

Communication Matters – Being a Trustee

Everything (well mostly) you need to know!

Legal Structure

- CM is a registered charity and a company limited by guarantee
- CM is governed by a Board of Trustees, who are voluntary and who are also Directors of the limited company. A charity doesn't have to be a limited company, but if it isn't (or isn't an incorporated body) then the Trustees are personally liable for any debts the charity may incur.
- As a company limited by guarantee CM has a legal status of its own. The “limited” bit means that all Members of the company agree to pay a limited sum (£1 each) should it become insolvent or incur debts. (The exception to this being if there is proven mis-management or even criminal activity which leads to financial debt.)
- As a charity it must have a constitution and as a company it must have a Memorandum & Articles of Association, therefore in the case of a charitable company the constitution and the M & As are one and the same. A charitable company has both a registered charity number and a company number, both of which must be displayed on any promotional, fundraising or publicity material and on the website.

Governance & members

- A limited company must have Directors & Members
- The (legal) Members of CM are the Directors who are also the Trustees. Associate Members do not have voting or other legal control rights. The Trustees alone have control and decision making authority for CM, but will aim to reflect as far as possible, the wishes of the Associate Membership.
- The appointment of new Trustees/Directors is the responsibility of the current Trustees/Directors but Associate Membership is asked to suggest candidates and to vote. The Board of CM has a duty to appoint the range of skills needed to run an effective charity and whenever possible the nominated candidates will become Trustees.
- In the past the Annual Meeting was referred to as an AGM, however it is actually the annual meeting of Associate members.

Beneficiaries

- To be a charity an organisation has to have wholly charitable purposes. The Charities Act sets out 13 descriptions of purpose which it classes as charitable and CM is a charity because its ultimate beneficiaries are AAC users (disabled people) and that falls under (at least) the following descriptions of charitable purposes:
 - (a) the prevention or relief of poverty*
 - (b) the advancement of education*
 - (d) the advancement of health or the saving of lives*
 - (j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage*
 - (m) any other purposes currently recognised as charitable under the law of England and Wales*
- CM is not a user led organisation. It is a charity for the benefit of AAC users and aims to be “of” AAC users wherever possible and appropriate.

Legal Duty of Trustees

- Trustees must think of and act in the interests of CM only; not as a representative of any outside organisation, body or company.
- Trustees must not benefit from their position, and care has to be taken that even inadvertent benefit is avoided.
- Trustees will not always agree with each other. However when a decision is reached all Trustees have an obligation to stand by the decision of the Board as a whole. All agreed and voted board decisions must be minuted and but is also permissible to minute any objections or abstentions.
- Trustees must not undermine the overall reputation or integrity of the charity by publicly sharing their personal dissatisfaction with Board decisions.
- Trustee business is confidential unless expressly advised otherwise, and so issues should not be discussed in any detail with anyone not on the board.

The guiding maxim is *“what is in the best interests of the charity as a whole?”*

Board Roles

- All Board roles (such as Chair, vice chair) are for the Board to decide, as per the M & As. Committees or working groups can include anyone who might be relevant, as long as there is at least one Trustee.
- Committees or working groups can have delegated duties or tasks but they do not and cannot have complete delegated authority to act separately from the Board.
- The actual defined role of the co/Chair/s is simply to chair any particular meeting and as such could change at every meeting. However the Chair/s of CM do much more than this currently (through necessity)
- From time to time the Trustees may ask or co-opt someone onto the Board with a view to them taking on a role such as Chair in the future. Whether or not this happens is entirely up to the Board at the time. No-one can “stand” for any Board role in an election sense, however someone could express interest in the role, to be decided by the Board as per the M & As.

Employees

- CM currently has 2 employees and the Board has full employer responsibility for them.
- Employees cannot be trustees and so all work done by employed staff must be agreed by the Board in some way.
- Charities have to manage and support employed staff correctly and CM has an HR sub committee and designated line manager Trustee. Trustees of an incorporated charity are not personally held to account if things go wrong *through no fault of the Board*, however if an employee works with insufficient Board oversight, and something goes wrong or backfires in any way, this may be construed as mis-management and in that situation the Trustees may indeed be personally liable for any financial irregularity.
- The buck stops with the Trustees, not with the staff!

Contract/project workers

- Contracted or short term project workers are not employees. Instead they are taken on as part of a time limited project and have usually tendered or bid for work. There are some personnel responsibilities for contract workers but not the same extent since they will be considered to be self-employed. They are however also totally accountable to the Board/Trustees and should take no actions or embark on work or funding bids etc without the approval of the Board.

They are solely our responsibility when working on any CM funded and/or managed project.

Involvement of non-Trustees

- At any time a non-trustee can be invited to attend all or part of any meeting however, they cannot make decisions, vote on decisions or otherwise influence the trustees. They should always be reminded of the confidentiality of the content of the meeting and can/should be asked to leave the room at any point where particularly sensitive or confidential issues are to be discussed.
- Non-trustees can be involved with any aspect of CM's work, except overall legal management & ultimate decision making.
- If a charity works closely with an outside body care is needed to avoid the outside body (usually unwittingly) ending up with undue influence over the charity and how it operates.
- CM staff currently attend almost the whole board meeting and are party to all trustee emails and so they must also be reminded of their duty of confidentiality.