

Charity Meetings

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Charity Meetings

There is no general rule of law which requires charity business to be conducted at meetings, but in practice regular meetings of trustees is the best way to manage a charity properly.

A. Governing Instrument

When considering the formalities and procedure for meetings, the starting point must be the charity's governing instrument. So, in the case of an incorporated charity, it'll be the memorandum and articles, for an unincorporated association, the constitution and rules and for a charitable trust, the trust deed. These are the most common forms of governing instrument, but are by no means the only ones.

The governing instrument is publicly accessible and all charity officers responsible for arranging and running meetings should be familiar with the relevant provisions.

B. Types Of Meetings

(1) Trustee meetings

Otherwise referred to as board or committee meetings. The main strategic decisions of a charity are made at these meetings. Generally, the frequency of such meetings is set out in the governing instrument and will largely depend on the nature of the organisation. For example, a small organisation which principally makes grants will need to meet less frequently than a larger service-providing organisation. In most cases, for effective management, a minimum of two full trustees meetings should be held each year.

Only the trustees may vote at trustee meetings, but there is no reason why non-trustees should not be invited to attend, for example if an accountant needs to explain the charity accounts.

(2) AGM

An annual general meeting or AGM. An AGM is only normally required where a charity has participating members who are not permitted to attend any other meetings. The purpose of an AGM is to give the trustees an opportunity to explain their management of the charity to the members who then have a chance to ask questions prior to voting on the business items on the agenda. A charity with a membership needs to maintain an up-to-date list of members so that all the necessary people can be invited to the AGM.

(3) EGM

The extraordinary or special general meeting – the EGM or SGM. These are held for the consideration of non-recurring business that requires approval by the members between AGM's. For example, alterations to the governing instrument, dissolution of the charity, merger and other one-off issues.

For charitable companies, the Companies Act 1985 (S.368(2)(b)) provides that an EGM can be requested by 10% of those entitled to vote at such a meeting (even if the memorandum and articles stipulate a higher number). This provision may, however, be overridden by a lower figure in the articles.

C. Model Memorandum & Articles

Based on the Charity Law Association/Geldards precedent.

This section must be read in conjunction with the seminar slides.

Trustee Meetings

- 4.1 The recommended number of trustee meetings is two per year, but this will depend on the nature and size of the organisation.
- 4.2 This deals with the quorum, that is the minimum number of people entitled to attend and vote who must be present at a meeting to make valid decisions. A quorum can be a fixed number or a percentage of those entitled to attend and vote.

The number of people required to form a quorum is usually recorded in the governing instrument, but if it isn't, it can be established by charity practice, as recorded in the charity's rules and regulations. For a trustee meeting, a suggested figure for the quorum is a minimum of one third of the total trustees plus one. For example, 10 charity trustees will have a quorum of 4.

The quorum is an important aspect of trustee meetings. If the quorum is too high, any absences may make it difficult to have a valid meeting, but if it is too low, a minority may be able to impose its views unreasonably.

- 4.3 This is an optional addition to reflect advances in technology. The Courts have decided that a valid meeting usually consists of people who can both see and hear each other (*Byng –v- London Life Association (1989)*). Article 4.3 allows the trustees to conduct some trustee meetings by electronic means, for example video conferencing or internet video facilities instead of a meeting where all trustees are physically present in one place.

The memorandum and articles can also be further modified to provide for telephone conferencing. However, as this only permits the participants to hear, but not see each other, it does not constitute a "meeting" within the meaning of the *Byng* case, so express authorisation to conduct business by telephone in the governing instrument is required. In the absence of a specific power, telephone conferencing may only be used for preliminary discussions - any decisions must be taken at a meeting.

Any decisions taken during a telephone conference not specifically authorised by the governing instrument run the risk of being successfully challenged as they have not been taken at a meeting in the strict sense. Even if telephone conferencing is specifically authorised in the governing instrument, there may still be occasions when an audio/visual meeting (either physical or electronic) is required by law. Therefore, the best advice would be to convene a physical or electronic meeting wherever possible, and only use a telephone conference as a last resort, and even then, only if expressly authorised by the governing instrument.

- 4.4 It is the role of the chairman to run the meeting.

4.5 Governing instruments often do not have details of voting procedures and instead, the charity trustees will have made supplementary rules and regulations to indicate the types of decisions that need to be decided by a vote.

Votes are often taken by a show of hands. This is generally the most appropriate method where the number of those entitled to vote is relatively small. However, it may be inappropriate for larger meetings, or where the governing instrument contains provisions for plural voting.

As an alternative to voting at a meeting, the model memorandum and articles allows decisions to be made by a written resolution signed by all the trustees. This is a useful tool to reduce the number of meetings that need to be called.

4.6 Only validly appointed trustees have a right to vote and to sign a written resolution. The chairman has a second or casting vote. Charity trustees cannot delegate their voting responsibilities.

4.7 Where, so far as the trustees are concerned, a meeting has been properly convened and decisions made, these decisions will not be invalidated, because of an inadvertent or unknown failure to comply with procedure.

The provisions referred to above are mirrored in the Charity Law Association/Geldards model constitution of an unincorporated association and the model trust deed of a charitable trust.

General Meetings

2.1 The words in square brackets are optional and can be added or deleted, depending on the charity's requirements. Provision is made for authorised representatives or proxies to attend meetings on behalf of members. Forms of proxy must be delivered to the company secretary within 24 hours of the meeting.

General meetings are to be called on at least 21 clear days notice which excludes, as a minimum, the day of service and the day of the meeting itself. The governing instrument of a charity may provide one or more ways of "giving notice" for different types of meetings. If it does not, the charity

trustees may by rules, or their practice, have established procedures for the giving of notice, but they may, in any case, rely on the powers in the Charities Act 1993 section 81(1) which allows for the notice of any meetings to be posted (or delivered by hand) to the address given to the charity by the charity trustees or members.

Notices sent by post are considered to have been delivered when the letter containing them would have been delivered in the ordinary course of post. Notices can also be faxed or e-mailed, if a fax number or e-mail address has been supplied by a trustee or member, provided the recipient has indicated a willingness to receive notices by one or other of these methods. The day when the notice is received or expected to be received is the date of service.

Section 81(3) of the 1993 Act removes the need to send notice of the meetings to charity trustees or members whose address is outside the UK. However, it is recommended that wherever possible, notice is sent to all members.

In the case of an AGM, the governing instrument may specify the information to be contained in the notice calling an AGM. In all cases, it is recommended that as a minimum, the notice sets out the following information:

- Date and time of the meeting
- Venue
- Details of the business to be considered
- An invitation to propose resolutions
- If appropriate, a request for nominations for officers to be elected.

The charity trustees may also wish to include additional information, such as how to vote, how to make resolutions and when these should be sent to the charity. It is also important that the charity makes it clear to members how to get an item on the agenda for a meeting. Any relevant documents, such as annual accounts ought to be sent out prior to the meeting, preferably with the notice.

2.2 Again, there must be a quorum at an AGM, although the means of defining the quorum is different from trustee meetings. The quorum will largely depend on the number of members.

- 2.3 Again, it is the chairman who runs the general meeting.
- 2.4 At a general meeting, all issues are generally passed by majority vote. Where the number of voters is small, a show of hands is practical. However, there is a common-law right for anyone entitled to vote to demand a poll and it is likely that a member will exercise this right where it may be that the outcome of the vote on the show of hands is unrepresentative. A poll is a formal count of votes on a resolution and would give recognition to plural voting rights, where available. Plural voting rights are permitted under a governing instrument and, for example, give corporate members five votes and individual members, one vote. The right to demand a poll can normally be limited or excluded by provisions in the governing instrument of a charity, but not always in the case of a charitable company.
- 2.5 The chairman has a casting vote and, following on from the issue of plural voting, article 2.5 confirms that each member is to have only one vote.
- 2.6 As with trustee meetings, a written resolution is given the same status as a resolution passed at a meeting.
- 2.7 By definition, a charity's AGM is held once a year.
- 2.8 The model memorandum and articles sets out the items that must be discussed at the AGM.
- 2.9 Self-explanatory.
- 2.10 This article sets out the procedure for calling an EGM. An EGM can be called by the trustees or upon a written request from the members. If the members request an EGM, the trustees cannot refuse. If they do, the members can usually call the meeting themselves. For charitable companies, company law provides that an EGM can be requested by 10% of those entitled to vote at such a meeting. This provision may be overridden by a lower figure specified in the articles. Again, if the trustees fail to convene a properly requested meeting, the members have a statutory right to call the meeting themselves.

D. Role Of The Secretary

It is the secretary's responsibility to:

1. Identify the date on which the notices have to be sent out so as to comply with the governing instrument.
2. Compile documents to send out with the notices, for example, annual reports and accounts.
3. Consider whether it is necessary to arrange a pre or related meeting. This is especially the case where the trustees will need to meet to approve the annual report and accounts prior to the AGM.
4. Consider the date on which nominations for the election of officers is to take place.
5. Discuss with the chair and any other senior members of staff the proposed agenda for the meeting and, during the course of this, to consider the governing instrument to see what matters have to be dealt with at that type of meeting.
6. Send out notices of the meeting, whether by post, fax, or e-mail.
7. During the meeting, to take minutes.

E. Role Of The Chair

It is the chair's role to preside over the meeting ensuring that each item on the agenda is dealt with. It is also the chair's duty to offer all those attending and voting an equal opportunity to speak on each item and also to prevent any one person from dominating the proceedings. At a general meeting, the chair must make it clear what decisions (if any) voted upon by members are binding on the trustees (as opposed to being merely a recommendation).

The chairman may also adjourn the meeting, if it becomes inquorate, or if the meeting becomes unruly. An adjourned meeting is only a continuation of the previous one, but nevertheless, fresh notices should, wherever possible, be sent to all those entitled to attend. No new items should be added to the agenda however.

F. Conflicts Of Interest

Any potential conflict of interest should be disclosed at the beginning of the meeting, or, preferably, before it and certainly before any debate of the particular item. The directors of charitable companies have, under the Companies Act, certain duties to disclose to their fellow directors conflicts between their private interests and their duties as directors.

The governing instrument of some charities validates transactions in which one or more of the charity trustees has a conflict of interest but there are certain provisions of company law which, regardless of the terms of the company's constitution, have the effect of requiring a resolution of the members, and the consent of the Charity Commission, to validate the transactions of a charitable company in which the directors have private interests.

G. Minutes

Whatever the legal requirements, for example in the case of charitable companies, section 382(1) of the Companies Act 1985, accurate minutes should be kept of all meetings. Recorded information should include:

- The charity's name and the type, date and time of the meeting
- Apologies for absence and the names of those present and in what capacity e.g. trustee, adviser
- The name of the chairman
- The precise wording of any resolution along with its proposer and (optionally) seconder

- A summary of the discussion on each item
- Details of decisions i.e. who voted and how and, in the event of equality of votes, if the chairman used a casting vote
- The action required and those responsible for implementing decisions
- The date and venue of the next meeting.

The formal minutes, once approved and signed as an accurate record by the chairman, form the only legal record of the business meeting.

It is important that, if a trustee is unable to agree that the draft minutes are an accurate record of the meeting, then he or she should draw the matter to the attention of the chairman before they are approved and signed. It is for this reason that copies of the draft minutes should be sent to every trustee who attended the meeting to ensure that they have the opportunity to comment.

The minutes of all meetings, especially trustees meetings, need to be preserved throughout the existence of the charity. Therefore, documents may be retained by the charity's solicitor or accountant, or may be handed over to another charity working in a similar field.

Minutes of trustees meetings are not open documents and do not have to be made available for public inspection, unless they are required by the governing instrument. The minutes of general meetings are usually made available to members, but not to the public. However, the Charity Commission recommends that charities make the minutes of their AGMs available to the public on request. A fee may be charged.

It is usual for the names of people attending a general meeting to be recorded by signing a register at the door, which is then attached to the minutes as a record of those present.

The accounting records of the charity must be retained for a minimum of six years, unless the Charity Commission consents to their disposal. The Charity Commission recommends that other important charity records are retained for a similar period.

A charitable company is permitted to retain its statutory books and copies of the minutes on computer.

H. Top Tips

❖ Know your governing instrument

In terms of procedure for meetings, the starting point has to be an examination of your organisation's governing instrument, which ought to set out the rules and procedures to be followed. If amendments to the governing instrument are necessary to bring about the smoother running of the organisation then this ought to be possible, either through an EGM or a written resolution.

❖ Clarify the roles of the Chairman and Secretary.

If necessary, the committee should work together to prepare written job descriptions for both posts.

❖ Good advance preparation

Ensure that there is a proper agenda, compiled following discussion with the committee members. Circulate the agenda in good time for the meeting with copies of any relevant documentation. Decide on the purpose of the meeting. Consider the venue and time of the meeting – are these convenient?

❖ Effective meeting management

Start and finish on time – do not overrun. Stick to the agenda and fulfill the purpose of the meeting. Give all delegates an opportunity to participate in the discussion. If appropriate, formulate an action plan, allocate tasks and agree on a timescale for the tasks to be completed. Take full minutes and circulate to members for approval.

I. Additional Material / Useful Links

www.charitycommission.gov.uk

CC48 Charities and Meetings

CC60 Hallmarks of an Effective Charity

www.icsa.org.uk

www.companieshouse.gov.uk

www.charityvillage.com

This briefing note is intended solely as an overview of the law. It was last updated on 27 April 2006. No responsibility can be accepted for the completeness or accuracy of this briefing note and professional advice should be taken in relation to any specific problems.

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