

Meetings and communication

- are your members properly engaged?

It is well over a decade since the Companies Act 2006 gave charitable companies the option to dispense with annual general meetings (AGMs), as well as broader powers to use electronic communication. Since then, technology has moved on, as has the way we all communicate with each other. Charities are increasingly looking at innovative and flexible ways to engage their members. We discuss here some of the options available, both to traditional membership charities, and to other charities who want to streamline their membership and update how they communicate with members.

Defining membership

The first step is to properly understand who the charity members are, the rights that they have, and whether they are still representative of the charity. Charities often reach a stage where the membership becomes dis-engaged. At one extreme, it has become unwieldy and difficult to coordinate, and at the other, there is poor attendance and engagement at meeting/ decision-making level. Often it is a combination of both - where there is a risk that meetings are not representative, or that the process does not allow the trustees to maintain an effective relationship.

One option is to redefine the formal, legal membership of the charity. This can be achieved by creating new or different classes of membership, or by changing voting rights so as to make decision-making either more democratic, or in other cases, more streamlined.

Another option is to separate out decision-making so that defined groups and stakeholders who are not formal or voting members, are still involved in making certain decisions, or can take part in other strategic aspects of the charity's governance. This kind of stakeholder governance can be more flexible and need not be constrained by the legal processes that apply to formal members.

The trustees will sometimes have the power to define classes of membership, but it will often require a decision of the members themselves to bring about a full reclassification, or variation of rights, particularly if a governing document needs to be changed. Care must be exercised - for most membership charities, the members represent the core of the organisation, and its values. Their rights should not be unfairly changed in a way that could cause harm to the charity's reputation, and in the case of some charitable companies, their rights should not be unfairly prejudiced. The trustees also need to consider whether re-definition will provide clarity, or unnecessary complexity.

Updating governing documents

Charities still rely on very old governing documents to regulate their dealings with members. This is particularly relevant to member communications, and to meeting procedures, where many model documents borrow from old company law provisions which have not been modernised. In many cases, charities end up not complying with their governing document, or are unaware of how restrictive its provisions are.

Electronic communication

Corporate charities can use most electronic means (such as email) to communicate with members, provided members have consented, and in return, the charity has made it clear that an electronic communication is an acceptable format to use. To use a website for communications, corporate charities either need specific consent from members, or have passed a members' resolution and given members the chance to consent before deeming them to have consented.

Other types of charity (i.e. unincorporated clubs, associations and trusts) need to adopt express provisions to use electronic communications.

But it is problematic that the legislation relating to corporate communications is over a decade old. It does not always cover how charities want to communicate with members, for example by the use of third-party software, applications and social media. Also, the provisions relate to communications – so this is relevant when the charity is sending or receiving notices, or where decisions are being taken using a written procedure, for example where this is permitted by a governing document or by legislation, but it does not cover how virtual or electronic meetings themselves are to be conducted. This distinction is not always clear to charities.

Virtual and electronic meetings

Most charities can hold electronic and virtual general meetings, provided that their governing document contemplates such a process and there is no restriction, and that members who are not present in the same physical location are able to communicate by being able to speak and vote with each other. The method used should provide a proper way to conduct and scrutinise voting, for example how to record a show of hands, a poll or a ballot.

For corporate charities, the legislation permits virtual meetings by not expressly excluding them. As such, many do not know if they can in fact 'go electric'. The cautious view is that by adopting express provisions in the charity's articles, there is no risk of challenge. Similarly, other types of charity will need express provisions if there is any ambiguity in their governing document as to how they can hold a meeting.

The law and practice of meetings has not reached the point where charities are racing to hold fully virtual meetings. In fact, only a handful of public companies in the private sector have taken this step, with the first reported virtual AGM only taking place in 2016. This reflects the general principle that members still need to be given the opportunity to present their views in an open and accessible format. Most charities therefore opt for a physical meeting, which can then be supported by virtual or electronic attendance.

Ditching meetings altogether

Charities do not need to hold AGMs unless their governing document requires them to do so. As mentioned, the Companies Act 2006 extended this to charitable companies. However, many charitable companies still have AGM provisions in their articles which predate the 2006 Act. Furthermore, the provisions often contain obligatory business to be carried out at the AGM, which can be irrelevant for many charities, such as formally receiving accounts, or appointing auditors.

One option is therefore to dispense with the mandatory AGM, on the basis that the trustees (and in some circumstances, the members) can still call a general meeting as and when required in order to make member decisions. This would be the standard position for most charities whose trustees are also its members. That said, many charities still prefer the consistency, and in some cases, ceremonious aspect of an annual meeting.

For membership charities, dispensing with the AGM should be carefully considered. If the membership can be better engaged in other ways, then there is a usually a good case for getting rid of it. However, it is something that the trustees need to decide as being in the best interests of the charity and the members as a whole.

Separating out trustee appointments

For many charities, and particularly membership charities, AGMs are used to elect trustees. There will be an election that takes place in the run up to, or at the meeting. The nomination process is usually closely tied to the notice period leading up to it. This process can be very rigid, but it does need to be complied with.

One option is to separate out the election process by giving the trustees more discretion and flexibility to organise the election, or alternatively a ballot of the members. The trustees can then set more modern rules, which can be subsequently updated to ensure they are fit for purpose. The appointments can still take effect at an AGM, but alternatively, if the charity has dispensed with the AGM, the appointments can take effect at any other member, or trustee meeting.

As part of this, charities should consider whether any annual retirement provisions are appropriate and whether more consistent terms of office are more suitable.

Key points

- Charity trustees need to understand who the charity's members are, and the rights that they have
- Charity members should be engaged- trustees should ensure that they are being properly represented and are taking part in the decisions they have authority to take
- As part of this, trustees should consider if general meeting procedures are adequate
- Governing documents need to be checked and updated to make sure that they incorporate modern communication and meeting provisions, and that they are being used correctly.

NADEEM AZHAR, ASSOCIATE

n.azhar@hempsons.co.uk

Nadeem specialises in advising charities and social enterprises, focusing on their governance and commercial activities. He has worked with the full range of charities including Independent schools, Royal Colleges, research bodies, theatre companies and faith-based organisations. He advises the broader social sector, from campaign bodies to employee led organisations, and in particular, on collaborative projects delivering health and social care.