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The Governance Structures of Community Foundations - Country Report UNITED KINGDOM

Introduction

All community foundations in England and Wales have to be registered with the Charity Commission, the statutory body which regulates charities. A separate legal framework governs Scotland and Northern Ireland. The governing body of each foundation operates independently but is accountable to the Charity Commission (for example, the Commission's permission must be sought if a foundation wishes to change its governing document in any material way). The Charities Act passed in 1992 gave the Charity Commission statutory powers to demand information from charities and to hold formal enquiries. In addition, the Act marked a radical change in the requirements of foundations concerning accountability and openness: Foundations must publish an annual report and are required to make their accounts available to any member of the public. At the same time, the Act broadly increased foundations' freedom in handling their investments and income.

A community foundation in the UK may be established either as trust, or as a charitable company. As a trust, the foundation can appoint anyone the Board chooses to be a trustee. A trust must report to the Charity Commission but otherwise is accountable only to itself. This is a simple structure with the advantage of flexibility. The disadvantage is that trustees are personally liable for its dealings and any losses or liabilities it incurs. The Trustee Act 2000 widened the investment powers of charity trustees.

Most UK community foundations are set up as charitable companies, that is, they are both registered charities and companies limited by guarantee. This creates an additional line of accountability, since as well as charity law they are also governed by company law, and must report annually through Companies House. This model, though more bureaucratic, has a number of advantages:

- provided they act responsibly and in good faith, trustees are protected from personal liability for any losses the foundation may incur;
- the company has members who nominate and elect trustees. This is a more open and democratic system, and promotes a more representative Board;
- the company model gives greater flexibility in the management of the foundation's assets.

Concerning their fiscal treatment, charities and donors enjoy a broadly favourable tax regime, albeit not offering the same incentives to philanthropy as the North American system. Key measures under the new tax regime adopted in March 2000 include:

- all donations, small and large, qualify for tax relief thus abolishing the former £250 (€407) minimum limit ;
- individuals and companies are be able to donate quoted shares to charities without having to pay any capital gains tax, and get the extra tax relief for the full value of the shares;
- the maximum limit of £1200 (€1,950) for payroll giving was removed;
- companies are able to donate any amount to charity and get tax relief for the full amount, without having to deduct tax from the gift and without further bureaucracy for the charity.

There is no UK equivalent of the US Public Support Test, whereby the tax-exempt status of community foundations depends on a third of annual income deriving from public donations. However, in order to demonstrate accountability for funds received, the Charity Commission requires all charities to report their expenditure under three headings: Direct Charitable Expenditure, Management and Administration, and Fundraising and Publicity. The new Statement of Recommended Practice for charity accounting (SORP 2000) acknowledges for the first time the need for charities to incur reasonable overheads by grouping Management and Administration costs with Direct Charitable Expenditure. Whilst there is no formally recognized standard of performance, most community foundations would expect to deliver annually between a 3:1 and 5:1 ratio of charitable funds raised versus pounds spent on fundraising.

THE CORPORATE MODEL

Community foundations organized in the form of charitable companies are membership organizations. Members are a charitable company's equivalent of shareholders. Different foundations appoint them in different ways (e.g. by becoming a donor, paying an annual membership fee, etc). They have voting rights at General Meetings (although unlike commercial shareholders they do not command voting rights in proportion to their contribution). The Board therefore has an extra layer of accountability, as it has to report and justify any major action it wishes to take to an external body of people, whereas a trust board can - within the law - proceed at its discretion.

Charitable companies are known as Companies Limited by Guarantee, denoting the limited liability of its members in the event of financial problems. Their governing documents are a Memorandum of Association (setting out what the company is for) and Articles of Agreeement (defining how it will operate). Together with the Deed of Incorporation they form the company's constitution.

HONORARY OFFICERS

Community foundations usually have one or more honorary (ie non-executive) officers, commonly called Patron, President or Vice-President. Some play an active role but most are figureheads without any special responsibilities or powers.

BOARD OF TRUSTEES (BOARD OF DIRECTORS)

The affairs of community foundations are managed by a Board of Directors, usually known as Trustees. They are ideally chosen for their range of abilities and connections, meet at least three times per year and give their time free. Increasingly, the Board is structured to ensure that it is reflective of the community (local businesses, community organizations and residents). The Board of Trustees is the key authority of a community foundation. The Board has ultimate legal, fiduciary and financial responsibility for the organization. Trustees can be nominated and appointed by the Board itself, or it may receive nominations from the Foundation's membership. The governing documents of most foundations permit casual appointments or co-options during the course of the year, but most require such appointments to be formalized by a vote taken at the Annual General Meeting.

re: Mission, Vision
- establishes and reviews the mission statement
- is responsible for planning for the organization's long term and short term strategy

re: Board Composition
- is responsible for the nomination, selection and recruitment of board members

re: Policy Development
- guards against conflicts of interest
- observes ethical requirements
- establishes personnel policies
- introduces policies relevant to any other aspect of the foundation's work, eg investment, grantmaking

re: Implementation
- hires/fires the Chief Executive, evaluates and holds him/her accountable
- is responsible for all financial operations of the organization, including budgets, assets and properties
- is responsible for ensuring that adequate funds are raised
- is responsible for evaluation and ensuring that the organization's work addresses community needs

Committees to address issues such as Grantmaking, Finance, Investment or Marketing may be convened between Board meetings to progress business. The Committees working under the Board maximise opportunities for locally-accountable governance and the direct involvement of local people in decision-making. They may have delegated decision-making powers subject to certain conditions.

GENERAL MEETINGS

General Meetings are the mechanism whereby a foundation's formal business is transacted. Every member of a community foundation established as a charitable company has a vote at General Meetings. These can be Annual (which are obligatory) or Extraordinary (convened ad hoc to present a Special Resolution). A General Meeting must be called if a foundation wants to change its governing documents.

re: mission and vision

- decides upon changes to the constitution

re: board composition

- in some foundations, the General Meeting selects and appoints new trustees

CHIEF EXECUTIVE/ DIRECTOR

The Chief Executive or Director of a community foundation, as a paid employee, may not be a member of the Board since trustees serve without recompense other than in exceptional circumstances. However, a Director/Chief Executive may be assigned a formal role on the Board, such as Company Secretary.

THE TRUST MODEL

The trust model was the forerunner of the company model, and many foundations continue to adopt it due to its flexibility. Like charitable companies, trusts are regulated by charity law through the Charity Commission. Their governing document is a Trust Deed.

Like companies, they are required to publish accounts in a format laid down by the most recent Statement of Recommended Practice (SORP), and to submit to a full external audit if their annual income exceeds £250,000 (€407,500).

Their governing bodies, structures and responsibilities, and the role and relationship with the Chief Executive are broadly the same as those described above for charitable companies. The principal difference is that Trustees of a Trust can operate at their own discretion within the law, without reference to a membership. They are nonetheless charged, under the new financial regulatory framework (SORP 2000) which takes effect from the accounting year 2001/02, with the same duty of openness and disclosure as a charitable company.

Forthcoming change

The Charity Commission is currently undertaking a major review of the operations and regulatory framework of charities in England and Wales. Their recommendations are likely to result in major changes. For example, at present a foundation wishing to operate as a charity and a company must register for each separately and be governed by two legal frameworks (company law takes precedence over charity law). This is likely to be rationalized to a single procedure. It will be interesting to see what impact, if any, the Commissioners' recommendations will have on the information given here.