

Comments on the Charity Governance Code : Consultation Document

January 2017

CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. Our 14,000 members work throughout the public services, in national audit agencies, in major accountancy firms, and in other bodies where public money needs to be effectively and efficiently managed.

As the world's only professional accountancy body to specialise in public services, CIPFA's qualifications are the foundation for a career in public finance. We also champion high performance in public services, translating our experience and insight into clear advice and practical services. Globally, CIPFA shows the way in public finance by standing up for sound public financial management and good governance.

CIPFA's comments on the Charity Governance Code consultation

Introduction

CIPFA has carried out significant work in leading the debate on governance arrangements in the public services. Our most recent generic project in the area of governance - is the development and promotion of the *International Framework: Good Governance in the Public Sector* which was drawn up in association with the International Federation of Accountants (IFAC). A copy of the International Framework is attached to this response.

The International Framework was developed after a review of relevant current governance literature from across the globe, and builds on this literature, particularly IFAC's and CIPFA's earlier work on governance, including *Governance in the Public Sector: A Governing Body Perspective* (IFAC, 2001) and *Good Governance Standard for Public Service Organisations* (CIPFA/OPM, 2004). It sets out seven core, high-level principles characterising good governance in the public sector. They bring together a number of interrelated concepts. The International Framework provides guidance on implementing the principles by providing an explanation of the underlying rationale, together with supporting commentary, for the key elements of each principle and the supporting sub-principles. The International Framework positions the attainment of sustainable economic, societal, and environmental outcomes as a key focus of governance processes and structures in the public sector. The Framework also considers sustainability and the links between governance and public financial management in order to encourage a recognition of the need to focus on the long term. The principles from the International Framework are illustrated at Appendix A to this response.

Since the publication of the International Framework, CIPFA has been working with the Society of Local Authority Chief Executives and Senior Managers (SOLACE) and other organisations associated with local government together with local government practitioners to update *Delivering Good Governance in Local Government :Framework*, which sets the standard for governance in local government across the UK. In developing the new Framework, the core principles and sub principles from the *International Framework* have been adapted for the local government context and translated into a series of expected behaviours and actions which demonstrate good governance in practice. A revised Framework and accompanying guidance were published in 2016.

While the Framework does not specifically apply to the not-for-profit-sector, we believe the principles are directly relevant. Charities need to be well governed to navigate the increasingly changing and complex sector they operate in. Similar to public services, UK charities have been required to adapt the way they operate to survive in a difficult funding environment. This has placed greater pressure on a charity board's ability to manage risk effectively, ensure transparency and exercise control – highlighting the crucial need for good governance.

We have therefore drawn on the International Framework in our response to the charity code consultation.

General comments

CIPFA welcomes a number of new features included in the draft Code. In particular, we consider the emphasis on the Code being regarded as a tool for continuous improvement as helpful. We are pleased to see the recommendation for boards to review their external environment on a regular basis with a view to considering partnership working, merger or dissolution where appropriate. We also welcome proposals for higher standards for the sector in a number of areas and specific best practice recommendations regarding the size of boards and frequency of board performance reviews.

Many of the principles, outcomes and recommended practice included in the Code are a reiteration of the guidance produced by the Charity Commission. We acknowledge the purpose and context of the Code, but believe that there would be great value in supplying trustees with accessible and practical guidance regarding how best to discharge their duties. Currently there is a lack of material addressing the difficulties experienced by trustees in implementing the Code, and dealing with the situations and dilemmas that trustees may encounter when they take on such a role. We understand that this may be addressed in additional materials which may be produced to sit alongside the Code.

We have a number of comments on specific themes and these are set out below.

Issues for comment

Apply or explain

CIPFA supports the use of the 'apply or explain' approach described in the consultation. However, in our view, it would be useful for the Steering Group to expand on this area in the final Code. If charities have not followed recommended practice set out in the Code, they should explain their alternative approach (page 6 of the consultation, highlighted in pink) *and* how it delivers the same impact. Charities should also be encouraged to report on action plans for improvement.

Organisational purpose and direction

CIPFA welcomes the reference to outcomes in the draft Code at paragraph 1.3.2. In our view, the fundamental function of good governance is to ensure organisations achieve their intended outcomes. Charities are driven by social or ideological impulses, and exist to achieve their charitable mission. The objectives or aims of the organisation are prone to change, as both their work and the context they operate in develops. What was a focus when the organisation was first established can quickly become irrelevant as the environment and charity itself changes. We therefore believe that greater emphasis should be placed on the board defining and agreeing outcomes for charities rather than 'purpose' which can be rather more vague. For example, this would be particularly useful at paragraph 1.4.3 which refers to a charity's sustainable strategy.

At the same time, we believe that charitable organisations should act in the public interest¹ and for the public benefit at all times. We would like to see this concept introduced in the Code at the outset (Principle 1). Whilst charities obligations regarding public benefit differ between jurisdictions, the principle that charity's activities must reflect their purpose for the public benefit should be clear from the introduction to the Code.

Scrutiny and challenge

Scrutiny and challenge contribute to good governance by being a key part of transparent and accountable decision making, policy making and review. It is essential that a charitable organisation, whatever form of governance structure it has, should benefit

¹ The net benefits derived for, and procedural rigour employed on behalf of, all society in relation to any action, decision, or policy (*International Framework: Good Governance in the Public Sector CIPFA/IFAC, 2014*)

from a culture of (and structure for) scrutiny which is effective at challenging the way the charity operates. Although scrutiny and challenge are referred to at paragraph 2.4.2 in the draft Code, in our view, the revised code could include greater reference to this important aspect. It is essential that board chairs and members exercise leadership and have the necessary confidence, skills and training to allow them to scrutinise and challenge effectively and that concerns are taken seriously and where relevant incorporated into appropriate recommendations.

Leadership and developing the charity's capacity

CIPFA welcomes the emphasis in the draft Code on leading the organisation and on the chair's role in promoting good governance. CIPFA notes that the Code sets out recommended practice for leading the organisation in both larger and smaller charities. However, we believe it would also be helpful to refer to the need to clarify various organisational roles and responsibilities and how these are allocated between the board of trustees and management at all levels. It is also helpful for these to be communicated to stakeholders.

We also consider that it would be helpful for the Code to include detail on developing a charity's capacity. Because both the individuals and the environment in which a charity operates will change over time, there will be a continuous need to develop the charity's capacity as well as the skills and experience of the leadership and of individual staff members. Charities should strive to learn from each other, for example through benchmarking. In developing options for improvement and solutions to resource issues, including outsourcing, relevant experience from public, private as well as not-for-profit sectors may be a source of good practice.

Partnership working

CIPFA welcomes the recommendation included in the draft Code for trustees to consider working in partnership. More charities are now seeking alternative sources of income, working collaboratively with other organisations and making difficult decisions regarding the provision of their services, as the gap between funding required and funding available widens. It is essential for those responsible for leading and working in partnerships to receive appropriate training to ensure that such partnerships operate effectively. Even where it appears obvious that working in partnership will improve outcomes, there still needs to be detailed discussion at a strategic level to clarify the aims of the partnership and specific issues such as control of resources. Working in partnership requires the ability to work across organisational boundaries and to confront and influence those who might put up barriers to co-operation. Training should also include guidance on how to deal with apparent competing and/or conflicting demands in respect of the partnership versus their role in their own organisation.

It is also important that the governance of partnership arrangements is scrutinised closely. Partnership working can introduce specific challenges in terms of risks facing partners and the need for effective internal control and financial management. We recommend that this aspect is stressed in the Code at 4 Decision making, risk and control.

Fraud and corruption

CIPFA recommends that reference is made in the Code to respecting the rule of law and also to safeguarding a charity against fraud and corruption. Fraud can be a major risk to charities both financially and reputationally and needs to be considered as part of formal risk management processes. For example, procurement can be particularly vulnerable to fraud and corruption. It is essential that the procurement process takes account of the principles of good governance, with particular emphasis on ethical values, transparency and accountability.

Openness and accountability

In section 7 – Open and Accountable, we believe that it would be helpful to refer to the role of external audit and internal audit in a charity’s accountability mechanism.

Financial management

We believe that the draft Code could benefit from a greater emphasis on robust financial management. Strong financial management ensures that a charity’s money is safeguarded at all times and is used appropriately, economically, efficiently and effectively. A strong system of financial management underpins sustainable decision making, delivery of services and achievement of outcomes as all decisions and activities have direct or indirect financial consequences.

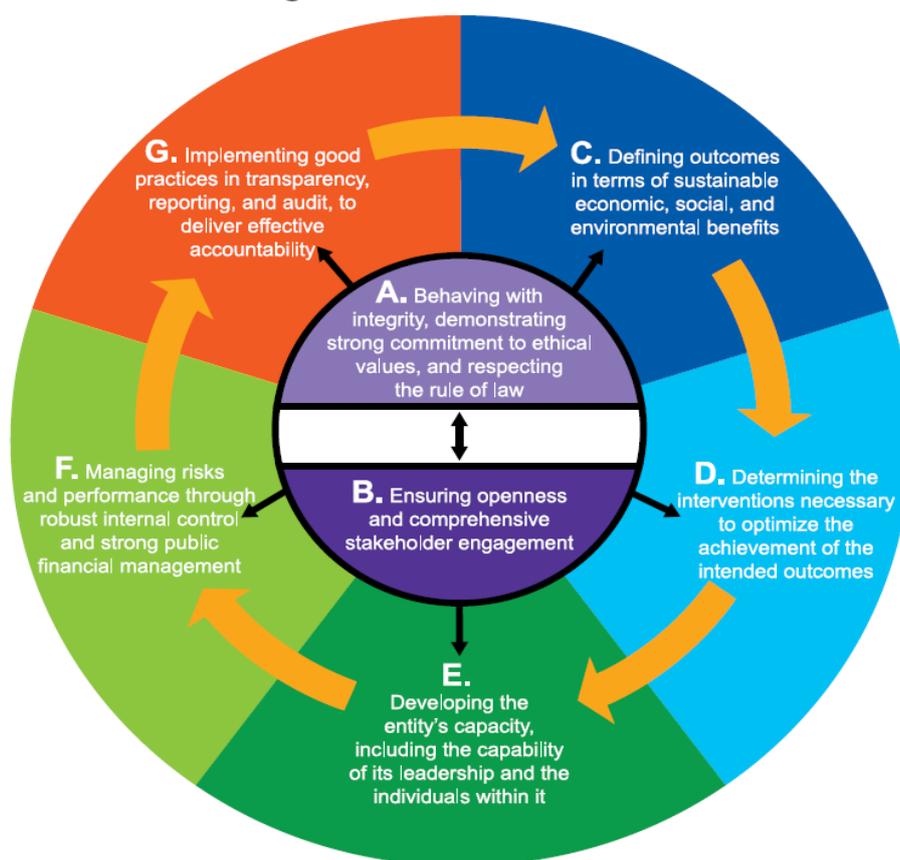
The principles of good governance

"Governance comprises the arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved.

To deliver good governance in the public sector, both governing bodies and individuals working for public sector entities must try to achieve their entity’s objectives while acting in the public interest at all times. Acting in the public interest implies primary consideration of the benefits for society, which should result in positive outcomes for service users and other stakeholders. "

(*International Framework: Good Governance in the Public Sector, CIPFA/IFAC, 2014*)

**Achieving the Intended Outcomes
While Acting in the Public Interest at all Times**



The diagram from the *International Framework*, above illustrates how the various principles for good governance in the public sector relate to each other. Principles A and B permeate implementation of principles C to G. The diagram also illustrates that good governance is dynamic, and that an entity as a whole should be committed to improving governance on a continuing basis through a process of evaluation and review.



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