

# In House Pro Bono Day

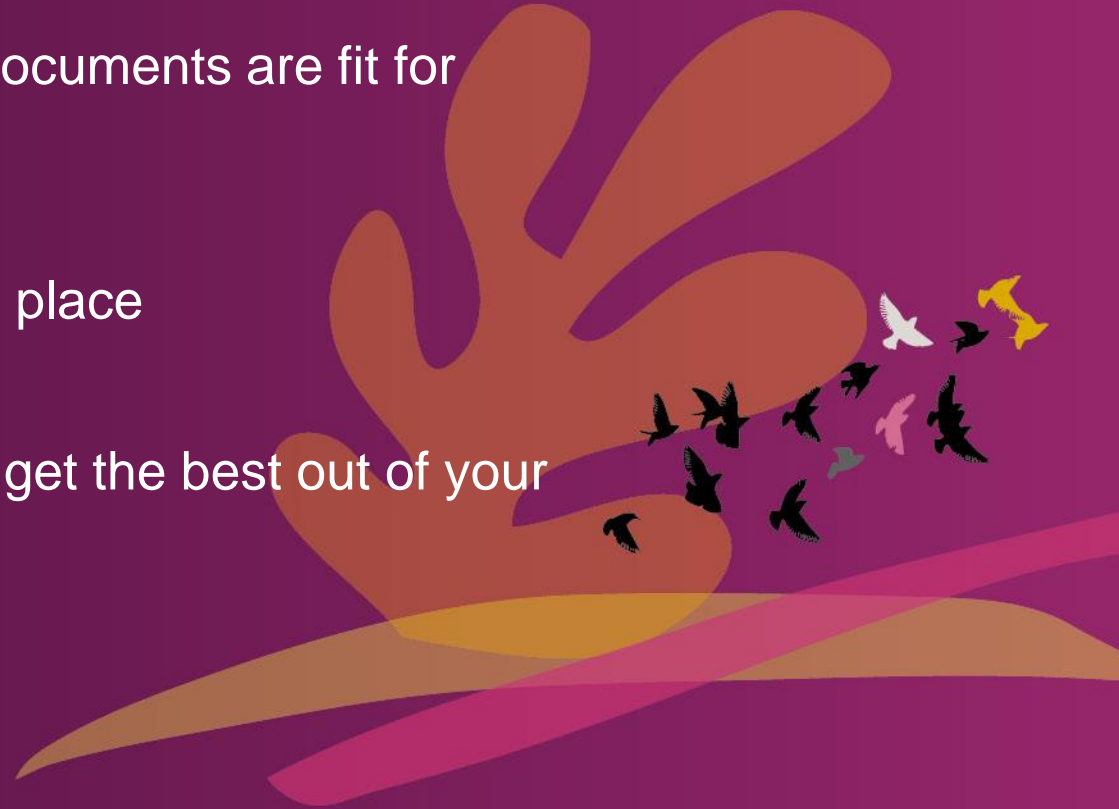
## Governance Online training

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24 April 2024

# Agenda

- ✓ The regulatory environment and common governance problems
- ✓ Ensuring your governing documents are fit for purpose
- ✓ Having the right policies in place
- ✓ Trustee duties and how to get the best out of your trustees



# Quiz



# The regulatory environment and common governance problems



# Active regulator

- Charity Commission is a particularly active regulator
- Has responded to negative press coverage with increased regulation
- Detailed “CC” guidance notes and its new ‘5 minute guides’: <https://www.gov.uk/government/collections/5-minute-guides-for-charity-trustees>
- The online register at: <https://register-of-charities.charitycommission.gov.uk/>

## Detailed guidance (‘CC publications’)

Number	Title
CC3	<a href="#">The essential trustee: what you need to know</a>
CC3a	<a href="#">Charity trustee: what's involved</a>
CC4	<a href="#">What makes a charity</a>
CC7	<a href="#">Ex gratia payments by charities</a>
CC8	<a href="#">Internal financial controls for charities</a>
CC9	<a href="#">Campaigning and political activity guidance for charities</a>
CC11	<a href="#">Trustee expenses and payments</a>
CC12	<a href="#">Managing a charity's finances</a>
CC13	<a href="#">The Official Custodian for Charities' 'land holding' service</a>
CC14	<a href="#">Charities and investment matters: a guide for trustees</a>
CC15b	<a href="#">Charity reporting and accounting: the essentials</a>
CC15c	<a href="#">Charity reporting and accounting: the essentials March 2015</a>
CC15d	<a href="#">Charity reporting and accounting: the essentials November 2016</a>
CC16	<a href="#">Receipts and payments accounts pack</a>
CC17 and CC39	<a href="#">Accruals accounts packs - SORP 2005</a>
CC17	<a href="#">Accruals accounts pack - SORP FRS 102</a>
CC17	<a href="#">Accruals accounts pack - SORP FRS 102 for charitable companies</a>
CC18	<a href="#">Use of church halls for village hall and other charitable purposes</a>

# Regulatory powers

- The Commission has a range of tools which they can use to:
  - Investigate, and
  - Take regulatory action.
- If there is a problem, the Commission may:
  - Give “regulatory guidance” to the trustees
  - Open an operational compliance case
  - Exercise its statutory powers
  - Open a statutory inquiry: this opens the door to further statutory powers.
  - Report on the results - whether or not there is an inquiry
- Additional powers since November 2016

# Common governance problems

Mission drift

Unmanaged conflicts of interest, trustee benefits, trustee loans and connected party relationships

Not following the governing document

A trustee body which is:

- Too distant
- Too hands off
- There for the 'kudos'
- Clueless what to do when things go wrong
- Too hands on

Poor financial management – no, or weak controls, reporting, lack of due diligence and monitoring; no reserves

Election/appointment of trustees

Relationships:

- Chair and trustees
- Chair, CEO and Finance Director
- Between trustees
- Trustees and Executive
- Membership bodies
- Volunteer tensions
- Staffing/management issues

Independence, control and dominance

CEOs and Boards in the group e.g. trading subsidiaries

Handling complaints – public, users, staff - whistleblowing



# Ensuring governing documents are fit for purpose





# Reviewing your governing document

- What is the legal form of your charity? Is it appropriate for your activities?
- Charitable objects: are they appropriate? Do they adequately cover the charity's activities?
- If it's a company/CIO – is a foundation/membership model? Does the model in the governing document mirror the model in reality?
- Members: Is there a requirement for an AGM? Are provisions for admitting and removing members easy to follow? Quorum? Meetings?
- Trustees: Who are the trustees? Minimum and maximum numbers? Appointment and retirement provisions – are they working in practice? How long are their terms of office?
- Trustee decision making: Quorum? Can decisions be taken without a meeting? Conflicts of interest?
- Benefits: are they sufficient or do they need to be more flexible?
- Delegations: Are they permitted and clear?
- Winding up – Is the winding up provision up to date and clear?

# Amending your governing document

- Express power of amendment that sets out how your governing document can be amended? Is consent of the Charity Commission or any other party required for the amendment?
- Statutory powers of amendment set out Charities Act 2011 (for charitable companies/CIOs/unincorporated trusts/associations)
- Charity Commission consent is required for certain amendments:
  - Charitable purposes
  - Allow trustee members and people/organisations connected to them to benefit from the charity
  - That change what will happen to your charity's money or property if you decide to close it
- Charity Commission will apply a statutory test in considering whether new purposes are suitable
- <https://www.gov.uk/government/publications/changing-your-charitys-governing-document-cc36>

# Having the right policies in place

# Policies

These policies can be tailored to your organisation. If you're at the start of your governance journey and looking to put in place the essentials, we've marked the most important ones with an asterisk (\*).

Governance and finance	People	Operations	Data and privacy
Conflicts of interest policy* (including register of interests)	Safeguarding and well-being policy*	Social media policy*	Privacy notice*
Risk management policy* (which can include a risk register)	Equality, diversity and inclusion*	Brand guidelines policy*	Data protection policy* (including security measures)
Serious incident reporting policy*	Volunteers policy*	Overseas payments/grants policy*	Data retention policy*
Trustee and volunteer expenses policy*	Health and safety policy* – it is a legal obligation to have a health and safety policy if your organisation has five or more employees.	Fundraising and event management policy (including guidelines to volunteers and dealing with complaints).	Privacy policy
Reserves policy*		Vulnerable donor policy	
Internal financial procedures policy	Employee-related policies* (could be contained in a staff handbook) including:	Acceptance and refusal of donations policy	
Investment policy	<ul style="list-style-type: none"> <li>• Disciplinary procedure*</li> <li>• Grievance procedure*</li> <li>• Email and access to the internet policy*</li> <li>• Whistleblowing policy*</li> <li>• Equal opportunities policy*</li> <li>• Flexible working policy</li> <li>• Contract management policy</li> </ul>	Gambling policy	
Social investment policy		Grant making policy	
Board development and training policy (including induction)		Bribery Act compliance and fraud policy	
Trustee code of conduct		Hospitality policy	
		Complaints policy	

# Trustee duties and the role of trustees

# The Guiding Principle

A Trustee's overriding duty is to advance the purposes of the charity for the public benefit

In doing so a trustee has several basic responsibilities....



# Trustees' six main duties



# Role and Responsibilities

Trustees are responsible for the vision, mission and overall management of the charity. They are accountable if things go wrong

Trustees are able to and should delegate in certain circumstances

Trustees should:

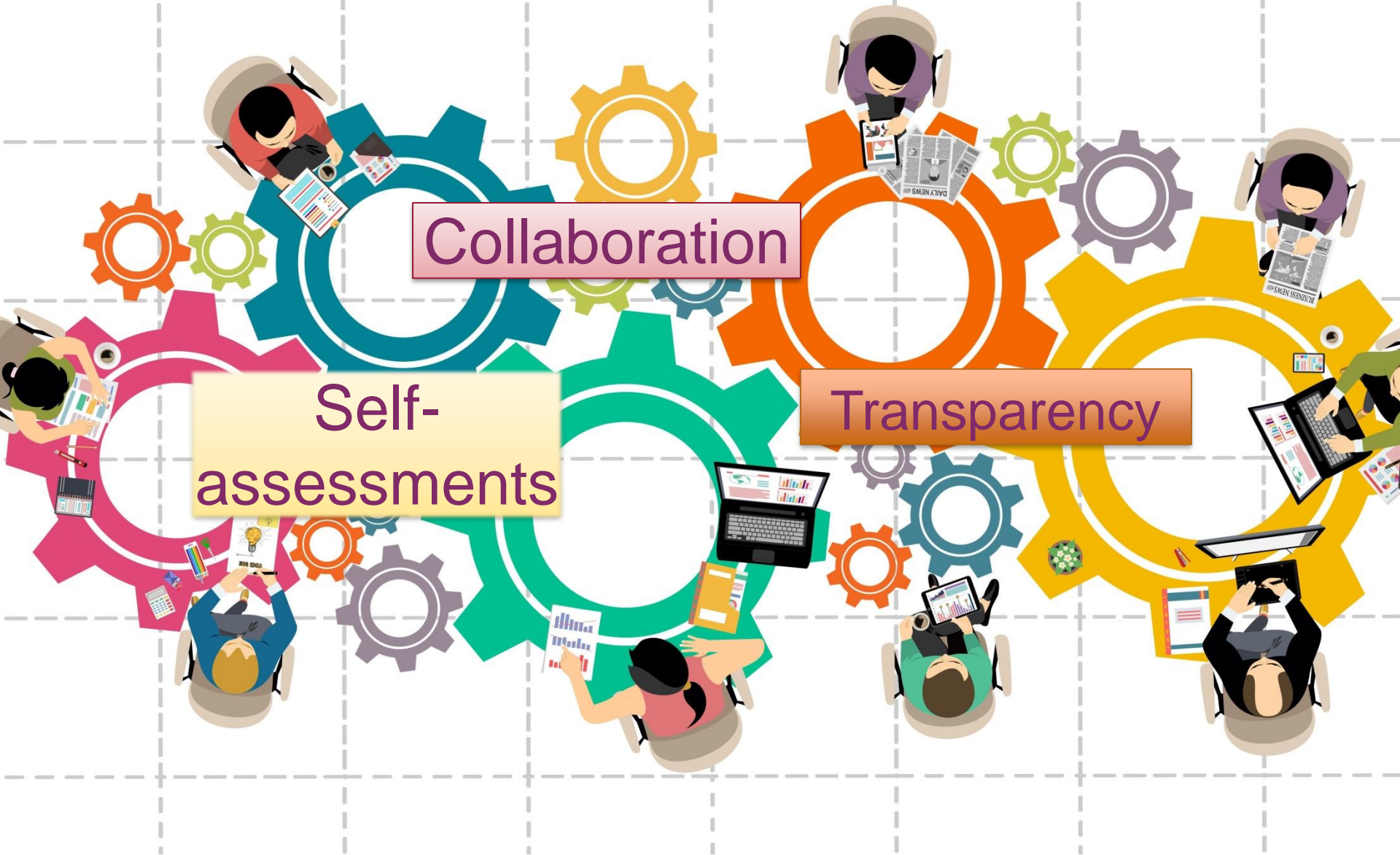
- Avoid day to day operational activities
- Delegate day to day management to staff and/or committees
- Focus on setting policies, strategies and budgets
- Focus on employing competent staff to manage the charity and monitor performance
- Ensure there is appropriate line management in place for staff



**What does a  
successful board  
look like?**



# What does a successful Board look like



# Board member engagement

- Utilise strengths experience of your board members
- Encourage lively and challenging discussions
- Clarify roles and responsibilities of the board collectively and individually
- Be clear about expectations associated with board membership
- Clarify the level of time commitment required for board membership and take attendance at meetings seriously



Are we financially strong enough to continue to provide services for our beneficiaries?

Have we reviewed any contracts to deliver public services?

Do we have adequate safeguards in place to prevent fraud?

What is our policy on reserves?

Are we an effective trustee body?

Are we making the best use we can of our property?

Have we reviewed our contractual commitments?

Do we know what impact the social and/or economic climate is having on our donors and support for our charity?

Are we making the best use of the financial benefits we have as a charity?

If we have a pension scheme, have we reviewed it recently?

How can we make best use of any permanent endowment investments we hold?

Have we considered collaborating with other charities?

What effect is the current economic climate having on our charity and its activities?

Are we making the best use of our staff and volunteers?

Are we satisfied with our banking arrangements and our current and future investment policy?



**15 questions  
trustees should ask**



**CHARITY COMMISSION  
FOR ENGLAND AND WALES**

# Decision making

It's your decision...



Strategic thinking

Collective decision making

Distribute leadership

Effective communication

Collaboration

# Keeping records

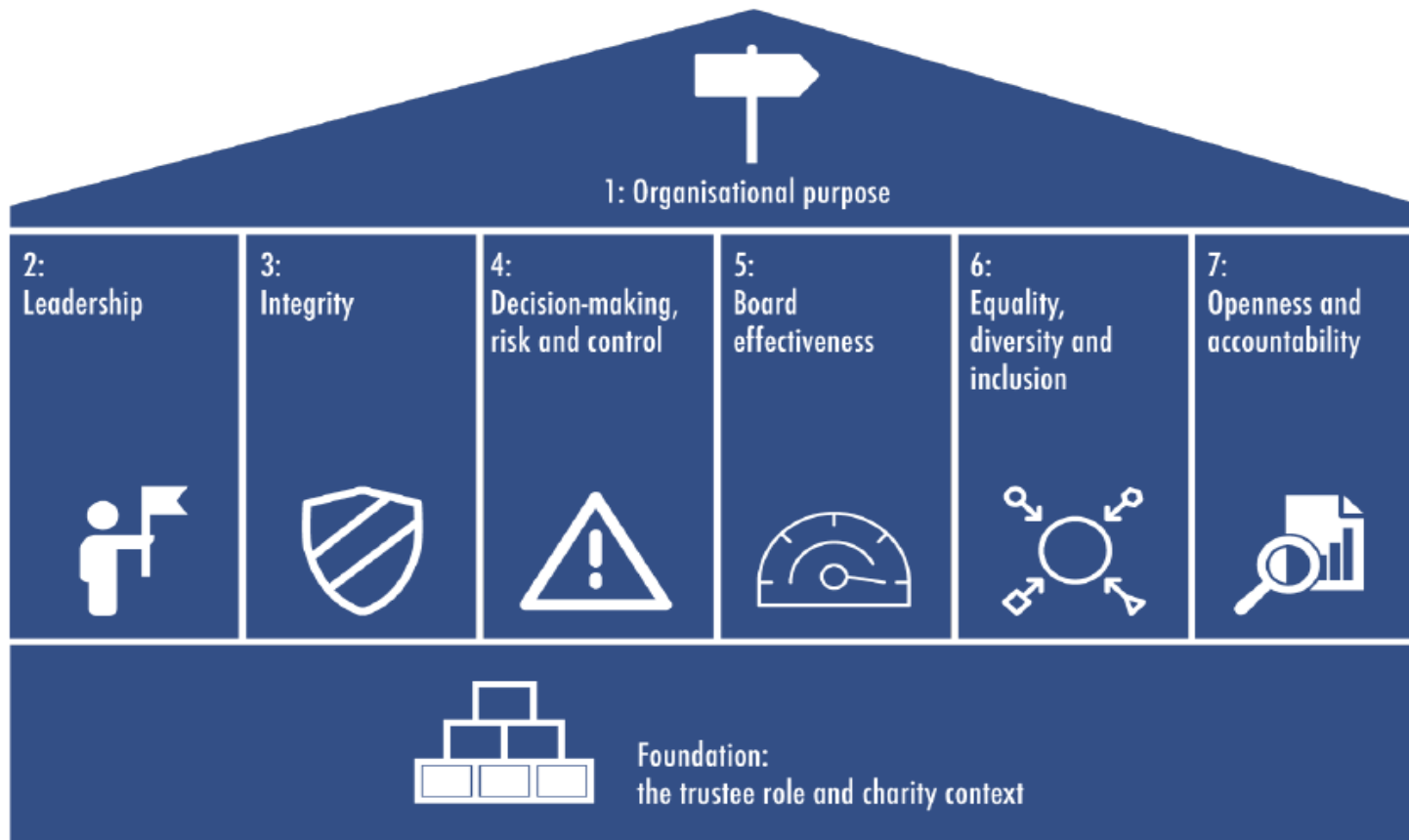
- Remember to minute all decisions taken by the trustees (including any decisions taken outside a meeting).
- Minutes should include the discussion and rationale behind the board's decisions, where appropriate, including:
  - any information or advice presented to the trustees; and
  - any dissenting opinions if such trustees wish that to be recorded.
- Minutes should also set out:
  - Quorum
  - Any conflicts of interest and how they were dealt with

# Charity Governance Code





# The Principles



<https://www.charitygovernancecode.org>

# Resources

[Weekly newsletter and invites to events](#)

[Bates Wells resources for the charity sector](#)

[Governance building blocks](#)

[The Charities Act 2022, Explained](#)



Thank you



We use the word ‘partner’ to refer to a member of the LLP or an employee or consultant with equivalent standing and qualifications.