



# **Charity law and Governance**

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# Charity Law



- Dates back to 1601
- Defines what charity is
- Charity Commission created in 1858
- Charity law has grown in complexity
- Office of Scottish Charity Regulator (OSCR) created in 2005

# What is a 'Charity'?



## DEFINITION OF A CHARITY:

- an organisation set up for the benefit of the community
- to qualify as a charity, the organisation has to demonstrate that its purposes are for the public benefit and this is continuously assessed (Charities Act 2006)
- Trustees Report (page 5 of annual accounts)
- Has to set out its purpose, values and rules in a governing document

# Advantages of charitable status



- Charities acquire a 'halo of legitimacy', which encourages both financial and other kinds of support
- Direct tax exemption, e.g. corporation tax
- Partial relief on indirect taxation, such as VAT & business rates
- The College saves 80% on business rates (£146k p.a.) at 17 Belgrave Square & Standon House.
- Donors also enjoy tax relief on their donations

# Charity Commission



- The regulatory body for charities in England and Wales
- Objectives :
  - narrow the scope for abuse
  - encourage accountability of trustees
  - ensure public confidence of the charity sector
- Functions:
  - registering Charities
  - advise charity trustees
  - instigate enquiries
  - act for the protection of charities
- 180,000 registered charities in England and Wales
- <http://www.charity-commission.gov.uk>
- 23,500 registered with Office of Scottish Charity Regulator
- <http://www.oscr.org.uk>

# Charity Commission – monitoring function



College has to submit the following:

- Full audited Annual Accounts including Trustees' Report
- Annual Return and Summary Information Return (SIR)
- Similar requirements from OSCR

These documents are available on the Charity Commission's website to anyone.

# How was the Royal College of Psychiatrists formed?



- Incorporated by Royal Charter
  - Granted by the sovereign
  - It has all the powers of a natural person, including the power to sue and be sued in its own right
- Registered as a Charity

# College's Constitution



- OP73
- Supplemental Charter
  - Approved by Privy Council
  - Sets out the College's objectives
  - Defines powers of the College (e.g. creation of Council, para 6)
- Bye-Laws
  - Approved by Privy Council
  - Defines functions and responsibilities of various groups (e.g. trustees, Council, FSDS etc)
- Regulations
  - Set by Council
  - Detailed procedures (e.g. frequency of Council meetings)

# **Supplemental Charter, Bye-Laws and Regulations require:**



- **Income and assets of the College applied solely promoting its objectives**
- **Council to approve bank accounts and signatories**
- **Council to control and approve expenditure**
- **Financial Officers' obligation to keep accounts and to prepare Annual Business Plans**
- **The Treasurer is the principal financial officer of the College**

# What is governance?



- Governance is defined as:

“ the systems and processes concerned with ensuring the overall direction, effectiveness, supervision and accountability of an organisation.”

# Why governance is important



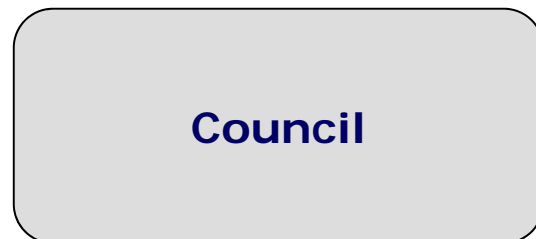
- Good governance is key to an organisation's health and success
- Charities working for public benefit are held accountable for their outcomes.
- They are expected to demonstrate how well they are governed.
- Governance ensures that the organisation adheres to:
  - Accepted ethical standards
  - Best practices
  - Formal laws and regulations

# Key principles of good governance



- Led and controlled by Board of Trustees (Council)
- The trustee board should be diverse with a range of backgrounds and skills
- Responsibilities and functions should be clearly defined
- Rotation of trustees
- Open, responsive and accountable
- Trustee training
- Periodic review of effectiveness

# College's governance structure



- Full management & control
- Stewardship of the College



- Considers College's financial policies
- Advise and report to Council
- Chaired by Hon Treasurer



- Achieve College's objectives within their own remit
- Implement and follow College's rules & guidelines

# External obligations



- **Charities Acts and SORP**
  - Risk management compliance statement
  - Reserves policy
- **Filing of Charity Commission/OSCR Annual Return**
- **Annual audit (consolidated accounts, Trustees report, going concern)**
- **Accounts approved by Council and AGM**
- **Money Laundering Regulations and Suspicious Activity Reports (SARs)**

# Internal obligations



- **Governed by College's Constitution**
  - Royal Charter
  - Bye-laws and Regulations
- **College Guidelines**
  - Financial policies
  - Staff handbook
  - College support document
- **High standards of internal financial control and governance are required**

# Internal Financial Control



- Financial guidelines
- Central accounting and bank accounts
- Business plans and management accounts
- Professional staff
- Transparent and consistent accounting
- Audit Committee, internal audit, FMC
- Separation of duties

# Legal Definition of Trustees



- Trustees are persons appointed to take responsibility for the general control, management and administration of the charity (Charities Act 1993)
- Council has full management and control of the College.
- Full members of Council are College Trustees
- There are 900,000 charity trustees in England and Wales

# Council Members



- **Trustee Members**
  - 14 Honorary Officers
  - 11 Division Chairs
  - 13 Faculty and Section Chairs
  - 4 Elected Members and Fellows
  - Chair of Professional Governance and Ethics Committee
  - Directors of Conferences and Public Education
  - Chair of the Psychiatric Trainees' Committee
- **Non-trustee Members**
  - 1 Affiliate representative
  - 2 Patient/Carer representatives
  - Director of CCQI and Director of NCCMH

# Trustees' responsibilities



- Overall responsibility for directing the affairs of the charity including financial management
- Compliance – external regulations and governing document
- Duty of prudence – business planning, solvency, risk management, going concern
- Duty of care – use skills and experience to ensure charity is well-run and efficient, monitor, take professional advice if needed
- Joint and several liability

# Responsibility and accountability



- All trustees – equally and collectively under charity law
- Delegated authority to
  - Honorary Officers
  - Sub committees
  - Chief Executive
  - Senior Managers
  - External Advisers, e.g. Investment Manager
- No personal benefit or remuneration

# Trustees Liabilities



## Governance:

- Personal liability
  - Breach of trust
  - Fraudulent activities
  - Funds must be restored personally.
- Collective liability
  - “Sleeping Trustees” (absent/leaving decisions to others) will be liable for the acts of their “active” co-trustees

Indemnity insurance applies only if Trustees acted in good faith and have discharged their duties.

# What protection is there?



It is very unlikely any liability will arise if you:

- Act reasonably
- Take professional advice when necessary
- Follow the requirements in the College's constitution and Charity Commission guidelines
- Regularly review policies, procedures and insurance

**Any Questions?**