

# Governance

Branch and Club Development and Support



Patron: Her Majesty The Queen Registered Charity 226686 (England & Wales). SC037673 (Scotland).

# What is governance?

- System by which organisations are directed and controlled
  - Structures
  - Policies, procedures, processes
- Not just about "rules"
  - About practical implementation
  - Attitudes, behaviour, culture

The Governance **Pyramid** 

Charitable output

Make a difference

Culture (People)

Understand roles & responsibilities, Want to do the right things the right way, Change

Policies & Procedures

Expenses, Conflicts of Interests, Reserves, Investment, Serious Incident Reporting

Governance Handbook

Royal Charter, Rules, Byelaws and Branch Regs

Legislation & Regulation

Charities Act, Equalities Act, GDPR, SORP

# Why is governance important?

- About how we make decisions .....
- The right decisions....
- To deliver our charitable purpose / achieve our aims

"Everyone involved in charity, all volunteers, all staff, all trustees are custodians of what charity means in the eyes of the public. That understanding is bigger than any single, charitable purpose. Leadership of any size of charity means pursuing a charitable mission selflessly and putting that mission before anything else. Exercising common standards, good judgment and integrity must lie at the heart of charitable leadership...

Being on the side of good is also no guarantee against leaders focussing on the wrong issues, prioritising the wrong things, or missing opportunities to put matters right. Sound processes and systems in charities are crucial to prevent this, but still more important are the people, the attitude and behaviours they display, and the culture they promote."

Ultimately being a charity is more than just about what you do, it is also about the way in which you do it.

Right Hon. Baroness Stowell of Beeston Chair, Charity Commmission June 2019

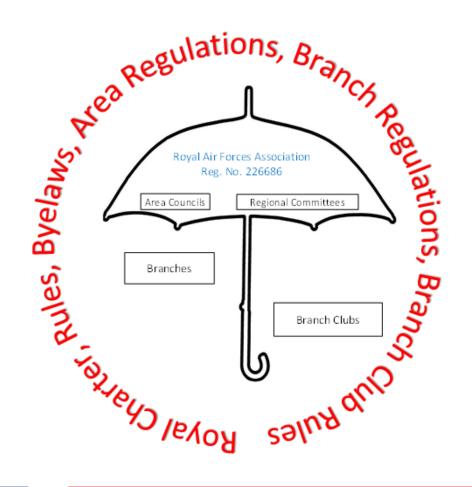
#### **Contents**

- Association governance
  - Roles & responsibilities
- Ocharity law & branches
  - Trustee duties
  - What action can be taken
- O Branch health

#### **Association Governance**

- Our structure
- Areas
- Branches
- O Branch Clubs

- One constitution.
- Area Councils & Regional Committees are part of the corporate body.
- Association and branches are legally separate....
- Branches and clubs are legally separate....
- Branches and clubs are subject to the jurisdiction and oversight of the Association (through Area Council & Council).



### Areas & Regions

- Areas & Regions may be established "for the purpose of facilitating the work of the Association" (RC18).
- Functions of Areas set out in Rule 25.
- Functions of Regional Committees set out in Byelaw 17.
- No authority for bank accounts see Rule 34.

#### Area Council & Branch Oversight

- Monitor, develop, support, assist and advise Branches R25(2)
- Support branches to attain charitable object R27(1)
- Monitor branches' compliance with Governance Handbook – R27(3)
- Investigate and report to Council where think branch should be closed - R25(4)

## Conference 2019

#### • Bognor Regis resolution:

"Conference resolves that: Council examines and reviews the democratic and administrative structure of the Association as laid out in Articles 18 and 19 of the Royal Charter, Rules 23 – 26, Byelaw 17 and the Area Regulations so that it is fit and ready for the future and able to deliver on its charitable vision into 2030. Reporting to Annual Conference 2020, the outcome of the requested review, together with recommendations for related changes (if appropriate) to the Royal Charter, Rules and Bye-Laws, and Area and Branch regulations."

#### **Branches**

- Must deliver same charitable object
- Branch committees have same responsibilities as Council
- No legal / governance difference between geographical or virtual branch
- Subject to Governance Handbook & local charity law
- Subject to Charities Act 2011 in E&W

#### Function of Branch

#### Branch is responsible for:

- Furthering and attaining the objects of the Association.
- Implementing decisions of Council & Area Council.
- Complying with Governance Handbook.

#### Branch Trustee - Statutory Eligibility

- Byelaw 9
  - Over 18 years
  - Association member
- Fit & Proper person (Finance Act 2010)
- Ocharities Act 2011
  - as amended by The Charities (Protection and Social Investment) Act 2016

#### Branch Committee - Statutory Eligibility

#### Branch Committee member can not:

- Have an unspent conviction for an offence involving deception, dishonesty, terrorism, money laundering, bribery, misconduct in public office, perjury, or perverting the course of justice OR for aiding, abetting or attempting any of these offences OR for contempt of court
- Be an undischarged bankrupt or be on the Insolvency Register
- Be disqualified / removed as a charity trustee due to misconduct or mismanagement
- Be a disqualified director
- Be on the sex offenders register

#### Checking trustee eligibility

- Declaration of good character
- Online search of Companies House for disqualified directors
- Online search of Insolvency Register
- Google!

# Branch Legislative and Regulatory Framework

- Charity Commission (E&W), OSCR (Scotland), CCNI (NI)
- ICO data protection & PECR
- HMRC gift aid?
- Fundraising Regulator
- Safeguarding not just a welfare issue
- H&S not just a property issue!
- Fire & Rescue Services (property)
- Property owners' liability (DPA, OLA, rates, utilities etc)
- Equality Act 2010

## Branch Clubs

- Unincorporated associations
- Private members' clubs
- Club committees responsible
- But club exists to serve branch / charity
- Subject to Governance Handbook

# Club Legislative and Regulatory Framework

- ICO data protection & PECR
- HMRC PAYE, VAT
- Fire & Rescue Services
- Local authorities
  - Premises licensing
  - Food hygiene (if applicable)
  - H&S
- Fire & Rescue Services
- Gambling Commission (gaming machines, bingo, lotteries etc)
- Other licensing (TV, PRS, Sky etc etc)
- Employment law
- Equality Act 2010

### **Charity Law**

- Legal framework
- Trustee role and responsibilities
- When it goes wrong and what could happen

# Understanding charity law

- Statutory requirements
  - Charities Act 2011- as amended
  - Some aspects of Charity Act 1993 (fundraising)
- Common law requirements
  - Eg legal duties of trustees (fiduciary)
- Best source of information and guidance
  - Charity Commission website

#### Charity Commission Statutory Objectives

- 1. To increase public trust and confidence in charities.
- 2. To promote awareness and understanding of the operation of the public benefit requirement.
- 3. To promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
- 4. To promote the effective use of charitable resources.
- 5. To enhance the accountability of charities to donors, beneficiaries and the general public.

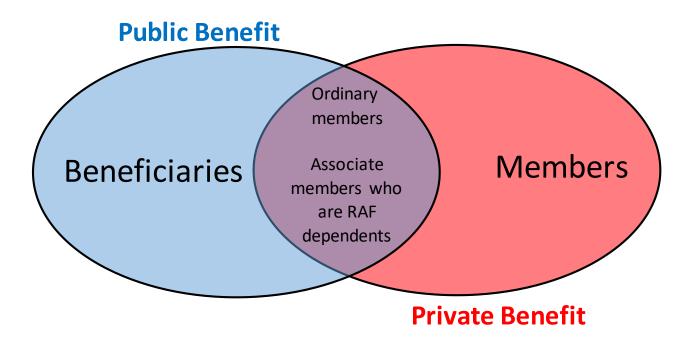
#### Being a charity trustee

#### **Trustees**

- have general control over the management and administration of the charity.
- have ultimate responsibility for the charity.
- are responsible for ensuring the charity is solvent, well run and delivers the charitable outcomes for the benefit of the public for which it has been set up (the "Beneficiaries").

#### Who are our beneficiaries?

- Set out in Royal Charter.
- Serving in HM's "Air Forces" (RC6) those who have served and their dependents the wider "RAF family".
- Members are not necessarily beneficiaries.
  - Not a simple Ordinary / Associate membership question.
  - Implications for branch funded social activities.
  - Implications for branch / club relationship.



# Q1. Should a branch pay for a social activity / trip for members?

- Are members beneficiaries?
  - Non-beneficiaries should pay the full cost.
- Will the trip meet a welfare need?
  - Eg reduce loneliness, social isolation etc.
- See Fact Sheets 4a and 4b
- Branch is a charity not a private members club.

# Q2 What about paying for a branch committee member to attend a social function?

- Is it in the best interest of the charity?
- Is it a reasonable use of charity resources?
- Raising the profile of the charity?
- A "jolly" want to go / rather than feeling obliged to go as a committee duty?

# Q3. Should a branch lend or give money to the club?

- Branch = charity and exists to provide public benefit.
- Oclub = private members' club.
- The club exists to support the branch not vice versa.

#### Trustee Legal Duties

The Essential Trustee 6 main duties for the public benefit best interests Manage your charity's resources responsibly

- Carry out the charitable object
- Comply with Governance Handbook & all laws
- Act in the charity's best interests
- Ensure the charity is accountable
- Manage the charity's resources responsibly
- Act with reasonable care and skill

https://www.gov.uk/guidance/charity-trustee-whats-involved (CC3)

#### Carry out the charitable purpose



#### It's about knowing:

- what your charity can and can't do within its purposes
- how your charity is fulfilling its purposes and benefiting the public
- what difference your charity is really making

#### Charitable purpose / aim / objective:

- To promote through comradeship of members, welfare by charitable means of the wider RAF family.
- eg fundraising, welfare, comradeship, promotion of the Association

#### • For the public benefit:

- Must provide a benefit to a sufficiently wide section of the public.
- A members' club where benefits are restricted to members would fail the public benefit test

#### Reporting

- Include in annual report
- CC guidance: <a href="https://www.gov.uk/government/collections/char">https://www.gov.uk/government/collections/char</a> itable-purposes-and-public-benefit

#### When it goes wrong

- Confusing beneficiaries with members.
- Using branch funds for branch / committee social events.
- Lending / giving branch money to clubs.
- Buying Christmas trees for the local church.
- Upkeep of memorials.

#### Comply with law & Governance Handbook



#### It's about being:

- familiar with your governing document
- up to date with filing accounts, returns and any changes to your charity's registration details
- aware of other laws that apply to your charity

#### It's not about being:

 an expert - but you do need to take reasonable steps to find out

- Know the Governance Handbook
- Keep the Charity Commission filings up to date - annual return, accounts, trustee details
- Know what other laws apply eg GDPR, H&S, fundraising – how do we check compliance with them?
- Check out the CC website - https://www.gov.uk/government/organi sations/charity-commission

#### When it goes wrong

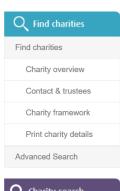
- Oharity Commission filings not up to date.
  - Wrong trustees shown
  - Charities removed from register
- Threatened litigation for streaming live Premiership football matches without the right licence.
- Banking funds raised for other charities as Wings Appeal.
- Not submitting accounts to Area office by 31 March

## **Charity Commission Red flags**

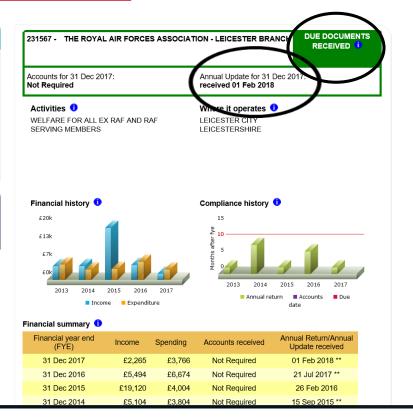


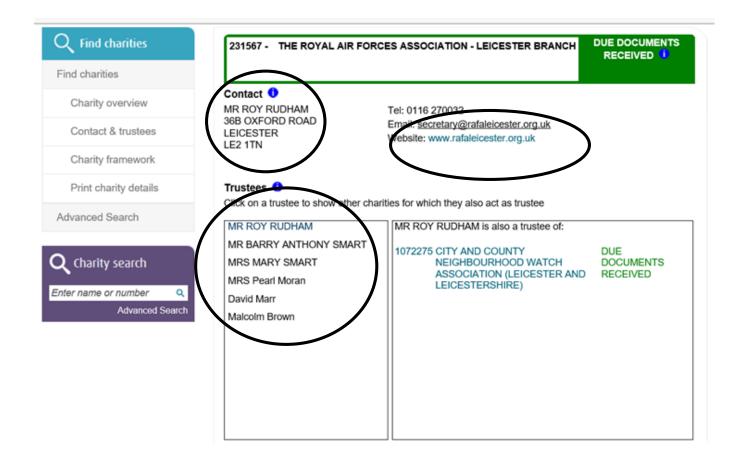
- Branch not registered at Charity Commission
  - Removed (does not operate)
- Contact details do not reflect current 1056
- Trustees do not reflect current 1056
- Trustees include Royal Air Forces Association (!)
- Documents overdue

### **Charity Commission**









### Act in the charity's best interest



#### It's about:

- making balanced, informed decisions
- recognising & dealing with conflicts of interest
- ensuring trustee benefits are allowed
- being prepared to question and challenge
- accepting majority decisions

#### It's not about:

- preserving the charity for its own sake
- serving personal interests

- Collective responsibility for decisions all committee members, not just officers
- Informed decisions consider long term as well as short term, challenge assumptions, duty of prudence – exercise sound judgement, take professional advice
- Make your own decisions about the best way to carry out the charitable purpose (CC27)
  - Might involve difficult decisions
- Avoid conflicts of interests (CC29)
  - Personal interests
  - Loyalty to any other person or body eg branch club
  - https://www.gov.uk/guidance/manage-a-conflict-of-interestin-your-charity
- No honoraria or other trustee payments

### When it goes wrong

- Subsidising the branch club / independent club from branch (charity) funds
  - Nil rent
  - Branch remains responsible for all repairs & maintenance
  - Branch loans to club which is trading poorly
- Same branch / club committee
- Multiple family members on the committee
- Committee members receiving personal benefit
  - Trustees honoraria
  - Social events

### Ensure the charity is accountable



#### It's about:

- meeting legal accounting and reporting requirements
- being able to show that your charity complies with the law and is effective
- being accountable to members and others with an interest in the charity
- ensuring that staff and volunteers are accountable to the board
- welcoming accountability as an opportunity not a burden

- Comply with statutory accounting and reporting requirements
- Must be able to demonstrate that your charity is complying with the law, well run and effective
- Reporting to regulators
- Reporting to stakeholders
- Collective responsibility of whole committee for all matters
- Evidence delegation of responsibilities and ensure appropriate oversight & scrutiny

### When it goes wrong

- No accounts produced since 2012.
- Independent examiner is related to the Treasurer.
- Accounts not independently examined.
- Committee do not understand finances / challenge the Treasurer / book keeper.
- 1056 / accounts filed late or not at all.
- Decisions taken by individual, not authorised by committee, not minuted.

## Serious incident reporting

- Trustee (Branch committee) responsibility
  - https://www.gov.uk/guidance/how-to-report-aserious-incident-in-your-charity
- Independent examiners / auditors
- Whistleblowing
- Parallel reporting by the Association

### Manage resources responsibly



#### It's about:

- managing risks, protecting assets (reputation) and people
- getting the resources your charity needs
- having and following appropriate controls and procedures
- dealing with land and buildings
- responsibility for, and to, staff and volunteers

- Act responsibly, reasonably and honestly duty of prudence
- Charity assets must only be used to support or carry out its charitable purpose
- Avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- Risk management (CC26)
   <a href="https://www.gov.uk/guidance/how-to-manage-risks-in-your-charity">https://www.gov.uk/guidance/how-to-manage-risks-in-your-charity</a>
- Property transactions legal requirements (CC28)
- Reserves policy, fundraising, financial controls

### When it goes wrong

- Selling land the branch doesn't own.
- Seeking to sell charity land to pay liabilities of club.
- Building up significant bank balances.
  - Not used for welfare output
  - Not used to maintain charity property
- No financial oversight signing blank cheques, funds unaccounted for, poor financial records
- Undertaking events without appropriate planning or advice.
- Running fundraising events at a loss
- Appointing an HWO without going through DBS / safeguarding training.

### Act with reasonable care and skill



#### It's about:

- using your skills and experience
- deciding when you need advice
- preparing for meetings
- getting the information you need (financial, management)
- being prepared in case something does go wrong

- Duty of care use reasonable care and skill
- Meet regularly and minute decisions
- Take advice when necessary
  - Professional staff
  - Legal & professional advisers
  - Charity Commission & other regulators
- Consider committee membership
  - Combination of skills ?
  - Individual capacity issues?
  - Meeting attendance / participation?
  - Succession planning?
  - Induction and training?

### When it goes wrong

- Leases downloaded from internet for commercial use of charity land.
- No employment contracts for staff.
- Legal advice obtained but ignored.
- Not implementing remedial actions on FRAs, asbestos surveys.
- Not scrutinising Treasurer's reports / finances.

### **Charity Commission Enforcement**

#### Sources

- Serious incident reports
- Complaints
- Failures to file accounts

### OCC investigation

- Operational compliance case
- Statutory inquiry
- Case reports & inquiries are published

### Aid & Peace Trust (30 Sept 2019)

- Charitable objectives to advance education in Bangladesh for young people who are socially / economically disadvantaged
- OCC Findings:
  - Financial records and decision-making records did not properly account for all income & expenditure
  - Monies used for charitable works outside the charity's objectives, which was mismanagement and / or misconduct
- Action taken:
  - Funding orders to safeguard charitable funds
  - Charity removed from register
  - Voluntary undertaking by trustees not to act as charity trustee for 3 years
- Issues for the wider sector:
  - "Trustees should take all reasonable steps to find out as much as they can about the charity including reading the governing document and finding out what will be expected of them as trustee."

# Deacons Charitable Trust & Jalloh Charitable Trust (20 Nov 2019)

#### Issues:

- 2 trustees related by marriage highlighting apparent unmanageable conflicts of interest and calling to into question whether key decisions have been made in the best interests of the charities or for the private benefit of the trustees.
- Independent examination of accounts has been compromised and inconsistently applied.
- Action taken (interim)
  - Bank accounts frozen (June 2019)
  - Interim managers appointed to the exclusion of trustees (Nov 2019)

### Kingdom Life Ministries (29 Nov 2019)

#### O CC Findings:

- Payment of trustees in breach of governing document and trustee duties
- Governing document required quorum of 3. 3 trustees but 2 are married to each other (only 1 independent un-conflicted trustee). Decisions being made without identifying, recording or managing conflicts of interest. No written policy or procedures to manage conflicts of interest.
- Late filing of accounts
- Poor financial record keeping trustees failed to comply with statutory duty to keep accounting records, Charity not adhering to its financial controls policy

#### Action taken

- CC orders including payment restriction order
- Official warning
- Disqualification of former trustees for 10 years

### Kingdom Life Ministries (2)

- Issues for the wider sector:
  - Trustees collectively responsible
  - Must be able to demonstrate charity's funds are applied solely and reasonably in furtherance of its objects.
  - Must maintain accounting records which are sufficient to show and explain transactions
  - Should be policies and procedures in place to identify and manage conflicts of interest.

### Cymmer Workmen's Hall & Institute (18 July 2019)

#### • Background:

- Previous regulatory advice re running bar separately from the charity not implemented
- Double defaulter re accounts
- Accounts produced were not SORP compliant

#### O CC Findings:

- Trustees in breach of constitution regarding no. of trustees (only 1)
- No written records of meetings maintained
- Misconduct & / or mismanagement failure to submit appropriate accounts despite extensive regulatory advice, lack of professional advice and relevant knowledge had resulted in sole trustee being unable to carry out legal duties,

#### Action taken:

- CC Order
- Charity put under new constitution

### Cymmer Workmen's Hall & Institute(2)

#### • Issues for the wider sector:

- Must have effective trustee body.
- Public trust and confidence depends on the conduct of trustees and how they safeguard charity funds and undertake the objects and activities of the charity.
- Where trustees unable to undertake the functions and obligations themselves, must ensure appropriate advice is taken and followed.
- Trustees must make sure they are sufficiently informed etc etc.
- Meetings and decisions should be recorded.

#### Ocuncil decisions (Sept 2019):

- Branch Regulations to be reviewed to make clear the minimum number of branch committee members / trustees that must be appointed.
- Every branch must have a point of contact with an email address, who should be a branch committee member, and Salesforce and Charity Commission records should mirror each other.
- Branches must submit an annual report on their activities, not just accounts. A template should be produced to assist with this.

# RAF Mess Charities / RAF Honington Mess Fraud (27 June 2019)

#### Background

- Loss of c £200k between 2010 -2014 at RAF Honington,
- Fraud by contractor, since jailed
- Became a class inquiry

#### CC concerns

- A one off fraud or wider issues across other mess charities?
- Adequate steps had been taken to recover the losses?
- Reasonable steps being taken to safeguard charity funds and assets?
- Adequacy of serious incident reporting by the charity trustees?
- Accounting records, reports and accounts, independent scrutiny?
- Role of RAF.

## RAF Mess Charities / RAF Honington Mess Fraud (2)

#### CC Findings

- A failure of basic internal financial controls.
- Many causes and contributory factors which created an environment in which fraud could take place and continue to take place over a prolonged period without discovery.
- Policies not adequately implemented or monitored
- No segregation of duties (Charity Commission's guidance CC8 "Internal financial controls for charities")
- Trustees did not understand their responsibilities adequately
- Failure to comply with statutory duties to maintain adequate accounting records
- Once the fraud was identified and reported, reasonable steps not taken to address the risk

#### Issues for the wider sector

- Trustees are responsible for overall management and administration of the charity
- Trustees should ensure financial controls are both adequate and provide sufficient information to show they are being followed
- If trustees delegate to 1 (or a small number of) persons / employees they must ensure there are arrangements for proper reporting back to the whole trustee body
- Serious incidents must be reported immediately to the CC

### Council Response

- Ouncil Meeting (Sept 19) Lessons Learned Reports on:
  - Oxfam
  - Cymmer
  - RAF Mess Charities
- Importance of providing branches with info and guidance
  - Plenty of info out there
  - More coming

BUT, branch committees must be proactive

### **Association Action**

- Information, guidance
  - Governance Handbook, Finance Handbook, Fire Safety Log Book, Branch H&S Toolkit
  - BSO / Area support
  - Branch development workshops
  - Fact Sheets
  - Members Portal +++
  - More regular communication +++
- But,
  - Branch / POC contact details
  - Branch engagement

### **Conclusion**

- One shared fundamental purpose.
- One shared reputation.
- Legal obligations in running a charity.
  - Ignorance of the law is not a defence, but
  - Recognise the need to inform, support and guide

Q – do you feel better equipped to do this?



Thank you.

Any questions?

