate) an employee, volunteer, board member, holding trustee or member of the organisation if they are sued as a result of carrying out the business of the organisation. It does not promise to cover anyone who acts without authorisation from the organisation, or acts without proper duty of care, or who acts outside the scope of the organisation's objects, or who acts criminally. However, the right to be indemnified by the organisation is worth nothing if the organisation does not have the assets to meet its responsibility. Individuals would in that case face personal liability for any losses. That is why the indemnity clause usually states also that the organisation should take out appropriate insurance policies.

**(iii) Clauses in contracts limiting the liability of the board or members of an association to the extent of the assets of their association, and no further**

It is possible to put a clause into contracts stating that the liability of the board or members of an association entering into the contract is limited to the extent of the assets of the association and no further. For example, the following wording could be used:

*"The personal liability of the person signing this contract on behalf of \*\*\*\*\* Community Association, any member of the governing body of \*\*\*\*\* Community Association and any other person held liable under this contract, shall be limited to the amount of the net assets of \*\*\*\*\* Community Association at the date of any claim."*

Many organisations entering a contract would be unwilling to agree to such a clause, but some may.

**(iv) Incorporating the organisation as a limited company**

This limits the liability of the members of a company to a nominal amount guaranteed when the company was set up (usually £1). Board members of a charitable company may still be liable for a breach of trust.

**(v) Improving management structures, communications, policies and procedures**

This can prevent potential problems and potential risks developing to a point where they become matters of litigation. For example, in a board or in an organisation where there is a culture of openness, and where people are not afraid to ask questions or raise issues, then it is more likely that potential problems will be uncovered at an early stage.

**(vi) Establishing contingency plans and funds**

Building up reasonable reserves of cash, while still using the bulk of the charity's money to promote and carry out its objects can cushion an organisation from unforeseen changes in fortune.

## Good Governance. A Guide

### Section Five. Trusteeship - the benefits

#### 5.1 The modern trustee

In today's society with so many different tasks, activities and opportunities competing for our time, trusteeship is not an easy option to sell to people. Those serving on a board may become an increasingly rare species, unless trusteeship can be presented as an attractive option, and to a broad range of people. There are two important ways of ways of preserving the trustee:

- (i) Highlight the benefits of serving as a trustee
- (ii) Broaden the pool from which trustees are drawn

#### **CASE STUDY I** (from an article by Patrick Curry in *NCVO News* 1998)

Youth Clubs UK represents around 7,000 youth clubs. It was decided that a third of its fifteen trustees must be under 25. Until then, only a token one or two of the trustees were young people. Ensuring that a third of the board is young people gives the young trustees power. If they win over three adult trustees, they can set policy.

#### **COMMENT**

The charity has a national members' group made up of young people of at least fifteen years old. They elect the young trustees. Young people who become trustees serve for two years and receive training in assertiveness, finances and public speaking.

Becoming a trustee is an important decision in any person's life. There is mutual benefit to the individual and to the organisation. The tangible benefit to the organisation is that the organisation's aims are furthered. The benefit for the individual is that they get an opportunity to be active, creative, fulfil a sense of duty, learn new skills (eg management and supervisory skills), to develop inter-personal skills, to make a difference and to share a vision with other people who may possess diverse talents.

The atmosphere of a voluntary board is often more relaxed and less hierarchical than in other sectors. Trustees often gain a new sense of self-worth and satisfaction. Their horizons have been broadened by coming into contact with people they would not normally meet. Empathy and self-confidence can be developed within a board. New and difficult challenges can be faced with the help, support and encouragement of other trustees.

Highlighting the benefits of board service can be a useful way of attracting employees of organisations to boards. Many find that board service has offered them more than promised. It should be promoted and valued.

It is important to motivate people to join a board. It is also important to keep them. Good practice, by encouraging fair play, can assist in keeping a board together. Petty corruption, abuse of power and the like can disillusion people very quickly.

## **5.2 Young board members and young people's participation**

For young people, becoming a trustee can give them a chance to explore their ideas and perhaps even take risks in a supportive environment. An understanding of power and management skills can be a result. While it is not possible for a person under eighteen to serve on the board of a charity, it is possible for those aged 18-25 to serve as board members.

In addition, it is possible for under-eighteens' views to be represented to boards by various means, for example by setting up an under-eighteens' 'Advisory Committee' which will engage directly with the board to put forward the views of the youngest members of a voluntary organisation.

All voluntary organisations should take on board their responsibility to involve young people. Youth organisations in particular need to work at helping the young people to be empowered within the organisation.

## **5.3 Older board members**

Older people are a valuable resource which voluntary organisations have drawn on extensively. However, like young people, the older person may be overlooked or undervalued as potential trustee in a voluntary organisation. For retired people, becoming a trustee can give them a renewed sense of purpose. It can also enable voluntary organisations to benefit from the skills and experience the older person has built up over a lifetime.

Older people can bring a great deal of strength to any community or voluntary organisation. They can inspire confidence and courage in younger members of organisations. In addition there are many examples of dynamic and very often self-reliant voluntary and community organisations run by and for older people.

## **Good Governance. A Guide**

### **Section Six. Development and training for boards**

#### **6.1 Good practice in board training and development**

There is a need for board development in the Northern Ireland voluntary and community sector. Too many trustees are wooed onto boards only to be left to fend for themselves. Board development does not happen by magic. It needs to be viewed as a task or a series of tasks that must be assigned if they are ever to be completed. In terms of training for board development, there are a number of ways to meet the needs:

- On the job training
- Relationship building
- Formal training
- Board assessment and evaluation programmes

#### **Board training programmes should cover the following topics:**

- (i) General responsibilities
- (ii) Legal responsibilities
- (iii) Financial management
- (iv) Employment responsibilities
- (v) People skills and assertiveness
- (vi) Communication skills

Ideally, the training needs of individual board members should be thoroughly assessed.

#### **6.2 Planning for training is good practice**

Trustee training can have a greater impact when it is planned for and implemented within a framework of trustee support and development. Many trustee boards have found it useful to:

- Carry out a training needs analysis - ask which board members need which training. Should staff be included too? In-house DIY training should be considered, as well as open courses and specially tailored courses.
- Draw up a realistic training plan - good practice requires that training is flexible and that the format and pitch are appropriate.
- Evaluate training sessions - this is very important to identify the things that worked and the things that did not work for the participants.
- Develop a training programme - budget for it so that there are sufficient resources to implement it. Funds need to be allocated for trustee development in the same way as

funds are allocated to staff development. As voluntary organisations invest in their boards, the benefits will be obvious, as individuals are better equipped to govern their organisations.

### **6.3 Organisational culture and team-building - what they mean for boards**

Ideally, a board is a group of people who can work effectively as a team. A board can have all the skills required, and represent all constituencies, but be so diverse that members are unable to work together as a team.

Requiring people to attend a number of board meetings (informally) before actually joining the board may help the board to get people who know what will be expected of them.

Holding away days and social events presents opportunities for trustees to get to know each other and to learn to work together. This can build camaraderie and trust among board members and between board and staff.

Other small things may help to create a good board environment, eg going round the table to introduce new members, or having name badges or place markers. An enabling environment encourages creativity, innovation and risk-taking. Mistakes are made, and can be learnt from. Taking risks is an important part of organisational development.

### **6.4 Other methods of strengthening board skills (other than formal training courses)**

#### **Induction**

An induction package should be offered to all newly recruited trustees so that they can familiarise themselves with important elements of the organisation (eg its constitution, its policies, culture, resources and staff).

Furthermore, the ongoing support needs of the new recruit could be looked at. Infrequent meetings and lack of day to day contact make it vital to welcome new board members with a good induction programme that answers their need for information and helps them to meet key people.

The induction process furnishes trustees with information about the organisation, its mission, vision, values and policies and their role as trustees. It is an ideal opportunity to identify their training and support needs.

After induction, making meetings more supportive can give new trustees the confidence to play a full part in discussions. A programme of ongoing board training allows trustees to develop new skills and to enhance the effectiveness of the board as a unit.

#### **Mentoring and shadowing**

Mentoring continues the process of development. It can provide an individual trustee with emotional support, a listening ear, an unthreatening presence, sensible advice and an opportunity to talk things over.

Some trustee boards have found it useful to identify trustees who are willing to act as mentors for new trustees (eg young trustees). Mentoring and shadowing arrangements can provide an effective reinforcement of a formal trustee training programme.

### **The chair's role in team-building**

The Chair can encourage everyone to contribute to discussion. A short biography of new trustees delivered by the Chair can help new trustees to gain credibility in the eyes of the others. Listening to each other and valuing contributions can help create a good environment for getting business done. Another important aspect of board development is to value trustees, eg by encouraging them to claim expenses. Trustees should never be out of pocket because they have been unable to reclaim expenses. All these require leadership to be shown by the Chair.

## **6.5 Tools for board development - board meetings**

Board meetings are the formal setting for trustees to take all decisions. Good meetings make effective use of board members' time, concentrating on governance rather than management issues.

The only time that boards should get involved in actually managing is when there is no-one else to do the management job - usually because the board does not employ management staff, or volunteers are not prepared to take on the task.

The quality of decisions depends on well-planned agendas that set out whether items are for information or discussion, and clearly presented meetings that are effectively chaired. Well-chaired meetings give trustees confidence.

## **6.6 Nine deadly sins of board management**

### **Do not:**

- (i) Take decisions over the head of the chief executive or co-ordinator (leave the chief executive to do the job of managing which is what you employed him/her for)
- (ii) Bypass the chief executive and issue direct instructions to staff
- (iii) Allow more than one person on the board to give instructions to the chief executive (there must be only one line manager)

- (iv) Allow so much overlap of roles between board members, staff and sub-committees that people get confused
- (v) Use board meetings to try and undermine or trip up the chief executive. Aim to operate on a basis of mutual trust but, if you have concerns, raise them through the proper channels, ie line manager first, etc
- (vi) Insist on having information on everything that is going on in the organisation, whether or not you need to know in the interests of effective policy-making and governance.
- (vii) Take a view on absolutely everything and discuss it at all meetings. It's not your job to make decisions on matters of small detail
- (viii) Make policy decisions on the hoof without proper information
- (ix) Fail to thank staff for their efforts and congratulate them on their successes

Extract from '*Faith and hope don't run charities, trustees do*' by the Wales Council for Voluntary Action 1999.

### **6.7 Twenty ways to sabotage a meeting**

- (i) Turn up late
- (ii) Forget to bring your papers
- (iii) Adopt a negative body posture, eg lounging
- (iv) Use a negative body language to colleagues, ie look bored
- (v) Maintain a whispered conversation with the person next to you
- (vi) Exchange conspiratorial glances (eg eyebrow raising) with one or two colleagues
- (vii) Use the time to catch up on your paperwork
- (viii) Fiddle about in your bag or briefcase
- (ix) Pass notes to people
- (x) Smile and nod indiscreetly when people pass notes to you
- (xi) Engage in paralinguistic forms of argument, eg respond to colleagues' arguments by vigorously shaking your head from side to side and wrinkling your nose
- (xii) Cut across other people's points and change the subject
- (xiii) Bring up issues which are not on the agenda
- (xiv) Display strong emotions
- (xv) Split the meeting up by starting a small discussion with a small group and then gradually increase the volume of the breakaway discussion until the Chairperson panics
- (xvi) Engage in mysterious or enigmatic chuckling, smiling and head shaking
- (xvii) Block colleagues' arguments by claiming to be deeply offended at the very mention of the issue
- (xviii) Look at your watch and sigh every few minutes

- (xix) Tell everyone that you cannot stay for the whole meeting
- (xx) Doggedly pursue your personal agenda

### **6.8 Some questions boards should regularly ask**

- (i) Are the governing and policy documents up to date?
- (i) How are trustees carrying out their responsibilities?
- (ii) What areas need improvement?
- (iii) What can be done to make improvements?
- (iv) Is there a sufficient number of board members to discharge business?
- (v) Is the current committee structure sufficient to handle the board's workload?
- (vi) Are board meetings conducted effectively?
- (vii) Do agendas cover policy issues rather than administrative trivia?
- (viii) How can the value of meetings be enhanced?
- (ix) Is there sufficient opportunity for the board to hear about the complexity of certain issues before making decisions?
- (x) Is the majority of the board involved in making the board's decisions?
- (xi) Is the board supporting and evaluating the chief executive?

### **6.9 Thinking time for the board**

At least once a year a board should set aside thinking time to look at how it is performing its role, eg thinking about targets, successes etc, or carrying out a SWOT analysis (ie a look at Strengths, Weaknesses, Opportunities, Threats). Planning ahead is crucial.

The contribution of individual trustees should be acknowledged, and their strengths, weaknesses and support needs discussed. The board could plan programmes to which individuals can contribute. It may be, after this process, individuals may decide it is time for him/her to leave the board.

Looking at ways to make board meetings more effective can help those who chair, serve on, or work with boards to perform their roles more effectively and efficiently.

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### **Section Seven. Maintaining a healthy board**

#### **7.1 The evolving board**

The sensitive area of moving on is one not often openly addressed by organisations. This is a critical issue if board members and organisations are to develop and grow. The evolving board should be the norm.

Moving on gives the board an opportunity to recognise (and celebrate) the contribution an individual has made to a board, valuing that contribution, but leaving the board to make way for new and fresh people. Ground rules for joining and leaving the board should be part of the board recruitment process.

Fixed terms of office for board members can be useful. For example, a board member may only serve two consecutive terms with a gap of one year before another term can be served.

Experience of trustees who leave can be very valuable feedback. For example, exit interviews could be a very useful way of evaluating satisfaction levels of outgoing board members, and monitoring people's reasons for leaving the board.

#### **7.2 Board assessment of the organisation**

Board assessment of the organisation links into assessment of the chief executive's performance in ensuring that the organisation achieves its objectives. Evaluating the performance of the organisation is unavoidable, and is a basic responsibility of the board. Here are some key questions:

- (i) If we were starting today, would we do it this way?
- (ii) How do our actions match our mission statement?
- (iii) How are we like (and unlike) the best in our field?
- (iv) How are the next five years likely to be different?

#### **7.3 Recruitment as a board development strategy**

A consideration in any plan for board development should be attention to who serves on it. Standards or 'criteria of participation' should be developed. The board needs to look at its current strengths, weaknesses and then decide what kind of people should be on board.

This could be called developing a board profile. Voluntary sector boards need a matrix of hard and soft skills. A list of strengths current board members possess should be drawn up, gaps identified, and prospective trustees identified to fill the gaps.

The board can shop for trustees with relevant skills and combine this with formal election procedures, eg places may be reserved for co-opted members who will fill skill gaps.

### **Job descriptions**

It is advisable to draw up job descriptions for trustees (and for honorary officers within the board). These are also useful for those making the nominations.

These matters should be reviewed on a regular basis to determine the kind of leadership the organisation needs. Organisations often change over time in terms of the communities they serve, the budget and staff with which they operate, or even the mission which drives them.

Different leadership styles may be required in management and governance as an organisation grows and changes. The board needs to acknowledge this and to make changes, so the board and staff can contribute to the well being of the organisation rather than impede growth.

### **The position of chair**

The position of Chair of a voluntary organisation carries with it a rare combination of qualities. It is one of authority and power. The Chair governs the organisation. He/she guides policy development, policy (which determines the future of the organisation) and has a high level of responsibility for financial and programme management of the organisation.

The kind of relationship that the Chair establishes with the board and chief executive can immensely influence the effectiveness of the organisation. If he/she can energise the board and at the same time promote a harmonious relationship with the chief executive, things can happen.

## **7.4 Keeping the board/staff relationship healthy and happy**

Staff and board work together to serve the mission of the organisation. Goals and objectives are set and met under the able leadership of a Chair. A Chair has a key leadership role in an organisation.

Some key questions are:

- (i) How does the Chair's responsibility mesh with that of chief executive?
- (ii) To what extent does the influence of each person vary according to different circumstances?
- (iii) How does a Chair deal with a board of diverse interests?
- (iv) How does the size of a board change a Chair's approach?

The role of a Chair involves effective performance in leadership. The components of this are to build participation, to acquire and communicate information, to evaluate performance, and to delegate power (on clear terms). A Chair has to have a vision, be detached, impartial, caring. A strong chair can recharge an organisation, set it on a new course and excite a board and membership to accept challenges formerly unseen, unrecognised, unacknowledged or ignored.

### **7.5 What attributes should a trustee have?**

The Charities Branch of the Voluntary Activity Unit, Department for Social Development, says in its pamphlet *Northern Ireland Charities - A Guide for Trustees* that:

*"A trustee should be chosen for the qualities they can bring to a charity. A trustee takes on legal responsibilities and could incur legal liabilities. No trustee should be appointed who does not understand the nature of the position they are taking on."*

A trustee needs to be committed to the organisation, have integrity, a strategic vision, have a willingness to speak his/her mind, possess common sense, have independent judgement, and be able to work as a member of a team. Boards should be provided with opportunities for interaction between board members and members of staff or the community. Members should be invited to visit the office or participate in key events.

Social activities should be scheduled in conjunction with board meetings which include members of staff and representatives of the community the organisation serves. In this way other members of the organisation can learn about the board.

### **7.6 Good practice considerations in board recruitment**

Boards should be accurate about the time and commitment required when they are trying to recruit new trustees. It is the board's role to create a dynamic and continuous volunteer leadership for the organisation. A trustee 'job description' may help. Developing a recruitment plan may also help in this task.

A written job description for board members may enable them to better understand the mutual and respective lines of responsibility of the chief executive and the board, resulting in a constructive climate in which governance can occur.

### **7.7 Securing board recruitment**

Board members could be described as volunteers in a professional environment. Trustees have to perform their role effectively and efficiently in an environment of change. They are not paid for the duties they undertake. Trustees are increasingly having to work in a professional environment and take decisions which involve implementation by

professional staff, which may entail recruiting consultants and professional advisors and which may even affect their own professional reputations.

Trustees must be up to speed to take the decisions they need to. With the increased professionalisation of the voluntary and community sector, trustees need to keep sight of the reason their organisation exists, the passion, the energy and the creativity which were needed to set up the organisation.

## **7.8 Encouraging board membership**

To be attractive to individuals, trusteeship has to be presented as the challenging, rewarding and creative opportunity that it is. Board programmes enhance the potential of developing the role, of developing citizenship and of planning for the future. All the aspects discussed in this guide are elements in a holistic programme of developing the role of the individual and the role of the board.

Board members must have a good sense of purpose and of the basic working of the organisation to govern wisely and with enthusiasm. This means they must experience first hand what the organisation does. This will have an impact on the decision-making process in the boardroom.

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### **Section Eight. Conclusions**

#### **8.1 The board of the future**

Many voluntary organisations touch the lives of the neediest and least advantaged in society. Some provide badly needed social services. Most are innovators. Effective governance is about leadership. Developing the role of trustees, trustee boards and committees involves equipping trustees to lead in what are often very challenging circumstances.

Board members have a duty to fulfil the mission of the organisation. In today's climate this involves a greater move towards integrity and accountability. What is involved is the ability to identify relevant issues, explore how best to address them, identify what is at stake and enable voluntary organisations to make the sometimes difficult choices that need to be made to shape the future.

Meeting the challenges of change, forging ahead with carefully planned strategies, creating a legacy for the future can only be done by effective boards in enabling environments. In the long term, the voluntary sector's greatest value arises from its freedom to experiment, but experiments are useless unless conclusions can be drawn from them. That is the purpose of evaluation.

Evaluation can only be carried out by boards that are effective, efficient and in a process of continuous development. Developing voluntary sector boards is a crucial element in enabling the sector to play a leading role in society.

Board development and training, and the effective recruitment of trustees are crucial factors. Though they are volunteers in a professional environment, board members must be encouraged and trusteeship presented as a truly rewarding and challenging concept. Imaginative approaches to board development will be required.

Effective governance is about good leadership, and leaders will have to be recruited who are able and willing to move toward ever greater openness and accountability. The voluntary sector's is the space that will continue to provide people of all ages with the freedom to experiment with structures, power, governance, leadership and change.

#### **8.2 Balancing altruism and ambition**

Groups are made up of individuals and individual needs are often at odds with the needs or interests of groups. With the best will in the world, individuals can lose sight of the altruism that very probably caused them to set about creating a voluntary group, or getting involved in one as a volunteer or trustee.

Derek Alcorn, in his paper for NICVA's Millennium Debate, described what could be a new breed of activist - the voluntary sector 'entrepreneur'. Such an individual may be moved to establish a new voluntary group, not because of his/her altruistic urge to improve society or address a need, but perhaps because he/she wishes to create a vehicle (controlled solely by him/herself) for self-advancement.

There is a need to be clear about the purpose of any new organisation, to ask if it is truly needed, or if a similar group already exists which could do with support. An egotist who is unwilling to share control with anyone else in establishing a voluntary organisation is heading for problems sooner or later.

The decision to set up a voluntary organisation immediately raises questions about the future management of the organisation. It is a good idea to hold off on setting in place a formal structure until consultation has taken place with relevant people. For example, it is good practice to set up a 'steering committee' as quickly as possible to examine the best way to establish the new organisation. The issue of participation needs to be addressed sooner rather than later.

There is a need to be clear about whether a for-profit, not-for-profit or charitable body is the most appropriate option. Sometimes, particularly where an individual has a strong personal drive to carry through a project without the help of others, or with the help of only a few selected allies, it is appropriate to set up a for-profit business enterprise, a workers' co-operative or a non-charitable voluntary association. There is more flexibility in the management of such organisations, though they are not eligible for the tax reliefs and funding opportunities which are open to charitable projects.

Alternatively, a charitable trust might be appropriate for a small tightly formed group of individuals wishing to establish a charitable project without admitting members, or having a regular turnover of board members. In a trust, the board members are usually self-appointed and once the trust is established, they may stay in place for life. One of the drawbacks of this sort of structure is that charitable grant-making trusts may not be attracted to an organisation which has such an undemocratic structure.

The key thing to remember is that there are a number of options, and if they are explored thoroughly, mistakes can be avoided. There are many ways to set up a voluntary or not-for-profit organisation. There is a wide range of alternative models - collectives, community businesses, workers' co-ops, non-charitable voluntary groups, purely commercial for-profit organisations.

If some kind of voluntary or not-for-profit organisation is to be established, there are very important issues that must be considered from the earliest possible stage. There will be a need for checks and balances to be built into any new organisation from the outset. Those that ignore the importance of such checks and balances may regret it later. If, after careful consideration, a voluntary organisation is being designed and set up, then the practical information in the Resource Pack in part 2 of this guide will be of help.