

Written evidence submitted by Frank Bennett

Evidence to DCMS in respect of Committee calls in Charity Commission. Hearing date 18 March 2020.

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Executive Summary

It is known that public trust and confidence in the charity sector is under scrutiny by the Charity Commission¹. High profile media reporting of scandals at Oxfam, Save the Children, Kids Co, Age UK, Alzheimer's Society have implications not only for the charities in question, but have also cast a shadow over the whole sector.

Polls show that trust in charities varies according to the sector in which they operate for example:

cancer, rescue services and hospices rank high for trust

and

religious and overseas aid and development charities rank low

There is one thing in common for all charities, irrespective of which sector they operate in: the requirement to observe the Charity Commission's guidance in its publication 'The Essential Trustee'. The guidance states:

'Trustees have independent control over, and legal responsibility for, a charity's management and administration.'

'You and your co-trustees must ensure that your charity complies with the law, and should be able to demonstrate that it is legally compliant, well run and effective in carrying out its purposes. If you can't demonstrate these things, you should be able to explain what steps you are taking to address any difficulties.'

This points to the challenge of good governance. When things go wrong it is so often the case, that the root cause is a failure of governance. This is not unique to the charity sector, as the corporate sector has its own similar challenges.

The evidence points to a major challenge for the charity sector – how to address its standards of governance. Even those charities with the resources to employ professional staff and/or external advisors can still find that their governance has failings, Oxfam is a point in case. So, what hope is there for charities without these resources?

The restoration of public trust and confidence is well meaning, but needs practical measures so that charities can address the challenges of implementing good governance. Tools are needed to assist the board with conducting a governance review and making this more accessible. Digital tools are ideally suited and at the same time advance the use of digital in the sector.

¹ <https://www.gov.uk/government/publications/trust-in-charities-2018>

Removing the worry, stress, cost and time of conducting a governance review, clears the way for replacement of the current system of voluntary reporting with mandatory reporting. It may appear a daunting prospect to mandate reporting, yet therein lies the solution to raising the governance standards of charities with the aim to restoring public trust and confidence.

1. Evidence

1. The Charity Governance Code Steering Group published a new Charity Governance Code (the 'Code') in July 2017. The Charity Commission

'encourages all charities to read, follow and apply it proportionately to their circumstances'.

2. After 2 ½ years there is no data in the public domain to know how many of the 168,000+ registered charities have adopted the Code. Therefore, there is no way to know if the Code is effective in improving the standards of governance of registered charities. The Charity Commission is not responsible for the Code and is reliant upon the work of the Charity Code Steering Group and relies upon volunteers with limited resources.

Should that be reviewed to bring rigour to reporting?

3. The Charity Commission quote²:

'In other sectors – the corporate sector, housing, sport, there are potential financial consequences for not complying with the relevant governance code. The Charity Governance Code doesn't work like that. It's not enforced by the regulator. The fact the Code is not enforced leaves charities to decide, and with no direct consequences it is easy to 'leave it off the board's agenda'.

Is it time to mandate governance?

4. As the Code is voluntary and there is no reporting requirement, there is no available data to know the extent to which the Code is used by charities. A study by RSM UK³ examined 85 charities with annual incomes of over £5million to inspect their governance reporting and found:
 - a. Of the 85 charities analysed, approximately 44 per cent acknowledged the Code within their annual reports;
 - b. average governance ratings for charities which stated their alignment to the Code was nearly 10 per cent higher than those that did not acknowledge its adoption; and
 - c. 31 per cent of charities, by RSM's scoring methodology, demonstrated excellent Governance.

This is a very small sample (0.0005% of the sector) and further qualified by RSM UK:

² <https://charitycommission.blog.gov.uk/2017/07/13/the-new-charity-governance-code-essential-reading-for-all-trustees/>

³ <https://www.rsmuk.com/ideas-and-insights/decoding-the-charity-governance-code>

While there were many excellent examples of compliance with most of the seven principles, there were several areas that require attention across the sector. Improvement is needed most noticeably with diversity, as we found:

- of our sample, only 19 charities (22%) provided diversity statements;
- 22 per cent adhered to guidance relating to these statements; and
- 55 per cent showed no clear evidence of its consideration at all.

Is the fact that 55% of the sample showed no evidence of compliance with the Code after 2½ years following its publication, a worry for the Charity Commission?

The 85 charities in this sample are more likely to have the resources to attend to governance. What inference can be drawn about the attention paid to governance for the majority of charities with annual incomes below £5million? The scale of the challenge is frightening as with no available data for the other 166,000+ charities in England and Wales⁴.

If so, what is the proposed plan of action?

5. The Charity Commission's 'Statement of Strategic Intent'⁵ 2018-23' has the objective of

'Giving charities the understanding and tools they need to succeed'.

The Charity Commission's website⁶ refers to the Charity Governance Code⁷

'as a practical tool to help charities and their trustees develop high standards of governance'.

The Charity Code Governance website⁸ makes available paper diagnostic templates as tools for charities. This flies in the face of the charity sector's drive⁹ for the adoption of digital. The paper templates take an expert in governance several hours to complete. Additionally, this is only a singular view whereas governance should reflect the collective view of those responsible.

Are the templates fit for purpose?

- i.) They are written by charity governance experts for use by persons assumed to be expert in charity governance.
- ii.) They are time-consuming to complete even by experts in charity governance.
- iii.) They are not mindful of the availability of trustees' time.

⁴<http://apps.charitycommission.gov.uk/ShowCharity/RegisterOfCharities/SectorData/CharitiesByIncomeBand.aspx>

⁵ <https://www.gov.uk/government/publications/charity-commission-strategy-2018-2023/charity-commission-statement-of-strategic-intent-2018-2023>

⁶ <https://www.gov.uk/government/organisations/charity-commission/about/publication-scheme>

⁷ <https://www.charitygovernancecode.org/en>

⁸ <https://www.charitygovernancecode.org/en/pdf>

⁹ <https://doit.life/charity-digital-code>

- iv.) There are no tools to aggregate multiple responses.
- v.) There is no support for, nor intention to support benchmarking.

Has the Charity Commission examined the availability of digital solutions to support governance reporting and benchmarking?

- What about Risk?

In the wake of Oxfam, Save the Children, Kids Co and others, the spectre of risk has been elevated among Government departments commissioning services, corporate supporters, Charitable Foundations and others.

Charities will need to be prepared to respond to inquiries about their governance and they are not equipped to do that. This has implications for securing contracts for commissioned services, securing grants and recruitment of trustees. If the RSM report reflects the situation sector-wide then both larger and smaller charities are not in a position to report on, nor respond factually to inquiries about their governance.

Would the Charity Commission be in favour of urging government departments' awarding public money to charities for commissioned services, to mandate that charities report annually on their governance?

Refer to: 2. Introduction to Digi-Board Limited, for a point in case.

6. Standardised reporting would allow benchmarking and analysis of the standards of governance as assessed against the 'Code'. This could be made available as 'open data' and would assist others, such as Corporate Supporters and Foundations, with their due diligence. What if this were available as a Commercial Off The Shelf (COTS) service that does not require any capital investment?

Would this assist the Charity Commission to meet its objectives of '*Holding charities to account*' and '*Informing public choice*' as reported in its Statement of Strategic Intent 2018-23?

- The Charity Commission's report 'Trust in Charities 2018', highlights declining public trust and confidence in charities. The root cause analysis for this has not been published. On the 4th August 2016 the Charity Commission published **Public Trust 4: our action plan on Governance**¹⁰. It highlighted a key aspect of building trust:

'management, or governance, in charities'.

How will the action plan include reporting about progress with charity governance?

8. Charity Commission investigations into charities frequently cite failure of governance in their inquiry report.

¹⁰ <https://charitycommission.blog.gov.uk/2016/08/04/public-trust-in-charities-4-our-action-plan-on-governance/>

What are the persistent failures of governance identified by the Commission's investigations?

What percentage is due to trustees' lack of knowledge of governance versus calculated wrongdoing?

9. The Republic of Ireland Charities Regulator, in response to a collapse in public trust and confidence in charities, has mandated governance effective 1 January 2020. A compelling reason for mandating governance, besides from the collapse in public trust and confidence, was reported¹¹ as:

'The main barrier to good governance is a lack of knowledge and understanding of what good governance is and what is expected of the board of a charitable organisation. This emerged as the biggest barrier for online respondents, followed by a lack of expertise and a lack of knowledge of their legal obligations.'

Does the Charity Commission of England and Wales recognise these traits in respect of the charities that it regulates?

2. Introduction to Digi-Board Limited

The company has developed an online software solution for charities to assess their governance against the Charity Governance Code and at the same time, learn about best practice. In addition to the principles of the Code, it also covers other aspects of governance to include, safeguarding, fundraising, use of digital and board behaviours and culture. The software is a British invention delivered as an online service in the Cloud and fully compliant with GDPR.

1. To illustrate here is an example of how it supports a charity to improve its governance. A charity delivering commissioned services under contract with another charity to a central government department conducted a governance review with Digi-Board. Among other matters the review highlighted two aspects of the charity that put it in default of its obligations:
 - a. The CEO had assumed the role of Data Protection Officer and that is in contravention of GDPR Article 38.
 - b. The charity did not have Cyber Essentials certification that is mandatory for all suppliers in the government's supply chain. Both have since been rectified.
2. The company has conducted governance reviews for charities with annual incomes ranging from £200K to £70M+.
3. Our work has revealed small charities (annual incomes <£250K) have severe challenges implementing the Charity Governance Code, primarily due to a lack of knowledge of governance among trustees.
4. The company is in the process of setting up a Community Interest Company to serve these small charities (over 88,000 in number) with a low cost online service with its social objectives to:

¹¹ <https://www.charitiesregulator.ie/media/1389/report-of-the-consultative-panel-may-2018.pdf> see Page 32

Equip charities and community groups to be able to excel in governance, leadership, and accountability at all stages of their development.

5. The software has in-built benchmarking that would be of great value to those supporters of charities who need confidence that the charity they are supporting is well run and managed. The majority of charities have no way to evidence their governance competency and satisfy enquiries from supporters.
6. The company and its services are known to the Chair and CEO of the Charity Commission, NCVO, ACEVO, Charity Governance Code Steering Group (and contributed to the consultation for the current refresh of the Code), Governance Institute, Small Charities Coalition among others.

3. Recommendations

1. Look at the potential of digital technology to assist charities to adopt the Charity Governance Code.
2. Collaborate with industry partners focussed on solving the challenges faced by charities with the implementation of the Charity Governance Code.
3. Evaluate the benefit to the broad church of stakeholders that support the charity sector by making available an ‘open data’ resource to check a charity’s governance status. This would reveal when the charity last undertook a governance review (dd/mm/yyyy) and over time create a longitudinal record of their attention to governance. Digi-Board has developed the software to do this (see below).
4. Evaluate the potential of sector-wide benchmarking of governance to assist the Charity Commission in its role as the regulator.
5. Consider following the lead of the Republic of Ireland Charities Regulator and mandate governance reporting.

Benchmarking charity governance

This table is the aggregation of the benchmarking data gathered from completed Digi-Board governance reviews and can be used for comparative purposes. Charities that have completed a Digi-Board governance review are curious how their governance compares to the benchmark. In response to this question, we provide a benchmark as below. We never compare one charity with another.

Governance Principle	Benchmark	AN Other
Organisational Purpose	3.6	3.0
Leadership	3.6	3.5
Integrity	3.9	3.6
Decision-Making	3.4	2.7
Risk & Control	3.7	3.4
Board Effectiveness	3.3	3.1
Board Composition	3.1	2.5
Diversity	3.0	1.8
Open & Accountable	3.6	3.1
Foundation Principle	3.2	2.8
Board Behaviours & Culture	3.6	3.3



The data gathered is anonymised and provides a sectorial view of the strengths and weaknesses of governance as assessed against the Charity Governance Code and other factors that Digi-Board consider vital to good governance, safeguarding, fundraising, use of digital and board behaviours and culture.

The data can be further analysed by size of charity (income), sector (e.g. youth), composition of the board (gender, length of trustee service) and extended to create other profiling. For example, do boards that announce higher scores for diversity achieve higher scores for board effectiveness?

The chart below assimilates ‘at a glance’ those aspects of governance that charities are coping with and not coping with. This is a small sample, and when applied to the whole sector would illuminate the challenges faced by charities in pursuit of good governance.

Would this data assist the Charity Commission in knowing where the risks lie in the sector and to direct its resources?

On the next page is the pictorial view of the governance universe that is produced for each charity completing a Digi-Board governance review. It is easy to understand and interpret with the use of a colour coded scoring system. The same pictorial is available as an aggregate view creating a benchmark for the governance universe sector-wide.



See next page.

