Looking forward to better governance

Seminar Report

Thursday 23 October 2003
10am – 4.30pm
Church House Conference Centre, Westminster

SEMINAR REPORT

Introduction and background

This report summarises the key themes from *Looking forward to better governance,* a seminar that was jointly hosted by the Charity Commission, Audit Commission and Home Office Active Communities Directorate on 23 October 2003. Full notes from the seminar are included as an Annex to this report.

The seminar aimed to stimulate debate about the nature of charities' governance arrangements following implementation of both the Strategy Unit review, *Private Action, Public Benefit,* and the Treasury Cross Cutting Review of the role of the voluntary and community sector in service delivery. It brought together over 50 representatives of the very largest charities in a series of workshops and plenary discussions.

Recent changes and emerging trends

Key messages for charities from the Strategy Unit report include growing public expectations for transparency and accountability, as well as concern about information failures by some charities in setting objectives and targets and giving a clear public account of achievement against them. The report also challenged sector regulators to look for better understanding and information on the aggregate regulatory burdens both on the sector and for individual charities.

The increasing role of charities in delivering public services poses its own challenges. While some welcome this development unreservedly, others fear that it might erode the ethos of voluntary governance or lessen the focus on the primacy of the client as an individual. There are questions around how to combine the independence of the charity and not-for-profit sector with the requirements of accountability for outcomes achieved with state finance.

There is a trend in the public sector towards strategic regulation. As defined by the Audit Commission this includes: a primary focus on improving services coupled with a focus on service users, strategic use of scarce regulatory resources, partnerships with other regulators and equally importantly with audited and inspected bodies. The Charity Commission has adopted a light touch approach for very small charities and is reviewing the extent to which the largest charities are responsible for self-regulation – what standards should the regulator expect from larger charities and how should they be reported on?

Charities are increasingly working in partnership-based initiatives between the voluntary and public sectors, which can bring ambiguity to decision-making structures and accountability.

Charities, government, funders and regulators are examining the structures and frameworks that support good governance and whether the voluntary sector's capacity for effective governance can be strengthened. Some are considering whether a new 'type' of charity trustee is required and how these new trustees can be properly empowered to move beyond scrutiny to fulfil a strategic role. For example, given the potential 'competition' for quality trustees from community interest companies and foundation hospitals, will the need for quality trustees drive some charities towards pushing for greater freedom to pay trustees?

Governance

There was a consensus that better governance results in better delivery of services and by definition improves accountability to users, donors and other stakeholders.

There were differing views about the role of regulators in promoting better governance, ranging from prescriptive reporting requirements about charities' governance arrangements (e.g. in the Charities SORP) through to facilitating sector development of a code of governance (along the lines of the Combined Code for listed companies) and self regulation by charities.

Similarly participants had different views on the role of the Board in effective governance. Some argued that the Board should focus on governance and the staff on management. Others felt that this was too simplistic and not practical. All agreed that boards had a responsibility for the strategic direction of the charity.

Effective boards

Participants shared many ideas on how to make boards more effective.

Difficulties in recruiting trustees were discussed. Ensuring the trustee role is satisfying and valued is critical here. There can be tensions between having the right skills on board, stakeholder representation and diversity. The Strategy Unit proposals for promoting trusteeship were warmly welcomed.

Some argued for a 'culture change' in which appraisal, formal role definition, recruitment, training and evaluation of effectiveness became as natural for boards as for staff.

There was general consensus that, when thinking about how to make boards more effective, it is important to take a holistic view and to consider the arrangements and incentives that will best suit the activities, funding structure and stakeholders of an individual charity.

Participants were divided on whether paying trustees would make boards more effective, with strong views held on all sides. Some thought that this would make it easier to attract younger trustees and for charities to require more from their trustees, both 'contractually' and in terms of skills and continuing development. Others thought that paying trustees would undermine the voluntary ethos of the sector.

Similarly participants were divided on whether executives (senior staff) should be trustees. Some felt that it was absurd not to have executives on board when they attend meetings anyway. Others thought it important that there should be a clear distinction between trustees and staff.

Although participants were divided on the pros and cons of paying trustees, there was a general consensus that ‘one size does not fit all’ and that the diversity of the sector means that prescriptive solutions are not always the way forward.

Regulating large charities

Participants at the seminar shared a commitment to continuing to improve the performance of charities and better demonstrating their impact. There was a general consensus that a higher standard should be expected of the very largest charities and that consequently there would be a greater regulatory focus on them. However, this must take account of other regulatory frameworks, recognise the diversity of this group of charities and have as light a touch as possible, which means being proportionate to the risks that individual charities face.

Peer review and greater self regulation are important and there should be a greater focus of regulation on outcomes and the needs and views of users. The general approach should be ‘freedom within a framework’ and charities with a good track record should have a lighter touch than those without. The ‘hard limits’ of this framework were not discussed in any detail, although it was agreed that it should be backed up with regulatory intervention when necessary.

Possible roles for the Charity Commission in achieving this include:

- Adopting as light a touch as possible (i.e. a proportionate approach that focuses regulatory resource on areas of highest risk)
- Acting as an external driver for accountability
- Encouraging performance and impact reporting
- Supporting self regulation
- Facilitating the sharing of best practice and enabling charities to learn from their peers

ANNEX: FULL NOTES FROM THE CONFERENCE

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1. PROGRAMME

10:00	**Registration and refreshments**
10:30	**Welcome plenary** Helen Edwards, Director, Home Office Active Communities Directorate John Stoker, Chief Charity Commissioner James Strachan, Chairman, Audit Commission
11:15	**Morning workshop session**
12:30	**Lunch**
13:30	**Afternoon workshop session**
14:45	**Feedback from workshops in plenary**
15:15	**Break and refreshments**
15:30	**Final plenary session** Discussion from the floor and with the panel: John Stoker, Chief Charity Commissioner James Strachan, Chairman, Audit Commission Amobi Modu, Home Office Active Communities Directorate Stuart Etherington, Chief Executive, NCVO
16:30	**Close**

2. OPENING PLENARY

Helen Edwards, Director, Home Office Active Communities Directorate

Helen Edwards welcomed participants to the day and the opportunity to be working with the Charity Commission, Audit Commission and so many experienced figures from the sector on the important subject of charity governance.

Governance is very much centre stage. Government has set out a clear agenda for its work with the voluntary and community sector; both the Cross Cutting Review and Private Action, Public Benefit signalled opportunities and challenges for trustees.

The ACU is working with the sector to agree a strategic approach to supporting governance over the next five years, including both policy and funding priorities in working towards stronger governance over the next five years. Today's seminar was timely and will feed into this work.

The aims of the seminar were:
- To identify new and emerging governance issues likely to affect the sector in coming years
- To discuss possible sector and funder responses
- To explore the extent to which there is a consensus about what good and appropriate governance might look like in the future

John Stoker, Chief Charity Commissioner

John Stoker welcomed participants and expressed hope that the day's discussion would suggest some answers to the burning questions about governance.

There's no shortage of these. Some of them are about high policy and the messages coming out of the Strategy Unit review. Some are about big trends in the way the world is changing, with a growing third sector role in delivering public services and the changes in finance and accountability that go with that.

For the charity sector and sector bodies corporately, as well as individual trustees and not-for-profit organisations:-

Have you fully hauled on board the big Strategy Unit messages about public expectations for transparency and accountability? As a sector, are you worried about what the SU said about information failures when it comes to setting objectives and targets and giving a clear public account of achievement against them?

As individual charities, are you proof against the general – and justified – SU criticism that SORP compliance on reporting and accounting is poor?

Individually and as a sector, are you clear about the risks to reputation and public confidence in live areas like fundraising? What are you doing to address them?

How far are all these questions for me as the statutory regulator to ask, and how far are they for the sector itself? What does self-regulation mean, and are you ready and able to make it work?

At the most basic level, do you as an individual not-for-profit organisation have a complaints procedure for people who feel they have been badly treated or given poor service?

For the future, what place might there be for a stronger self-regulatory lead on governance from within the sector itself? For example, the Combined Code on corporate governance for listed companies works on the 'comply or explain' principle. The Better Regulation Task Force commends this approach to regulators. Is this an idea that the sector could develop and apply for its own governance?

Questions for the regulators -

Are you sure that your approach to regulation is proportionate and you have got the balance right between advice, intervention and simply getting out of the way?

Have you taken fully on board SU challenges to look for better understanding and information on total regulatory burdens on the sector and individual not-for-profit organisations?

Where you share the regulation of a body with others – as the Commission does with generic regulators like the Inland Revenue and functional regulators for activities like care and education – are you properly "joined up"?

In charities, the assumption of the regulator has traditionally been that employees – the executive – should not have trustee responsibilities. You should be either a trustee or a manager, but not both. Is that still the right presumption?

For big, personal donors, putting resources into a charity in principle applies some surrender of personal decision-making and control. Does this run the risk of deterring rich and energetic entrepreneurs from getting involved in the "new philanthropy"? If so, what can we as regulators do to make philanthropy more attractive without allowing the governance risk to become excessive?

There is a trend, in the SU work and the Charity Commission's own regulatory approach, towards greater freedom for those running not-for-profit organisations, linked with greater responsibilities and clearer duties of care. Is that working as it should? Are there any hard limits to the approach? If so, where are they?

Questions for Government-

What can you do to underpin good governance in not-for-profit organisations?

The Treasury cross-cutter and the resources that followed it are good news. Is the targeting yet fully refined? Are the optimum partnerships for building governance capacity – with both the sector and the regulators – fully identified and fully in place?

Questions for all of us –

Looking ahead, what does the growing role of not-for-profit organisations in delivery of public service mean for governance?

How do we ensure that the growth of public sector finance does not erode the ethos of voluntary governance that gives clear and distinctive primacy to the client as an individual?

How do we combine the independence – which is essential in all senses of the word – of the charity and not-for-profit sector with the requirements of accountability for outcomes achieved with state finance?

These questions are why the Commission thought it would be timely to suggest hosting this discussion on governance jointly with the Audit Commission, as one of the principal regulators of the statutory public sector, and with the Active Communities Directorate as the unit with an overview of Government interests in the governance of not-for-profit organisations.

James Strachan, Chairman, Audit Commission

Introduction

I want to start by invoking two Audit Commission patron saints: Adam Smith and Karl Marx. Smith as the patron saint of deregulation is perhaps obvious. You may be wondering though quite where Marx fits in. That's because he was a man who railed against philosophers, and in many ways I think he could have been talking about old-style regulators. He used to complain that they merely described the world as it is, when surely the whole point is to change it.

Certainly the spotlight is now focused on how to change public services for the better – in a way that the taxpayer, the service user can clearly recognise.

What role does regulation play in all this, why is corporate governance suddenly the phrase that trips off a thousand chattering lips? Is this just the flavour of the month, as some of you are about to discuss? But before I tell you the answer to that, let me just set out the three things I want to talk about:

1. I want above all to give you a different perspective, so that you can have a comparison as you go through all your thinking today: how

public sector regulation is developing, how it is moving towards Strategic Regulation and what that really means.

2. Why Corporate Governance plays such a critical role both in Strategic Regulation and in helping achieve real improvements in public services, and for that matter private services.

3. Then lastly, to shift from the public sector to the not-for-profit sector: some of the things I think need to change, both in terms of regulation and Corporate Governance.

1. Move to Strategic Regulation

Why regulate the public sector at all? Of course assurance to the taxpayer that they are getting value for money. But it has become a comfort industry: universal alibi, compliance etc. We should either do it differently or scale back significantly.

We're very good at talking about other people's value for money, have we asked ourselves about our own value for money with the same degree of rigour? At the Commission we are refining our concept of Strategic Regulation, a new, lighter touch style of regulation which we want to encourage throughout the public sector. It revolves around four key principles.

A. In essence **it focuses primarily on how to improve services**, not merely to provide assurance.

B. User focus. At the end of the day the real test is whether the person using the service has been well served, and preferably over time better served?

C. Strategic use of scarce regulatory resource
Comprehensive Performance Assessment is truly pathbreaking in this sense. Leave the excellent relatively alone and focus our attention on helping those in greatest need to improve. Closely linked to this is a fundamental objective: to minimise the burden of regulation.

D. Partnerships both with other regulators and the bodies with which we work
There now exists an increasingly complex set of public service delivery arrangements. This joined-upness needs to be reflected in the regulatory arrangements that assess effectiveness. In turn this will help minimise unnecessary duplication of audit and inspection.

2. Why is Corporate Governance so key?

You will now see I hope why Corporate Governance is so key. Because a more strategic form of regulation raises its sights to the level of asking the real questions about what will improve organisational performance while nonetheless continuing to provide assurance to the taxpayer about value for money. These are questions about the governance, the framework within which services are provided.

But what is Corporate Governance exactly? Its related root is of course Gubernator, a helmsman, someone who steers the ship. But contrary to that vivid root, the phrase gives the impression of an activity that goes on deep in the bowels of an organisational machine, irrelevant to the people who buy products or use services. The only time it comes to public attention is when something goes wrong.

We pride ourselves at the Commission on being the evidence people. So, not only what does good governance look like in practice, but also what results from good or bad governance. How much does it really matter?

Our recent report on Corporate Governance, tellingly subtitled improvement and trust in local public services, highlights four characteristics of well governed organisations:

- **First, effective leadership that sets clear objectives,** and the roles and responsibilities that are required to achieve them.

- **Second, robust systems and processes** – financial management, risk management, and performance management – that produce reliable information about an organisation's performance and health.

- **Third, a culture of openness and honesty,** in which internal scrutiny and challenge about performance is professional and rigorous. The key to this is the right relationships between executives and non-executives and is founded upon the relationship between the chair and chief executive, which sets the tone for the rest of the organisation.

- **Fourth, instead of navel gazing, focus on the needs of users.** This is a key strength of the voluntary sector, and something that the public sector could usefully draw lessons from. Governance is for a purpose – better outcomes for people.

That's what it looks like but so what? Well, the two large 'so whats' are that when we looked at governance in local government, health and the police we found two strong correlations: well governed organisations produced good services that met the needs of the people they were seeking to serve and poorly governed ones did not. Secondly, well governed organisations are more likely to gain the public's trust. Just as reputation is a vital lubricant in the private sector, and indeed the basis of many purchasing decisions, so is trust in the public sector. And surely public confidence in the not-for-profit sector is equally critical when it comes to prising money from would-be donors' hands or indeed persuading commissioners to buy services from you

3. Recommended changes in the not-for-profit sector regulation and Corporate Governance

That brings me to this sector. Let me conclude with some thoughts about regulation and corporate governance in the not-for-profit sector, in the light of what I have said. To parallel my earlier question: why regulate the not-for-profit sector at all? First, I turn to John Stoker and his Commission for the answer.

They say that “charities are free and independent organisations whose work is essential to society. But we need a charity regulator which regulates on behalf of those who give to and benefit from charities, and on behalf of wider society: “Our work, our partnerships with other regulators, and charities’ own work to manage their affairs, should result in public confidence in charities and the work they do”.

Fair enough, but then the bleeding heart liberal cries out, Adam Smith spins in his grave. Surely this was supposed to be about the free association of men and women? Why should the nanny state be allowed anywhere near?

Well, the reason I have been belabouring the name – not-for-profit rather than charities or indeed the voluntary and community sector is that there is no such thing as a homogeneous charity sector, so why try to regulate it as such?

I think there are two very distinct elements: one consisting of roughly, but not all-inclusively, up to the largest 200 organisations and the other consisting of the remaining, 186,800. I would advocate a much more strategic approach to regulating this vast number of bodies by leaving almost all of them alone other than to confirm their tax exempt status against a series of sensible public benefit tests, hopefully to be defined in the Charities Bill. This could be done by an approved list of auditors for Inland Revenue. But it does seem to me that there is a gross waste of public money breathing down the necks of small local MRI scanner appeals and their like. It should be caveat emptor. These charities are not in the main raising money from people on either a mass or an anonymous basis. Nor do they have significant, indeed often any, reliance on taxpayers’ money.

There are two key elements that differentiate the roughly top 200 and the rest, from the point of view of regulation: service provision to the public and mass, anonymous fundraising. There is a major need not only to boost public confidence but also to help the public make very difficult choices between charities which today can raise a million pounds cold on the basis of little more than an appealing image.

But, cry so many smaller charities, we really value our charitable status. However I cannot believe that there is a huge difference in that registration coming from one arm of Government rather than from another.

That’s the Adam Smith bit.

The Karl Marx element – remember from the point of view of changing the world not creating socialist command and control State - is that I think that greater regulation of the top 200 is long overdue. But you will now I hope see that by regulation I do not mean heavy handed bureaucratic compliance, I mean ensuring that the right governance, the right frameworks are in place to ensure, with a relatively light touch, that these organisations will excel. Intervening in the hopefully rare occasions when they do not. And in the process making a major, dare I say it value for money, contribution to building public confidence in the sector.

What about governance itself? Three key positive steps which I just want to raise now in outline terms so that we can discuss them later:

- Impact reporting: reporting about what matters instead of mimicking 32 financial reports. We are about the impact we have on people's lives, not financial housekeeping. Of course the latter is important but it is the means not the end.
- Absurd not to have executives on Boards. They sit there anyway.
- Absurd, when in some cases we are talking about multinational businesses, not to pay some, not all, Trustees if you want to. This where this whole charity nomenclature is such a millstone. We are talking about different forms of enterprise, in this not-for-profit sector. No-one is saying you must pay, just that those that wish to should be allowed to. Where is the freedom to associate if you then start defining how you can associate.

Development: smaller regulator, larger development agency is how to use the money.

And on that note I will leave it and be fascinated to see when I come back later what conclusions you arrive at today.

WORKSHOP A

SELF REGULATION: What standards should large charities achieve?

The workshop was led by Geraldine Peacock, Charity Commissioner.

Questions posed prior to a wider ranging discussion included:

- What is the link between good governance and standards? And are there implications for good governance in a greater focus on standards?
- What standards should large charities achieve, and should there be a greater focus on larger charities? Who sets standards? And why do we need them?
- Should standards be different for different types and sizes of charity?
- Where does self-regulation fit?
- What role does the Commission have in standards and governance of the sector?

Key points emerging from discussions:

The special case for large charities

- Larger charities have greater capacity and impact and therefore a responsibility to be exemplary in their standards of governance, performance, transparency and accountability

- It was generally accepted that larger charities will therefore be subject to greater focus and that the Commission could rightly expect higher standards - but this needs to take into account various other regulatory and accountability mechanisms.

- Regulation needs to be simple, not bureaucratic, and operate on the principle of "the better you are, the less you will be looked at" - a lighter touch for a good track record

- Any standards framework needs to recognise the diversity of the large charity sector - some raise more from the public than others, some activities are more quantifiable than others. The Commission's role should be to provide a framework within which charities can operate flexibly ("freedom within a framework").

Drivers for standard setting

- The focus should always be on beneficiaries and outcomes. But there is a need to develop ways of measuring performance and impact in order to be able to demonstrate effectiveness and value of work being done.

- There are limitations in donor/beneficiary drivers for accountability - not many ask to see or understand accounts, and not all charities have a donor base

- The Commission could have a role as an external driver for accountability - setting higher level principles for standards, with the sector responsible for developing the detail as appropriate to different activity types

Self-Regulation

- Peer Review and greater self-regulation were strongly endorsed as means of sharing best practice and monitoring progress. Better governance is everyone's responsibility. Often best developed in sub-sectoral groups of similar charities/fields of activity.

- Warning about importing frameworks and models from other sectors, without first examining whether they work for the not-for-profit sector – which ha primarily social rather than economic drivers.

- Commission can have useful facilitative role to support self-regulation - the freedom within a framework model, plus support to large charities to help them to get it right. Also a possible facilitator in sharing best practice.

Leadership

- Boards need to more consistently embrace the challenge of strategic leadership - there is scope to enhance the quality of understanding of the role of trustees, with potential for CC to be involved in educative role, and potentially a locus for sharing best practice examples e.g. in field of governance

- Need to keep Boards focussed on strategy - danger that overly drawn into details through background in charity and risk reporting/perception of trustee liability.

- Mixed views on need to pay trustees or have CEOs on Boards. Morning workshop largely thought not necessary, afternoon workshop largely thought that should have the freedom to do so, as long as could justify the benefit to the organisation.

Reporting

- As leaders in the field, need to get better at telling the positive story of the sector - don't wait for things to go wrong! But to be transparent, tell both good and bad news as it happens. And need to find out and keep in mind what things the public want to know about.

- Difficulties for many charities in moving to key performance indicators - it can be difficult to attribute impact to any one organisation, and difficult to measure 'softer' impacts, such as social change.

- Need to keep focussed on impact in terms of objectives, to avoid box ticking or self-perpetuating 'indicator industry'. Need to develop a "richer narrative".

- Commission could play a role in encouraging sector towards performance (operational) and ultimately impact (visionary) reporting - not getting involved in micro details, but setting broad requirement/expectation that large charities should report their performance measures (via SORP, SIR?)

WORKSHOP B

WHERE WILL THE QUALITY TRUSTEES COME FROM AND HOW WILL WE REWARD THEM?

The workshop began with presentations by Baroness Jill Pitkeathley, Chair of the New Opportunities Fund, and Sir Graham Hart, Chair of Citizens Advice, which were followed by a discussion facilitated by Baroness Pitkeathley.

Baroness Pitkeathley

Baroness Pitkeathley spoke from her experience as a trustee of local and national bodies, a Chair of an NDPB and a Chief Executive working to a user controlled board.

The motivation for becoming a trustee varies enormously; it can be about gaining new skills, but also about altruism. Baroness Pitkeathley declared herself to be 'agnostic' on the debate about trustee remuneration. She had experienced both types of boards, and felt that payment was not a 'defining' difference in how effective boards are. She did however, reflect on concerns that efforts to ensure the active involvement of users in governance should not be hampered by a regime of expenses that failed to reflect the true costs to people of being involved (which could include childcare, eldercare, travel, and even hours not worked).

Involving users on boards offered the opportunity to 'fish in a larger pool' for potential trustees, but offering job satisfaction was vital.

Key to this were:

- **A proper definition of role:** Governance encompasses legal, financial, contractual and strategic roles. The danger is that management rather than governance creates more immediate satisfaction.

- **Proper systems that enable boards to make the right decisions**: Often there can be too much information, or simply not the right information. This needs to be considered when deciding how regular meetings should be. Do the roles of any sub-committees match the current needs of the organisation? Are board members appraised in the same way that staff are? Do they receive training and induction? This is important because it can take a long time to feel that trustees are taking an active role. Bringing users on to a board can mean involving someone who has never seen an agenda before.

- **Skilful chairing:** A good chair can set the right agenda and ensure meetings keep to a reasonable time. There is a skill in recognising the difference between discussion and decision. Chairs need to lead and manage the relationship between trustees and management, and in particular to develop a strong relationship with the chief executive, that is trusting but not too close.

- **A positive relationship between staff and trustees:** The relationship reflects trust (e.g.: ensuring staff are given ‘deliverable’ decisions), loyalty (e.g.: not discussing matters externally), and mutual respect (with clear roles, consistency and retaining an appropriate distance).

Summing up, Baroness Pitkeathley suggested that in answer to the workshop’s question, we needed to ‘fish in a wider pool’ and work harder to ensure that the trustee role was satisfying and valued.

Sir Graham Hart

Trusteeship is valued, and should not be difficult to sell. It is important to ensure that clear expectations are communicated. While it is difficult to generalise, as charities are so different, they all have one thing in common, that they need good trustees.

The job of the trustees is to decide the strategies and policy of the charity and to monitor the performance of the paid staff. These are both demanding roles. Ideally all of the trustees should be highly capable of carrying out the roles. If they are, then a small Board in which every member is fully engaged is desirable.

Charity constitutions vary greatly. Trustees can be appointed by a variety of methods including appointment (internally or externally), or election. External appointment and election carry the potential difficulty that the Board member may see himself as a representative, whilst co-option by the existing board can lead to homogeneity.

Citizens Advice (NACAB) is a membership organisation and nearly all Trustees are elected by the membership. Sensitivity to the"user" is therefore pretty good. We also have two slots for cooptees and we use those to bring in experience/skills we do not get by election. Election by an informed electorate is a very satisfactory way of appointing trustees, but the system of recruitment should depend on what kind of organisation you are.

Graham disagreed with James Strachan in his proposal that executives should sit on charity boards; rather believing that a clear distinction between staff and trustees is both workable and in some respects valuable, for example in clarifying the difference between governance and management and discouraging trustees from trying to manage. On payment of trustees, Graham felt that charities have a moral purpose of public benefit, and derive their authority from the act of giving; there are risks of changing its very nature. If there are gaps in the skills available to the Board which cannot be filled by unpaid trustees, then the charity should pay specialists to advise.

Discussion

This focused around a number of key topics:

Trustee appraisal
Examples were offered where this had made a real difference. It can link to a skills analysis and highlight recruitment needs (which in turn should relate to the strategic direction of the charity). There is also link to a culture of openness and accountability; an example was offered where the appraisals were posted on a charity's intranet.

Recruitment processes

These should be transparent.

Payment of trustees

Modest payment may help widen and diversify the pool of potential trustees, especially among excluded and disadvantaged communities; and encourage acceptance of principles of appraisal.

Fears expressed included a dilution of the voluntary ethos. There was agreement that this may be more of an issue for smaller and medium-sized charities that don't have the 'cachet' of larger organisations.

Possibly the term 'compensation' is more useful than payment; and such compensation should recognise the full opportunity costs of the role. There are a number of 'grey areas' – e.g. payment to organisations from which trustees come.

There was some concern that legal and regulatory frameworks act as a disincentive, particularly where the trusteeship appears daunting.

'Supply' concerns

There was concern about the age profile of trustees, which was felt to be a function of employment trends. Charities in certain areas of the country faced a limited of pool of potential trustees; often other large charities were in effect competitors.

These concerns should link to more value being placed on volunteers in general; although it can be difficult to market the giving of time rather than money. There may be mileage in building on schemes to encourage employee volunteering. There was interest in *the Private Action, Public Benefit* recommendation to promote trusteeship as part of citizenship education in schools.

Governance in practice

Poor management of the process of strategic planning can put trustee off their role. The ‘simple split’ between governance and management was questioned by some participants in terms of practicality. Charities need to recognise that it takes time for trustees to ‘settle’ in to role. More guidance and support for particular roles would be useful e.g. Chairing.

In summarising the discussion participants felt that the key factors that will help to recruit and retain trustees include:

- Realistic job descriptions, with clear roles
- Job satisfaction, which can be achieved through attention to healthy systems and process to enable trustees to deliver their role, and good chairing.
- Open and transparent recruitment – involving younger members and users, with private sector boards encouraging their directors to apply as an opportunity for personal development
- Assessment of board and trustee effectiveness: appraisals, skills audit of future board needs, constant review

The group took a vote on whether executives should sit on trustee boards and the majority of the group voted against this.

WORKSHOP C

GOVERNANCE – FLAVOUR OF THE MONTH OR ADDED VALUE?

The Home Office Active Community Unit has commissioned the Foundation for Good Governance to develop a governance strategy that is shared across the sector. Key areas of work include developing a shared understanding of governance, tackling the ‘key questions’ that keep coming up, identifying ways to extend and improve effectiveness, and using this discussion as the basis for the development of a strategy.

Governance is a relatively new concept. New challenges mean it has come to the fore. Every organisation has governance, but what is its added value? We know there are a lot of ‘should do’s’ but what is **good** governance?

Participants were encouraged to cite practical examples from their experience of good governance:

- **Accountability** to stakeholders; maintaining member ‘ownership’ of, involvement in, and confidence in the organisation

- **Guardians:** Acting a conscience of the organisation; ensuring the organisation remains focused on its mission and aims; stopping a commercial alliance that would have compromised the organisation; preventing the presentation of misleading financial figures (protecting the organisation’s staff and public); changing purchasing/procurement policy in line with mission.

- **‘Boundary-spanning’**: Linking the organisation to external events; having key role in public relations and profile.

- **Adding value** to staff roles: Mentoring staff in key skills areas; being a brake on a dominant CEO.

- **Process and structures** that had made a difference included the use of skills audits; ‘shrinking’ the board.

This exercise was followed by consideration of a series of case studies, leading to discussion about the key developments at organisational and strategic levels that could make a significant difference in promoting and sustaining ‘better governance’.

Participants concluded that priorities for action to support better trusteeship include:
- Practical measures and initiatives that support trustees internally and externally.
- Achieving a culture change, in which training and development for trustees is as important as it is for staff, the role of trustees is clear and there is internal monitoring and evaluation of board performance.

WORKSHOP D

BUILDING ACCOUNTABLE AND TRANSPARENT PARTNERSHIPS

Mark Wardman, Senior Manager at the Audit Commission, began the workshop with a presentation, which was followed by a facilitated discussion.

Mark Wardman

The Audit Commission has recently published a corporate governance study, *Corporate Governance – improvement and trust in local public services.* The Commission defined corporate governance as "The framework of accountability to users, stakeholders, and the wider community within which organisations take decisions and lead and control their functions to achieve their objectives".

The Audit Commission's study surveyed the views of CEOs and Chairs on this issue of accountability. They have multiple accountabilities: internally, locally and nationally. Direct accountability to local people is difficult to achieve. While regulation improves accountability, too many agencies and (wrong) targets can cause confusion and tension. The media can have a positive and negative impact on accountability.

The Commission focuses on partnerships between local public bodies, e.g. Local Strategic Partnerships. Good local partnership delivers better user focus as well as better transparency and use of resources.

Elements for success in partnership working include:
- High level commitment to partnership working
- Shared vision
- Long established relationships
- Skills & experience of the staff involved
- Cross sector utilisation of skills to achieve organisational objectives
- Evaluation – such as use of quality of life indicators
- Learning from others, good practice and own experience.

Auditors look for 3 things when reviewing partnerships:
- Participation – actively involving all the partners needed to reflect different perspectives in the local community; making partnership working attractive to both public, private, voluntary organisations
- Performance – building the sort of relationships that deliver improvement; knowing that the partnership is making a difference.
- Probity – ensuring that the partnership is accountable and that public money is being properly spent; having in place formal monitoring and appraisal systems.

For each joint working initiative the roles and responsibilities for partners, systems for measuring and reporting performance, and the accounting and audit arrangements all need to be clearly set out and understood. For small community groups and voluntary organisations, keeping the necessary records of expenditure and data on performance which are essential for accountability can be a considerable administrative and costly burden.

The governance risks in partnership working include:

- Potential lack of clarity in roles, responsibilities and accountability
- Ambiguity in decision making
- Different expectations and cultures
- Confused financial management

Partnership working posed four key issues for the voluntary sector:

- To participate as partners or contractors?
- Problems with core funding and emphasis on project and output funding reduces voluntary sector capacity in partnership
- Roles in partnership – not being seen as strategic and equal partners on Local Strategic Partnerships
- Does involvement in the governance of partnerships threaten the independence of the voluntary sector?

Discussion focused around several key themes:

- Partnership members should have shared aims; common purpose; consensual agreements; respect for all parties; good relations between individuals.

- Partnerships should understand and reflect needs of users, not just vocal groups. Voluntary sector struggles to represent the users – some charities are better than others and most are in a better position than the majority of statutory organisations

- Importance of clear governance in partnerships – roles and responsibilities; accountability; realistic timetable. It is not always appropriate for charities to be brought in after the ground rules have already established. Charities should not be included just for the short term. Successes and failures should be shared.

- Relations between regulator and regulated. Regulators role should be to empower users

- Entrepreneurial approach of charities not matched by statutory bodies. ‘Passion does not exist in the public sector’. There are structural and cultural differences between statutory bodies and charities and a ‘collision of culture’.

- Partnerships require a great deal of time & effort, but offer the opportunity to achieve something that would not be possible if working in isolation. The combination of small and large charities can be valuable. Small charities bring local perspective and large charities provide structure and financial control

- Independence of voluntary sector – role to criticise or influence? Which route most effective?

WORKSHOP E

THE ROLE OF THE BOARD IN THE 21ST CENTURY

The workshop began with presentations by Fran Beckett, Chair of ACEVO and Chief Executive of the Church Urban Fund, and Tim Butler, The Solicitor and Secretary to The National Trust, which were followed by a discussion facilitated by Fran Beckett.

Fran Beckett

ACEVO launched a Governance Inquiry in May 2003 to examine a number of the key issues that the voluntary sector is currently grappling with. A mix of task groups and questionnaire consultation, and the advice of a Steering Group including representatives from the Charity Commission, NCVO, and the Charity Trustee Network, will result in a formal report being launched at ACEVO's conference in December.

Some of the preliminary findings from responses to the questionnaire were shared in the presentation.

Empowering and equipping the Board for leadership

1. Board functioning
   a) Stage in the organisation life cycle
   b) CEO role in facilitating the Board's focus upon the strategic
   c) Clarity of expectations – partnership model, methods in reaching shared understanding
   d) Focus on vision and delivery of objectives (24% admitted their activities only mostly aligned with core objectives)

2. Board membership
   a) The importance of the right people for the right job (only 10 out of 84 Chairs rated finding the right trustees not a problem at all, with the biggest issues being finding the right skills and diversity)
   b) Mix of expertise, networks, and team players
   c) Active and public recruitment, including use of brokerage services (NCVO's online trustee bank). OU Business School 2001 Survey found the majority of trustees recruited through personal connections; issue of elected representative Board members in federated structures – use of job descriptions and person specifications
   d) Charity law reform proposal, now backed by the Home Office, for inclusion of a statement on trustee recruitment, induction and training
   e) Mix of executive/non-executives on Board (overall 49% think CEO must be on Board – 50% CEO's + 32% Chairs) – a new model needed for charities heavily involved in delivery of public services?

f) Payment of Trustees (overall 73% said recruitment not a problem if trustees remain unpaid but 45% CEO's + 40% Chairs want freedom for discretionary payments without applying to the Charity Commission)

3. Board development

a) Training and development (overall 64% in favour of trustees professional development)
b) Self appraisal (overall 73% said Board failed to appraise itself regularly, and 94% Chairs + 98% CEO's favoured a code of good practice)
c) Formal qualifications (overall 56% favoured a qualification being developed but all wanted it to be optional)

4. Sustainability

a) Shared written agreements re. timetables, processes, and objectives for regular review of Board functioning – use of external expertise (panel of experts welcomed by 69% CEO's + 57% Chairs)
b) Succession planning (one of the two biggest problems, and for Chairs the biggest)

Tim Butler

Background to the National Trust governance review

The National Trust has just undertaken a review of its governance. The principal recommendations were

- reduction of the number of trustees and streamlining of the trustee and committee decision making process
- greater consistency and openness in selection and appointment processes
- more structured trustee development
- clarification of the role of members of the National Trust.

The changes will be implemented over the next two years.

Moving beyond supervision to leadership

The review made a distinction between the trustee body ("the Governing Body") and a larger Council. The trustee body will be a body which genuinely leads the organisation, working with senior management to create strategy and make key decisions. It will not be a 'rubber stamp' and will preserve the distinction between governance and management. The board will be small (around 12 trustees, joined at their meetings by perhaps 3 senior staff), giving board members freedom to express ideas, to challenge. There are likely to be around 8 board meetings a year.

Chair will have a key role – being the chair of both the trustees and the Council as well as the focus of communication with regional committees and advisory panels.

There was considerable discussion within the group which carried out the review about whether the Director General (CEO) should be a trustee (the decision was that she should not be) and about how to ensure that the new structure gives an appropriate voice to the regions.

It is important that the trustee body (and the organisation) retains its soul and the role of the Council in selecting and challenging the trustee body is relevant here.

Empowering trustees to fulfil a strategic role

Systems to facilitate this will include:
- co-ordinated induction processes
- clear role profiles/terms of reference with a governance handbook and special attention to ensuring that the differing roles of the different bodies are properly understood
- appraisal system for members of trustee body, the Council and committees
- self-appraisal systems for the bodies as a whole (are we doing our job)

Holding the trustees to account

Issues considered here included:
- who should hold the trustees to account, and how?
- on whose behalf are trustees being held to account ("the nation's")
- what forum would work best
- what does transparency really mean?

The Trust has the serendipity of having a Council which represents both members and expert bodies (the wider nation), with the sanction being the power to dismiss trustees. Transparency is enhanced by the public airing of issues at the AGM and the role of members in a membership charity is clearly important.

Discussion

This focused around 4 main themes, which were seen as the key debates in progressing the governance agenda:

Board composition

Any voluntary organisation must operate to the highest standards of governance, which means having the best people for the job and an appropriate balance of skills.

The composition of the board, especially efficacy (the right skills) versus stakeholder representation is a key issue and there are many different ways of dealing with this.

There can be tensions between having the right skills on board, stakeholder representation and diversity. Some regulatory bodies and funders have dogmatic views about diversity.

One way of ensuring a diverse trustee body is making good use of sub-committees – they are the bodies that need the expertise which could then be fed up to the trustee board. More emphasis could be given to using sub-committees as a vehicle for developing potential trustees. Task and Working Groups can also provide opportunities for participation for those whose lifestyle may preclude longer term formal committee membership e.g. young people, those who are carers or single parents.

Another model for balancing stakeholder representation with efficient decision making is a two-tier structure, like The National Trust. However, this can create its own tensions. E.g. it can create the impression that members of the advisory body have been 'put out to grass' and in some cases this has resulted in them insisting on extremely detailed scrutiny of the trustee body, which in turns affects efficiency.

Addressing these issues requires an investment and commitment to change. For example, the culture of boards may need to change to take on different people e.g. young people on board.

Board function

Should the board lead or implement? Is there a contradiction between governance and leadership? It can be hard to specify leadership in a governance context for charities – an initial 'vision' can bring a charity into being and live with it for decades.

Is it the responsibility of those with the governance role to develop a vision that the staff must work with? Or is the vision developed in partnership between staff and trustees with responsibility for translating it into strategies delegated to staff? It was noted that papers often come to the board from the executive but equally boards should ensure that they get the papers that they want.

The function of the board, respective responsibilities between trustees and senior staff, and the relationship between governance and management can vary from organisation to organisation, from time to time and from issue to issue.

Holding trustees to account

Board members have a responsibility not only towards their own organisation but towards the sector as a whole.

It was suggested that when boards are smaller trustees are given more involvement, information and interface and as a result are more passionate about their work. It may be that if they are larger this does not happen to the same extent. As an alternative it was suggested that the more corporate and business-like the board was the more efficient it would be. A large number of enthusiastic trustees does not necessarily mean that they are efficient or effective. Are there ways of combining these perhaps contrasting approaches?

Different ways of ‘measuring’ a trustee’s commitment and effectiveness were discussed. For example, one charity has a system of measuring indicators such as attendance at meetings, visits, which can show how committed trustees are. In one case this resulted in a trustee being removed.

Conclusion

In conclusion the group thought that the voluntary sector is a ‘loose and baggy monster’ and one size does not fit all. The diversity of the sector means that prescriptive solutions are not always the way forward. A flexible approach is required.

Although the sector is diverse it may still be possible to split into sub-sectors and establish informal frameworks.

FINAL PLENARY

The final plenary session included questions and points from the floor, alongside substantial discussion from a panel including John Stoker, James Strachan, Amobi Modu (Head of the Home Office Active Community Unit) and Stuart Etherington (Chief Executive of the National Council for Voluntary Organisations).

Stuart Etherington, Chief Executive, NCVO

The session was opened by Stuart Etherington, who questioned the value of increased regulation for the charitable and broader voluntary and community sector.

Key points raised during Stuart's contribution included:

Charities are not instruments of government; they are part of civil society, and even the largest charities forget these roots at their peril. The notion of earned autonomy is not relevant – charities by their very nature are autonomous. Charities should not be too much in thrall of corporate models of governance given recent private sector scandals.

The logic of a separate regulatory regime for the largest charities was questioned and the risk of a somewhat arbitrary cut off point.

Regulators themselves should be placed under careful scrutiny. Who regulated the regulators? What rights of appeal are there? Is their own governance fit for purpose? Are costs of regulation proportionate? Should there be less of them?

The Better Regulation Taskforce had lost count of the number of regulators at 108. Many charities do fall under the auspices of specific regulatory regimes these because of their field of work.

The sector faces a range of challenges, including ensuring users were at the centre of work, for information to be available to the public and users about charities and their effectiveness. Growing demands for transparency are right, but the work being taken forward around fundraising shows that the sector can respond to such challenges.

The notion of 'strategic regulation' is welcome. Charities have the opportunity through self-regulation to 'leap-frog' the public sector in terms of a modern approach.

The dangers of over regulation might include: driving out voluntarism; stifling innovation through strict guidance; the costs involved in regulation itself may outweigh net gains; costs for organisations, which should be proportionate to risk; scope for perverse incentives and unintended consequences; potential impact on staff morale; and less flexibility to respond to local need.

There is an imbalance between the minimal resources available to support for self-regulation, and those used to maintain regulatory regimes. Yet the charitable sector had made large steps forward in governance. This was probably truer for larger organisations, and there was much work to do to support local organisations, and develop best practice. The key challenge is how to improve governance, ultimately to increase the quality of impact, whilst retaining the best features of the sector.

Discussion

Stuart's contribution was followed by a lively debate including questions from the floor, and further comments from a panel. Points raised by participants included:

- Being clear about the concerns or problems we are addressing. Given the regulatory regimes in particular public service areas, many charities involved in service delivery already fall within extensive regulation.

- What can we learn from the experiences of Housing Associations, the role of the Housing Corporation and model of continuous improvement?

- Is there evidence that strategic audits add value? What can we learn? Some attempts by the sector to be more 'impact focused' are weak.

- Concern that the charitable sector may be in a similar situation to local authorities 15 years ago. Must get beyond defensiveness and fears; and respond constructively and imaginatively to avoid 'heavy handed' response by government. Examples include increased transparency (e.g. board minutes on website); independent complaints procedures; clear impact measurement.

- Disagreement on a few points risked masking the degree of consensus that existing about the challenges faced. This was about the sector 'coming of age' and facing forwards.

Conclusion by panellists

The panel responded to points from the floor (and each other), and made some concluding points.

Stuart Etherington stressed that charities maintain their independence when taking public funding; they do not become public authorities. He considered housing associations as an example of the consequences of the 'nationalisation' of the sector. There are dangers in over-regulation; and the *Private Action, Public Benefit* recommendation of self-regulation in fundraising shows a useful way forward: self regulation must work. There was a need for openness and transparency. Guidestar is one initiative that may assist. But charities are not public authorities like local authorities. At its heart, governance is moral and ethical, and about impact and beneficiaries, more resources and thinking is needed, but there a question about who should push this agenda forward.

Amobi Modu reflected on the focus which Fiona Mactaggart, as Minister for Charities, places outcomes and impact for beneficiaries. Whilst there needs to be clear accountability for public expenditure, Government also has a role in reducing bureaucracy – for example in funding - especially to ensure that small organisations are 'free' to do what they do best. Government funding forms around 25% of charities' income; and the sector is not government. Good governance is about pursuit of mission, and mobilising resources to meet this. Ultimately, that means a commitment to improving performance.

James Strachan argued that charities needed to move beyond defensiveness and needs to 'bite the bullet' in demonstrating performance; third party judgements have value. Guidestar is a start but not detailed enough. A key factor is openness and willingness to learn from mistakes. Good corporate governance leads to good services, campaigning and research, and ultimately to increased trust and confidence. Strategic regulation is about a balance; not being uniformly heavy handed, but – for example – being able to take quick action where necessary. More could be done to 'join up' regimes and this was starting to happen. There are increasingly systems of appeal. A focus on outcomes was essential; the system should only be a servant.

John Stoker agreed that there were questions about the cost-effectiveness of regulation, particularly of small organisations, whilst arguing there was potential for more change among large charities. Good regulation was not about being heavy handed, but being a catalyst for change, and a 'helping hand'.

He felt that there were particular circumstances in which Housing Associations had developed, with a very high proportion of public spend, making comparisons difficult. Charities are very diverse, with many financial accountabilities. The idea of 'freedoms within a framework' is useful. For example, on trustee payment the Charity Commission has moved from a test of necessity to a test of expediency.

Summing up the day, John stressed that although there had been rigorous debate, there was much agreement among participants;

- Charitable sector has scope, and should, do more for itself
- Voluntary codes may have some value; on the principle of 'Comply or explain'
- Regulation should be proportionate
- Performance measures are a real challenge, but offer new opportunities for charities (e.g. the planned Standard Information Return).