



An Rialálaí
Carthanas

Charities
Regulator

Report of the Consultative Panel on the Governance of Charitable Organisations

5 April 2018

Chairperson's Foreword

Charitable organisations are an integral part of every Irish community. They play a central role in advocating for, and delivering services to, a significant part of our population. The volunteers who sit on their boards as charity trustees or who are otherwise active in their work add so much to the quality of life of our society.

The context in which charities exist, as with all other parts of our society, is constantly changing. In recognition of this, the Charities Regulator established this Consultative Panel on the Governance of Charitable Organisations to consider what approach it might adopt to simultaneously assist charities to achieve their goals while at the same time ensuring they meet their legal obligations and achieve transparency and accountability in all that they do.

The Consultative Panel brought together members with wide and varied experiences in the charities and corporate governance sector. The panel's deliberations were supplemented by a public consultation process, international research and presentations.

The panel received papers and presentations from a number of interested parties. These presentations and the discussions that followed ensured the panel had an understanding of Irish charities, the experiences of organisations so far and the far-reaching effects of governance, in addition to challenging the panel's thinking. I wish to extend my thanks to all those who made a contribution.

The panel meetings were open and collegiate where members positively contributed their experiences and analysis during full and frank discussions. My role as Chairperson was made easy by an approach which sought consensus.

The task of the panel was facilitated by the staff of the Charities Regulator during the public consultation stage. Sarah Mongey was both the panel's secretary and provided logistics support throughout the process. The Institute of Public Administration, through Dr Nicholas Marcoux, pulled together all of the documentation and opinions and produced the many drafts and research documents. To them and my colleague panel members, my sincerest thanks.

The report is now available to the Charities Regulator as a set of proposals to guide its work over the next few years in its dual roles of regulating and protecting registered Irish charities. Our hope is that we have contributed in a meaningful way to establishing practices which will sustain and enhance the work of so many wonderful organisations long into the future.

Senan Turnbull

Chairperson

Consultative Panel on the Governance of Charitable Organisations

Table of Contents

Chapter 1. Executive Summary	6
Chapter 2. Overview	8
2.1 Establishment of the Consultative Panel on the Governance of Charitable Organisations	8
2.2 Profile of Registered Irish Charities	8
2.2.1 The legal form of Registered Charities	9
2.2.2 Charities by Charitable Purpose	9
2.2.3 Financial Information on Charities in Ireland	10
2.2.4 Charity Trustees	12
2.3 Role and Place of Charities in Contemporary Ireland	14
2.4 Definition of Good Governance	15
2.5 Proportionality	15
2.6 The Panel's Approach to its Terms of Reference	15
Chapter 3: Regulations in Relation to the Governance of Charitable Organisations	18
3.1 Terms of Reference	18
3.2 Observations	19
3.2.1 Regulatory Framework	19
3.2.2 Primary Legislation	19
3.2.3 Secondary Legislation - Regulations	19
3.2.4 Public Consultation	21
3.3 Proposals	21
Chapter 4: Codes of Governance	22
4.1 Terms of Reference	22
4.2 Observations	23
4.2.1 The Concept of a Code of Governance	23
4.2.2 The Public Consultation	26
4.3 Proposals	27

Chapter 5: Charity Trustees Guidance, Support and Education	30
5.1 Terms of Reference	30
5.2 Observations	31
5.2.1 Overview	31
5.2.2 The Public Consultation	32
5.3 Proposals	35
Appendices	37
Appendix 1: Panel Composition	37
Appendix 2: International Context	38
Appendix 3: Public Consultation on Governance of Charitable Organisations	43
Appendix 4 - List of Authors of Written Submissions received by the Panel as part of the Public Consultation on the Governance of Charitable Organisations	48
Tables and Figures:	
Table 1: The legal form of Registered Irish Charities	9
Figure 1: Charitable Purpose by Category	10
Figure 2: Charities by Income in Annual Reports	11
Figure 3: Charities with Annual Income over €250,000	11
Figure 4: Charities by Number of Employees	12
Figure 5: Charity Trustees and Geographic Location of Charities	13
Figure 6: Evolution of Public Trust in Charities and other Public Institutions	14
Figure 7: The Panel's Conceptual Governance Framework	16
Table 2: Format of the subsequent chapters in the panel report and the terms of reference each addresses	17
Table A: Comparative analysis of the main features of selected Charity Regulators	40

1

Executive Summary

Good governance within charities is more important than ever before, with instances of poor governance having tarnished the sector as a whole and with public trust in charities now well below its peak of 74% in 2012 (see figure 6, page 12). Taking on board the results of the public consultation and having deliberated over a wide-range of opinion and research, the panel is clear in its conviction that good governance is the foundation stone of a well-managed charity.

Governance ensures that basic processes and controls are in place within a charity, which will ensure transparency and accountability within a charity, and will assist charity trustees in carrying out their duties under the Charities Act 2009. This will go towards restoring public trust and confidence in the charities sector as a whole.

There are a number of ways in which charity trustees can ensure good governance within their charity, such as ensuring their board of charity trustees meets regularly; is diverse; has a good skills and gender mix; has induction procedures in place and a focus on succession planning. All of these will enhance the management of any charity. However, at the heart of good governance is each charity trustee's knowledge of their duties under the Charities Act 2009 and their engagement with the charity.

The panel is aware that a one-size-fits-all model is not appropriate in the context of the scale and scope of Irish charities. However, the panel is clear that good governance ensures that charity trustees can carry out their statutory duties which include but are not limited to:

- ensuring that the charity is carrying out its charitable purposes for the public benefit;
- acting in the best interests of the charity;
- managing the assets of the charity;
- ensuring the charity keeps proper books of account; and
- acting with reasonable skill and care.

Good governance is something all charity trustees should insist upon and strive to achieve. This will create a standard of excellence within a vibrant charities sector, valued for the public benefit it provides.

During 10 meetings, and in writing and reviewing versions of this report, the panel explored a wide range of opinion and options under the three mandates in its terms of reference. The panel explored the nature of the charities operating in Ireland and recognised the need for a proportionate approach to governance, given the vast range in terms of size of organisations, especially the preponderance of small charities.

The panel makes the following 10 proposals:

1.	Rather than issuing additional regulations specific to governance, a more proportionate approach, as set out in this report, is the approval/issuing of governance guidelines or codes. <i>(See chapter 3 for the rationale behind this proposal).</i>
2.	There should be a new Governance Code for charities issued by the Charities Regulator to facilitate the better administration, management and governance of charitable organisations. <i>(See chapter 4 for the rationale behind this proposal).</i>
3.	The new Governance Code should be principles-based and should operate on a “comply or explain” basis. <i>(See chapter 4 for the rationale behind this proposal).</i>
4.	The content of the new Governance Code should be developed in collaboration with the charity sector. <i>(See chapter 4 for the rationale behind this proposal).</i>
5.	The new Governance Code should be proportionate. <i>(See chapter 4 for the rationale behind this proposal).</i>
6.	The Charities Regulator should promote efforts to streamline compliance and reporting duplication between State bodies. <i>(See chapter 4 for the rationale behind this proposal).</i>
7.	The Charities Regulator should develop and issue guidance (where possible online and/or in digital/video format) to support prospective and current charity trustees. <i>(See chapter 5 for the rationale behind this proposal).</i>
8.	The term of office of charity trustees should not be subject to a mandatory limit. However, the new Governance Code should include an advisory maximum limit on a ‘comply or explain’ basis. <i>(See chapter 5 for the rationale behind this proposal).</i>
9.	The Charities Regulator should consider in the context of the new code of governance the issue of former senior management becoming charity trustees of the same organisation. <i>(See chapter 5 for the rationale behind this proposal).</i>
10.	Further research should be conducted on the profile and number of charity trustees in Ireland. <i>(See chapter 5 for the rationale behind this proposal).</i>

2

Overview

2.1 Establishment of the Consultative Panel on the Governance of Charitable Organisations

In March 2017, the Charities Regulator established a Consultative Panel on the Governance of Charitable Organisations (the 'panel') in accordance with section 36 of the Charities Act 2009 (the 'Act'). The Charities Regulator was minded to put in place a regulatory approach which ensures registered Irish charities are well governed and managed. The Authority was of the view that observations and proposals from a consultative panel of experts with appropriate expertise in governance, law, finance and charity administration was the optimal approach to ensuring an appropriate and proportionate framework to facilitate good governance in charities is put in place in Ireland.

The terms of references of the panel are to consider:

- Options arising from the Minister's power to make regulations in relation to the Governance of Charitable Organisations pursuant to section 4 of the 2009 Act;
- Options for the Charities Regulator to encourage and facilitate the better administration, management and governance of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and a range of model documents, deemed relevant by the panel in the course of its work;
- Options for the Charities Regulator to promote compliance by charity trustees with their duties in the direction, control and management of charitable trusts and charitable organisations.

The panel met 10 times over the course of 12 months to discuss the options. This report sets out the panel's observations and proposals. The names and position of each member of the panel are available in Appendix 1.

2.2 Profile of Registered Irish Charities

There were 9,061 charities in the Register of Charities at 31 December 2017, an increase of 1,058 from the end of 2016. Of these, 7,220 charities were registered under Section 40 of the Act and 1,841 under Section 39 of the Act. These are two methods by which an organisation can become a registered charity.

Section 40 of the Act provides automatic registration for those organisations who held a valid charitable tax exemption (CHY number) on 16 October 2014 issued by the Revenue Commissioners. Such charities are deemed registered with the Charities Regulator so long as they are entitled to hold this charitable tax exemption. A total of 8,452 charities were automatically registered by this method in October 2014.

All charities that were deemed to be registered under section 40 of the Act must set up an online account and then complete details for the register of charities. At the end of 2017 5,902 charities had furnished the required information (up 19% on the same figure for 2016).

At the end of 2017, 1,318 charities, which had been automatically deemed registered in 2014 by virtue of having a valid CHY number from the Revenue Commissioners, had not completed their details for the Register of Charities or provided an annual report as required by law. This figure represents a reduction in the number of charities in non-compliance with the Act, by 56% on 2016.

The Charities Regulator has an escalation process for dealing with those who have annual reports outstanding more than 90 days. In 2017, 699 charities were de-registered¹ (up 122% on 2016).

Section 39 of the Act sets out the information required of organisations in applying to be entered in the Register of Irish charities. All charitable organisations must apply for inclusion in the Register of charities regardless of size, legal structure or income.

The Charities Regulator awarded charitable status to 1,757 organisations in 2017. This is up from 84 awards in 2016. This takes the total of charities registered under Section 39 of the Act to 1,841 or 20% of the Register.

2.2.1 The legal form of Registered Charities

The Act sets out three main types of legal form which are outlined in Table 1:

Table 1: **The legal form of Registered Irish Charities**

General	Type	Charities	% of Total
Incorporated	Companies	4,630	51.1%
Unincorporated	Association	1,495	16.5%
	Board of Management (School)	1,593	17.6%
	Other	664	7.3%
	Subtotal	3,752	41.4%
Charitable Trust	Trust	679	7.5%
	Total	9,061	100%

Once a charity has completed its details in the register of charities it must file an annual report within 10 months of the end of its financial year.

2.2.2 Charities by Charitable Purpose

The Act sets out specific categories of charitable purposes:

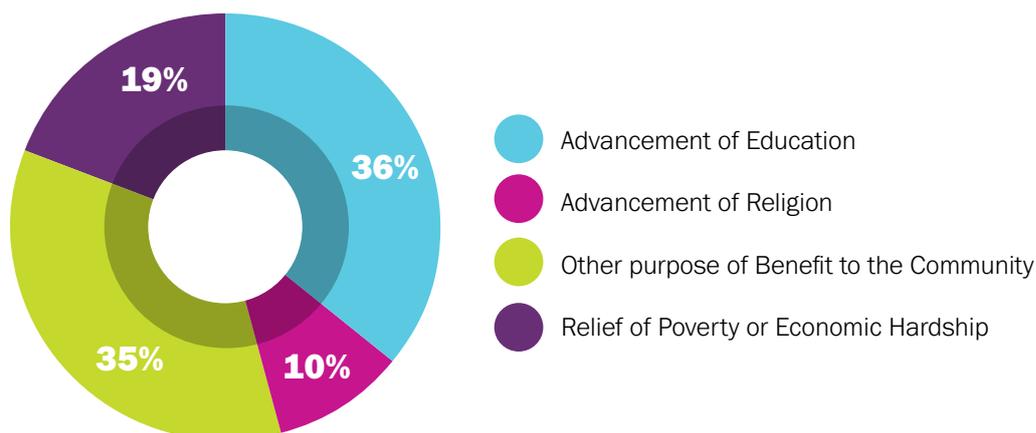
- > The prevention or relief of poverty or economic hardship;
- > The advancement of education;
- > The advancement of religion;
- > Any other purpose that is of benefit to the community.

1 Charities no longer deemed to be registered under section 40 of the Charities Act 2009 as they are no longer entitled to an exemption under section 207 or section 208 of the Taxes Consolidation Act 1997.

'Any other purpose that is of benefit to the community' contains specific purposes such as the integration of the disadvantaged, the promotion of health and voluntary work and the advancement of: community welfare and development, environmental protection and sustainability, racial and religious integration, conflict resolution, animal welfare, and the arts. Charities may have more than one specific charitable purpose.

Figure 1 provides a breakdown of charitable purposes in the Register of Charities at 31 December 2017:

Figure 1: **Charitable Purpose by Category**

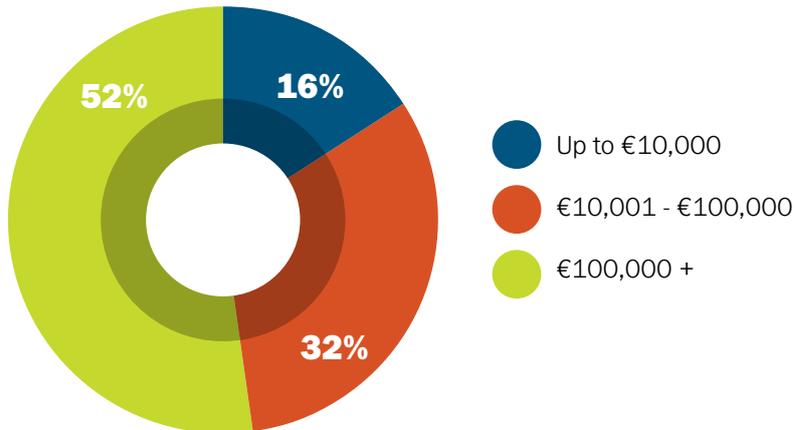


2.2.3 Financial Information on Charities in Ireland

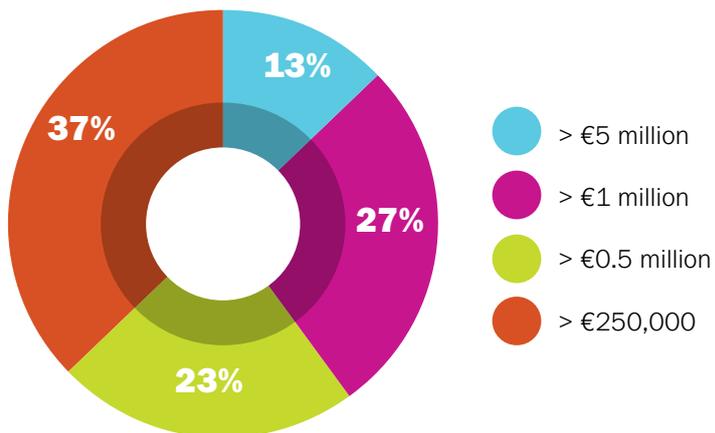
Figure 2 illustrates the size of charities by reference to the income they disclosed in their annual reports, comprising of 5,986 annual reports for those charities who have completed their details for the Register of Charities. Although at the end of 2017 there were 9,061 charities on the Register of Charities, 3,075 of these charities are not included in the annual report figure. This is because 1,757 of the charities on the Register are not yet required to report as they are newly-registered charities, and will file their first annual reports in 2018. A further 1,318² charities, although legally obliged to report, have not completed their details for the Register, which must be done before an annual report can be filed. Some 91% of charities that completed the registration process have submitted an annual report to the Charities Regulator (5,457 charities).

Annual reports for almost 6,000 registered charities illustrated in Figure 2, provide information on annual activities, on how each charity furthers its charitable purpose for the public benefit, on details of income and expenditure, on the number of employees and on the types and estimated number of beneficiaries in the reporting period.

² Charities which fail to file annual reports face further sanction from the Charities Regulator up to and including de-registration.

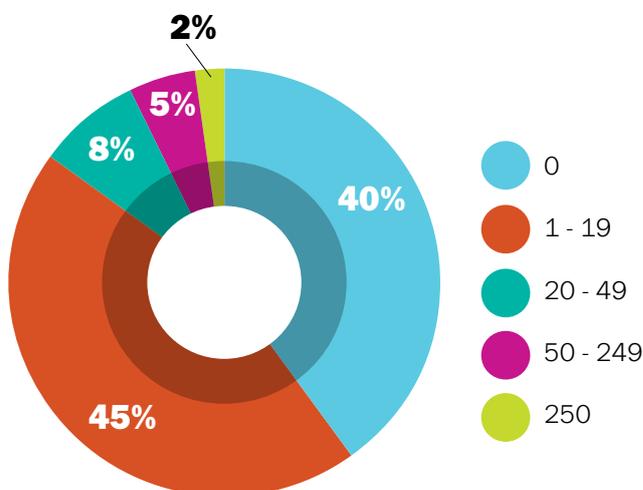
Figure 2: **Charities by Income in Annual Reports**

Of the 52% of registered charities who have declared annual income over €100,000 in 2017, 2,094 declared income over €250,000. Figure 3 illustrates the income bands over €250,000 for these 2,094 registered charities.

Figure 3: **Charities with Annual Income over €250,000**

Some 40% of registered charities which filed annual reports in 2017 declared that they had no employees. Figure 4 below shows that only 15% of registered charities employ more than 20 people.

Figure 4: **Charities by Number of Employees**



2.2.4 Charity Trustees

Charity trustees are the people who are legally responsible for the management of a charity. Although voluntary, the role of a charity trustee carries significant responsibility. The title of a charity trustee in a particular charity will depend on its legal structure. The following are some examples:

- > If the charity is a **company**, the charity trustees are the directors and other officers of the company;
- > If the charity is **an unincorporated body or a body corporate** (other than a company) the charity trustees include any officers or people acting officially in the direction and control of the organisation such as members of the board of management or governing committee;
- > If the charity has been **established under a trust deed**, the charity trustees are the trustees specified in the trust deed.

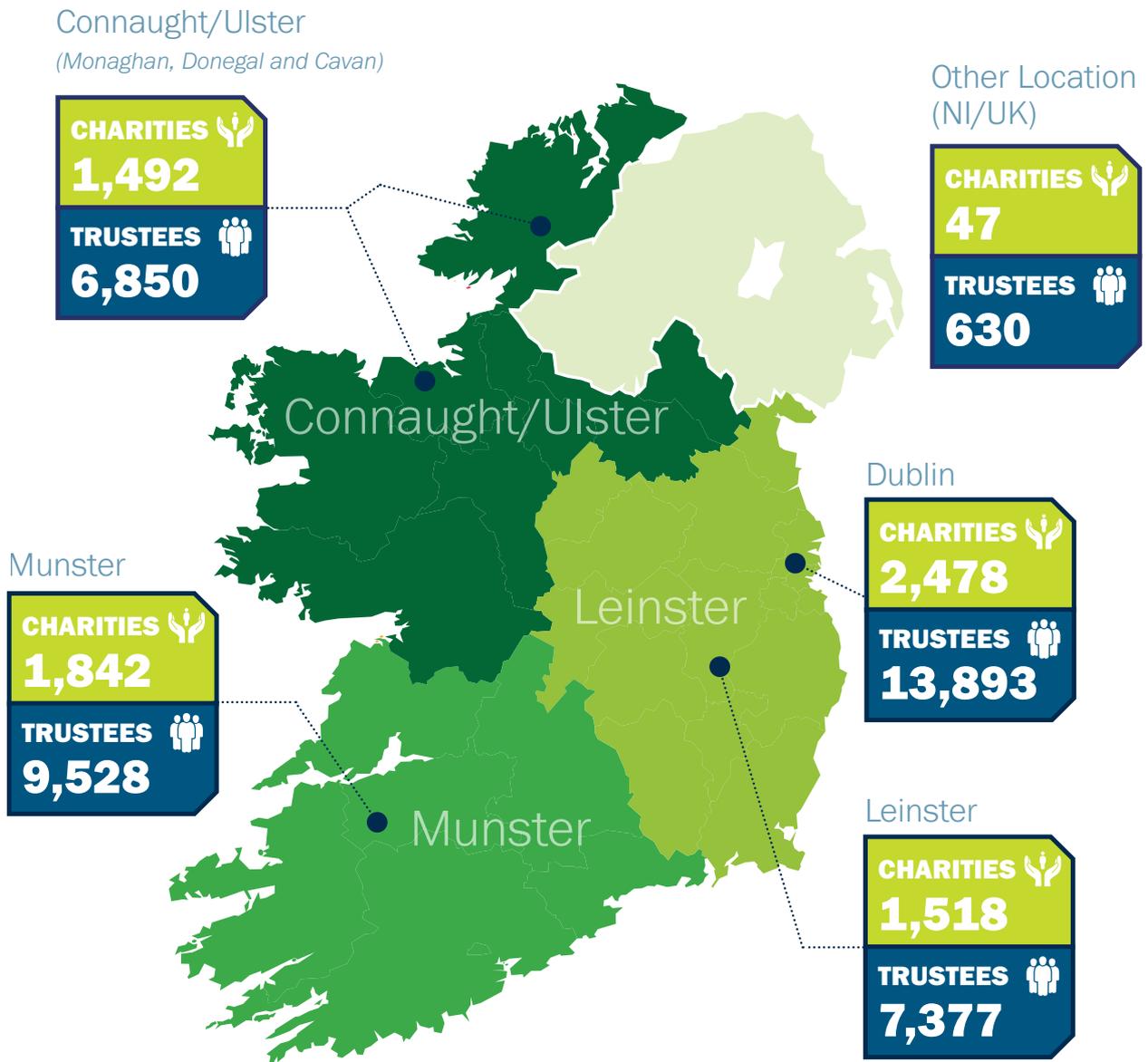
If an individual is unsure as to whether or not they are a charity trustee, then it is important that they check the legal structure of their charity to clarify their position and consult their charity's constitution or deed of trust ('governing document').

The position of charity trustee is an unremunerated one. It is a common requirement of the Revenue Commissioners for charitable tax exemption and of the Charities Regulator for charity registration that charity trustees should not be appointed to, or hold any office of the organisation, paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the organisation³. In general, no payments should be paid to charity trustees other than reasonable out of pocket expenses, which constitutes reimbursement rather than remuneration.

Figure 5 illustrates the geographic location of registered charities in Ireland and of the charity trustees who further their charitable purposes. Figures reflect the situation to the end of December 2017.

3 See Charities Regulator Requirements for Registration available at <https://www.charitiesregulator.ie>

Figure 5: **Charity Trustees and Geographic Location of Charities**



	CHARITIES 	TRUSTEES 
	7,377	38,278
 Schools	1,684	12,941
Total	9,061	51,219

2.3 Role and Place of Charities in Contemporary Ireland

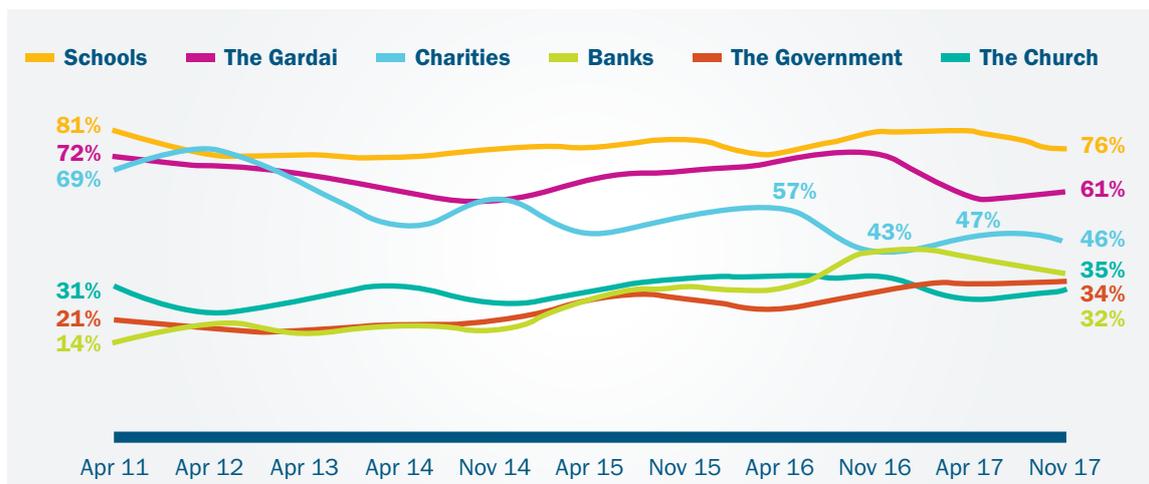
Ireland has a long history of charitable activity, with significant numbers of people donating their time, money and skills on a voluntary basis to charitable causes. From small local charities run entirely by volunteers, to major global organisations with large turnovers and paid staff, their support and advocacy work touches almost every facet of Irish life. In the early days of the Irish State, many charities provided essential services to the population and this defining feature of Irish society continues today.

The environment in which charities operate has evolved dramatically in recent years. For large charities, the reduction in the overall level of public money available and the growing emphasis on value-for-money, efficiency and performance metrics⁴ have brought new challenges. Arguably, however, small and medium-sized charities have faced greater challenges adapting to this new environment, particularly in terms of their management, financial skills and resources. Although smaller, these charities are vital, as they possess major capacity for innovation with proven capability to form strong roots and bonds with local communities and people.

At the same time, there have been some widely reported high-profile governance failures in a number of charities which have led to public questioning and a weakening of trust.

Figure 6 shows the evolution of public trust in charities (and other public institutions) over a six year-period.⁵

Figure 6: Evolution of Public Trust in Charities and other Public Institutions



“To what extent do you trust each of the following institutions?” **Ranked by ‘Up to a point + A great deal’**

Source: Irish Charity Engagement Monitor, November 2017, nfpSynergy | Base 1,000 adults 16+, Ireland

Greater expectations in terms of governance, accountability, transparency and effectiveness are now required of all of the recognised pillars of Irish society be they the State, large private companies or charities. Charities should embrace these expectations and adopt in their daily practice basic governance standards that will maintain the bond of trust between them and their supporters.

4 See Boyle, R “Maintaining voluntary sector autonomy while promoting public accountability: managing government funding of voluntary organisations” (2002), Royal Irish Academy Third Sector Research Programme. See also McInerney, C and Finn, C “Caring at what cost?” (2015) [Impact].

5 Irish Charity Engagement Monitor, November 2017, nfpSynergy

2.4 Definition of Good Governance

The panel considered a number of definitions of governance, mindful of the need for a workable definition that would be of use to all charities and charity trustees. Above all, the panel construes good governance in a holistic manner, which should mirror the values and ethical culture of the charity. While rules, processes and policies are key in ensuring that the charity performs well and complies with legal requirements, good governance will only flourish if it is truly embedded in the culture and fabric of each charity, starting with the behaviour of the charity trustees and permeating throughout the entire organisation.

The panel defines good governance as **the duties and responsibilities of the charity trustees to put in place systems and processes to ensure that the charity achieves and sustains its charitable objectives with integrity and is managed in an effective, efficient, accountable and transparent manner.**

2.5 Proportionality

At the outset, the panel agreed that its work should enable the Charities Regulator to ensure that an appropriate and proportionate framework to facilitate good governance in charities is put in place in Ireland.

The panel recognises the wide diversity in size, type and purpose of registered Irish charities and holds the view that there cannot be a 'one-size-fits-all' model of good governance. However, the panel is in no doubt that all registered charities should demonstrate an agreed set of basic governance standards in their work.

Therefore, the panel has taken great care in balancing its proposals to ensure they can be complied with, especially by the smallest charities.

2.6 The Panel's Approach to its Terms of Reference

The panel established three working groups to consider each of its mandates in greater detail. The outputs were considered by the full panel and fed into these final observations and proposals.

Furthermore, panel members took into account:

Their own expertise, practical knowledge and experience of governance;

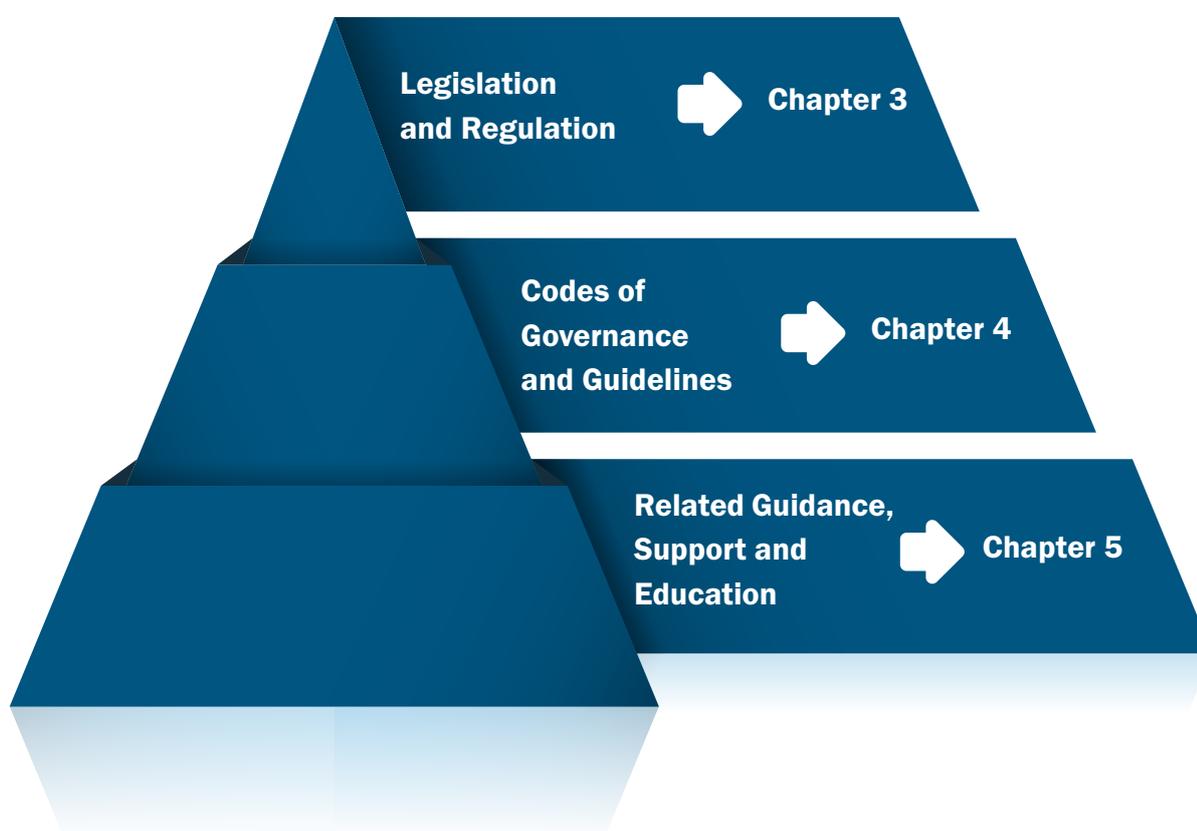
- The approach taken in different jurisdictions which were applicable to facilitating improved governance;
- Research previously published in Ireland relating to governance of charities;
- A public consultation process facilitated by the Charities Regulator (see Appendix 3); and
- The views of some selected stakeholders who were invited to meet with the panel.

At the outset, the panel established a conceptual framework of governance to guide its work and to structure this report. As such, the framework conceptualises governance as a pyramidal construct, made up of three key assembled elements. Each of these elements corresponds to the terms of reference of the panel as set out in section 2.1 of this report:

1. Legislation and Regulation: the applicable primary legislation (Acts of the Oireachtas) and secondary legislation (statutory instruments, regulations and orders), i.e. 'hard law';
2. Codes of Governance and guidelines i.e. 'soft law':
3. Related guidance, support and education to support both hard and soft law.

Figure 7 below represents the panel's governance framework.

Figure 7: **The Panel's Conceptual Governance Framework**⁶



⁶ The Panel's conceptual governance framework is based loosely around the Ayres and Braithwaite (1992) responsive compliance model, also known as the Ayres and Braithwaite compliance pyramid. The Ayres and Braithwaite compliance pyramid illustrates an escalation in regulatory response to non-compliance, with the hardest sanctions used least frequently. The panel adapted their framework, showing soft-law guidelines at the bottom of the pyramid, followed by 'comply-or-explain' soft-law codes of governance, with hard-law 'comply-or-else' statutes and regulations at the top of the pyramid.

Ayres, I. and Braithwaite, J. 1992. *Responsive Regulation: Transcending the Deregulation Debate*. Oxford: Oxford University Press.

Commencing with the terms of reference, each chapter sets out the panel's observations and its proposals, informed by the results of the public consultation process, as follows:

Table 2: Format of the subsequent chapters in the panel report and the terms of reference each addresses

Chapter	Terms of Reference addressed
3	Options arising from the Minister's power to make regulations in relation to the Governance of Charitable Organisations pursuant to Section 4 of the 2009 Act (terms of reference 3).
4	Options for the Charities Regulator to encourage and facilitate the better administration, management and governance of charities by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and a range of model documents deemed relevant by the Panel in the course of its work (terms of reference 1).
5	Options for the Charities Regulator to promote compliance by charity trustees with their duties in the direction, control and management of charitable trusts and charitable organisations (terms of reference 2).

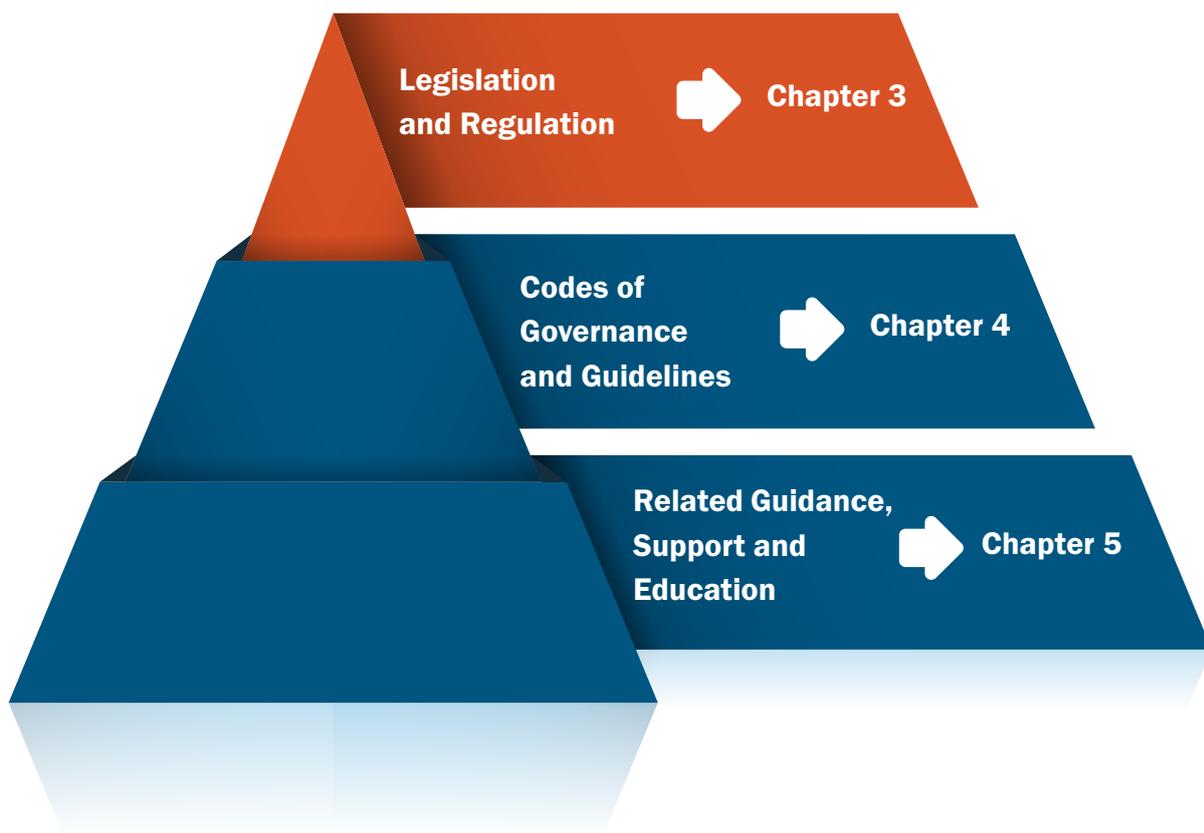
3

Regulations in Relation to the Governance of Charitable Organisations

3.1 Terms of Reference

The panel was mandated to consider options arising from the Minister's power to make regulations in relation to the governance of charities.

As outlined in section 2.6 of this report, this chapter focuses primarily on the first layer of our conceptual framework of governance and examines the issue of regulations for the charity sector. This chapter summarises the panel's observations (3.2) before setting out its proposals regarding governance guidelines and codes (3.3).



The panel approached its task by first considering what a proportionate yet robust regulatory framework might look like. It then identified the areas of the Act for which an express power to make regulations exists and then examined those areas' relevance for good governance.

3.2 Observations

3.2.1 Regulatory Framework

Regulation is typically used to describe the entire statutory regime which governs a particular sector or activity. Regulation in this sense includes all primary and secondary legislation, as well as measures to improve practice through the provision of guidelines and codes by the relevant supervisory authority. The panel agreed that it is useful to set out the different aspects of a regulatory framework.

A regulatory framework usually comprises hard law such as primary and secondary legislation. In relation to charities, this is the Charities Acts 1961-2009 and any associated regulations. These set out the 'must do' matters that must be implemented and the penalties for failure to comply. It also includes legislation which gives powers to bodies such as the Revenue Commissioners, An Garda Síochána and various State authorities which impact on the scope of activity of registered Irish charities.

Very often guidelines and codes are also issued. These are the relevant soft law tools designed to encourage and enable better practice by setting out the 'should dos'. An appropriate mixture of hard and soft law is key to developing a balanced, proportionate regulatory framework.

3.2.2 Primary Legislation

The Charities Act 2009 aims to provide for the better regulation and protection of charities. Its main provisions were commenced on 16 October 2014 with the establishment of the Charities Regulator. It sets out the duties and responsibilities of charity trustees and provides extensive powers to the Charities Regulator to ensure compliance with the law.

The Act requires any organisation with exclusively charitable purposes and providing public benefit, which wishes to operate or carry out activities in Ireland, to apply to be registered.

Part 4 of the Act grants the Regulator broad powers of investigation, including the power to require a charity's trustees to produce its books, records or other documents. It also covers the consequences of contraventions of the Act. In certain circumstances, the Regulator may prosecute charity trustees, impose intermediate sanctions, remove a charity from the Register of Charities for a specified period or publish details of the contravention on its website. Charity trustees must implement the requirements of the Act and ensure the charity complies with the Act.

3.2.3 Secondary Legislation - Regulations

Secondary legislation includes statutory instruments, which are required to give effect to various sections of an act. For example, section 4(1) of the Act provides that: '*the Minister may by regulations provide for any matter referred to in this Act to be prescribed*'. In this regard, the Act provides for the making of Ministerial regulations in relation to eight specified provisions⁷ of the Act. Of these eight provisions, at least five of them touch on matters concerning governance, relating to the type of information held on the Register of Charities, the accounting and financial reporting requirements, the audit requirements, the annual reporting requirements and the regulation of fundraising practices.

Section 4 also empowers the Minister in making regulations under the Act, to include any incidental, supplementary or consequential provisions as appear to the Minister necessary or expedient for the purposes of the regulations.

7 Sections 34, 39(5)(p), 46(8), 48, 51, 52, 66 and 97 of the Charities Act 2009

To this end, the Charities Regulator has indicated its intention, separate to the panel's work, to seek regulations pertaining to accounting and reporting. These regulations will provide a key foundation and framework for charities to improve their governance. The panel is also aware that the Charities Regulator has requested the amendment of the Act, to ensure that these regulations, when introduced, apply to charities which are also companies. This approach will ensure a coherent, proportionate framework for both accounting and reporting by all registered Irish charities.

In addition to the above, there are specific areas on which the Charities Regulator may propose new regulations that touch on matters concerning governance:

- The type and quality of information held on the Register of Charities, for which regulations can be made under section 39(5) of the Act, provides a context against which the Charities Regulator can assess the capacity of a charitable entity. It is likely that over time, as the evidence base grows, the Charities Regulator may wish to seek more information and data on charities than is currently provided for in the Act, such that new regulations may be needed.
- The regulation of fundraising is a subject that has been examined by a previous consultative panel and upon which the Charities Regulator recently issued new guidelines.⁸ Therefore, we do not propose to re-examine this area at this time.

The panel considers that the introduction of accounting and reporting regulations will increase transparency, incentivise best governance practice and enable charities to evidence this to the Charities Regulator, donors, beneficiaries and the public. It is critical that the introduction of these regulations occurs in a planned and coordinated way and is accompanied by a suite of guidelines to educate and inform charity trustees, management and advisors on how annual financial and narrative charity reporting can support and evidence good governance.

The panel is of the view that the introduction of additional hard law regulations specific to governance is not appropriate at this time, but rather the accounting and reporting regulations should be the priority.

The panel is also of the view that a more proportionate approach is the approval/issuing of soft law governance guidelines or codes, as examined and proposed later in this report.

⁸ Charities Regulator – 'Guidelines for Charitable Organisations on Fundraising from the Public' (September 2017); Available from: www.charitiesregulator.ie

3.2.4 Public Consultation

Whilst most of the public consultation focused on the elements relating to a governance code and supporting charity trustees, there was clear public appetite for ensuring more transparency in how charities account to their donors, beneficiaries and to the public on how they spend their money.

The submission of appropriate financial statements was seen as a must for all charities, whatever their size and location. As one individual stated in her submission:

“Every charity, irrespective of turnover and size, should provide a detailed annual Income and Expenditure statement. The public should have access to this information.”

3.3 Proposals

The panel proposes that:

- 1** Rather than issuing additional regulations specific to governance, a more proportionate approach, as set out in this report, is the approval/issuing of governance guidelines or codes.

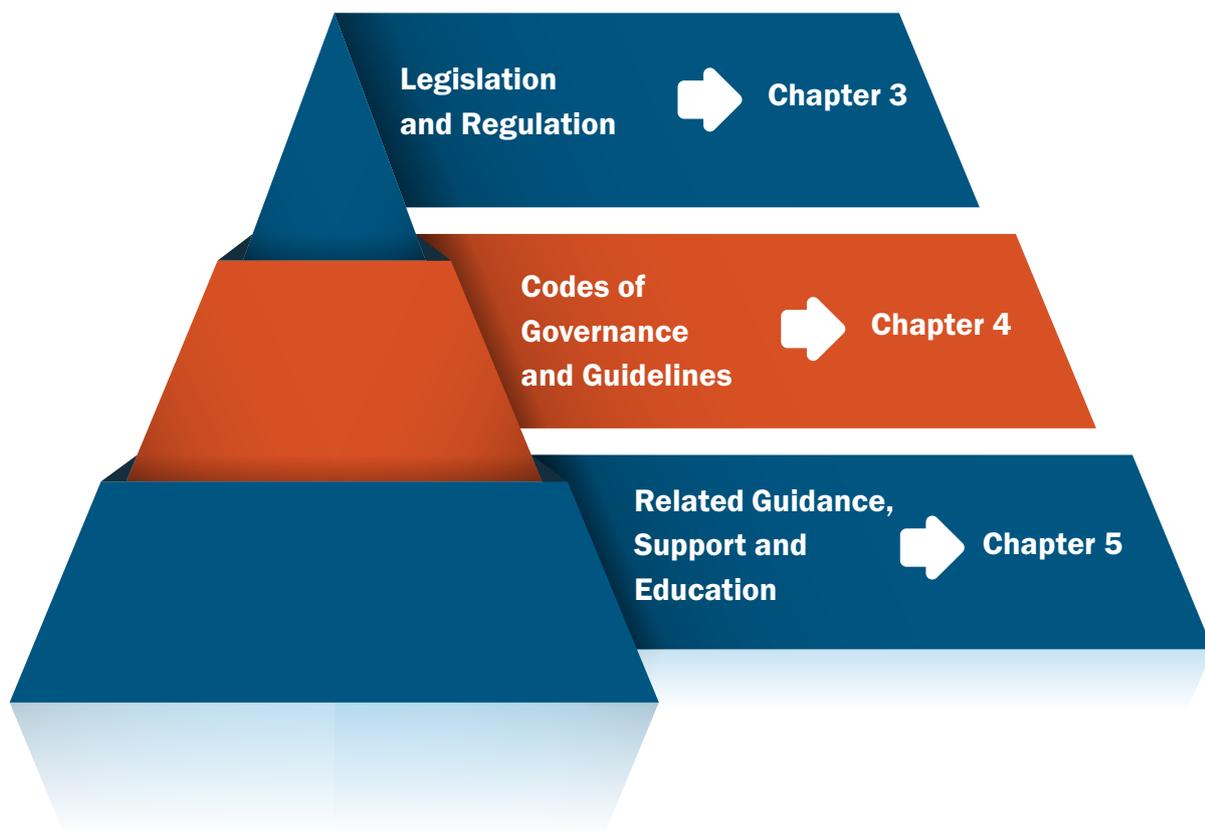
4

Codes of Governance

4.1 Terms of Reference

The panel was mandated to consider a series of options to encourage and facilitate the better administration, management and governance of charities by the provision of information or advice, including by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and a range of model documents, deemed relevant by the panel in the course of its work. The panel explored options in this regard and set out proposals for the Charities Regulator to consider.

As outlined in section 2.7 of this report, this chapter focuses on the second layer of our conceptual governance framework and examines the concept of a code of governance for charities. The chapter summarises the panel's observations (4.2) before setting out its proposals regarding such a code (4.3).



4.2 Observations

The panel considered three main issues:

- Should Ireland have a code of governance specific to registered Irish charities?
- If so, should a code be issued or endorsed by the Charities Regulator?
- In either case, should the approach be to adopt one of the current codes, to adapt a current code or to develop a brand new code?

In considering these questions, a number of other issues arose relating to:

- Whether and how a code could be an effective way of achieving and sustaining good governance;
- Whether a code, should be principles-based (i.e. setting out key objectives that should ultimately be voluntarily adopted) or rules-based (i.e. list of detailed rules to follow);
- The minimum governance requirements that any registered charity should be expected to have in place;
- Avoiding any unnecessary administrative burden;
- Proportionality;
- The costs/complexity of complying with various codes.

4.2.1 The Concept of a Code of Governance

In Ireland, the charity and voluntary sector has to date led on the development of various frameworks, guides and codes with the aim of improving governance.

These codes of governance are not a statement of law but rather set out the highest standards of behaviour that charity trustees should aspire to adopt, in order to demonstrate their commitment to serving the best interests of the charity.

4.2.1.1 What Codes Exist?

➤ Statement of Guiding Principles for Fundraising

The 'Statement of Guiding Principles for Fundraising'⁹ was drawn up by the Irish Charities Tax Reform (ICTR) in 2008. The code, which was voluntary, applied to all fundraising activities of charities. This code has now been replaced by the Charities Regulator 'Guidelines for Charitable Organisations on Fundraising from the Public' (September 2017)¹⁰ which is supported by the 'Charities Institute Ireland Fundraising Codes of Good Practice' (September 2017).¹¹

9 See <https://www.charitiesinstituteireland.ie/guidelines-for-charitable-organisations-fundraising-from-the-public/>

10 See <http://www.charitiesregulator.ie>

11 The Charities Institute Ireland Fundraising Codes of Good Practice (the 'CII Codes') are a resource that have been designed to support and complement the 'Guidelines for Charitable Organisations on Fundraising from the Public', helping fundraisers ensure that they are operating effectively whilst being fully-compliant with their organisation's legal obligations. See <https://www.charitiesinstituteireland.ie/the-cii-codes>

> **Irish Development NGOs Code of Corporate Governance**

The *'Irish Development NGOs Code of Corporate Governance'*¹² sets out a comprehensive code of conduct and best practice for the governance of non-profit international development Non-Governmental Organisations. It was developed by Corporate Governance Association of Ireland, in partnership with Dóchas, an umbrella body for that sector. For that reason, it is also known as the Dóchas Code.

This code seeks to enhance effectiveness by clarifying good governance. It focuses on the board and articulates seven principles: leadership; accountability; responsibilities; review and renewal; delegation; integrity; and openness. Each principle is supplemented by a series of supporting statements which define best practice and provide practical guidance on implementation. Adherence to the code is mandatory for each member of Dóchas and a commitment to adhering to the code is a pre-condition to any application for membership being accepted. Thereafter the 'comply or explain' principle applies.

> **Code of Practice for Good Governance of Community, Voluntary and Charitable organisations in Ireland**

The *'Code of Practice for Good Governance of Community, Voluntary and Charitable Organisations in Ireland'*¹³ was launched in February 2012, by a range of national organisations¹⁴ who came together under the shared vision of creating the resource that is also known as the Governance Code. The code seeks to increase transparency and effectiveness, and to reassure stakeholders that an organisation in compliance is well run and its funds are well managed. It is a voluntary code and operates along the 'comply or explain' principle.

The code distinguishes between three types of organisations: type A (usually run by volunteers and not employing staff), type B (small number of staff often with people on the board also with managerial capacity) and type C (organisations with a clear division of roles between board and managers, and usually with more than 10 employees).

The code consists of five key principles and a series of sub-principles together with corresponding recommended board practices. The five key principles are: leading; exercising control; being transparent and accountable; working effectively; and behaving with integrity.

A three-year review was conducted of the code's implementation in 2015/2016, which resulted in a second edition. The most significant change in the second edition was the addition of stakeholders' stewardship guidelines, designed to enable stakeholders such as members, dependents, volunteers, donors, funders or regulators to assess the 'comply or explain' declarations and rate them accordingly. The code clearly articulates that the actual responsibility for compliance and application lies with the charity trustees.

> **Other Codes**

Both the public and private sectors have witnessed the emergence of various governance best practice, codes and guidance, often following corporate scandals. These codes and guidance attempt to lay down some key principles of sound and ethical administration for entities concerned.

12 See http://dochas.ie/sites/default/files/CGAI_Governance_Code_FINAL_O.pdf

13 See <http://www.governancecode.ie/the-code.html>

14 Boardmatch Ireland, Business in the Community Ireland, Carmichael Centre for Voluntary Groups, Charities Institute Ireland, Clann Credo, Disability Federation of Ireland, Volunteer Ireland and The Wheel

Recent examples include, for the public sector, the 'Code of Practice for the Governance of State Bodies' (2016),¹⁵ the 'Corporate Governance Standard for the Civil Service' (2015),¹⁶ the 'Governance Principles and Governance Framework for the Local Government Sector' (2015),¹⁷ the 'Health Service Executive Code of Governance' (2015)¹⁸ and the 'Governance Standard and Assessment Framework for the Regulation of Approved Housing Bodies in Ireland' (2017).¹⁹ For private sector organisations, the 'UK Corporate Governance Code' (2016)²⁰ and the 'OECD Principles of Corporate Governance' (2015)²¹ are particularly relevant.

The panel noted that many Irish charities currently face regulatory, reporting and funding-compliance requirements from a variety of statutory bodies, with these becoming increasingly burdensome for organisations. Furthermore, the interaction of the many separate, but related, regulatory and reporting demands from donors, funders and oversight bodies has been singled-out as hampering the core operations of charitable organisations.

4.2.1.2 International Overview

In other countries (see Appendix 2), as in Ireland, the charity sector has led on the development of governance codes. In England and Wales, the Charity Trustee Network has produced 'Good Governance, A Code for the Voluntary and Community Sector'.²² In Singapore, the Charity Council published the 'Code of Governance for Charities and Institutions of a Public Character'.²³ In Northern Ireland, the Developing Governance Group produced the 'Code of Good Governance'²⁴ endorsed by the Charity Commission for Northern Ireland (CCNI) and in Canada, the 'Guide to Good Governance: Not-for-Profit and Charitable Organizations' was published by the Governance Centre of Excellence.²⁵

In other jurisdictions, no specific codes exist but useful guidance on best practice for good governance is provided by the relevant Charities Regulator (New Zealand, Scotland and Australia). Worth noting is a recent development in England and Wales in relation to governance for the charity sector, that led to the emergence of a voluntary principles-based governance code, operating within a supportive regulatory environment. The Charity Commission for England and Wales has now formally endorsed a separate and distinct independent sector-based 'Charity Governance Code'²⁶ as a voluntary principles-based governance code, whilst providing through its own website guidelines that refer to the legal obligations of charity trustees.

The 'Charity Governance Code' (July 2017) introduces a 'foundation principle' that states that charity trustees have to ensure basic legal and regulatory compliance. The rest of the code is taken up with key principles which act as a guide for the charity trustees to adopt over time.

This formula accommodates a voluntary principles-based code oriented towards optimum practice alongside a rules-based regulatory framework that contains the basic standards to which all organisations must adhere.

15 See <http://www.per.gov.ie/en/revised-code-of-practice-for-the-governance-of-state-bodies/>

16 See <http://www.per.gov.ie/en/corporate-governance-standard/>

17 See <https://www.tipperarycoco.ie/sites/default/files/Publications/governance%20principals%20framework%20for%20LA%20sector.pdf>

18 See <https://www.hse.ie/eng/about/who/directoratemembers/codeofgovernance/governance.html>

19 See <https://www.housingagency.ie/Regulation/GOVERNANCE-STANDARD-AHB-SECTOR-2017-ONLINE.pdf>

20 Available from: <https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>

21 Available from: <https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>

22 Available from: http://www.ecgi.org/codes/documents/vol_sector_code_uk_jun2005.pdf

23 Available from: <https://www.charities.gov.sg/manage-your-charity/Day-to-Day-Operations-of-Charity-IPC/Pages/Code%20of%20Governance%20for%20Charities%20and%20IPCs.aspx>

24 Available from: <http://www.volunteernow.co.uk/fs/doc/publications/revised-code-of-good-governance-jan16.pdf>

25 Available from: http://www.gbachc.ca/BoD/orientation_manual/2.1%20-%20GuidetoGoodGovernance.pdf

26 The third edition of the Code is under the name 'The Charity Governance Code' (see www.charitygovernancecode.org).

4.2.2 The Public Consultation

There was strong support for a governance Code for registered Irish charities throughout the consultation process. The majority of attendees and respondents favoured the code being issued by the Charities Regulator and approved/endorsed by the sector. Equally, most of the submissions suggested a collaborative process of development to be followed between the Charities Regulator and the sector.

4.2.2.1 Type of Code

One individual submission highlighted:

“Rules and principles don’t have to be mutually exclusive. There could be a Regulator’s mandatory code of basic rules and practices for all charities and a complementary sector body’s guidance on enhanced principles-based governance practices for charities over a certain size.”

In this light, an organisation considered in its submission that:

“The outcome would be a new ‘unified’ voluntary principles-based governance code that would be proportionate to the profile of the charity-sector in Ireland.”

Similarly, another submission suggested that:

“It would be a positive step forward if a single core code could be developed to address the governance of these many types of organisations.”

Several submissions suggested that the minimum requirements expected of all charities could include, but not be limited to:

- Have a constitution;
- Keep and maintain the charity's charitable purpose;
- Register with the Charities Regulator;
- Submit an annual report;
- Hold an AGM;
- Appoint a chairperson, treasurer (and company secretary if a company);
- Produce an annual report and financial statement to include specific levels of information as set out by the Charities Regulator;
- Keep a minute of all board meetings;
- Keep proper accounts that are up to date and available;
- Refrain from paying the trustees of the charity;
- Comply with company law (if applicable).

4.2.2.2 Proportionality

A clear concern reflected in most submissions and voiced at public meetings echoed the panel's view of the need for proportionality. It was consistently stressed that the code could be gradually implemented and should be proportionate, for instance, to the size of the charity and the number of volunteers, with the potential for a differentiation between State-funded and non-State-funded organisations.

4.2.2.3 The Need to Avoid Duplication

A theme that emerged at each of the public meetings and in the online questionnaire was the need to remove duplication. Respondents voiced their frustration at the lack of joined-up thinking from State funders, State bodies and other regulators, and called for consistency. It was suggested that this could be done through a central governance code, with state bodies and regulators working together to streamline the monitoring of compliance.

4.3 Proposals

It is the view of the panel that the optimal approach for promoting improved governance and practice lies in the development of a new governance Code for charities.

The panel is of the view that this new code should not restate the existing legal requirements on charity trustees. This new code should complement rather than restate legal requirements and:

- a) focus charity trustees to achieve their charitable purpose(s) while maintaining good governance, and
- b) be a voluntary, principles-based governance code, operating on a 'comply or explain' basis.

In developing the new code, the Charities Regulator should consider existing codes and ensure a participatory approach to its design and content. The new code should also provide a clear definition of key terms. The Charities Regulator should also recognise the diversity in size and capacity of registered Irish charities and define proportionate and appropriate governance requirements by reference to:

- a) annual income, possibly in line with the cut-off level determined for requiring reporting in the Statement of Recommended Practice, Accounting and Reporting by Charities (Charities SORP)²⁷ and/or ;
- b) the number of staff.

Furthermore, the public consultation considered that the Charities Regulator is best placed to lead efforts in reducing and streamlining the administrative burden currently facing many charities and their trustees from a variety of statutory bodies.

The Charities Regulator may take into consideration models developed in other jurisdictions²⁸ and notably the 'report-once, use often' central system model as used by the Australian Charities and Not-for-profits Commission (ACNC): the ACNC has developed a 'charity passport' which enables authorised government agencies to access ACNC charity data via a file transfer protocol (FTP). By allowing agencies to access charity data directly from the ACNC, the 'Charity Passport' significantly reduces the amount of information that charities have to provide to different government agencies.

In light of the above-mentioned observations and the public consultation, the panel proposes that:

2 There should be a new governance code for charities issued by the Charities Regulator to facilitate the better administration, management and governance of charitable organisations.

3 The new governance code should be principles-based and operate on a 'comply or explain' basis.

4 The content of the new governance code should be developed in collaboration with the charity sector.

²⁷ Statement of Recommended Practice, Accounting and Reporting by Charities.
Available from : <http://www.charitySORP.org/>

²⁸ See 'Reducing Bureaucracy' project in Northern Ireland, led by NICVA working with Government Departments. Available from: <http://www.nicva.org/topics/bureaucracy>

5

The new governance code should be proportionate.

6

The Charities Regulator should promote efforts to streamline compliance and reporting duplication between State bodies.

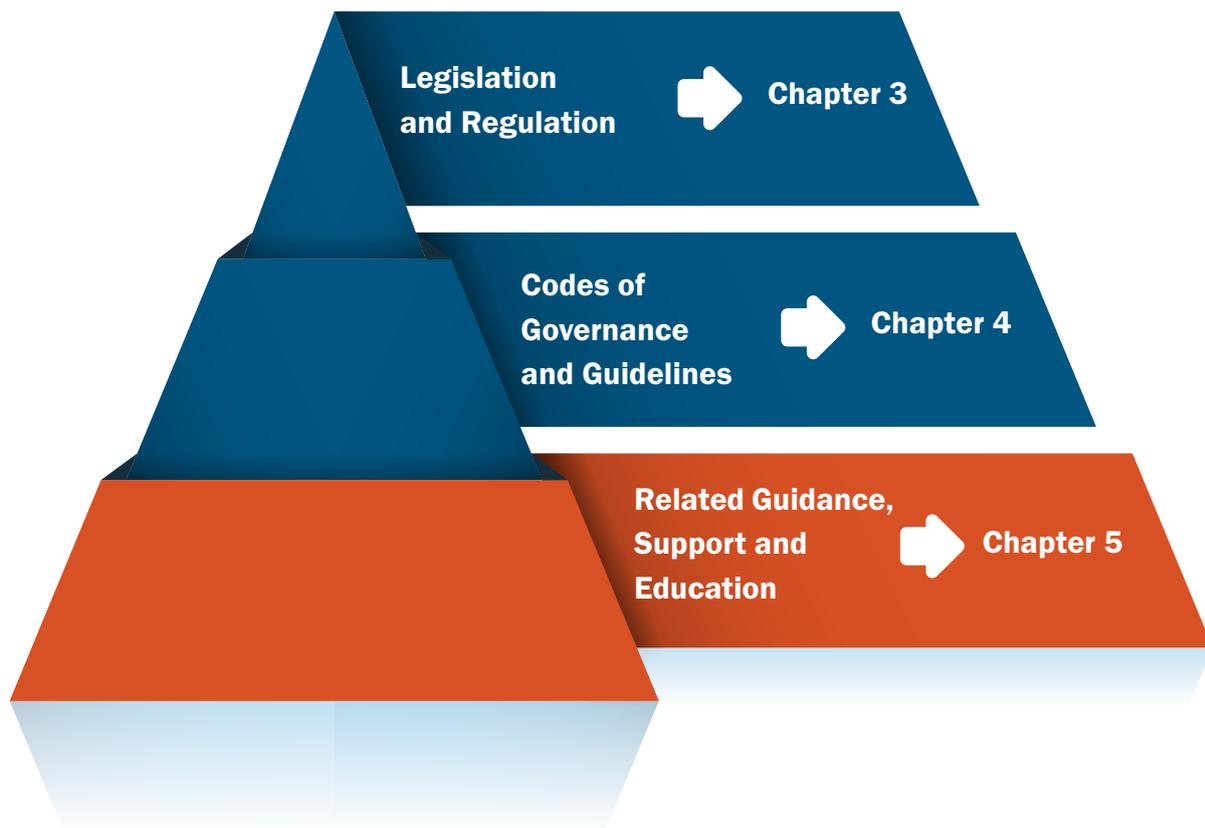
5

Charity Trustees Guidance, Support and Education

5.1 Terms of Reference

The panel was mandated to provide options for the Charities Regulator to promote compliance by charity trustees with their duties in the direction, control and management of charities. This chapter also includes the observations and proposals relevant to the provision of key model documentation such as board pack, standard forms, standard policies, conflict of interest, gifts, and governance checklists.

As outlined in section 2.7 of this report, this chapter focuses on the third layer of our conceptual governance framework and examines guidance, support and education for the charity sector. The chapter summarises the panel's observations (5.2) before setting out its proposals regarding guidance, support and education for the sector (5.3).



5.2 Observations

5.2.1 Overview

It is the view of the panel that charity trustees are ultimately the sole responsible individuals for ensuring good governance. As such, charity trustees have a significant responsibility and are often faced with challenging decisions as they attempt to balance the interests of donors and beneficiaries whilst running the charity in an ever-changing regulatory environment. In this context, the panel acknowledges the number of representative organisations which have been providing useful guidance, support and training to the sector. It is anticipated their role will continue.

Despite the crucial function played by charity trustees little research has been conducted into the composition of the large cohort of people (estimated at 50,000), who play this vital role in Irish society. Information on charity trustees such as educational status, gender, age, term of office etc. could be very valuable in designing appropriate interventions to support trustees.

In its discussions, the panel considered the following key elements:

- **Application level:** governance should be applied at every level within an organisation, such as charity trustees, the management, staff and volunteers;
- **Public expectation:** the role of donors, their expectations in relation to charity governance and transparency, and their sometimes contradictory attitudes to charities expending resources on administration and compliance costs;
- **Guidance for charity trustees:** issues that might be regarded as having a bearing on the effectiveness of charity trustees and boards, and on which guidance from the Charities Regulator might be helpful, include:
 - Before becoming a charity trustee: potential charity trustees should carry out appropriate due diligence on the charity: e.g. have sight of the charity's governing documents and accounts and/or financial statements and other key policies; meet key stakeholders e.g. Chairperson, CEO;
 - The process of becoming a charity trustee: implementing fitness and probity checks for charity trustees beyond those already specified in the Act is not considered necessary, but the panel strongly recommends that the Charities Regulator ensures a wide range of support and development programmes are available in as user-friendly and efficient a format as possible;
 - On becoming a charity trustee: a structured induction programme should be offered to all new board members;
 - Support and development: as charity trustees work in a voluntary capacity, and as the vast majority work with small charities, it is important that training, guidance and support is available at little or no cost to charity trustees and that any costs be met by the charity rather than individual charity trustees. The panel acknowledges that the charity trustees of 51% of charities are also directors of companies and have significant statutory fiduciary duties.²⁹
 - Online and or digital/video format guidance material topics to include but not limited to:
 - Introduction to the Charities Act 2009;
 - Advice on due diligence for prospective charity trustees;
 - Recruitment and induction of prospective charity trustees;

29 See Companies Act 2014 – available from: <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/html>

- Succession planning;
 - Risk management;
 - Conflict of interest;
 - Policies on declaration of gifts, hospitality etc.;
 - Role of the Chairperson and Board Secretary;
 - Keeping and making available adequate accounting records;
 - Annual general meetings.
- > **The length of term of office:** the panel acknowledges that it is widely accepted that a more diverse board that regularly alternates its members and is open to new people and ideas is more effective and less vulnerable to entrenched and dominant views. Equally, various codes of governance (such as the *'Code of Practice for the Governance of State Bodies'*, 2016) recommend that the number of terms a member can serve on a given board should be limited, usually no more than two to three terms for an overall maximum duration of up to 10 years.

The panel recognises that limiting the amount of time a charity trustee can serve corresponds to best practice as it allows for greater diversity of views, enriches the discussion at board level, and prevents stagnation of the decision-making process. Nonetheless, the panel recognises the practical challenges in many charities, particularly small ones, in imposing fixed terms of office for charity trustees. The public consultation echoed these sentiments. The panel favours limiting the terms of office of charity trustees while recognising that caution is required. The panel considers that charity trustees and charities should be encouraged to review and table discussions on their own constitutions in this regard. To facilitate this the panel recommends that the new governance code should include an advisory maximum limit on a 'comply or explain' basis.

Further to the public consultation, the panel also recognises the concerns around CEO/founders becoming charity trustee/chairperson on their departure from office. The panel considers that charity trustees and charities should be encouraged to review and table discussions on their own constitutions in this regard and that to facilitate this the panel recommends that the new governance code should address this issue.

- > **Public awareness:** providing further information on the role and activities of charities could increase trust by the general public. Such guidance could include a list of questions potential donors should ask in relation to governance, before they donate to a charity.

5.2.2 The Public Consultation

Various themes emerged from the public meetings, online questionnaire and focus groups.

The key findings were:

5.2.2.1 Key Barriers to Good Governance

The main barrier to good governance is a lack of knowledge and understanding of what good governance is and what is expected of the board of a charitable organisation. This emerged as the biggest barrier for online respondents, followed by a lack of expertise and a lack of knowledge of their legal obligations.

5.2.2.2 Support and Development

Some 21 written submissions backed the provision of more help and support for charity trustees. Many indicated that specific support is required, with others proposing that efforts be concentrated on recruiting more charity trustees. The need for charity trustee development was a strong theme that emerged at each of the public meetings.

An individual submission highlighted:

“The Achilles heel in all of this is that there is no mandatory training for trustees. Mandatory training is very hard to implement when boards are built on people giving freely of their time. Their time is not an infinite resource. There could be a case for a system of Continuing Professional Development (CPD) where trustees would be required to achieve several hours of qualifying CPD over the course of a year e.g. five hours per year.”

Similarly, in its submission an organisation considered that:

“It would be beneficial if the Regulator were to issue a guideline recommendation that every trustee should receive a minimum of three hours per year on training and development on the role of trustee to emphasise the importance of trustees up-skilling and maintaining their skills as a charity trustee.”

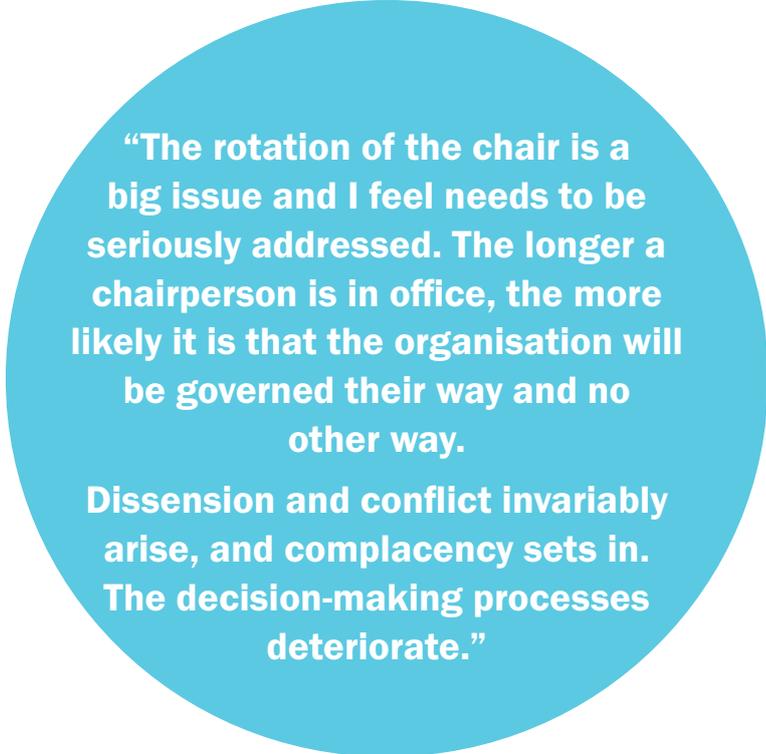
The consultation also highlighted the following:

- principal duties of charity trustees;
- Internal financial controls and keeping adequate books of accounts;
- responsibilities and role of the chairperson;
- risk and audit committees; and
- conflict of interest.

5.2.2.3 Term of Tenure and Charity Trustee's Rotation

The public consultation mirrored the views and observations of the panel on maximum board terms, whilst there were opposing views, “typically” reflecting size and location of individual charities on this issue.

As an individual said:



“The rotation of the chair is a big issue and I feel needs to be seriously addressed. The longer a chairperson is in office, the more likely it is that the organisation will be governed their way and no other way.

Dissension and conflict invariably arise, and complacency sets in. The decision-making processes deteriorate.”

On the other hand, the following individual submission summarised the views of many as regards the risks of setting a limit on charity trustees' mandate:

“It takes years to build up knowledge in the area we work in, and it is easy to do harm through ignorance, so having some people on the committee who are long-termers is very useful... New people can always join the committee, so new people are not excluded from joining. Sometimes someone with specific knowledge (in our case medical or technical) is good on a committee, and if they are doing a good job there is no need to remove them. Our charity could either fall apart, or shrink in terms of what it does, or worse do harmful things if there was a time-limit on how long trustees served.”

5.3 Proposals

The Panel proposes that:

7 The Charities Regulator should develop and issue guidance (where possible online and/or in digital/video format) to support prospective and current charity trustees.

8 The term of office of charity trustees should not be subject to a mandatory limit. However, the new governance code should include an advisory maximum limit on a ‘comply or explain’ basis.

9

The Charities Regulator should consider in the context of the new code of governance the issue of former senior management becoming charity trustees of the same organisation.

10

Further research should be conducted on the profile and number of charity trustees in Ireland.

Appendix 1:

Panel Composition

Senan Turnbull, Chairperson, former member of the Charities Regulatory Authority

Professor Oonagh Breen, UCD Sutherland School of Law

Professor Niamh Brennan, UCD College of Business

Ivan Cooper, Director of Public Policy, The Wheel

Patricia Cronin, Member, the Charities Regulatory Authority

John Farrelly, CEO, Charities Regulator

James Kavanagh, Chairman, Corporate Governance Association of Ireland

John Laffan, Principal Officer, Civil Governance Unit, Department of Justice and Equality

Stephanie Manahan, CEO, Central Remedial Clinic

Lucy Masterson, CEO, Charities Institute Ireland

Teresa McColgan, Tax Partner, PwC

Claire O'Hare, Policy Development Manager, Charity Commission of Northern Ireland

Appendix 2:

International Context

Overview of Charities Regulatory Approach to Governance in Selected Common Law Systems

With the view to assist the Consultative Panel in its consideration of workable options for facilitating the better administration, management and governance of charitable organisations in Ireland, this working paper sets out the common features of selected regulators and how they facilitate improved charity governance.

Common Features

All systems reviewed have a dedicated charity regulator, except for Canada, which has a separate charities directorate within its revenue collection agency.

Mostly, the regulators' role is to:

- Grant charity status;
- Maintain a public register of charities;
- Ensure compliance;
- Monitor, investigate claims, concerns and apparent misconducts (subject to appeals tribunal);
- Provide information, guidance, take initiative on strengthening the charity sector.

Regulatory systems vary from mandatory to voluntary registration (in the latter case, mainly to gain tax exemption). While there is a degree of variation in the criteria used to assess charity status, each system has adopted a two-part charity test: applicant organisations are required to demonstrate that they possess a charitable purpose and that they provide a distinct public benefit. Some systems impose additional requirements, including compliance with a set of good governance principles (Australia notably and Singapore as part of the reporting duties). Once registered, all charities must submit an annual report including financial statements.

Governance

Compliance with a good governance framework is usually not a requirement for obtaining charity status (except in Australia) but it is clear that, for most of the systems reviewed, it is becoming a growing challenge among their respective charity sectors.

In all of the systems reviewed, some sort of governance code or guidelines exist (see Table A below), often as a result of initiatives taken by the not-for-profit sector. All regulators refer on their websites to the existing code(s) applicable in their own jurisdictions. In addition, they all have taken initiatives to instil a culture of good governance and promote best practices in the manner in which charitable organisations are managed. Most of the regulators provide on their websites, a series of practical guidance on the key principles of good governance and self-assessments to judge/test governance.

Most systems also acknowledge that good governance is not a 'one size fits all' approach, with the majority endorsing a proportionate approach to their good governance drive, as charities largely differ in terms of their size and the resources available to ensure compliance with good governance standards.

Given the above, below are some initiatives worth keeping in mind:

In Australia, where registration requires compliance with good governance standards, the Australian Charities and Not-for-profits Commission (ACNC) provides guidelines on five good governance standards that charities must observe; each of these is defined on the website with further information (links) on how to adopt them.

Furthermore, and maybe looking at the medium to long term, the ACNC has led on an initiative aimed at reducing red tape for charities in their dealings with the Australian public service. The ACNC 'Charity Passport' enables authorised government agencies to access ACNC charity data via a file transfer protocol (FTP) process. By allowing agencies to access charity data directly from the ACNC, the Charity Passport reduces duplication and the amount of information that charities have to provide to different government agencies, in line with a 'report once, use often' reporting framework.³⁰

In New Zealand, the Charities Services requires registered charities to provide information on their governance arrangements, including who governs the organisation, how they are nominated, how decisions are made, what is a conflict of interest and how conflicts of interest are managed etc. (see Table A below).

In addition, Charities Services operates a free online self-assessment tool developed for New Zealand community organisations.³¹ The focus of Charities Services is on building strong and effective organisations and communities, enabling users to assess the performance of their organisation by rating all of the important areas of the organisation's operation – direction, governance, leadership, people, administration, finances, communication, evaluation, and relationships.

Once the self-assessment is complete, the organisation has immediate access to a report with charts, scores, feedback and resources (including an action plan) to assist in further developing the organisation. This is useful, for instance, when the organisation talks with its funders and wishes to demonstrate the work it is doing, and to highlight those areas where some organisational development activity can be supported.

Because the tool is self-administered, it also presents an opportunity for charities to be open and honest about key aspects of their organisation. It also provides a benchmark for future evaluation whereby the organisation can compare any two assessments to see the progress made.

In Scotland, the Office of the Scottish Charity Regulator (OSCR) provides useful pointers to describe what good governance means for a charity, along 11 key topics, each explained with corresponding definitions.³²

30 Available from: http://acnc.gov.au/ACNC/About_ACNC/Redtape_redu/Charity_Passport/ACNC/Edu/Charity_Passport.aspx

31 Available from: <https://nznavigator.org.nz/>

32 Key topics are: conflict of interest, remuneration, governing documents, publicising your charity, disputes, trustee induction, regular meetings, management and control, dominant trustee, financial control, trustee duties. Available from: <https://www.oscr.org.uk/managing-a-charity/good-governance>

Examples:

Conflict of interest “You must do what’s best for the charity and those it supports – not what’s best for you, your friends or family, or any organisation that appoints you. What matters is how you handle any conflict of interest where it arises”.

Remuneration ‘Remuneration’ means ‘paying’ or ‘rewarding’. Generally, charity trustees in Scotland are not paid, apart from reimbursement for reasonable expenses.

Governing document: “Your governing document explains what your charity is set up to do, and how it should operate. It sets out the rules to be followed in running the charity. It may have another title, such as ‘the Constitution’. All trustees must understand the governing document, and make sure it is kept accurate and up to date”.

Table A: **Comparative analysis of the main features of selected Charity Regulators**

System	Date est.	Number of charities	Code(s) of Governance	Public register	Model of regulation	Reporting requirement	Key criteria for registration
Ireland	2014	9,061	Dóchas Governance Code	Y	Charities Regulator Independent Regulator as stand-alone Statutory Office	All charities registered with the Charities Regulator will have to submit an Annual Activity Report Most charities (except very small ones) will also have to submit financial statements	Mandatory registration Organisation must be set up exclusively for charitable purposes 15 charitable purposes Public benefit (test includes consideration of undue restrictions and charges to beneficiaries)

System	Date est.	Number of charities	Code(s) of Governance	Public register	Model of regulation	Reporting requirement	Key criteria for registration
Australia	2012	55,851	Not as such but outlines key standards that will be assessed for registration purpose Makes reference to ACFID Code ³³	Y	Australian Charities and Not-for-profits Commission (ACNC) Independent Regulator as Statutory Office	Registered charities must provide financial and operational reports (not strictly defined but guidance provided by Commission on website)	Registration voluntary but pre-requisite for tax concessions 12 charitable purposes Public benefit Must have an Australian Business Number (ABN) and meet the governance standards
Canada	1967	86,264	Guide to Good Governance: Not-for-Profit and Charitable Organizations	Y	Charities Directorate -Canada Revenue Agency	Annual information return	Registration voluntary (only to be granted tax exemption) 4 charitable purposes
England and Wales	1853	168,237	Code for the voluntary and Community sector ³⁴ New edition in 2017	Y	Charity Commission for England and Wales (CCEW) Independent Regulator as stand-alone Statutory Office	All charities must prepare financial statements and make them available on request Submit financial statements, annual report and annual return form	Mandatory registration except for charities with income less than £5K 13 charitable purposes Public benefit (no detailed definition in Charities Act)
New Zealand	2012	27,762	Not as such but guidance and self-assessment tool on Charities Services website	Y	Charities Services Independent Regulator as Statutory Office located under line Department	Submit an Annual Return	Registration voluntary 4 charitable purposes Public benefit

33 The Australian Council for International Development (ACFID) Code promotes good practice and aims to improve international development outcomes and increase stakeholder trust by enhancing transparency and accountability of the signatories. It sets out more than 50 principles and 150 obligations.

34 Available from: http://www.ecgi.org/codes/documents/vol_sector_code_uk_jun2005.pdf

System	Date est.	Number of charities	Code(s) of Governance	Public register	Model of regulation	Reporting requirement	Key criteria for registration
Northern Ireland	2008	6,009	The Code of Good Governance ³⁵	Y	Charity Commission for Northern Ireland Independent Regulator as stand-alone Statutory Office	Submit an online annual monitoring return form, covering accounts trustees' annual report and report from independent examiner / auditor, as applicable	Mandatory registration Organisation must be set up exclusively for charitable purposes for the public benefit 12 charitable purposes Governed by the law of Northern Ireland Must be an institution
Scotland	2006	24,353	Not as such but provides very useful guidance and tools	Y	Office of the Scottish Charity Regulator Independent Regulator as stand-alone Statutory Office	Keep and submit annual accounts on line. More detailed accounts if income >£100,000	Mandatory registration 15 charitable purposes Public benefit (defined in Charities and Trustee Investment Act 2005)
Singapore	2006	2,200 (of which 600 are of a public character)	Code of Governance for Charities and Institutions of a Public Character ³⁶	Y	Office of the Commissioner of Charities (COC) Independent Regulator as Statutory Office located under line Department	Charities or Institutions of a Public Character (IPC), are required to make an annual submission to the Commissioner of Charities that comprises an Annual Report (including the Statement of Accounts) and a Governance Evaluation Checklist ("comply or explain" basis)	Organisation must be set up exclusively for charitable purposes 10 charitable purposes Public benefit Organisation must have at least 3 governing board members, of whom at least two must be Singapore citizens or permanent residents

35 Available from: <http://www.volunteernow.co.uk/fs/doc/publications/revised-code-of-good-governance-jan16.pdf>

36 Available from: <https://www.charities.gov.sg/manage-your-charity/Day-to-Day-Operations-of-Charity-IPC/Pages/Code%20of%20Governance%20for%20Charities%20and%20IPCs.aspx>

Appendix 3: Public Consultation on Governance of Charitable Organisations

Executive Summary

1 Public Consultation Process

1.1 Background

The Charities Regulator carried out a public consultation process on the governance of charitable organisations. The consultation consisted of an online questionnaire, public meetings, written submissions and focus groups. The consultation period ran from 1 November to 6 December, 2017, and sought the public's views on a number of issues which the Consultative Panel set up by the Charities Regulator, required consultation on. A total of 1,193 individuals and/or organisations participated in the consultative process and made their views known.

1.2 Consultation Process

1.2.1 Online Questionnaire

- The online questionnaire received 864 responses. It consisted of 16 questions, posed by the Panel.
- The respondents classified themselves as charity trustees (24%), former charity trustees (8%), volunteers at charities (21%), paid employees of charities (33%) or having no involvement in charities – other than occasional support or donations (29%).
- More than half (58%) of the respondents stated that the turnover of the charity with which they were associated, was over €250,000, 22% had a turnover of €1-50,000, and for 20% it was €50-250,000.
- Some 17% of respondents' charities had no staff, 35% had 1-9 employees, 19% had 10-29 employees, and 15% employed more than 100 employees. In terms of volunteer numbers, 9% had no volunteers, 20% had 1-9 volunteers, 22% had 10-19, 26% had 100 or more volunteers.

1.2.2 Public Meetings

- › Three public meetings took place as part of the consultation process – in Cork (1 November), Galway (6 November) and Dublin (21 November) 2017
- › A total of 278 people attended these events (83 in Cork, 73 in Galway and 122 in Dublin).

1.2.3 Written Submissions

- › A total of 41 written submissions were received (11 submissions were from individuals; 16 from registered Irish charities; four from non-governmental organisations/groups which were not registered charities, and one representative body)
- › A further seven submissions were submitted by State Bodies and two from private companies.

1.2.4 Focus Groups

- › Two focus group meetings were hosted at the Offices of the Charities Regulator on 4 December 2017. The first group was made up of charity trustees from four small charities (with no or very few paid staff) and the second group consisted of charity trustees from six medium sized charities (with paid staff).

2 Findings

The sections below set out the findings of the consultation process for each of the key governance topics discussed.

2.1 Code of Governance Specific to Registered Irish Charities

2.1.1 A New Governance Code

There was strong support for a governance code for registered Irish charities throughout the consultation process. Most people favoured the code being issued by the Charities Regulator and approved/endorsed by the sector.

- › Among the online respondents, 96% supported having a code, with two-thirds (67%) stating it should be issued by the Charities Regulator and approved/endorsed by the sector.
- › Among the written submissions, of the 18 documents which mentioned a governance code, all agreed one was required, with 16 stating it should come from the Charities Regulator, with charities contributing to the process.
- › All written submissions concurred that any code should be succinct and proportionate.

2.1.2 Proportionality

Proportionality was the most common theme, with focus on the need to ensure that any code does not create unnecessary duplication and administrative burden and is considerate of smaller charities.

- › Of those who supported a new code in the online questionnaire, 59% favoured making it proportionate based on the turnover of the charity, 26% thought it should be based on asset size, and 31% on the number of employees. Of the 35% who favoured the “other” option, their replies proposed a combination of these criteria. There was strong support for either a combination of turnover and asset size, followed by employees and turnover.
- › It was also proposed that the code could be gradually implemented, with a potential for a differentiation between State-funded and non-State-funded charities.

- It was suggested in a written submission that the code should be designed for smaller charities and “layered up” for larger charitable organisations.
- Only two written submissions indicated that the code should be mandatory.

2.1.3 Duplication

A theme that emerged at each of the public meetings and in questionnaire responses was the need to avoid duplication. Attendees voiced their frustration at the lack of joined-up thinking from State funders, State bodies and other regulators, and the need for consistency.

- It was suggested that consistency could be achieved through a central governance code or set governance criteria for each State body/funder.
- It was also suggested that the Charities Regulator could champion a central code and it could be the main driver of the Charities Regulator’s code.

2.2 Charity Trustees – Maximum Terms

2.2.1 Limits on the Number of Terms

There was divergent opinion on the issue of whether there should be limits on how long a charity trustee should serve.

- Whilst there was general consensus among the online respondents that the number of years a charity trustee could serve should be limited (with 80% favouring this), they also warned of the difficulties this could cause small charities. If absolute limits were imposed by the Charities Regulator, a number of respondents stated that the time limit should be a recommended practice rather than a mandatory requirement.
- Questioned about the maximum number of years a charity trustee should serve, two-thirds (68%) favoured three to six years and some 30% favoured five years. Respondents stated that these maximum periods should consist of a combination of shorter (two, three or four year) terms. These time periods should be dictated by the governing documents of the organisations (e.g. the National Schools governance manual recommends a maximum of two four-year periods for members of boards of management).
- The issue of charity trustees’ length of service resulted in the most wide-ranging opinions at each of the public meetings. Concerns were raised at both the Cork and Galway meetings regarding very small charities and the effect of a code, if maximum charity trustee terms were introduced. It was felt many rural organisations do not have the personnel to implement this, with a number of charity trustees in attendance repeatedly stating they were over their term limit but no new charity trustees were coming forward. It was mentioned that a number of organisations have one charity trustee working alone to keep the organisation afloat.
- At the focus group meetings, it was noted that despite the difficulties in finding new charity trustees and the loss of good charity trustees experienced by the organisations in attendance, the boards of all of the organisations represented at the meetings had (and recommend) some form of maximum terms.
- Among the written submissions received, caution was expressed about limiting the amount of time a charity trustee should serve on a board given that it is hard to recruit charity trustees. Another submission recommended maximum terms to professionalise the management in the sector. Other written submissions indicated that there should be a limit set by the charity, as opposed to the Regulator.

2.2.2 Rotation of Charity Trustees

- › It was suggested that rotation prevents a dominant mind (or one or two dominant minds) from controlling a board. It protects against inappropriate relationships developing between a CEO and a Chairperson. It prevents stagnation. It ensures equal opportunities and women featuring more prominently on boards and it contributes to the transparency of an organisation.
- › Some written submissions recognised the dangers of a CEO acting as a de facto charity trustee or being elevated to the board of charity trustees on expiry of employment as CEO. It was also suggested there should be clarity with regard to the role of the charity's founder in governance terms.
- › It was suggested at the first small-charities focus group that departing charity trustees could take on another role within an organisation (e.g. volunteer) to prevent knowledge loss. This group also discussed more collaboration between similar organisations with a view to "charity trustee swapping".
- › The second medium-charities focus group felt maximum terms allow charity trustees who want to, to depart from a board. This group felt maximum terms resulted in charity trustees making huge efforts for a short time, with organisations benefitting greatly from their knowledge and energy. This group echoed the fact that charity trustees are then more likely to stay on in another role.

2.3 Charity Trustees – Suitability (Training and Skills):

2.3.1 Checks on Charity Trustees

- › There was strong support among the online respondents for reasonable checks on the suitability of charity trustees, with 95% favouring this. Reasonable checks included the current checks under the Act (e.g. not being adjudicated bankrupt, not being part of a company in the course of being wound up, not having been disqualified as a charity trustee, etc.).
- › There was support for all charity trustees to be Garda-vetted. A number of respondents believed that charity trustees also needed to show they have the professional skills to meet the needs of the vacancy they were going to fill.
- › The responsibility for checking the suitability of charity trustees fell between a number of bodies, according to the online respondents. These bodies include the charity itself (through a nominations board, the whole board and the Chair), the Gardaí and the Charities Regulator.

2.3.2 Training and Support

- › Some 21 written submissions backed the provision of more help and support to charity trustees. Many indicated that very specific training and support was required, with others proposing efforts should be concentrated on recruiting more charity trustees.
- › The need for charity trustee training was a strong theme that emerged at each of the public meetings. It was suggested that this should be compulsory and by way of continuous up-skilling/evaluation or re-fresher training every few years. There should be a particular focus in this regard on the role of the Chairperson and Secretary to the board.
- › It was mentioned that training could potentially lead to a charity trustee QQI qualification, giving something back to charity trustees.
- › The general consensus at each of the public meetings favoured charity trustees having the relevant skills to carry out their legal duties.

- › Suggestions at focus group level included that new charity trustees make a declaration of suitability, mandatory online training, and the need for a nominations process outlining the responsibilities of the CEO and the board.

2.4 Barriers to Good Governance

2.4.1 Lack of Knowledge

- › The main barrier to good governance emerging from the consultation process was a lack of knowledge and understanding of what good governance is and what is expected of the board of an organisation.
- › This lack of knowledge and understanding of what good governance is and what is expected of the board of an organisation emerged as the single biggest barrier for online respondents, followed by a lack of expertise and a lack of knowledge of their legal obligations. Respondents also cited the absence of dedicated, low cost training for charity trustees as being a barrier, along with an inappropriate skills mix on some boards.

2.4.2 Lack of Resources

The lack of knowledge was followed closely by a lack of resources, time and money.

- › Charities - both big and small, have a cost associated with good governance. Individuals at the public meetings mentioned how their organisations had contracted auditors or solicitor firms to inform them of their duties, at a high cost.
- › It was further suggested that there is a role for State funders to ensure funding received includes an element for governance training.
- › Other barriers mentioned included recruiting new charity trustees, monitoring and auditing volunteers, a lack of strategic planning by boards of charity trustees and the lack of data on the subject in Ireland.

2.5 Model Documents and Guidance

Respondents to the online questionnaire were asked to rank in order of importance the areas relating to the governance of charities, on which they believed charity trustees required guidance and/or model documents.

- › The principal duties of board members and keeping adequate books of account emerged as the top priorities. These were followed by the principal duties, responsibilities and powers of the Chairperson, and risk and audit committees. In follow up comments, guidance on conflict of interest and more formalised training for new board members were also raised as issues.
- › It was raised that guidance documents needed to be short and written in plain English in order to encourage the next generation of charity trustees.
- › Public meeting attendees suggested guidance around board induction packs, specific guidance for the chairperson and secretary roles on a board, the 'do's and don'ts' for boards, volunteers and employees, a model strategic plan, a model annual report and any template documents that could assist an organisation in best practices.
- › The focus group meetings suggested templates or checklists for different size organisations, including codes of conduct; conflict of interest policy; board handbooks; checklists for financial controls and charity trustee screening. It was also suggested that training workshops could be provided, with the Charities Regulator becoming a resource for charities.

Appendix 4 - List of Authors of Written Submissions received by the Panel as part of the Public Consultation on the Governance of Charitable Organisations

Individual Submissions
David Buttimer
Chris Cassidy
John Drinane
Niall Fenton, Cormac McConnell, Deirdre McKenna, Breda Rafter, John Webb
Frank Keane
Jacqueline McGrath
Orla Ní Chomhraí
Maureen O'Sullivan
Richard Ryan
John Warren
Registered Irish Charities
Bedford Row Family Project
Carmichael Centre
COPE Galway
Donegal Volunteer Centre
Dublin City Volunteer Centre
Enclude
Galway Volunteer Centre
Irish Penal Reform Trust, Bedford Row Family Project, Bray Community Association Team, Care After Prison, Cork Alliance Centre, Irish Association for the Social Integration of Offenders, Jesuit Centre for Faith and Justice, PACE Prisoner Aid through Community Effort, Release Prison Partnership
Kerry Volunteer Centre
Look Good Feel Better
Meath Volunteer Centre

Order of Malta
Social Justice Ireland
St Stephens Green Trust
The Wheel
Volunteer Ireland
Non-Governmental Organisations Groups
Dóchas
Immigration Control Platform
Institute of Directors
Irish Council for Civil Liberties
Representative Bodies
Governance Code Working Group
State Bodies
Bord Na Móna
Citizens Information Board
Department of Children and Youth Affairs
Department of Communications, Climate Action & Environment
Department of Housing Planning and State Government
Department of Justice and Equality
Housing Agency Regulation Office
Private Companies
Good Governance Solutions
West Training and Development

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