

# HOW TO: ENSURE GOOD GOVERNANCE

For developing and delivering heritage projects

# AGENDA

- What is governance
- Different types of governance structures to consider
- Good governance, why it is important
- The role of the Board
- Governance through the lifecycle of a heritage project
- Top tips on good governance
- Links to further sources
- Q&A

# WHAT IS GOVERNANCE?

“Governance is the **framework of authority and accountability** that **defines and controls** the outputs, outcomes and benefits from projects, programmes and portfolios. The **mechanism** whereby the investing organisation **exerts financial and technical control over** the deployment of the work and the realisation of value.”

– *Association of Project Management*

# GOVERNANCE STRUCTURES

- There are a range of legal models to choose from
- Two key factors to consider:
  - Incorporation vs. un-incorporation
  - Charitable vs. non-charitable

# Unincorporated vs Incorporated

| Unincorporated  | Incorporated  |
|---|---|
| <ul style="list-style-type: none"><li>• Used for partnerships and associations e.g. sports clubs and societies</li><li>• Easy and free to set up</li><li>• Individual board members personally responsible for debts</li><li>• Unlimited liability</li><li>• Organisation only subject to any insurance protection you may hold</li><li>• Perfectly acceptable for a small venture with no or limited liabilities</li><li>• E.g. Charitable Trust or Unincorporated Association</li></ul> | <ul style="list-style-type: none"><li>• Becomes a legal entity, shifting liability from individual to organisation</li><li>• Debts and liabilities are those of the legal entity not individual board members</li><li>• Liability is limited to the amount of paid share capital or guarantee</li><li>• Can borrow money and receive grants</li><li>• Can own property, enter into contracts and employ staff</li><li>• Offers significant protection and assurance</li></ul> |

# Will Your Organisation be Charitable?

- Must be established exclusively for charitable purposes and public benefit
- A restricted number of charitable purposes as set out in Charities Act 2011
- Arts and heritage charities also have a merit test and public benefit test
- Regulated by Charity Commission or other body
- Can get grants from other charities and bodies
- Tax attractive with Gift Aid, Legacies etc.

# Formal Legal Structures

| <b>Charitable Status</b>  | <b>Non-Charitable</b>  |
|---|--|
| <ul style="list-style-type: none"><li>• Charitable Trust (unincorporated)</li><li>• Company Limited by Guarantee</li><li>• Charitable Incorporated Organisation</li><li>• Charitable Community Benefits Society</li></ul> | <ul style="list-style-type: none"><li>• Unincorporated Association</li><li>• Company limited by Shares</li><li>• Community Interest Company</li><li>• Co-operative Society</li></ul> |

# Charitable Trust

- Type of charity run by a small group of people known as Trustees
- Trustees are appointed rather than elected
- No wider membership or voting members
- Unincorporated
- Cannot enter into contracts or own property in its own right
- Trustees could be personally liable
- To set up – need a trust deed demonstrating legally charitable
- Must register with Charity Commission if income over £5K



# Company Limited by Guarantee (CLG) & Charitable

- Incorporated at Companies House (Companies Act 2006)
- Controlled by Directors (and Trustees if charitable)
- Invests profits it makes back into the company
- Usually 'not for profit' but needs to register as a charity with Charity Commission (only once income above £5K)
- Governing document is Memorandum and Articles of Association
- Legally separate entity
- Directors are usually unpaid – if charitable
- Traditional model for Building Preservation Trusts

# Charitable Incorporated Organisation (CIO)

- Introduced in 2013
- Incorporated and always charitable
- Registered with Charity Commission only
- Fairly quick to register, and not required to show proof of funds
- 2 types: Association Model and Foundation Model
- Separate legal entity so can enter contracts, hold property and employ staff
- Liabilities fall on the organisation not trustees
- Other types of organisation can convert to being a CIO.

# Charitable Community Benefit Society (CBS)

- Incorporated
- Can have paid Directors
- Owned by its members who hold shares - 1 member 1 vote
- Must exist to benefit the wider community with profits used for that benefit
- Statutory Asset Lock & exclusively charitable aims = charitable status if HMRC agrees
- Can be useful for taking control of an asset e.g. building
- Can fund organisation by selling 'Community Shares'
- Recent resurgence e.g. community pubs

# Company Limited by Shares (CLS)

- Non charitable
- Incorporated at Companies House (Companies Act 2006)
- Usually, a business that makes a profit
- Is legally separate from the people who run it
- Can be run by a single Director
- Has shares and shareholders – who have certain rights
- Can keep any profit it makes after paying tax

# Community Interest Company (CIC)

- Incorporated at Companies House
- Not-for-profit but not charitable
- Commits assets and profits permanently to the community by Asset Lock
- Can have paid Directors
- Can't get tax benefits e.g. Gift Aid

# Co-operative (Co-op)

- Incorporated
- Can have paid Directors
- Non-charitable
- Similar to CBS but provides services to members not community
- Must be based on co-operative values
- Regulated by Financial Conduct Authority

# Group Structure - Trading Subsidiaries

- A formal association of separate organisations linked by ownership
- Typically include a parent charity setting up other non/charitable subsidiaries, including trading arms.
- Often a CLS with the charity parent company the sole shareholder
- Charities can trade if: primary or ancillary purpose, or with a small trading exemption
- Useful if charity: makes profits on trading not linked to primary purpose; makes profit close or higher than small trading exemption limit; wants to protect itself from risk
- Can reduce tax liabilities, Gift Aid benefits

# Informal Structures

- Contracts
- Partnerships
- Joint Ventures
- Collaborations
- Groups



# GOOD GOVERNANCE

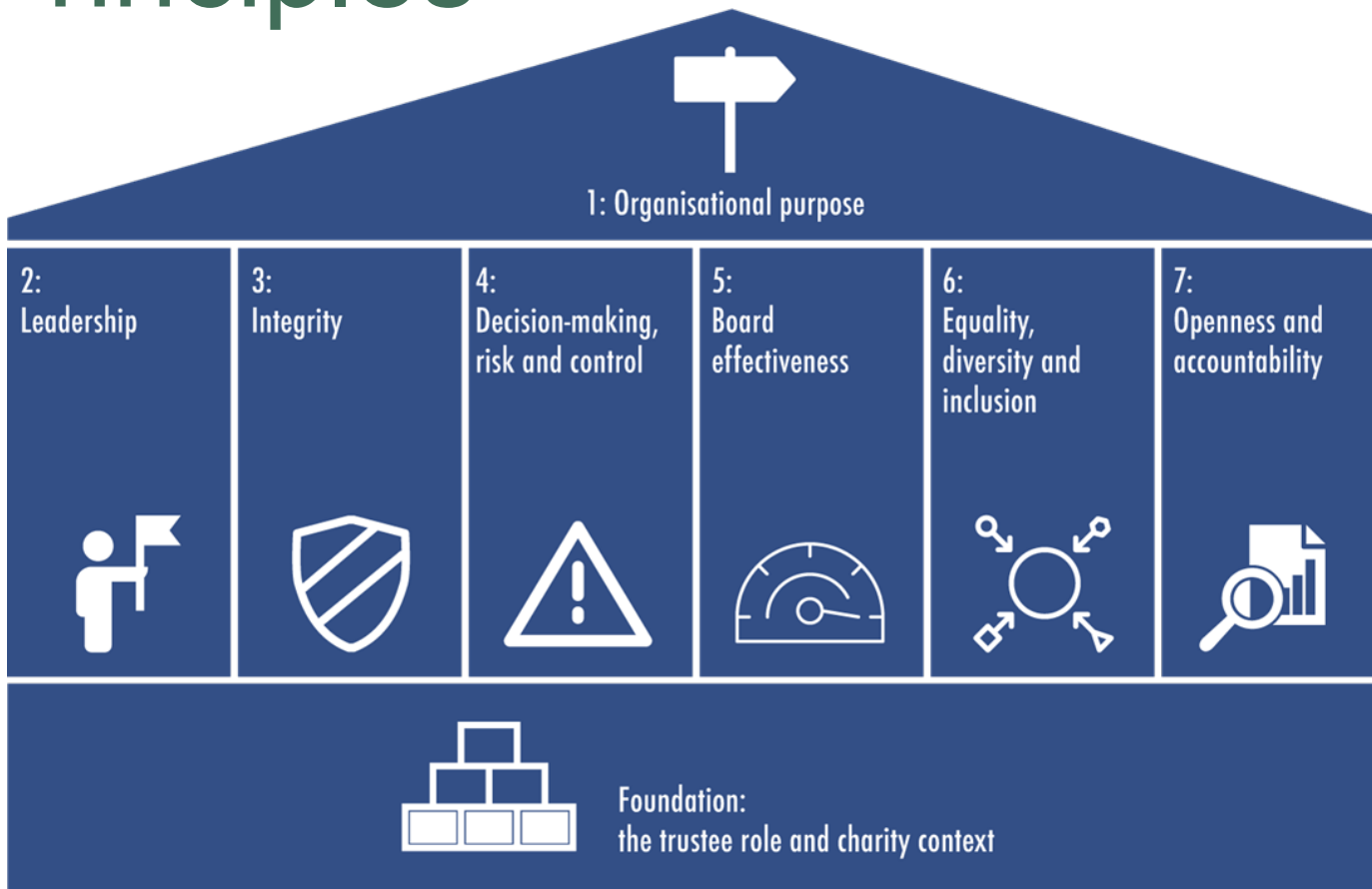
“Successful boards of trustees demonstrate a culture characterised by trust, candour, challenge, open dispute, good humour and flexibility. Their members are prepared to evaluate their contribution, both as individuals and collectively.”

*Adrian Babbidge, Successful Governance in Independent Museums,  
AIM, 2013*

# Charity Governance Code

- [www.charitygovernancecode.org](http://www.charitygovernancecode.org)
- Practical tool to help charities develop high standards of governance
- Sets the principles and recommended practice
- Deliberately aspiration – tool for continuous improvement
- Universal principles - whatever the size or activities
- Large version – income over £1m and externally audited accounts
- Based on foundation of trustees' basic legal and regulatory responsibilities, and that they are committed to good governance
- Revised in 2020 to refine 2 of its 7 principles: EDI and integrity

# Charity Governance Code – 7 Principles



# THE BOARD

- The Board of Trustees will provide good governance and leadership for your organisation
- Charity Commission provide essential reading and guidance for trustees – The Essential Trustee
- Responsible for ensuring compliance with governing document which sets out:
  - What the charity exists to do (its objects)
  - How it can operate (its powers)
  - Who can be [a member and] trustee
  - The structure of the board
  - Rules about meetings and decisions
  - How to change and close down

# Key Board Roles & Responsibilities

- Chair – acts as spokesperson, gives support to other trustees, line manage manages CEO / Project Director
- Secretary – calls meetings of boards and keeps minutes, signs legal documents, ensures compliance with regulator (Companies House/ Charity Commission/ FSA)
- Treasurer – oversees accounts, interprets accounts and financial position to trustees, responsible for audit processes, payments

# Ineffective vs Effective Boards

| Ineffective Board   | Effective Board   |
|---|---|
| <ul style="list-style-type: none"><li>• No shared mission, or clear purpose, or drifts from its core</li><li>• Is 'stale, male, pale and frail'</li><li>• Has dominant founders</li><li>• Doesn't work as a team</li><li>• Has a Chair that does not provide leadership</li><li>• Doesn't fulfil its legal requirements</li><li>• Doesn't make best use of its members' skills, wisdom and experience</li><li>• Doesn't give full support to its CEO or doesn't check in enough</li></ul> | <ul style="list-style-type: none"><li>• Is sure of the vision, priorities and objectives</li><li>• Has a diverse make up</li><li>• Focuses on strategy, compliance, organisational health and risk management</li><li>• Gets to know each other and the staff</li><li>• Is curious and asks questions</li><li>• Is properly inducted, trained &amp; honest about time involved</li><li>• Regularly refreshed with fixed terms</li><li>• Keeps former members involved</li><li>• Runs effective meetings</li><li>• Deals with conflicts swiftly</li><li>• Reviews itself annually, ensure skills are used</li><li>• Is an advocate</li></ul> |

# Board Review

Boards should ask themselves at least annually:

- Are we fulfilling our governance obligations?
  - Are we being effective?
  - Are we giving our full support to the executive?
  - Is full use being made of our skills?
  - How diverse are we?
- 
- Questionnaires, interviews
  - Involve senior staff
  - Keep on the agenda until all items are achieved

# Management vs Board

| Management  | Board  |
|---|--|
| <ul style="list-style-type: none"><li>• Drafts, develops and reviews the mission</li><li>• Prepares and manages the business model</li><li>• Manages legal and financial obligations</li><li>• Devises and implements programmes</li><li>• Manages organisational change</li><li>• Leads the organisation</li></ul> | <ul style="list-style-type: none"><li>• Develops and approves the mission</li><li>• Develops and approves the business model</li><li>• Ensures legal and financial obligations are adhered to</li><li>• Oversees and supports programming policy</li><li>• Oversees organisational change</li><li>• Advocates for the organisation</li></ul> |



# The Role of the Board in Finance

- To ensure the organisation remains solvent
- Ensure the Business Plan is realistic and sustainable
- Approve the annual budget
- Have and oversee reserves policy
- Have financial controls and staff pay policies
- Every Trustee's responsibility to understand the financial issues— don't just rely on a finance committee or Treasurer!

# GOVERNANCE THROUGH PROJECT STAGES

- Your governance structure may need to change
- Regularly review if your legal model is still appropriate
- An unincorporated campaign group likely insufficient as you progress
- Funders have criteria – you may need to be charitable or have a certain number of directors
- Types of skills required from Trustees may change – regularly Audit skills and try to recruit to fill gaps
- Greater need to focus on strategic rather than management role
- Increase delegation and use of subcommittees
- Running operations – trading subsidiaries

# Closing a Charity

- Many reasons why a charity might close – but a well managed wind up will help all parties
- Consider what the Governing documents say about closure
- Public funds need to be returned, or clarified and declared if that is not possible
- Contact the Insolvency Service if you can't meet liabilities
- CT – members agree with charity winding up
- CLG – inform Companies House and Charity Commission (if charitable)
- CIO – dissolution resolution > declaration > give copy to relevant parties > contact Charity Commission > Commission publishes notice > 3 months later close

# TOP TIPS

- Talk to people who have gone before you
- Start with a clear view of the vision and mission
- Choose the right legal format and structure – and if in doubt, get legal advice
- Ask yourself do your fellow trustees look like me?
- Be professional
- Keep reflecting, especially as you prepare for change

# FURTHER SOURCES

[The Essential Trustee](#)

[www.charitygovernancecode.org](http://www.charitygovernancecode.org)

[www.heritagetrustnetwork.org.uk](http://www.heritagetrustnetwork.org.uk)

[www.acevo.org.uk](http://www.acevo.org.uk)

[www.knowhow.ncvo.org.uk/tools-resources](http://www.knowhow.ncvo.org.uk/tools-resources)

[www.dsc.org.uk/category/governance/](http://www.dsc.org.uk/category/governance/)

[www.gov.uk/government/organisations/companies-house](http://www.gov.uk/government/organisations/companies-house)

# QUESTIONS?

## THANK YOU!

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