



NPC RESPONSE TO THE CONSULTATION ON THE CHARITY GOVERNANCE CODE

Written evidence by New Philanthropy Capital

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Consultation questions

Q9. Does the current Charity Governance Code outline good governance practice and how it can be applied to charities?

To some degree we believe that the current Charity Governance Code outlines a good governance practice and how it can be applied to charities. However, it is limited in some areas as set out below.

Q10. Given that the Code was only last updated in 2017, do you agree that we are right to limit changes to the Code at this stage and only focus on urgent items? Please provide comments for your response.

NPC agrees that you are right to limit the number of changes to the Charity Governance Code. However, there are three areas where the existing Code can benefit from adding additional guidance around impact, environment and risk. Surfacing the points in these areas at a higher level, rather than an implicit mention in the recommended practices, would strengthen the Code.

A. Impact

As NPC recommended in the [2017 review](#), we strongly suggest that impact should be at the forefront of the Code. Currently at 1.5.1, impact is only mentioned once in the context of evaluation. Yet, as the Code suggests, the charitable purpose of the organisation is why the organisation exists in the first place. A focus on the difference being made by the organisation—the impact—is critical to understand where to direct efforts and energies in the future.

Considering impact first, may lead trustees to different decisions than if they consider impact later. This may also change the relevance of later guidance in the Governance Code. For example, by taking an impact first approach, trustees may decide to stop doing an activity that has little impact, and therefore do not need to take into account a whole range of considerations associated with that activity. Or, trustees may review the evidence of their impact and decide that they may not be the best organisation to carry out those activities and should work with partners to achieve a greater collective impact.

NPC recommends the following suggestions to bring impact to the forefront of the Code:

- ‘Principle 1’, the key outcome for ‘Organisational purpose’ should be amended to include an explicit recommendation for trustees to put impact at the heart of decision-making. For example, this could be done by adding ‘the board takes an impact first approach when decision-making’ in key outcome 1.2, so it reads *‘1.2 The board takes an impact first approach when decision-making and can demonstrate that the charity is effective in achieving its charitable purposes and agreed outcomes.’*
- At 1.4.2, current wording does not say what boards should do after assessing results, outputs and outcomes. It is important that reporting on impact is used both as a way to learn from what has gone well and what could be done better to improve services, and to demonstrate to stakeholders how the work of the charity is going. We suggest amending this recommendation to encourage boards to take appropriate action, including making changes to reflect learning, as a result of assessing and evaluating impact.
- ‘Principle 1’, we suggest the Code should add a recommended practice, asking charities to report on their progress towards achieving their intended impact and outline how they plan to build on what they have learned. Boards could report on this annually, and outline their plans for the following year (along the lines we have outlined previously in our governance policy paper ‘It starts from the top’¹). The exact form this takes should be proportionate to the size of the charity.

¹ <https://www.thinknpc.org/resource-hub/it-starts-from-the-top-improving-governance-improving-impact/>

These changes will help to encourage trustees to make decisions based on what will achieve the greatest impact, in conjunction with considerations of financial and organisational sustainability, which tend to be incentivised through regulatory drivers.

B. Environment

External environment

Charities must consider the external environment in order to make decisions that will have the greatest impact. It's promising to see external environment being stated at 1.3.1, but it needs to be acknowledged that the external environment will be varied and complex for many organisations, and cover a multitude of areas. That said, there are some clear factors that should be common across the sector that will need to be considered by boards.

We suggest that explicitly listing the changing nature of need, the wider policy environment the organisation operates in, and technological advances will provide further clarity to boards on key things they need to consider and ensure this recommendation is interpreted in a meaningful way.

Environmental sustainability

In addition to the above, all charities should consider their role to play in safeguarding our environment and their impact on environmental sustainability. At 1.5.3, it's assuring to see a mention of recognising responsibilities towards the wider environment and resources. However, practical recommendations on this are absent from the Code. Alongside charities taking action, we suggest the Code includes a recommendation to charities to report on this annually. The exact form this takes should be proportionate to the size of the charity. This will demonstrate charities' commitment to external stakeholders and strengthen internal improvements.

C. Risk

In our work with charities and trustees, we have found that risk averse boards can prevent innovation and transformation which could increase their impact. There is therefore space for the sector to embrace opportunity more fully, alongside managing risks. A shift away from tying all discussions about risk to long scoring mechanisms, could also be beneficial.² For example, renaming the 'risk register' to the 'risk and opportunity register' within charities, with a section dedicated to opportunity, could help to achieve this.

We welcome the acknowledgement that being risk averse is a risk in itself at 4.3.

Although identifying opportunities is mentioned in the rationale, the detail largely focuses on managing risks. Whilst the Code is clear this isn't a tick box document, some boards may see it as that, so we suggest there should be a recommended practice around actively identifying and managing opportunities as well as risks.

Finally, ensuring boards have a clear understanding of the trade-offs between the different types of risk is vital. Strategic risks can be broken down into the four categories: governance, financial, reputational and impact risk (please see Figure 1 for a brief description of each risk). Use of this approach and understanding trade-offs would help trustees to understand and compare their risk appetite for each different type of risk. Furthermore, this would support trustees in understanding the risk of focusing on safeguarding the finances alone and missing opportunities to innovate and deliver greater impact as a result. NPC recommends that an explicit statement is added to bring out this point further.

² <https://www.thinknpc.org/blog/trustees-and-risk-taking/>

Figure 1: Strategic risk categories³

Q11. We have identified the following areas where the Code might benefit from immediate changes. The following questions explore these areas:

i. Should the Integrity principle say more about charities' ethical principles and the right to feel safe? If yes, what might it say or require?

Integrity is the practice of being honest. It's also about showing consistent adherence to strong ethical principles and values. We suggest that the 'Integrity' section should be merged with other sections of the Code, mainly because there is a lot of overlap of 'Recommended practices' with other sections of the Code.

If it is decided that the 'Integrity principle' should be kept as it is, we recommend that the first key outcome, at 3.1, should read as—so that it aligns with key outcome 1.1—*'the board acts in the best interests of the charity's purposes', instead of 'the charity and its beneficiaries.'*

There are many overlaps between 'Integrity' and 'Principle 7, Openness and accountability'. For example, there is overlap between 3.4 'Maintaining the charity's reputation' and 7.2-7.3 'Key outcomes about the need for charities' interactions to be guided by values, ethics and culture'. We would like to see clarity and bolder statements on how charities can act with integrity, similarly to the frameworks set out in 'Principle 4 Decision making, risk and control' (at 4.5.3).

We also see some overlap between NCVO's code of ethics: 'Integrity' section and the Code's 'Integrity principle'. Both codes cover topics such as the charity's reputation, management of conflicts of interest, and ethical values. However, NCVO's code of ethics takes integrity a step further by covering efficient resource management and the impact of a charity's activities on the natural and human environment. As mentioned in Q10. 'Environment above', NPC suggests the Code incorporate a charity's impact on the environment. Additionally, given the number of similar areas covered by the two and for ease of charities, we believe that the steering group for the Charity Governance Code could consider ways to bring similar codes together.

³ https://openroadalliance.org/wp-content/uploads/2017/01/Open_Road_Risk_Toolkit_01.2017.pdf

ii. Should the Diversity principle be renamed, for example to ‘Diversity and Inclusion’ or ‘Equality, Diversity and Inclusion’ to reflect good practice in this area? Please explain your response.

The Diversity principle should be renamed to ‘Diversity and inclusion’. We welcome the acknowledgement that this section seeks to address and encourage board diversity. However, this section would benefit from a range of changes to make it relevant to today.

The focus throughout ‘Principle 6’ is on visible diversity. Although ‘different backgrounds, life experiences, career paths and diversity of thought’ are mentioned as forms of diversity, the ‘Recommended practices’ focus on the visible characteristics of diversity. We suggest that this section brings non-visible diversity characteristics to the fore:

- Cognitive diversity: We must be clear what is meant by cognitive diversity. The term refers to differences in approach to thinking and information processing. It does not refer to skills and professional background. Differences in professional background do not necessarily result in cognitive diversity. Cognitive diversity does not negate the need for charities to ensure diversity of identity (eg, social class, race and ethnicity, gender, religion).
- Lived experience / ‘user voice’ / ‘service user’: Charities must commit to giving people with lived experience support and training to take on leadership roles, and to developing a culture that values and supports this. A simple definition of lived experience is an individual having ‘direct, first-hand experience, past or present, of a social issue(s) and / or injustice(s).’⁴ We need to listen and be imaginative about how to engage people in strategic thinking and decision-making, including being prepared to invest time in supporting those who are new to trusteeship or leadership roles.

Note that including a form of cognitive diversity and / or lived experience in leadership is not substitute for engaging a wider service user base in a charity’s work. One or two people do not represent the experience or perspective of all. For some people with lived experience, being required to fulfil other aspects of a trustee or senior leader role may dilute the impact of their expertise and energies, and so we recommend charities explore a variety of ways in which the value of lived experience can best be incorporated.

At 6.5, the section on ‘Monitoring and reporting’ focuses solely on diversity of the board, with little reference to monitoring diversity and inclusion practices of the organisation. NPC recommends the Code also suggesting monitoring diversity and inclusion practices across the organisation.

While diversity and inclusion of all staff does require investment to get right, NPC’s ‘Walking the talk on diversity’ report sets out a clear argument that diversity is fundamental to creating stronger, more creative and more effective organisations. It leads to understanding and meeting user needs better, addressing issues of trust in the sector and to achieving a more representative and inclusive sector.⁵

iii. Is there any additional or different recommended practice that should be included as part of this principle regarding diversity? Please provide further information.

- NPC’s ‘Walk the Talk’ research highlighted three main themes when it comes to diversity, inclusion and equality (as outlined below).⁶ These should be considered in the Code, for example at 6.3.1, where the board is recommended to reflect on diversity, conversations should also include reflection on power dynamics.
 - Share power.⁷ This means giving employees time and capacity to develop solutions. Avoid tokenism by having people with lived experience as trustees.

⁴ Lived Experience Leadership: <http://www.lexmovement.org/wp-content/uploads/2019/07/LEx-Report-Final-1.pdf>

⁵ <https://www.thinknpc.org/resource-hub/walking-the-talk-on-diversity/>

⁶ <https://www.thinknpc.org/resource-hub/walking-the-talk-putting-workplace-equality-diversity-and-inclusion-into-practice/>

- Share responsibility. Diversity, inclusion and equality are everyone’s job. Be values driven at every level across your organisation.
- Take an intersectional approach. It is not good enough to take on one category at a time. Barriers in the workplace are interconnected. Viewing each in isolation leads to a tick box mentality.
- Equity as a practice could also be incorporated into this section. There is a differentiation in equity vs equality that the Code should be informed of: ‘An equality approach treats all people equally, providing them with the same opportunities and the classic example of this is through universal funding programmes which most foundations promote ... What we fail to acknowledge is that universal funding programmes do not reach people equally and instead what foundations need to explore are equity-based approaches which acknowledge the differentiated starting points of communities and tailor-makes solutions appropriate for them.’⁸ For example, ‘Key Outcome 6.2’ could read as *‘The board ensures that the charity follows principles of equity, inclusion and diversity, going beyond the legal minimum where appropriate,’* replacing the term equality with equity.

Q12. Are there any other urgent changes that are required to the Code at this stage? Please provide further information.

Throughout the Code, there are a number of recommendations that we feel could be tightened up to ensure clarity on who needs to do what. In addition to the recommendations in previous responses above, NPC suggests incorporating the following changes:

- ‘Principle 1’, trustees should include the consideration of mergers, sharing models and collaboration opportunities as a regular standing agenda item, to ensure that they are fulfilling their duties according to the Charity Governance Code. From our experience of having undertaken many strategic reviews, it’s important that boards consider whether radical new models will meet need in a more impactful way. In our ‘Let’s talk mission and merger’ report, we provide further information on this.⁹
- At 1.3, strategy development should be carried out jointly with management in order to ensure a joint vision that is delivered by the senior management team.
- ‘Principle 2, Leadership’, there is a need to include and define ‘collective responsibility’ from ‘all leadership’.
- At 3.4.3, include a definition of ‘Nolan’s Principles’.
- ‘Principle 4, Decision making, risk and control’, good practice to include a mention of opportunities for the board to meet wider team.
- ‘Principle 5, Board effectiveness’, the language could include ‘effective prioritisation of decisions’ as a definition of the principle. ‘Key outcomes’ overlap with the ‘Leadership principle’.
- ‘Principle 7, Openness and accountability’, we suggest that the definition of the principle states that the board reflects the voices of lived experience / user voice. Currently, the key outcomes language is largely perception-led, and would benefit from being more committal, for example, 7.4 should read as ‘... *legitimately represents*’ instead of *‘The charity is seen to have legitimacy in representing ...’*
- At 7.7, there is a need for guidance on complaints management and whether to pursue an investigation.

⁷ NPC blogs on power dynamics: <https://www.thinknpc.org/blog/power-dynamics-in-grant-making/>,

<https://www.thinknpc.org/blog/three-ways-to-wield-power-well/>, <https://www.thinknpc.org/blog/shifting-power-changing-lives/>

⁸ <https://www.acf.org.uk/news/sfprovocation-why-we-need-to-stop-talking-about-equality>

⁹ <https://www.thinknpc.org/resource-hub/lets-talk-mission-and-merger/>

Q13. Do you have any suggestions for guidance or websites that might be helpful for charities trying to implement the Code that we could signpost to? Please provide further information in identifying to which principle the guidance or website relates.

- NPC's 'Above and beyond in trusteeship: What good governance looks like' guide draws on the experiences and insights of active, ambitious trustees, as well as NPC's own knowledge gained over nearly 15 years working with charities and funders. We use these insights to explore how boards can get the most from their organisations and do the best for their beneficiaries.¹⁰
- Inspiring Impact offers free online resources and peer learning networks so charities can plan, understand, and improve impact.¹¹
- Consider adding a framework for an environmental policy and reporting for charities.

Q14. Are there any issues on the horizon or areas that the Code should consider in the longer term? Please provide further information. (See also our blog flagging up possible issues www.charitygovernancecode.org/en/front-page.)

See responses for Q12.iii and Q13.

Q15. Do you have any other comments you would like to make about the Charity Governance Code refresh?

Yes. In general, we noticed immaterial differences between recommended practices for larger and smaller charities. Therefore, we recommend that the two are merged to simplify the Code.

¹⁰ <https://www.thinknpc.org/resource-hub/above-and-beyond-in-trusteeship/>

¹¹ <https://www.inspiringimpact.org/>