Governance Training
Fingal PPN

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May 2018

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- The Governance Agenda
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  - Charities Act
  - Regulation of Lobbing Act 2015
  - Data Protection Act 1988 (amended in 2003)
  - General Data Protection Regulation (GDPR)
  - Labour Legislation
  - Governance Code
  - Risk assessments
- Good Governance and oversight

Why have there been changes

- Economic Collapse and the failure of Compliance
- Difficulties in the NGO sector – e.g., CRC
- Long term recognition for reform in corporate governance
- The C&V sector wanted stronger Governance
- Voluntary Code of Governance developed
- State funds NGO sector and has demanded levels of compliance
- Local Authority looks to have organisations it deals with to have a structure (legal or not – constitution or a set of rules)

The New Governance Landscape

- Companies Act 2014
- Charities Act 2009 – enacted in 2014
- Regulation of Lobbying Act 2015
- GDPR – on the way (May 2018)
- Governance Code (voluntary – but becoming less so)
- Each bring some element of change
- Collectively - results in a fundamental changed landscape

Companies Act 2014

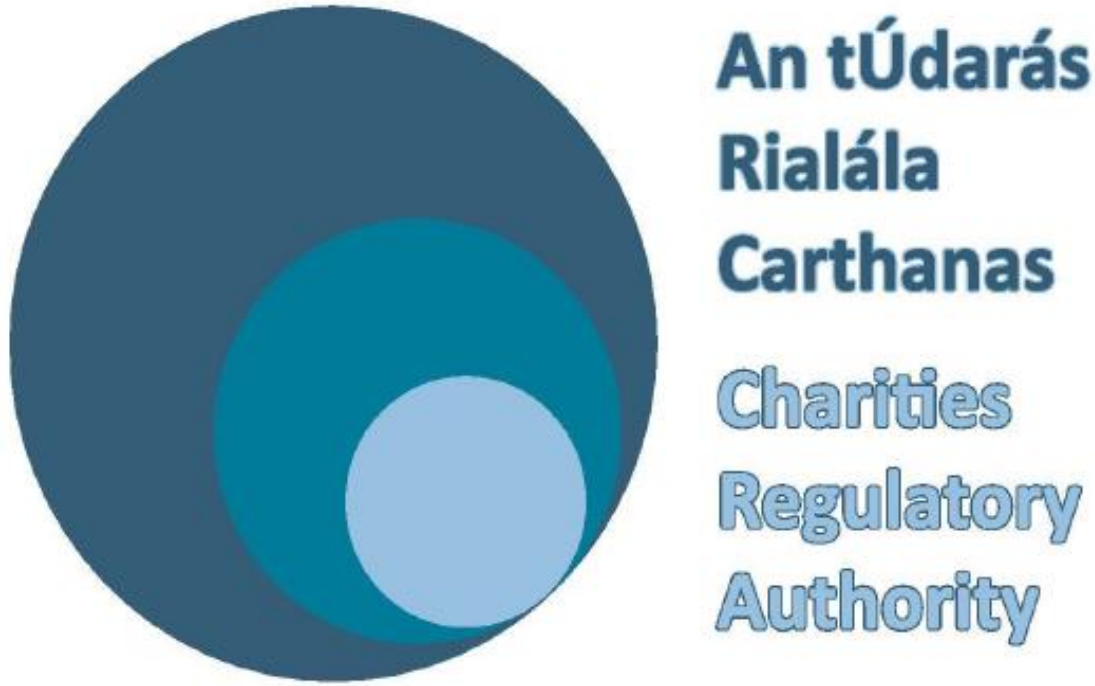
- In draft form for many years, subject to a lot of review and consultation
- A colossal piece of legislation that consolidates all Company law
- Clauses changed in order
- Companies Limited by Guarantee to loose Ltd and become CLG
- New companies have a Constitution (short) rather than a M&A (but will still require rulebook)
- Funders want you to adopt old style
- Little change for C&V sector – but needs attention
- Role of Company Secretary is now more substantive
- Register of members – old clause but ignored – at your peril

Charities Act 2009

- Defines charities
- Establishes a Register of Charities
- Outlines reporting requirements
- Transparency and Trust
- Reforms how Charities operate
- Same responsibility as a CLG But report to Charity Regulator and Companies Registration Office (CRO)

What you have to do

- Register
- CHY numbers from Revenue are being changed are they will not be the same
- Prepare for complying
- You need to be able to upload material on line – max file size 10mb
- You will get a password from the Charity Regulator (CRA) that will allow you to up load, but not change your information



Registration – User Guide (S40)

Post Registration

- Annual Returns
- Changes to governance structures – to be approved by CRA, CRO Revenue Commissioners
- New directors / trustees – to be registered as well as with CRO

Annual returns

- You need to make it within 10 months of your year end
- Accounts for now will be in what ever format they exist
- A format will be set out in the future for Accounts
- In future years accounts to be filed only with CRO
- All will have to file a Annual report with the CRA
- New Accounting reporting structure on the way

Activity report / Annual report

- Aims, Objectives, Achievements
- Governance and Board Structure
- Financial performance and results
- Risk management in place (more on this later)
- Financial Policies and Funding sources
- Reserve policy of the Board
- Future Plans
- To be in within 10 months of year end

Regulation of Lobbying Act 2015

- Short Brief -
- Operational since 1st September 2015
- Registering people and bodies Lobbying and what lobbying is taking place

Who needs to Register

- Persons with more than 10 employees
- Representative bodies and advocacy bodies with at least 1 employee
- Lobbyists paid by clients to Lobby
- Anyone lobbying about the development or zoning of land
- People who are making representation to Designated Public Officials on relevant maters.

Designated Public Officials

- Ministers, Minster’s of State
- Members of DAIL, Seanad, European Parliament (Ire)
- Elected Local Cllrs
- Special Advisors
- Senior Civil Servants (DG, ADG, AS, Directors, + similar LA grades)
- Coming Soon - PO’s

Lobbying

- The Initiation, development or modification of any Public Policy or any Public programme;
- The preparation of an Enactment;
- The Award of any grant, loan, other financial support, contract, or other agreement, or of any licence or other authorisation involving public funds

Making returns

- Once you register
- Make 3 returns a year
  - 1 September to 31 December; 1 January to 30 April; 1 May – 31 August
- Who was lobbied
- Subject mater
- Intended result
- Type and extent of activity
- Name of people conducting lobbying
- Name of people who was lobbied (who was at a meeting)
- Client information if relevant
- www.lobbying.ie

Governance Code

- Around for a few years
- Board led process (but Executive has to do work on it)
- If the is no Executive or its small this falls to the Board / Committee
- Voluntary Code
- Funders are now requiring that you “are on the Journey”
- This is now a necessity for all organisations who need
  - Funding
  - Strong reputation

Consultative Panel on the Governance of Charitable Organisation

- Charities Regulator will publish Ireland's first code of governance for charities later this year
- Report of the Consultative Panel on the Governance of Charitable Organisation (10th May 2018)
- a need for a code of governance for charities
- the Charities Regulator should produce it
- proposed that the Governance Code should be principles-based
- should operate on a 'comply or explain' basis by charities
- code's content be developed in collaboration with the charity sector
- the code should be proportionate.

The panel makes the following 10 proposals:

1.	Rather than issuing additional regulations specific to governance, a more proportionate approach, as set out in this report, is the approval/issuing of governance guidelines or codes. *(See chapter 3 for the rationale behind this proposal).*
2.	There should be a new Governance Code for charities issued by the Charities Regulator to facilitate the better administration, management and governance of charitable organisations. *(See chapter 4 for the rationale behind this proposal).*
3.	The new Governance Code should be principles-based and should operate on a "comply or explain" basis. *(See chapter 4 for the rationale behind this proposal).*
4.	The content of the new Governance Code should be developed in collaboration with the charity sector. *(See chapter 4 for the rationale behind this proposal).*
5.	The new Governance Code should be proportionate. *(See chapter 4 for the rationale behind this proposal).*
6.	The Charities Regulator should promote efforts to streamline compliance and reporting duplication between State bodies. *(See chapter 4 for the rationale behind this proposal).*
7.	The Charities Regulator should develop and issue guidance (where possible online and/or in digital/video format) to support prospective and current charity trustees. *(See chapter 5 for the rationale behind this proposal).*
8.	The term of office of charity trustees should not be subject to a mandatory limit. However, the new Governance Code should include an advisory maximum limit on a 'comply or explain' basis. *(See chapter 5 for the rationale behind this proposal).*
9.	The Charities Regulator should consider in the context of the new code of governance the issue of former senior management becoming charity trustees of the same organisation. *(See chapter 5 for the rationale behind this proposal).*
10.	Further research should be conducted on the profile and number of charity trustees in Ireland. *(See chapter 5 for the rationale behind this proposal).*

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Table 1: **The legal form of Registered Irish Charities**

General	Type	Charities	% of Total
Incorporated	Companies	4,630	51.1%
Unincorporated	Association	1,495	16.5%
	Board of Management (School)	1,593	17.6%
	Other	664	7.3%
	Subtotal	3,752	41.4%
Charitable Trust	Trust	679	7.5%
	Total	9,061	100%

Figure 1: **Charitable Purpose by Category**

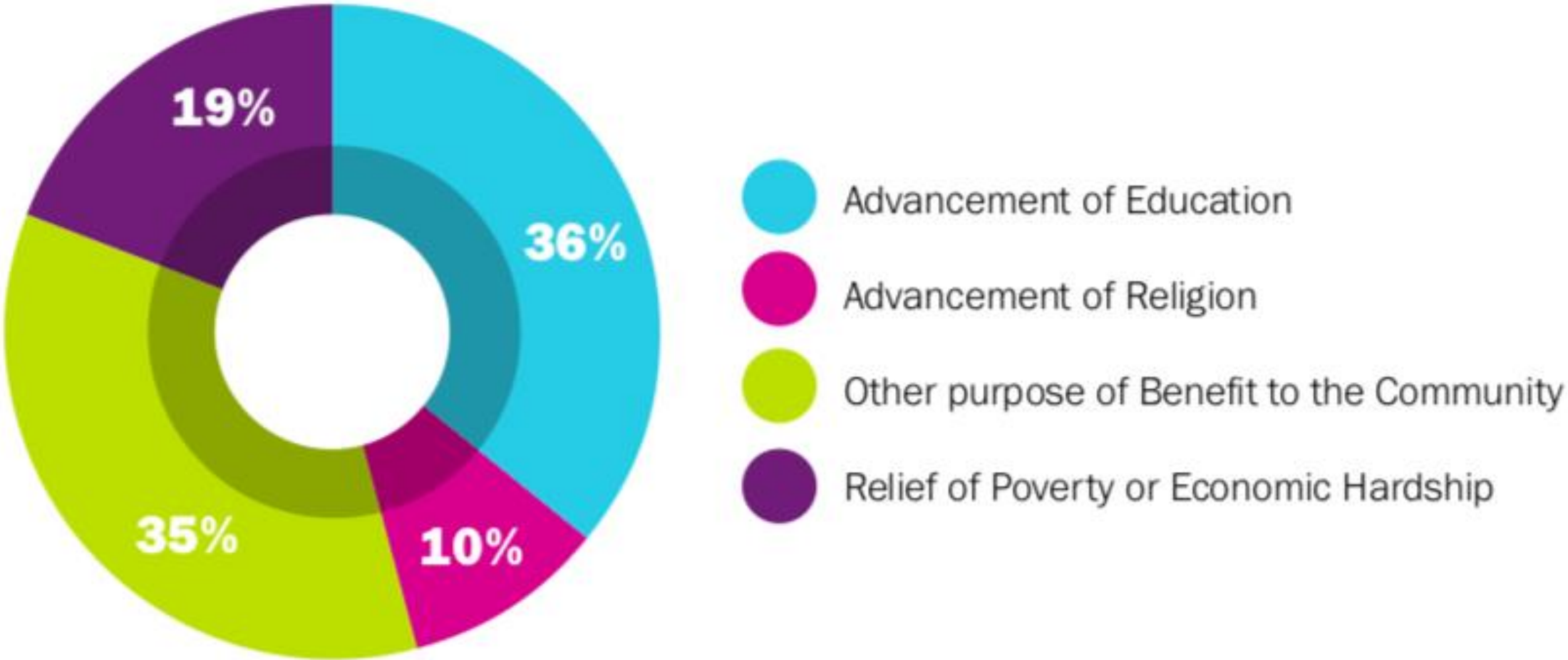


Figure 4: **Charities by Number of Employees**

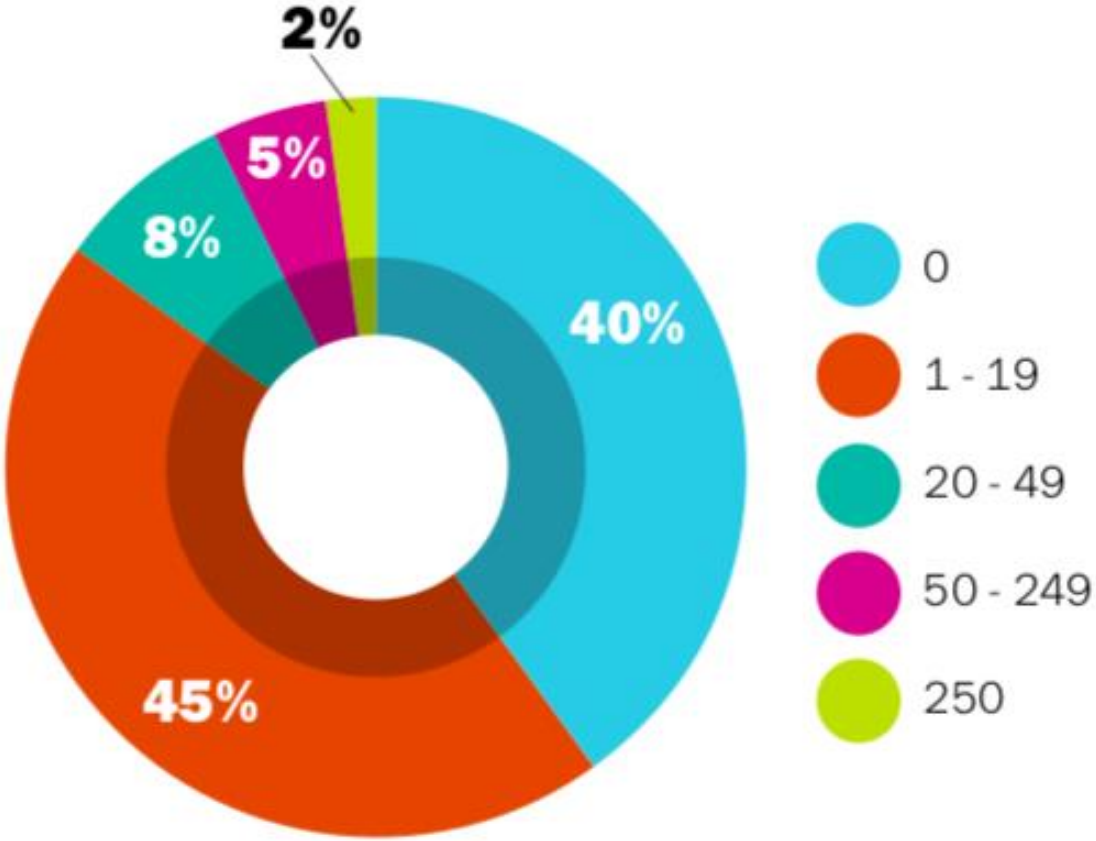
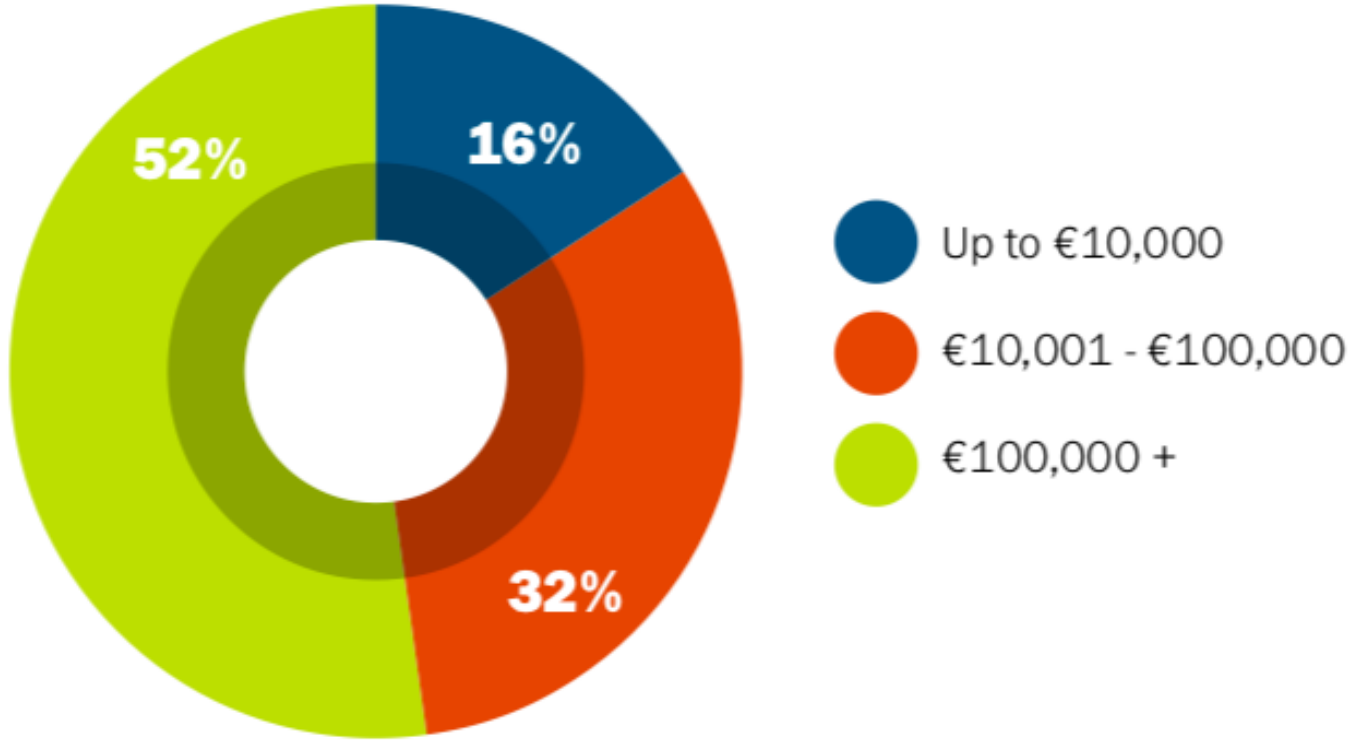


Figure 2: **Charities by Income in Annual Reports**



The Code - As it presently exists

- Introduction
- The Governance Code – Type A, B, C – identification
- The Check List on the Governance Code
- Outlining Phased Work programme for organisations
- Type A – Committee
- Type B – Small organisation with staff
- Type C – Medium to large

The Code

- 3 types of organisations
  - Type A – Run by Volunteers & no staff –little income
  - Type B – small staff possibly only one five or six
  - Type C – Board solely focused on Governance and a bigger staff

Type A

- Run by volunteers
- Do not employ staff
- The members of the board are responsible for:
  - Overseeing the work of the organisation (governance);
  - Organising the daily work (management), and;
  - Carrying out the work of the organisation (operations).
- Can operate on less than €10,000 a year (some larger)
- May or may not have a CHY number
- Usually not incorporated (some may be required to do so by funders)

Type B

- Usually employ a small number of staff (possibly only 1)
- Senior (or only) member of staff may have a title such as manager, coordinator or administrator,
- The Board will still have
  - some management
  - operations responsibilities
  - governance/oversight role.
- Annual income may vary considerably
- May receive grants from statutory bodies and/or trusts and foundations.
- Tend to be incorporated,
- May have a CHY number.

Type C

- The Board focus solely on governance/oversight role,
- Delegating management operational duties to the staff.
- Clear division between
  - the governance role of the board
  - the management role of staff.
- Tend to employ more than ten members of staff
- May often have hundreds of staff
- May require a structure based on
  - functional or
  - geographic departments.
- most organisations will be incorporated
- may have a CHY number,

Self Identification

- You need to identify which one you are
- The same basic principles apply
- The partnership ahs been working with organisations for some time to deliver briefings and training.
- Other training available
- Share policies and make them adapt to your organisation

Getting through the Governance code process

- Sign up for the Governance Code and deliver it
- Work through the various stages of the Code
- Work in groups of organisations of a similar size / type
- But this is the responsibility of each board – need assistance of the Executive

- More on the Board later if we have time

Type A (and Type B and Type C)

- A Board, a Management Committee, a Committee, a group of individuals doing something collectively

As a structure to do what?

- The Organisation
- How you get your committee Board? And who are you responsible to?
- The make up of the Committee / Board
- Roles and responsibilities, and Inclusivity
- Meetings, records, outcomes, follow-up, communication and confidentiality
- Budgeting and choices
- A constitution
- Succession

Board / Committee as a structure to do what?

- What is the objective of the Organisation?
- Do you have a work Plan? (yearly / Multi Annual?)
- Who has decided what you are about –
  - if its you that is who you are responsible to
  - If its an organisation them that is who are responsible to
- How do you know you have achieved something?
- Who funds you?
- Do you have to report?
- Why a Structure?

An employer?

- Have you staff?
- No – then you are going to have to do everything?
- Yes - then you have to be realistic as to what you want them to do (voluntary boards can be difficult)
  - Employment legislation
- Staff have to take a lead **with** the committee or do the committee / Board take the lead – a key decision?
- You are an employer so you have to be mindful of employment law
- You have additional responsibilities
- You need some level of expertise.

The Organisation

- If you form an organisation then you have to put together some element of a structure
- This can depend on what you are doing and where your resources come from
  - Are you funded by the state? – they will want a legal structure
  - Are you collecting money through fund-raising – Charities Regulator will be interested
  - Are you earning anything – your structure may determine what tax you if any
- Do you have to report? To who, and how? Who will do the reporting?
- A “Committee” is a structure that is not incorporated
  - A Board is a committee of a legal structure
- But it still requires a governance structure. Why?

Why A Structure?

- Coherence
- Transparency
- Good decision making
- Why you exist
- A set of basic rules
- Allow for good ideas to come forward (and bad ones to be challenged)
- Report back with coherence
- Bring in different specialisations and ideas

The Reality

- Its hard to get members
- Depends on what you are doing
- Depends on the type of organisation
- Are you starting it
- Have you a direct interest or passion
- What drives some people and repels others
- Independent members – or people with total self interest
- More the latter – but that is not wrong… mostly

How Would a Committee (Board) Look?

- Chairperson
- Vice Chairperson
- Secretary
- Treasurer
- Possible
  - PRO
  - Membership
  - Other
- Committee members

- Possible Sub Committees
  - Finance
  - Activities
  - HR
  - Recruitment
  - Professional Standards

It all depends on the organisation and the scale. Sometimes you might be lucky to have 3 people.

Roles and Responsibilities - Chairperson

- Lead the Organisation
- Chair meetings
  - Not to speak too much
  - To bring in other people
  - To allow discussion/ exchanges of views / modify tensions that are unnecessary
- Be a spokesperson
- If there is a key staff member (e.g. CEO) they may be the spokes person or it could be a joint function
- Funders will want to engage with a Chair as that represents the governance structure
- Follow up with people to ensure they do what they said they would do
- Facilitate others and encourage input
- Work with the Secretary and staff on Agendas
- Ensure meetings happen and on time – and are worthwhile
- Be competent

Roles and Responsibilities – Vice-Chairperson

- Stand in for the Chair in their absence
- Be a support for the Chair
- Be on top of the issue that the Chair is dealing with - in case you have to stand in

Roles and Responsibilities - Secretary

- Call meetings
- Ensure paperwork for the meetings is correct
- Ensure that minutes are taken and are accurate
- Hold the Minute book
- Work with the Chair and the Staff to set the agenda
- Deal with correspondence in and out as required
- Assist the the Chair in ensuring that meetings run effectively
- Make the arrangements for the AGM
- On a board they carry a very significant legal role

Roles and Responsibilities - Treasurer

- Ensure that all the income and expenditure is accounted for
- Ensure that the financial records are accurate
- Ensure that when decisions are being made, there is adequate money to meet any expenditure
- Work on a budget for a year (or longer)
- Report on expenditure at the AGM and at regular Committee meetings
- Make submissions for additional money
- Report to funders as required in a timely fashion

Meetings

- Call them with a reasonable notice (text, e mail, post…)
- Have an Agenda (see next slide)
- Have a neutral place to hold the meeting if possible
- Make sure that the meeting is run well and that people have a chance to have an input
- Make sure no one person dominates the meeting
- Get decisions and not just discussion (a deferred decision is a decision)
- Try and get consensus where possible
- Conclude the meeting in a reasonable period of time
- Ensure that the minutes are clear on decisions taken

An Agenda

- Minutes and maters arising
- Correspondence
- Financial report
- Clear agenda items
  - Some for information
  - Some for decision
  - Issues relating to your plan/ strategy / objective
- Any other Business
- Date of the next meeting

- For Boards and committees try not to have huge surprises. Get papers out to people before meetings. Members should read the papers and be ready for the meeting

Minutes

- Date of the relevant meeting
- Who was there and who said they could be there
- Follow the agenda of the meeting
- What was proposed (by whom and seconded by …)
- What was disposed off – the decision
- Some small bit of a report if there was a discussion – but no he said she said…
- Unanimous decision or a vote

- Minutes to be out at least a week before the next meeting, but sooner the better so follow up action can be done

Constitution and Rules

- Constitution say’s
  - What you are
  - Why you exist
  - What you can do and sometimes what you cant do
  - Who owns it
  - The rules around elections and the committee structure
  - Powers available to the company (e.g. a bank account)
  - How the rules are changed

Rules

- Can be in constitution, but some should be outside
- Standing orders for Committee
- Approval of membership
- Allows the organisation to be practical and effective
- Be simple and
- Try not and make rules to address the last crises

The Governance Code

- Use this as a model to help you develop
- It takes time to implement
- Take your time – but get there
- And then constantly review

The Check List – 5 Sections

1. Leading the organisation
2. Exercising Control over the Organisation
3. Being Transparent and Accountable
4. Working Effectively
5. Behaving with Integrity

- Type A is less daunting than type B and type B is less daunting than type A
- Lets look at type C and see the issue that have to be addressed
- Many of the issues are the same but the scale is different

1. Leading the Organisation

- Strategic Plans and direction
- The Rules – Memorandum and Articles of Association / Constitution
- Accountability of the Executive and Staff
- HR and the Role of the CEO

2. Exercising Control Over the Organisation

- Good Board Governance
- Are you meeting all legal requirements – reporting on it
- The Role of Company Secretary
- Policies in place
- Finance, reporting, auditing and monitoring
- Risk Assessment

3. Being Transparent and Accountable

- Who are your clients / stakeholders and how do you listen and communicate with them
- Making Accounts and reports accessible to the Public
- Make people know you comply with Governance code and other legislation…
- The AGM
- Yearly reports on compliance

4. Working Effectively

- Induction and making people know their responsibilities + training
- The role of a Board member
- Sub Committees and terms of Reference
- Reserves
- Being clear of the distinction between Board and Executive
- Regular minute meetings with clear agenda
- How you recruit the Board members

5. Behaving with Integrity

- Openness and transparency + confidentiality
- Code of Conduct
- Ethical standards
- Conflicts of Interest
- Register of Interests for Directors

Moving on with the Code

- Are you interested? – you may have to be
- You need to self identify which type you are?
- Are the Board / Executive committed to the Governance Code?
- Its Board led process – but needs the Executive to do a lot of the Work.

- It takes time. You need to work at a pace that is
  - Not daunting to the board
  - Not going to distract you from core business
  - But which will ensure that enough progress is made so that funding and compliance is satisfied

Constitution
Memorandum and Articles of Association

- A Good Place to Start
- Have you read it – its your rule book
- Most people ignore it – its complex
  - but you can't ignore it, this can be problematic if you have a governance review
- It needs to be reviewed early
- What is not happening?
- Is the structure sound?
- Does it constrain you?

Memorandum

- Does it say what you are about
- Do you recognise your organisation based on the principle objectives? And the Subsidiary objectives?
- If Not – then you need to change them
- Perhaps you need to modernise the language and make it clear what you are about
- Are the powers you need in your M&A?
- Have you changed to meet the 2014 Act?

Articles

- These are the rules about directors, members and meetings (ordinary, extraordinary and general) – appointment , dismissal, rotation…
- It covers resolutions, proxy voting, structures etc.
- Do you have a register of members? Who are your members? Do they meet?
- How do you rotate your directors

Homework

1. Read the M&A
   - Is it fit for purpose?
   - Have you moved on?
   - Make a written assessment of it
2. Governance Check List
   - Be blunt and real
   - Access where you are and map out a to do list
   - Focus on sections 1 and 2 in the check list