

Committee Trustees:

A confused committee structure explored

By Leon Ward, Charity & Governance Advisor

As a columnist for the 'Big Give', I was recently asked a question regarding trustees not knowing their basic duties. My answer below contains general principles, which boards should consider.

The question:

We are a small charity and 5 of our 15 committee members are trustees. All of the committee share the same voting powers except the Chairman, who has the casting vote. In the eyes of the Charity Commission (and the law), should it apply that all committee members have the same authority in a vote?

My answer:

It depends! First thing to do is read your constitution/rules or other governing document, if you don't have any constitutional documentation then legally you may not exist, and it's difficult to advise.

Assuming you do have a constitution or any other governing document:

- Your organisation is only a charity if it has solely **charitable objectives**.
- Assuming your organisation is a charity, it may have to register with the **Charity Commission** if it hasn't already.
- Read what your governing document says about the role of the committee and any other bodies within the charity.
- What is the ultimate decision-making body? All properly appointed members of that body are charity trustees in law, no matter what they are called in the document (trustees, directors, the management committee etc).

It does sound as if your committee is the main decision-making body within your charity. If there is no other body that has delegated responsibility to them, all members of your committee are in law charity trustees. You can't opt to have the power without having the responsibility, so you can't pick and choose who the trustees are. This does however seem like a dysfunctional set up.

In general and in addition to the above, each committee should have set terms of reference outlining what powers the board have delegated to them - and what restrictions that entails. Usually, committees are empowered to make minor decisions but major decisions should always be ratified by those trustees who are registered i.e. the board; that way the line of accountability is clear; during any terms of uncertainty you should check with the board what you can and cannot do as a committee.

If trustees feel completely out of depth then they 1) do not have the right skills mix on the board and 2) should seek legal/professional external advice on what they are deciding on. You should also consider ongoing mentoring for your board and make it standard practice to carry out a skills audit so you can identify gaps in your board or the skills of individual members; which can then be resolved by sending them on training. It is critical that you ensure your governance is fit for purpose to protect not only beneficiaries and funding but also to protect yourselves. You are doing a diligent job if you apply the brakes when you are unsure.

There are mechanisms you can put in place to help achieve this and that includes (as you have done) having an odd number of trustees so that it is easier to reach a majority verdict. But, only those who are registered as trustees (so in this instance the 5 that have volunteered to do so) of the charity should have votes on issues. No one else, and that includes the executive should have a vote.

It is however slightly different if those 15 committee members are officially 'members' of the charity; either as a federal model or when they have paid a fee to be a Member in which case you should be having AGMs and Members can vote on certain things as outlined in your constitution and articles of association. Your process may be different so check what your constitution outlines.

My suggestion is you check the Commission guidance on the legal structures available and see which one you are currently operating within. And that you then seek professional advice from the Commission or charity lawyer.

With many thanks to the Charity Commission for reviewing my non-legal advice!

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