MHA

Using Conflict as a Catalyst for Change

A Guide for Embracing, Managing and Mitigating Conflict Within Your Charity

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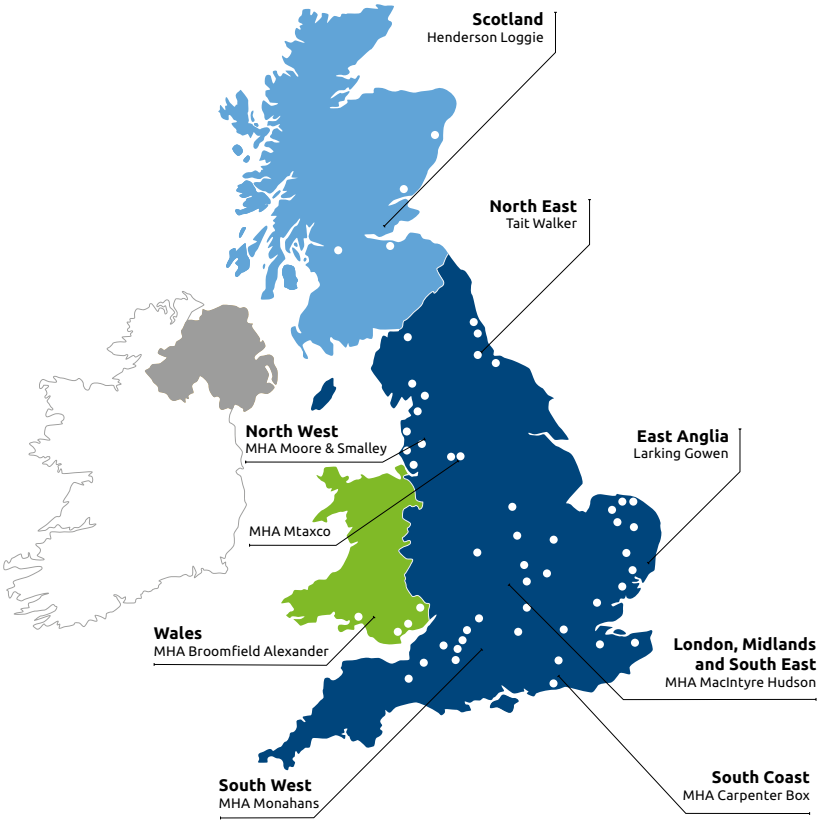

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What is Conflict and Why is it so Significant for the Third Sector?

The dictionary defines conflict as "an active disagreement between people with opposing opinions or principles". To differ, to be incompatible, to disagree, all of these sound like negatives for any organisation.

The Charity Commission defines trustee conflict as "a conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity".

It is essential to understand that conflicts affect all charities, large or small, simple or complex. Trustees have a legal duty to act in their charity's best interests, they are expected to understand what conflict is, how it affects their organisation and to deal with any issue appropriately.

Therefore, it is fundamental that charities follow the guidance issued by the Charity Commission.

This document recognises that conflict takes many forms over and above the guidance issued by the Charity Commission and other Charity Regulators. It seeks to cover the various types of conflict that you could come across and recognises that some conflict can actually be a positive for the charity.

In each article we will cover the issue, the good, the bad and the best practice advice, along with some practical hints and experiences.

We hope you find this year's guide useful and if you would like to discuss any of the issues raised with our experienced team, please contact one of our regional charity experts.

Conflict with Your Trading Subsidiary

The Best Interests of a Charity are not Always the Same as its Trading Subsidiary

Jamie Davidson

Henderson Loggie

As many charities are finding increasing pressure on their traditional sources of income, there is a need for charities to find new and innovative ways of funding the charity.

This can give rise to an increased amount of trading activities and the main reason a charity sets up a trading subsidiary is if these activities are non-primary purpose (i.e. the trading activity does not directly advance the charity's charitable purposes) and in excess of the HMRC small trading exemptions. Trustees need to carefully consider whether to set up a trading subsidiary and how to manage this relationship between the charity they are ultimately responsible for and the trading subsidiary in a way that avoids conflict.

The trading subsidiary should have its own separate board of directors

Setting up a Trading Subsidiary

As a charity trustee, the main consideration should always be 'what is in the best interest of the charity?' The creation of a trading subsidiary, in theory, shields the charity assets from the risks associated with trading, but care must be taken that the charity's assets are not put at risk from the need to support the subsidiary. The Charity Regulator may open an investigation if they do not consider the support the charity is giving to the subsidiary to be in the best interests of the charity. Establishing and managing the relationship, responsibilities and transactions between the charity and subsidiary is key and there are several key points to consider:

Governance

There needs to be a clear line of responsibility to the charity for the trading subsidiary operations. The trading subsidiary should have its own separate board of directors and should include at least one person with experience of commercial activity. Whilst it is usual that there are some trustees/directors in common, it is recommended that the charity has trustees who are not directors of the trading company and the trading company has directors who are not trustees of the charity. This helps trustees put the interest of the charity first, particularly where there may be conflict with what is best for the trading subsidiary. It can facilitate healthy debate between the trustees of the charity and the directors of the company to ensure conflicts are resolved in a way that is appropriate for all parties and it also eases separation if the trading subsidiary was to fail and can help mitigate the reputational risk of a failed subsidiary.

Shared Resources

It is very common for charities and their trading subsidiaries to share resources, such as staff, premises and equipment. It is important where there are resources shared that the trading subsidiary pays a fair rate for the resources and there is a formal arrangement in place. For staff where payroll is paid by the parent charity, this can simply be recharged on an apportioned basis if they spend time working on both entities. The regulator has, in cases we are aware of, made clear that where the trading subsidiary has use of space in the charity's building, there should be a formal lease agreement in place and rent should be charged at open market rate.

Funding

There are costs and time associated with setting up a trading subsidiary. The Charity Regulator would only expect a charity subsidiary to be set up after charity trustees have considered the risks of the trading subsidiary and that costs do not outweigh the benefits.

The Charity Regulator is likely to recognise that initially a trading subsidiary requires funding and support. However, it should always be kept in mind that the aim of the trading subsidiary is to generate income for the charity.

When a charity chooses to invest in a trading subsidiary, this is no different to an external investment made by the charity and should only be undertaken if there is expectation of a profit in the long term. Initial finance may be provided by the charity through issuing of share capital or a loan. It is critical if there is a loan that there should be a formal loan agreement in place between the entities. The loan should be on a commercial basis and include both appropriate repayment terms and a market level of interest charged. If the subsidiary manages to obtain external funding, the charity trustees need to consider the risk to their own assets if they are asked to provide a guarantee and if this is in the best interest of the charity.

Financial Difficulties

Even with the best intentions and plans, not all trading subsidiaries succeed. If there are extended periods where the subsidiary is operating at a loss, charities should consider the best action for the interest of the charity. It is important to remember that the reason the trading subsidiary was set up was to both protect the charity's assets in the trading venture and generate additional funds for the charity. In instances where the only reason the subsidiary is surviving is because the charity is heavily supporting it and getting no benefits, this can cause issues with the regulator as there is a lack of evidence to demonstrate keeping the subsidiary open is in the best interests of the charity and that trustees are sufficiently fulfilling their legal duties with care and diligence. It is vital in these instances that charity trustees focus on minimising any losses to the charity.

There can be conflict between what is best for the charity and what is best for its trading subsidiary. Charity trustees have a legal duty to act in the interest of the charity and we have seen instances where the Charity Regulator has opened investigations where this has not been clear. The trustees in these cases have had to spend time dealing with the enquiry and ultimately putting in place arrangements such as commercial rent, formal and commercial loan agreements and separation of the board which should have been in place. Therefore, it is better to set up on a proper basis in the first place!

What to do to Avoid Harmful Conflict:

- Take careful consideration prior to setting up a subsidiary to ensure there is enough assurance to demonstrate that the rewards and benefits outweigh the risks and costs;
- Appoint a different board of trustees to board of directors;
- Put agreements in place for any shared resources at market rate;
- Ensure loans provided by the charity are under a loan agreement with repayment terms and market rate interest;
- Regularly scrutinise and consider the trading subsidiaries' results.

Trading subsidiaries are set up to both protect the charity's assets in the trading venture and generate additional funds

How we can Help

We can perform a governance, risk and structure review and provide advice. If you would like to speak to a member of our team about how we can help, then please get in touch with your local MHA member firm.

Conflicting Roles

Too Little Monitoring can Lead to Fraud, how to Balance the Freedom Given to the CEO Versus Maintaining Good Board Oversight

Simon Brown

Tait Walker

"Chief executive of small charity on trial accused of £700,000 fraud".

"Trial begins of former charity chief executive".

"Former chief of local charity jailed for seven years for fraud".

Unfortunately, these types of things do happen! The questions are, what went wrong and what can we learn from it?

Detailed review and checking of controls are not one of the auditor's functions

Trustees (who are ultimately responsible) delegate management and the day-to day running of the charity to its employees and management team. Of course, the trustees having delegated this, have firstly ensured that the charity has systems and controls which are designed to mitigate the risk of fraud from occurring – right?

They do this by ensuring that the board (maybe the treasurer) regularly checks and tests controls to ensure that controls are being operated as designed and documented! No?

Hands up… Who Relies on Auditors to do This?

Who actually knows what auditors do as part of their visit? Detailed review and checking of controls are not one of the auditor's functions. It's a board function to ensure that systems and controls are robust, have a good chance at preventing and detecting fraud and error, and operate as the control is documented and designed to!

There can be a conflict between trusting your CEO and monitoring their actions.

Case Study – What Went Wrong for the Charity Which Created Those Headlines?

The main issue was that too much control was given to the CEO, such that they were able to bully and dominate their small team, overriding what little controls were actually in place. The board also were not financially minded and received too little financial information, too late. The auditors seemingly did not liaise with anyone beyond the CEO during their audit.

Dual Authorisation on Bank Accounts

A key control, as a final step to stop misappropriation of funds, is dual authorisation (of cheques and BACS). In this case the CEO convinced one of the other authorised signatories to counter sign blank cheques, as it would 'just speed up the process and stop issues if one of them was out of the office!'

Therefore, a perfectly effective control was overridden and yet no one was aware that this was happening. Indeed no one was routinely checking the cheque book (or anything else), so this went on unnoticed for many years.

Board Minutes

The CEO would attend all board meetings and would helpfully take the trustee minutes. The fact that these were subsequently amended by the CEO to award generous bonuses to themself is another way in which funds were diverted. Again, a simple control could have been that previous month's minutes were reviewed at the next meeting and signed by the chair of trustees as 'a true record'. It is also helpful that the board, where employees are invited, keep a section which is 'confidential to members' and excludes all employees.

Whilst payroll was 'authorised' by the deputy CEO, no board member was regularly authorising and/or checking rates of pay back to contracts, otherwise the multiple fraudulent bonuses the CEO had awarded themself would have been obvious. The non-charity-specialist auditor also failed to disclose remuneration of employees earning over £60,000, again this might have made it obvious to the board.

Capital Projects

A capital project leads to large expenditure, which can be spread over a number of months. This can also be a perfect opportunity to 'hide' fraudulent expenditure, as it is capitalised and has no comparative to sit against. Also, if you create fraudulent photocopied invoices, once in control of the already counter-signed chequebook, the CEO could write their own cheques to pay these 'invoices'.

When commencing a capital project, a good control is to ensure (beyond the requirement to obtain at least three quotes) that the project is monitored against the original board approved expenditure level. Clearly the capital project should be documented and detailed in the board minutes. Then where variances arise, ensure that these are investigated fully and explained, particularly so that overspend can be reviewed by the board, who can take action as necessary and authorise accordingly, documenting as such.

Standing Data

An increasingly common type of fraud is where the payment details for suppliers are 'updated' on the system. This can often be after receipt of an email asking for these to be changed. Can we and should we trust emails? The answer is always no, as emails can easily be compromised and hacked!

Picking up the phone and confirming any change of standing payment data is essential, to ensure that the email is genuine.

In our case study example, fake suppliers and fake purchase invoices were entered onto the system. Therefore, ideally, you need a control to ensure that, a) only authorised people have access to these details, b) that both new standing data is verified prior to entry onto the system, and c) that any changes to existing standing data is verbally confirmed (perhaps being subject to dual authorisation at each stage).

How was the Fraud Uncovered and Subsequent Actions?

The finance person was alerted when a 'purchase invoice' for a capital project did not add up, due to a VAT error. On contacting the supplier to ask them how he should proceed, they pointed out that they had never raised an invoice for that amount on that date.

With suspicions raised, the finance person spoke to the board directly, who contacted a specialist forensic accounting firm. With their help, the board took positive actions to suspend the CEO whilst an investigation took place. Dismissing an employee may be the wrong thing to do, since the employer then has no rights to call that individual in for questioning etc. The fullness of the investigation found more than £700,000 of fraud and with their specialist help, were able to suspend personal assets and mount a successful legal case against the employee.

Don't Worry you Have an Audit Each year!

It transpired that a couple of years earlier, the finance person had approached the CEO when he was unsure of something that 'didn't look right', only to be bullied into submission for asking such a ridiculous question. In spite of a 'good telling-off', the finance person then reported the same suspicions to the Deputy CEO, who themselves took no positive action and suggested that 'if there is a problem, the auditors would find it!'. Sadly, neither the Deputy CEO, nor the finance person actually told the auditor of their concerns, so the auditor wasn't aware to look for it, adjust their risk profile accordingly and almost inevitably as a result, didn't spot any fraud as part of their annual audit process.

What to do to Safeguard Against Fraud?

The key point of the article is that systems and controls are a board responsibility. Therefore, trustees must ensure that they either themselves carry out regular testing of controls, or they employ an internal auditor to do so on their behalf.

It is essential that the board regularly checks key approval processes (e.g. payroll, large expenditure payments and capital projects etc); ensuring that the board have an open channel for all staff members to approach them directly; encouraging a culture of openness; and, empowering staff to be vigilant and report suspicious activity.

Of course, if you yourself have any suspicions, the key is to take action rather than 'delegate' it to another employee. Get in touch with the board, they are responsible, so it is their call to make. Then as required, take specialist advice, quickly, before dismissing or alerting the accused!

How we can Help

If you would like to speak to a member of our team about how we can help, then please get in touch with your local MHA member firm.

Conflict Between the Needs of Today with the Demands of Tomorrow

How can Trustees Balance the Need to Spend Today with that of Reserves, Investments and Future Strategies?

Sarah Case

MHA Broomfield Alexander

You need to be very clear about your reserves policy and the current level of reserves

The Trustee Dilemma

So, your charity has reserves, fantastic, it gives both the employees and the trustees the comfort that there is a pot of money if it was needed, if say funding was lost, or an unexpected expense occurred. However, the age old problem comes of how much is too much and also when is it appropriate for you to use them? The conflict of spending now versus saving for the future; meeting the needs of today whilst securing the longevity of the charity.

Solving this problem lies with the board of trustees, those people who decide the strategic direction of the charity. Of course, the CEO and senior management team would be part of the strategic discussions, but the ultimate decision making on any spending of reserves has to lie with the board.

When is Spending Reserves a Positive Strategy?

There are plenty of good reasons to spend some of your charity's reserves, however to do this you need to be very clear about your reserves policy and the current level of reserves. Have the board agreed and completely thrashed out the reserves – not just rubber stamped six months of expenditure? Only once you properly understand how much you need and why you need it can you decide if you are able to spend any of it.

Equally as important is knowing the reserves figure at the current date. Year end financial statements can be nine months or more out of date and the reserves picture can have changed dramatically in that time. It is also crucial to understand the split of restricted to unrestricted reserves – ensuring that trustees have a clear picture of the "free reserves", not just the balance sheet total. These two figures can be a million miles apart and incorrect information could cause the charity to spend money that is reserved for specific projects.

Management accounts should always have a running total of reserves against budget and policy to keep trustees informed.

Good Reasons to Spend can Include:

- When you simply have accumulated too much and have the capability to fund extra services, projects, capital spend that will assist service users or enable the charity to move forward.
- When you know that funding is slowing down or ceasing and in order to replace that level of income you need to commit to a project or fundraising campaign etc. Spending now to reap the benefits in the future.

When Spending Doesn't Help the Charity

There are occasions where it is possible to justify spending reserves, but the long term impact for the charity is detrimental, examples would be:

- Plugging a gap in the funding to continue to provide services where there is little to no chance of obtaining longer term funding for the service. This prolongs the inevitable, it drains resources and reduces the amount of reserves available to commit to a project that could yield future benefits. Whilst it is a hard decision to cut any programme, the financial implications must be reviewed and the longer term consequences determined.
- Where you would be spending reserves that are invested for the longer term and provide annual income that is already committed. Often, reserves are held as investments that themselves generate valuable income for in year spending. To dig deep into these pots can have significant longer term implications. Any strategy that includes spending reserves allocated to investments should be undertaken with considerable caution.

What Should we Consider as a Board Before Making any Decision?

The charity needs to take stock and consider creating/updating a long term strategy. How long is long term, is for the board to decide, but at least three years could be considered sensible and anything after that seen as star gazing. The long term plan should thoroughly review the organisation, what it wants to deliver and how will that be funded. The plan should dovetail with the reserves strategy which should flush out whether there is any excess in reserves (or deficit). Excess reserves may need to be spent or if there will be gaps in income going forward, these may need to be planned for and strategies implemented.

If your organisation has this level of awareness, then these documents coupled with a comprehensive discussion document, giving a reasoned and well researched argument as to why reserves spend would be appropriate would be enough for the board to make decisions on.

What to do if the Board are in Conflict?

There will always be trustees who are reluctant to commit to spend any of the reserves, conversely there will always be those that want to deliver services outside of the annual budgeted income – in that respect it's no different to how individuals handle their finances. All any organisation can do is provide comprehensive evidence as to why the strategy is best for both the charity and its beneficiaries. The evidence provided should make the decision-making easy. Research and communication remain key to any strategy.

Case Study

A wildlife charity has historically been the recipient of large pots of government funding; it had reasonable reserves and was successful in delivering its aims and objectives. The tightening of public spending started to create a precarious situation for many of its projects and staff cuts looked likely. The reliance on Government funding had meant that whilst membership was important, it hadn't been a focus for a number of years. So, what was the Charity to do? The trustees knew they needed to generate more income, as with many charities in the current climate, the big question was how? Risk was going to play a large part in the trustees' decision making process, as whilst they had adequate reserves, there wasn't an excess to gamble with.

The trustees were provided with a number of scenarios and as with any board, some members are more risk adverse than others and some are born entrepreneurs, those see speculating to accumulate as part of developing. A mix of strategies was therefore required, using different levels of funding commitments, have different risk profiles and could also work together to produce maximum return.

They ultimately decided to focus initially on increasing membership, this was a reasonably low risk and low expenditure strategy, however the returns once the recruitment costs had been taken into account were also low and wouldn't themselves plug the gap. The second strategy was to commit to capital expenditure to ensure once the members were engaged, the visitor centres were a desired destination and once there, there were reasons to spend money. This was the riskier strategy, both from the initial commitment and the ongoing cash flow.

Both strategies complimented each other from a risk perspective and timeline perspective, cash flows were balanced and reserves impacted only to the extent of affordability. These weren't easy decisions for the board to make, but the organisation had access to good information, clear plans and objectives, great research and a good mix of diverse board members.

How we can Help

If your board can't agree, it's often worth obtaining an external opinion. Is this strategy a well reasoned, thought out plan? What do the auditors, lawyers, funders etc. think? Seek a variety of opinions that can look at the strategy from different perspectives. If you would like to speak to a member of our team about how we can help, then please get in touch with your local MHA member firm.

Conflict Between the Board and the CEO

What Happens When Relationships Break Down?

Tracey Johnson

MHA Moore & Smalley

The role of the board is not to "rubber stamp" but to provide effective challenge

The relationship between a charity's board of trustees and the CEO is a fairly unique one.

Each has their own respective role to play, but it is the overall team effort that keeps the charity on track and ideally takes it from strength to strength, so that it can make that all important difference to its beneficiaries and society. The board's responsibilities include; setting the overall strategy, fulfilling its legal responsibilities, maintaining high standards of governance and holding the CEO and management to account. Their role is to offer support, as well as challenge to the CEO. The CEO's responsibility is to manage the day to day activities of the organisation and its staff, to deliver the strategy and the best possible outcomes. What both parties should have in common is an emotional investment to the cause – all working to the same goals and doing what they do because they care deeply about the work of the organisation. That seems fairly obvious doesn't it? So, what are the ingredients that make for a happy partnership and why do things sometimes go wrong?

What are the Main Ingredients to a Successful Relationship?

Mutual Respect

It is vital that both parties have mutual respect for each other and that they understand each other's skill sets, roles and responsibilities. Many CEO's can be paralysed by a board or board members who gets overly involved in the detail of day to day operations and loses sight of the big picture. This starts with the recruitment process on both sides – making sure that both the CEO and the trustees have the appropriate skill sets and relevant knowledge to carry out these respective roles. However, respect also needs to be earned and maintained and this is something that needs to be worked at. Building levels of trust and understanding outside of board meetings can be a good way to achieve this.

The Right Sort of Challenge

As we have already said, the role of the board is not to "rubber stamp" but to provide effective challenge, and to be effective this must be healthy and constructive and not unnecessarily aggressive. This sort of challenge need not result in conflict. CEO's should ensure that sufficient, relevant information is provided to the board in advance of meetings and board members should ensure that they have read it before the meeting.

The meeting can then be used for "healthy debate", acknowledging that opinions may differ and there is more than one route to a destination, but remembering always what the common goal is!

The Role of the Chair

The Chair can play a vital role in setting the tone and culture of meetings and leading by example. Maintaining regular contact between meetings and keeping appraised of any potential areas of conflict can help to diffuse a potentially difficult situation. The Chair ideally needs to have sufficient emotional intelligence to be able to work with a range of personalities and to know when a difficult conversation needs to be had or a difficult decision made.

It is inevitable and generally desirable that "good" conflict will arise from time to time, but with the right approach and a willingness to cooperate, differences can be resolved, and the challenges that have been overcome will often result in the charity going from strength to strength.

As one Chair has recently commented: "We are not perfect, but we all have a strong will to do the right thing".

What can Cause the Relationship to Deteriorate?

On the other hand, conflict can be a negative, not a positive influence in the relationship between the board and the CEO, leading to irreconcilable differences. Conflicting personalities, conflicting motives, or both may lead to:

- Lack of understanding of respective roles;
- Inappropriate skills or knowledge to carry out roles;
- Lack of mutual respect;
- Pursuit of personal goals to the detriment of the corporate goal;
- Dominant personalities on either or both sides;
- Influence of internal politics;
- Poor or miscommunication.

The processes discussed previously can help to avoid or manage these situations. In addition, formal appraisals for both the CEO and the board are a useful mechanism to monitor performance, set objectives and identify any areas of performance which require extra support. They are one means of finding whether both parties are "on task", and for teasing out any potential conflicts before they escalate into a major issue. A survey carried out by the ACEVO Governance Commission found that 65% of respondents carried out a formal annual appraisal of the CEO, but less than half had ever carried out any form of appraisal for board members.

What can Happen When the Relationship Goes Wrong?

The following case study illustrates what can happen when some of the issues highlighted above are not dealt with appropriately, at the right time.

The charity in question had a very dominant CEO, a weak board and a Chair who admittedly tried to deal with the situation, but was unable to manage either the CEO or his fellow trustees. The CEO was a longstanding employee with considerable influence and well remunerated. The trustees were not used to challenging him and were probably frightened to do so. When the charity hit hard times, not only did the CEO refuse to accept a salary reduction, he tried to introduce a final salary pension scheme for the Senior Management Team. Whilst some attempts were made to cut costs elsewhere, the hefty (some would say excessive) staff costs were not only a drain on resources, but deterred potential funders. Despite the best efforts of the Chair to agree a restructuring of the staff cost base, the CEO refused to back down and the Chair could not gain the support of his fellow trustees, who were unwilling to tackle the conflict. Understandably, the Chair resigned. One or two Chairs came and went for various reasons, but fundamentally they had inherited a situation which needed to be dealt with by someone who was able to stand up to the CEO, who was clearly only putting his own, not the charity's, interests first. Eventually, a new Chair was appointed who was able to address the issue and the CEO was eventually replaced, but not before a battle had been fought from an employment law perspective. Under its new leadership, both at board and management level, the charity has gone from strength to strength. The trustees and the CEO now work together with a common purpose and the relationship is allowing the organisation to blossom.

What to do if Things do go Wrong

If there is a sense that the conflict between your board and the CEO is moving from the positive end of the scale to the negative, then the most important thing is to try to remedy the situation as soon as possible. The repercussions of allowing things to escalate may result in serious financial or reputational consequences, poor staff morale and the decline of the charity. A simple misunderstanding between parties can sometimes be easily put right by using an internal or external third party as a sounding board. In more difficult situations, independent mediation may help to avoid settlement agreements with CEO's which can be expensive and not necessarily in the best interests of the charity. However, as illustrated above, it may be necessary to take one step back to take two steps forward.

Where to Find More Information

The recently updated Charity Governance Code (www.charitygovernancecode.org/en/pdf) places considerable emphasis on the role and behaviours of the board and the Chair and their interaction with management. There is also a useful diagnostic tool to help charities assess how their current standards of governance compare with the Code. Whether or not you recognise your own organisation in some of the examples described above, we would recommend making use of this material. It may help you to turn bad conflict into good conflict, or to maximise the outcomes from good conflict between your board and CEO!

A simple misunderstanding between parties can sometimes be easily put right by using an internal or external third party as a sounding board

How we can Help

If you would like any assistance in reviewing your current governance, please get in touch with your local MHA member firm.

Managing Priorities

The Conflict Between Beneficiary Needs and Finite Resources

Helen Blundell

MHA MacIntyre Hudson

Decisions that have an impact on the ultimate beneficiaries are much harder to make

Whether you are part of the board of trustees or the senior management team, you will inevitably sometimes face a difficult decision about how to make resources stretch to meet demands. Perhaps one springs to mind? Was it a negative process, leaving a bitter taste, or were you able to embrace the conflict and end up in a better place?

As the demand for services increases, there is often a resource constraint – usually in terms of finance or staff availability. Whilst for most corporate businesses, profit is the driving force, for a charity, decisions will be more complex.

- As a charity, your driver has to be fulfilling your charitable purpose. However, when resources are limited and the choice is between one essential service and another, how do you begin to prioritise?
- Is it most important that a service is financially viable?
- Can you cut the staff time allocated and still deliver a safe and valuable service?
- Is what the service users want and need more important than whether you can afford to run the service?

The challenge is how to measure the contribution of one activity compared to that of another.

- For trustees, you have a legal obligation to act in the best interests of the charity. So, does that mean if an activity makes a loss it should be cut? Not necessarily.
- For the senior management team much closer to the ground, if an activity is oversubscribed, does this mean that it should be expanded? Not necessarily.

One of the benefits of the governance structure of charities is that it can deliver an opportunity for clear thinking. Many people, whether staff or trustees, are involved in their charities because they have a real heart for their charitable cause. That can make decisions that have an impact on the ultimate beneficiaries are much harder to make.

The senior management team who are at the front line dealing with the demands of beneficiary needs and delivering operational activity may be much closer to service users and feel more keenly the potential impact of a cut to services. The trustees in their strategic role may be more detached from the day to day delivery and may be able to take a more objective approach. The role of the trustees here might be to ask searching questions and to help refresh the approach to the conflict.

On the other hand, trustees, particularly those comprised of service users, may have a particular affinity for a service and be passionate about trying to retain it. The senior management team who are more involved in the process can recognise how a service requires a disproportionate investment of time or money for the impact it makes on delivery of the charitable purposes.

Where there is good organisational governance, then trustees and senior management would be anticipating resource constraints ahead. They might already be reflected in the organisational risk register. Whether expected or unforeseen, trustees and senior management need to respect the different roles and use them as a resource to help reflect on how to manage the conflicts for the best outcome for the charity.

Bad Conflict

Charity A, as part of its work, was managing a supported housing facility which benefited its client group. The Housing Association for whom they were doing this funded the staff costs, but only to the extent of net pay. Charity A was subsidising the cost of providing supported housing. The charity was not monitoring the costs associated with this aspect of its work because they could see the value to their clients, but it was gradually eating into its reserves. Eventually Charity A ran out of reserves and had to look carefully at each area of its work. Prioritising the service without understanding how it was draining financial resource eventually put the whole existence of the charity at risk. Once Charity A understood the conflicts and the need to understand the factors at play, they challenged the funder to either meet the cost or they would walk away. They recognised that failure to act would mean that there would potentially be no services at all for their clients.

Good Conflict

Charity B delivered an outreach service as part of its suites of activities for its service users. Funding ceased for this service and the trustees and senior management team recognised that either they ran the service and cut back in other areas or they cut the service. A difficult decision was taken to close the service, as to run with no funding would compromise the ability to deliver other essential services. The service had been running for a long time with the support of long serving volunteers who felt disappointed that they would no longer have a value.

Charity B consulted with its service users about how they could support them in a different way that would be self-financing. The service users thought this was an even better idea and the volunteers were able to re-engage. That hard, but informed decision required the charity to rethink. Recognising the competing priorities and understanding the facts, Charity B ended up with a positive outcome from conflict. Conflict is good when decisions are not made in isolation but as part of the wider offering and solution.

What to do When Faced with a Conflict

Don't make an uninformed decision. Get all your facts straight and weigh up the different scenarios.

- What impact does the service have?
- How many service users does it reach?
- What is the financial cost?
- What staff resources does it require?

You will need to reflect on which is the limited resource. If you release resource from one area, does this have sufficient impact to add value to other areas?

Conflict is good when decisions are not made in isolation but as part of the wider offering and solution

How we can Help

If you would like assistance in assessing the full cost of services or would like us to facilitate discussion on how to assess service values and priorities, please get in touch with your local MHA member firm.

Conflict Amongst Your Trustees

Managing Diversity of Backgrounds and Opinions When Diversity Causes Conflict

Robin Evans

MHA
Carpenter Box

Having a diverse board of trustees can bring many positives

Charities' boards of trustees are normally made up of a diverse group of people, with differing skill sets and backgrounds. As a result, conflict often occurs where trustees have opposing opinions.

However, conflict is not always a bad thing and having a diverse board of trustees can bring many positives. Trustee diversity is being encouraged by the Charity Commission. This article will discuss the areas where conflict can arise, provide a real life case study of a fractured board of trustees and what they did to overcome it and provide some tips for your own board of trustees.

Our world is evolving, both culturally and ethnically, as we grow to understand the impact of religion and gender, background and other characteristics. As a collective of likeminded individuals looking to gain advantages for our charities, our beneficiaries and our communities, it is important to actively cultivate the differences between those sitting around the table and those charged with governance.

A diverse board can unintentionally also lead to a divisive or critical environment that has to be controlled. We can assume that each trustee has been chosen for a specific role, that their experience will often lead to different conclusions being drawn, that each is informed and intelligent and all have an understanding of your charity's pursuits and goals. Therefore, let's accept the tensions that naturally arise, and learn how to manage them, rather than it turning into a steadfast dysfunctional conflict that disrupts every meeting and the decision making process.

Aside from an expected level of board conflict, within the volunteer sector you also seek to engage the public interest and capitalise from the benefits of an involved community. There is a constant fear of offending the sensibilities of people who may otherwise be willing to step up to a trustee role and bring skills and passion to the cause.

Where Conflict Lies

Communication

How do you talk to each other? The communication processes in place need to be adequate for new trustees being appointed, as well as established representatives of the board.

Information provided at meetings needs to be comprehensive, complete and consistent, while serving the different needs and interests that may seem to compete with each other around the table. While each and every person may have a talent, they should also have a full appreciation of what their peers are involved with; it will harbour acceptance and respect for colleagues.

Differences of Opinion

Are differences personal or genuinely debatable for a higher purpose? While the charity's objects are agreed and articulated amongst the trustees, is there a true shared view of mission and vision? It can be surprising how a diverse group of people can value similar targets with such different emotional receptors! However, we want our trustees to care, to be human and understand other people's concerns and fears, acknowledge that feelings matter (certainly in this third sector where the cold executive pursuit of commercial profiteering is a world away).

Never be afraid to reiterate the charity's message. It is important that to maintain a steady ship, the board must stay balanced and 'on point'. Make sure those involved grasp some of the wider issues binding all charities – the importance of confidentiality, use of volunteers, fundraising principles, training they should expect and responsibilities of a trustee etc.

There can be an awkward balance of power amongst a board of trustees. Certain roles may present a natural defensiveness over others, e.g. the Chair with overriding accountability or the treasurer with an admiral sense of ownership of the figures. This extends to any member who may just be too demanding!

Undertake a review of board dynamics, to grasp the personalities of each member and how they will cope under certain stresses. Could 'aggression' arise and where will it come from? It is crucial to identify patterns of behaviour from individuals on the board to help you manage challenging personalities and conflicts, such as where one member speaks over the thoughts and views of others.

Conflict in the boardroom won't necessarily be resolved in the boardroom. A series of one-to-one/ small group private sessions may be required. Confidentiality is critical, so no formal minutes should be noted, but perhaps the outcome could be reported widely as a concluding action to procedures. This demonstrates the success of a resolved conflict and can be another constructive aid.

Policies, processes, role guidelines – with so much red tape, is it a wonder we fall foul of disagreements and division? Still, a code of conduct is needed at least, or lines can be unnecessarily crossed.

What to do

- Listen – communicate – feedback. Attention to each other is a way to manage conflict before it has taken hold. At least once a year, a meeting agenda point should be to reflect on communication values and how they can be bettered.
- Soft skills management may be a requirement to those new in the role of trustee or leadership.
- When all else fails, there may need to be a conflict resolution process undertaken – a skill that should be on the list of abilities instilled in the Chair.
- As you will see from the Conflict Between the Board and the CEO article (page 10), an effective board comes from an almost essential level of conflict, but manage that, and your charity will flourish.

Case Study

The ex-Chair was in the military and often assigned overseas. As a result, he was not always able to attend board meetings or be there when critical ad hoc matters arose, so had stood down for a less involved 'back bench' trustee role. His background gave him a strong eye for detail and dedication meant that much of his down time while not on duty was spent gaining CPD on his sector and coming up with 'improvements' to processes. Whilst well-meaning, this often meant proposals were over-engineered beyond the understanding of others on the board.

The new Chair was a good leader, but a less dominant figure. For older trustees, inducted and led by the example of the ex-Chair, the governance role was often seen as one of critical questioning of anything and everything at both a strategic and (more often) an operational level. It sometimes seemed that the CEO's actions were questioned on the basis that the role of the trustee was to consistently challenge and only grudgingly support anything that was not the trustees' idea! The ex-Chair found he didn't like being out of the loop on CEO and Chair meetings, so seemed intent on setting up his own faction.

The new Chair had a problem. There were three new trustees with previous trustee experience who understood the role of trustee. Then there was the old guard who turned up for meetings and mimicked the actions of the ex-Chair.

"Sometimes I wish I was trustee at a poorly performing establishment rather than this place. I'd have far more to get my teeth into then" commented one of them, who seemed to only see their role as helping to admonish and change what is bad rather than celebrate and protect what is good.

Therefore, board meetings had two clear factions – the 'New' who broadly supported good strategic leadership at the Trust and the 'Old' who saw the 'New' as 'Yes-Men' and continued to vigorously challenge, often at an operational level.

Things finally came to a head when the 'Old' would not accept an operational point on which they disagreed. This could only end one way unfortunately and the ex-Chair's resignation was forthcoming. One of the other old faction followed suit, the other two remained in place. Without their leader, their stance gradually mellowed. They are still of the Old Guard, but now take on the devil's advocate role in a more considered manner. Their input means the meeting stops and thinks rather than running into all-out conflict. The board is still not perfect of course, but it seems to be performing much better these days.

How we can Help

Know your board? Why not undertake a personality audit of your trustees to test the dynamism and interaction between each other? We can help with any training you may feel you need across the members or on an individual basis. If you would like to speak to a member of our team, then please get in touch with your local MHA member firm.

When Conflict can be Just What you Need

The Effect of Conflict on Decision Making, Ideas and Communication

Cara Miller

MHA MacIntyre Hudson

A positive approach to managing conflict can be a useful catalyst for innovation and growth

When individuals are faced with conflict, we typically experience our body's natural fight or flight reflex, with our temperatures rising, heart pounding and palms clammy.

Many choose flight, thus avoiding the conflict, whilst others opt to fight and confront it head on. There is a happy middle ground where a positive approach to managing conflict can be a useful catalyst for innovation and growth, at the same time strengthening individuals and the collective group too. Some of the best examples I've seen of this have been within the not for profit sector.

When Conflict can be a Strength

Avoid a Group Mindset

A board of trustees or a senior management team can develop a group mindset, where the decisions made are not reflective of the individual members thoughts, but represents a blander view that everyone can agree on. It has been widely reported that there is a lack of diversity amongst charity boards which can make the group mindset a very real risk to the effectiveness of the board.

Better Developed Ideas

Ideas that are subject to challenge will have been well thought out and developed. Very rarely is our first version of an idea perfect and unable to be enhanced through a robust discussion of its merits. Ideas are "road tested" before they are presented in their final form. The process can also make us more committed to an idea.

New and Innovative Ideas

Conflict can involve a lot of dialogue back and forth, with input from a variety of sources. This process can encourage creativity and flexibility, leading to new ideas that wouldn't be identified any other way.

Drives Change

Conflict usually leads to change and solutions being identified, which is driven by the often intense nature of conflict and challenge which is then difficult to ignore once an expression of opposing views has taken place.

Skill Development

Conflict creates feelings of discomfort and anxiety, but learning to manage it properly instils a sense of important leadership and life skills, such as listening, compromise, negotiation, influencing and accepting when you are wrong.

Understanding Other Styles and Behaviours

Observing how colleagues handle conflict can teach you a lot about them, their values, their styles and patterns of behaviour. By managing conflict, we also learn about ourselves too. Such observations can provide useful insights into colleagues, which can lead to more effective interpersonal relationships. Healthy conflict can produce positive outcomes, deepen relationships and act as a catalyst for good governance and growth.

Focus on the facts of the matter and not the individual proposing them

How to Encourage Healthy Conflict

1. Ensure all board members feel their views and contribution is valued equally, by being open and encouraging participation and questions.

2. Maintain a diverse board composition, particularly ensuring that the characteristics of the beneficiaries of the charity are well represented.

3. Focus on the facts of the matter and not the individual proposing them.

4. Get to the point quickly through calm and assertive behaviour, allowing more time to be spent working towards a resolution, based primarily on reaching an understanding rather than an agreement.

5. Often a neutral or independent person joining discussions where conflict is likely can prove useful in cultivating the right environment.

Case Study

We worked with a trustee board in a small charity which did have a diverse group of people at board level, but also had a dominant Chairperson. This meant that whilst others had alternative views, it was the Chairpersons views that formed the basis of decisions made and which were supported by an agreeable board.

The financial position of the charity came under significant pressure, as is so often the case in the sector and the future strategic direction of the charity needed consideration and robust budgets to be put in place. The trustees had different ideas about how this could be done and different levels of understanding of the finances; for the sake of the charity's future, the board needed to work together on this. As mentioned, the Chair was a dominant character and whilst they had a lot of detailed knowledge of the charity itself, finance wasn't their particular skillset.

The significance of the issue and the expertise of those around the table meant that others spoke up when they had previously been very reserved. The Chairperson had not faced much challenge in the past and to everyone's surprise and delight, the Chair was thrilled that his colleagues were being more open, he listened intently to everyone's views, making them all feel their contributions were welcomed and valued. He asked questions, demonstrated empathy and confirmed his understanding of what the other members were saying.

The dynamics of the group changed from that day on into a more collaborative and open group. The Chair hadn't been aware of their own influence on the group and as soon as different views and opinions were expressed and conflict was identified, the Chair amended his behaviour brilliantly. It was handled in a healthy and constructive way and a much stronger strategic plan and budget was created as a result. Many of the trustees felt a greater sense of ownership towards the output which they had contributed towards and were willing to commit more time to the project as a result.

How we can Help

If you would like to turn around conflict in your board or organisation we can provide training, facilitation and support to enable you to enjoy the many benefits that well managed conflict can bring. If you would like to speak to a member of our team, then please get in touch with your local MHA member firm.

Conflict with Third Parties

What to Consider When You're at Odds with the Outside World

James Gare

MHA Monahans

There is a range of third parties with whom charities may find themselves in conflict. Some common examples include:

- *Conflicts with regulators;*
- *Disputes with suppliers over the quality of goods or services provided;*
- *Disagreements with HMRC regarding the interpretation of tax law;*
- *Disputes with the press or media regarding potentially damaging reports;*
- *Conflicts with funders regarding project delivery and grant clawback;*
- *Disputes with landlords or tenants.*

It is difficult for organisations who face any of these situations. Unlike internal conflicts, disagreements with third parties often carry a heightened risk of reputational damage to your charity. The stakes are therefore high and emotions can run deep. However, often the best course of action is to take a considered and dispassionate approach.

At the heart of any decision must always remain the core principle of doing what is in the best interests of the charity

Acting in the Charity's Best Interest

At the heart of any decision must always remain the core principle of doing what is in the best interests of the charity. Conflicts are often emotionally charged and there can be a temptation to base decisions on matters of principle, or emotions, rather than what is best for the organisation. I have encountered organisations who have incurred significant professional fees challenging an argument on principal, where arguably the potential gains were vastly outweighed by the potential costs of losing.

This is where the board of trustees can really come into their own. Detached from the front-line turmoil of a conflict places them in a good position to stand back and help the charity make the correct business decision, devoid of emotional influence.

Bring in Professional Support When Appropriate

Where the charity and its trustees are not fully equipped to understand the best course of action, it is important to bring in professional support to guide the decision. For instance, when deciding whether to commit to a legal action, one would require a clear view on the likely outcomes of any litigation, as well as the potential losses involved. Unless you are lucky enough to have a lawyer, who specialises in litigation on your board, external support will undoubtedly be needed.

Organisations often shoot from the hip and agree settlements outside of court, without the requisite professional advice in place. In these situations, charities could potentially lose large sums. Not seeking professional support in these situations could be considered to be a "breach of trust", with the trustees personally liable for losses incurred. It is therefore important to seek expert guidance.

Things to Consider Before Taking Legal Action

The Charity Commission stipulates that charitable funds must not be spent on defending legal claims that have no merit or prospect of success. In some cases, consent is required from the Charity Commission before legal action can commence. Where charities are unable to resolve a conflict themselves and where legal action is the next step, careful thought needs to be given.

Before undertaking expensive legal action, mediation can also provide a cost-effective solution to resolve the conflict. The Civil Mediation Council or the Centre for Effective Dispute Resolution are well established organisations that can provide support to charities at a fraction of the cost of a legal action.

The Charity Commission requires charities to report serious incidents, which may result in a loss of charity assets, damage to property or harm to a charity's work, beneficiaries or reputation. If a conflict has a significant potential impact for your charity, it is important to assess whether it needs to be reported to the Commission.

Managing Risk Through the Risk Register

Managing the risk of conflict with third parties does not always need to be reactive, indeed managing the risk proactively should be encouraged. The charity's risk register is a helpful place to begin identifying the risk of third party conflict, as well as how the risk can be managed. One charity I know has recently been able to challenge an unfavourable HMRC ruling due to them putting in place professional fee protection insurance, which has covered the accountancy fees associated with the tax investigation. Having the foresight to identify and manage the risk proactively has potentially saved the organisation significant sums, as well as allowing them greater capacity to defend their position.

Keeping Calm and Carrying on

It is inevitable that your organisation will encounter conflict with a third party at some point during its lifetime. Although stressful, conflict can also be an opportunity to improve relationships or ways of working. For instance, there has been cases where charities have used conflict with its neighbours as an opportunity to build bridges with the wider community. Open invitations were sent to local people who attended workshops to express their concerns and new ways of working were developed which addressed the community's complaints. The initial conflict allowed greater communication and not only were the relationships repaired, they ended up being better than they had ever been in the past. Provided organisations can keep a level head and work through conflicts rationally and methodically, obtaining outside support when needed, they can be opportunities rather than disasters.

What to do if you are in Conflict with Third Parties?

Most conflicts with third parties can be resolved by the staff or the trustees themselves, sometimes with some advice. However, in serious cases the Commission may need to advise the trustees or take action to protect the charity.

If something goes wrong, the trustees should be asking themselves the following questions:

- Do we need to take any steps to minimise any future losses, or recover losses incurred to date?
- Do we need to report the situation to the Charity Commission?
- Do we need to enlist the help of a professional to support our decision making?
- Do we need to say anything to staff, volunteers, members or the public?
- What do we need to put in place to prevent a similar conflict occurring again in the future?

Conflict can also be an opportunity to improve relationships or ways of working

How we can Help

If you would like assistance with a conflict situation, we are always on hand to provide professional assistance. We can help with a broad range of scenarios; from helping with HMRC investigations to providing ad-hoc governance support. We are also experienced in helping develop risk management strategies to help minimise potential impact. If you would like to speak to a member of our team, then please get in touch with your local MHA member firm.

Conflicts Between Treasurers and Finance Directors

Avoiding Conflicts and Making the Relationship Count

Sudhir Singh

MHA MacIntyre Hudson

Without proper planning and a structured approach, these relationships can be dysfunctional, or at worst disastrous for charitable success

The Importance of Avoiding Conflict

The relationship between the key board member responsible for finance (Honorary Treasurer, Chair of Finance or Audit Committee) and the Chief Financial Officer (CFO) or equivalent (Finance Director, Resources Director or Head of Finance) is crucial for the success of a charity. Existing guidance tends to focus on technical and accounting matters, rather than governance roles and "soft" issues. Yet it is the latter that most often creates difficulties.

Conflict in this relationship can be very harmful for charities. Whether it is individuals that do not interact well, either with each other or with others in the organisation, or where the relationship is ineffective or even disruptive.

There are no legal or regulatory provisions that determine how this relationship should work, and virtually no guidance on how it can be done well. Without proper planning and a structured approach, these relationships can be dysfunctional, or at worst disastrous for charitable success.

Making the Relationship Count

Clearly, roles and relationships vary according to the size and complexity of the organisation, and it is not unusual for the treasurer to have a more hands-on executive role in smaller charities. This article considers the position where there is a professionally qualified or experienced CFO and a non-executive Treasurer, which enables a clear differentiation between management and governance roles.

To avoid conflict and enable these relationships to make a positive contribution, set out below are six key practical characteristics which will be useful to consider.

1. A Successful Personal Working Relationship

The starting point in any effective working relationship between Treasurer/FD is the personal relationship between the two individuals. There are some practical steps that will help.

- The relationship is more likely to succeed if there is good chemistry between the individuals: an ability to communicate well; willingness for both parties to be completely open and honest in an environment of mutual trust; and alignment of views on key issues concerning financial strategy, management, and governance.
- Avoid the relationship becoming too cosy, as both parties must be able to be objective and challenge each other – not always, but when necessary.
- On occasions it is helpful for the Treasurer to be a confidante for CFO, as they can easily feel isolated or just in need of a friendly sounding board.
- There must be a process for refreshment of relationships as with all trustee positions, probably through regular replacement of the Treasurer. Otherwise there are threats to objectivity, or at the very least a possibility of unrecognised complacency. So fixed term appointments for Treasurers are recommended.

2. Avoiding Finance Operating in Isolation

Even if the Treasurer/ FD relationship is working well, the finance function needs to interact well with the whole organisation, as conflicts may still arise with other parties.

- Where a strong relationship has been established, care must be taken that it does not become too insular, to the extent where there is isolation from both the board and other senior managers. Where it works well, an effective Treasurer/CFO partnership can be transformative for internal communication on financial matters both at executive and trustee level. The view that finance should be a servant to, not a slave of, charity purposes may help position the relationship.
- It is not unusual for the non-financially orientated members of the board and of the management team to abdicate responsibility on financial matters, delegating them to those seen as financially literate.

This attitude was considered highly negative in the 2018 MHA/ Charity Finance Group survey of trustee skills, in which 92% of respondents considered it very important to have more than one person on the trustee board that is engaged with their charity's finances. Together, the Treasurer and CFO can ensure there is strong engagement by the key decision-makers, avoiding decision making paralysis on financial issues, and establishing a shared financial vision for the charity. Communication, clarity and creativity all help.

3. Recruitment Considerations

Having the right individuals in post can transform relationships, so appropriate recruitment is essential.

- Though the CFO will typically be line managed by the CEO, the Treasurer is often involved in the recruitment. This is appropriate to ensure both parties are comfortable they can work with each other. Furthermore, it is often the case that in considering the candidate CFO's technical skills, the Treasurer may be the best placed to make the assessment.

- Treasurers are generally appointed by the board, with the Chairman often in a sponsoring role. It is rare, but it is certainly worth considering allowing the CFO to be involved in the selection of the Treasurer, albeit on an advisory basis only.

- The ability to establish good relationships is critically important, yet the role descriptors for Treasurers tend to focus on technical competency, rather than personal and management skills; referring to compliance and control aspects of the charity rather than oversight of the CFO and their team who have the direct responsibility for such processes.

4. Board Representation

The Treasurer and CFO are normally the key link with the board on financial matters, so their effective engagement is paramount.

- The Treasurer role is generally viewed as being the representative for finance matters on the board. The Treasurer should not disempower the CFO from speaking to the board, especially as they will often have a better understanding of the detail of issues. However, it can be necessary for the Treasurer to be an advocate or spokesperson for the CFO. For example, where issues arising from the CFO's line management or other management issues have created a potential communication barrier. This can arise, as typically, the CFO will have a reporting line to the CEO and thence to the board. To ensure the board is not prevented from having appropriate access to information for decision-making, it is appropriate to establish a 'dotted' reporting line to Treasurer. This must of course be handled sensitively by the Treasurer and probably in conjunction with the Chair.

- Potential management or governance disputes on financial matters can arise – in such circumstances it is very helpful if the Treasurer and CFO present an aligned and consistent position; instil appropriate firmness and rigour on financial decisions; and provide explanation, clarification, reassurance or balm as necessary.

5. Staying in Touch

Insufficient or inappropriate communication in any relationship can often result in conflicts, so appropriate strategies are needed to get it right.

- The regularity of contact between Treasurer and CFO needs to be mutually agreed. It is helpful to set formal contact dates in advance: for example, two weeks prior to committee meetings to agree the agenda and discuss draft papers.

- Always maintain a clear balance between management and governance roles. It would be usual to expect there to be less contact between Treasurer/CFO than between Chairman/CEO. However, it really helps if parameters for working together are agreed – these should include an annual programme of recurring actions; prior preparation before meetings; and the process by which you intend to agree mutual goals in advance of key decisions.

6. Balance of Skills

Conflicts can arise where the skills and experience of Treasurers and CFOs differ.

- Whilst it is quite likely that both parties have similarities in terms of their competencies, the requisite skills of a Treasurer are different to those of a CFO. It is essential for the CFO to have a good grasp of technical compliance – hence they are likely to be a finance professional and a qualified accountant. The Treasurer, however, should adopt a mostly strategic role regarding finance – hence it is not necessary they should be a qualified accountant, but strong financial literacy and understanding will still be essential.

- Often, the Treasurer will be a highly experienced and qualified accountant or financial professional – in these situations the Treasurer can play an additional helpful tutoring/mentoring role for the CFO if they are less experienced.

- Trustee diversity is being encouraged by the Charity Commission, and whilst instinctively positive, this may lead to conflicting approaches and attitudes. Some friction and challenge is good in all relationships, as long as it is proportionate and appropriately directed.

Well run charities recognise the significant part that strong financial management and governance should play. An effective Treasurer/CFO relationship really can count towards charitable success.

The six relationship characteristics set out in this article should contribute to that outcome if actively and formally developed.

Well run charities recognise the significant part that strong financial management and governance should play

How we can Help

If you would like to speak to a member of our team about how we can help, then please get in touch with your local MHA member firm.

Conflicts Between Transparency and Your Charity's Reputation

Ensuring Your Reputation is at the Forefront of all Your Activities

Giles Kerkham

Larking Gowen

Reports of serious incidents should be made as soon as possible after they come to light

We expect you well remember the ugly headlines generated by scandals at Oxfam, Save the Children and the Presidents Club Charitable Trust.

The reputation of charities has taken a beating in the years since the collapse of Kids Company and these recent events, and the size and profile of the charities involved has sent shock waves through the sector.

As the news about misconduct on Oxfam projects broke, the charity didn't just come under fire over the actual events, but also how it handled the news once it became public. High profile casualties followed, with the CEO of Oxfam GB stepping down at the end of 2018 in order to allow someone else to 'rebuild' the charity (and public confidence). Whilst the original misdeeds are important, a main criticism of Oxfam from the Charity Commission was that, although Oxfam reported the incident to them, it didn't provide enough detail of the full circumstances.

This all emphasises that, as a charity board of trustees, or as a charity leader, you need to think about how you will guard your charity's reputation both with the public and with the Charity Commission. Often there is a conflict between wanting to keep things private and the expectation to be open and transparent, particularly with the Charity Commission.

Reputation with the Public – Different Expectations

If the public's trust in charities falls, then it's feared that a general fall in donations will follow. In the Charity Commission's recent study into the key drivers of trust in charities, high up this list were transparency and good governance.

This is in stark contrast to the commercial world where transparency is not the norm. Aside from the biggest companies, there is no desire to disclose too much information – comparing the detail in the trustees' report for a charity with £1 million income to the Directors' Report for a similar size company shows the reality of this. The introduction of the Strategic Report for medium and large companies has gone some way to redress this balance, but the fact remains that the public judges charities more harshly than the commercial sector.

In recent cases where companies have disclosed frauds or inaccurate financial statements, aside from a couple of high profile resignations, it seems these can be largely brushed under the carpet. The impact for charities is more serious. Oxfam and Save the Children are having to work with their major institutional donors to rebuild trust in order to secure future funding. The Presidents Club Charitable Trust was wound up in light of adverse publicity and loss of reputation. The charitable sector needs to be taking action, and this is where the Charity Commission is acting.

Reputation with the Charity Commission – Report any Incidents

The regulator has been vocal in its criticism of the sector for not reporting serious incidents to them. When trustees have reported an incident, then the Charity Commission say they can add their support to ensure that appropriate action has been taken – as they were apparently unable to do with Oxfam.

Why Should you Report?

When an incident occurs, the onus is on a charity to take action quickly to reduce the risk of further harm and to show that it's taking the matter seriously. This will demonstrate that it's protecting its assets, reputation and beneficiaries.

The Charity Commission is responsible for ensuring charities comply with their legal duties and manage the incident responsibly, and therefore needs to be informed of threats.

Telling them in a timely manner means that the Charity Commission may be able to offer advice or guidance which could help you. Where a matter is more serious, the Charity Commission may need to intervene (using protective powers) to help you get back on track. The act of reporting gives the Commission the information that they need to be able to manage the risks to you and the sector as a whole.

What Should you Report?

The Charity Commission needs to be told the details of a serious incident. This is broadly defined as any adverse event (actual or alleged) which causes significant loss of (or risk to) a charity's assets or money, damage to a charity's property or harm to a charity's work, beneficiaries or reputation. Examples include frauds, theft, significant financial losses or safeguarding issues.

It's worth noting that significant financial losses include 'losing significant institutional donors, public funding or key delivery contracts and being unable to replace these in order to ensure the charity's survival.'

It's ultimately the trustees who are responsible for reporting serious incidents and there should be clear planning to make sure it happens. New guidance on this was issued by the Charity Commission last year (How to report a serious incident). This includes how to make the report and what to include.

Reports of serious incidents should be made as soon as possible after they come to light. Make sure that enough detail is included and that the actions taken are specified. The most important thing is to report on what has happened and what you have done about it. You need to report to the Charity Commission even if you have already told other authorities.

Take Action - Have a Plan

If something does happen, you need to have a plan in place to manage the incident and to communicate it. This should include:

- How you will take immediate action and who is responsible for taking it.
- Who is responsible for reporting the incident and what will be included in the report.
- How staff, the public and the press will be informed and who will be responsible for this.
- What form an internal investigation will take and whether additional skills will be needed.
- What will be done to prevent it from happening again.

Before it Gets This Far

Prevention is of course better than cure and you can take steps to reduce the risk of incidents happening:

- Review your governance – Charity Commission guidance called 'Charity Governance, finance and resilience: 15 questions trustees should ask' is a good starting point for this. This could lead to some interesting discussion at all levels. The Charity Governance Code is also well worth considering.
- Consider fundraising practices – especially if you use third party fundraisers or dedicated websites. Trustees are responsible for the practices used by these agencies and you will need to make sure they comply with the Fundraising Regulator's code and GDPR. Registering with the Fundraising Regulator yourself can send a strong message that you are committed to best practice.
- Keep up to date – donors rely on your website and the public record to gather information about charities, so make sure that your details are up to date at the Charity Commission and Companies House.

This list is not exhaustive and this is certainly an area that all charities should discuss at board, executive and staff levels.

How we can Help

If you would like advice on any of these areas, or if you feel that your board or staff would benefit from training, we can help. If you would like to speak to a member of our team, then please get in touch with your local MHA member firm.

Further Reading

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532104/Public_trust_and_confidence_in_charities_2016.pdf

https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity

https://www.gov.uk/government/publications/charity-trustee-meetings-15-questions-you-should-ask

https://www.charitygovernancecode.org/en/front-page]

Managing Conflict

What to do when Conflict Arises

John Adams OBE

John Adams OBE, has been a charity chief executive and was a long-serving executive director of one of the UK's largest charities. Since 2005 he's worked independently, specialising in conflict resolution and governance. He's been a trustee and chair of several charities and has held a number of public appointments. He was awarded the OBE in 2011 for services to adult social care.

… Exploring the impact conflict has on charities and the role of boards in using conflict, complaints and controversy as a way of 'health-checking' and improving their organisations…

Conflict in the charity sector can come without warning and for very different reasons

Let's face it, not many of us are good at handling conflict. However, is conflict always a bad thing in the context of charity governance, or can it assist boards in making good decisions which further their charitable objects and act as a catalyst for positive change?

The answer of course depends on a number of factors; not least being the root cause of the conflict, how long it lasts and what form it takes.

Public confidence in charities remains at similar levels to 2016, despite trust in charities being badly knocked in 2016 and 2018, by controversies surrounding Age UK, Kids Company and more recently, the Oxfam scandal. High profile reputational conflicts and protracted controversies like these are almost always damaging and usually have serious consequences for the charities involved.

For example, as the Oxfam story unfolded, the charity lost thousands of its regular donors, and at its height, the issue even appeared to threaten the UK government's commitment to spend 0.7% of gross national income on foreign aid.

A quick glance at the articles in this publication confirms that conflict in the charity sector can come without warning and for very different reasons. However, given that most charities are involved one way or another with people and depend on volunteers, who are often passionate about the cause, then some degree of conflict may be unavoidable.

Managing Conflict

Managing conflict is almost always time consuming, it can be demoralising and is often damaging to key relationships. It can also, as in the case of Oxfam, be costly. Prolonged periods of conflict undermine confidence, unsettles trustees and diverts managers. Charities large or small, seldom in my experience flourish during times of conflict. Although, occasionally conflict may in fact be a good thing.

Charities are accountable to their beneficiaries and stakeholders and should listen to and value their feedback, even if at times it's uncomfortable to hear. The stakeholder theory of governance recognises that a wide range of people and groups are likely to have valid and varying interests in charities and effective governance negotiates and resolves conflicts between them. To put it another way, challenges stemming from stakeholders expressing different opinions, if effectively managed, can be a driver of improvement.

Constructive Challenge

Although listening and responding to stakeholders is essential, it's important to appreciate that people have mixed motives for being involved with charities, not always altruistic, and the challenge for boards and chairs in particular, is to recognise the difference between constructive challenge and damaging conflict.

Constructive challenge has its origins in creativity; it respectfully questions conventional wisdom, is values driven, and is focussed on mission. Whereas outright conflict frequently stems from individuals or factions seeking greater influence, is distracting from mission, is occasionally personality driven and can be costly.

Outcomes from charity conflicts and disputes that I've seen over more than 30 years in the sector include, disruptive and costly extraordinary general meetings (EGMs); chairs and chief executives' resignations; senior staff being sacked; independent investigations; serious incidents being reported to the Charity Commission; key staff leaving; damaging publicity; lost contracts; funders withdrawing and large legal bills. Therefore, conflict should never be ignored, or treated lightly, it calls for skilful management and sound judgement.

The Role of the Board

Governance plays a vital role in a charity and effective governance includes successfully managing conflict.

Importantly, as conflicts bubble-up it's rarely clear at the outset what wider implications there might be; therefore conflict resolution requires timely attention by trustees and senior managers. However, monitoring conflicts and complaints and how they're being resolved can provide boards with valuable insights into organisational morale and underlying cultural issues.

The health and social care regulator, the Care Quality Commission (CQC) is particularly interested in this aspect of scrutiny by non-executive boards – asking as part of their rigorous inspection process, what 'line-of-sight' does the board have from the board-room to front line services? How are trustees in practice 'temperature checking' the health and underpinning culture of the organisation? Is this organisation well-led?

To shockingly illustrate the importance of boards being alert to these warning 'signals', as many as 1,200 patients died as a result of poor care at Stafford hospital, a small district general hospital in the West Midlands. Governance doesn't get any more serious than this.

In his public inquiry report, Robert Francis QC made it clear that the board of Stafford Hospital was primarily responsible for the failure of leadership that enabled poor standards of care to go unaddressed for so long. In other words, it was a shocking failure of governance.

However, at the time, conflicts between staff and mangers and crucially complaints made by distressed relatives were characterised by some senior managers as vexatious, or fault-finding, and were tragically brushed aside.

Practicing effective governance is demanding, but mature boards understand that in managing conflict and complaints, the 'buck stops with them.'

Being an Effective Trustee

There are many similarities in the role and responsibilities between charity trustees and health trust non-executive directors and the Mid Staffs health inquiry provides vital lessons for trustees and charity boards alike. Regulatory and policy developments since Mid Staffs have been a valuable driver of improvement in all aspects of governance practice in the UK.

Being an effective trustee is not easy, in part because you're dependent on others for information about what's going on across the organisation. If a powerful chief executive tells her board that a conflict simmering between managers and volunteers is nothing for trustees to be concerned about, it can be hard to challenge that view.

In order to be effective, trustees need to be as well informed as possible, they need to engage with their stakeholders and be prepared to constructively challenge the executive. In short, to create some respectful conflict of their own.

Recent research from Birmingham University and the Nuffield Trust highlights the value of a 'restless board' that seeks to constantly compare itself with others and find ways to improve. Trustees should regularly visit frontline services, they should encourage routine meetings with stakeholders and regularly engage with the life of the charity beyond the boardroom. They need to be curious, welcome dialogue with stakeholders and be vigilant when conflict and complaints arise.

Constructive challenge has its origins in creativity; it respectfully questions conventional wisdom, is values driven, and is focussed on mission

Conflict Checklist

	Yes/ No	Action to Undertake
Fundamentals – Page 2		
Does the charity have a register of interests for all trustees and the senior management team?		
Does the charity have a comprehensive conflicts of interest policy and has the policy been widely distributed within the organisation?		
Are conflicts of interest a standard point on all meeting agendas for the charity?		
Conflict with Your Trading Subsidiary – Page 4		
If you have a trading subsidiary, have you extended the conflicts policy to include the subsidiary and its directors?		
Have you considered the conflict potential of a trading subsidiary, regarding shared resources, PR etc?		
Have you considered the board structure of any trading subsidiary and created controls to mitigate the conflict?		
Conflicting Roles – Page 6		
When was the last time the board themselves reviewed and carried out checks to ensure that the systems and controls in operation are being used as documented?		
Does your charity have a robust procedure for changing standing data for the payment of suppliers (and do you know what it is)?		
Do the board have a regular dialogue (or open channels of communication) with key personnel and other staff beyond the CEO?		
Conflict Between the Needs of Today with the Demands of Tomorrow – Page 8		
Does your charity have a comprehensive reserves policy and clear calculation of free reserves?		
Does your charity have a clear short term and long term strategy; is this strategy linked to the reserves?		
Do the management accounts clearly split restricted and unrestricted reserves – do all trustees and the senior management team understand each category of reserves?		
Conflict Between the Board and the CEO – Page 10		
Do you have written roles and responsibilities for both the chair and the CEO, which are periodically reviewed to make sure they remain relevant?		
Is relevant information provided to the board well in advance of meetings to ensure that meetings give opportunity for healthy debate?		
Is there an agreed procedure for resolving disputes between the board and management?		
Managing Priorities – Page 12		
Have management/ your board identified any finite resource being overstretched?		
Have you reviewed how that resource is being used?		
Is there any activity that is draining the resource without making a proper contribution to the charity's activities (charitable impact, finance etc.)?		
Conflict Amongst Your Trustees – Page 14		
In addition to the usual skills audit, have you considered a personality audit to understand the interacting characters on your board, such as a Geiger colours test?		
Do you have a code of conduct setting out protocol for meetings, perhaps including timing and format of papers presented?		
Do your trustees understand each others' backgrounds and know the other demands they face in life, which may help with understanding other points of view?		

	Yes/ No	Action to Undertake
When Conflict can be Just What you Need – Page 16		
Have you implemented robust communication channels to ensure trustees' contributions are acknowledged and valued?		
Have you reviewed your board composition to ensure there is an adequate level of diversity?		
If conflict arises, have you focused on the facts of the matter and not just the views of the individual?		
Conflict with Third Parties – Page 18		
Does your charity's risk register take potential third party conflicts into account?		
Have you put a plan in place that sets out how you will deal with a third party conflict?		
Do you need to enlist the help of a professional to support decision making?		
Conflicts Between Treasurers and Finance Directors – Page 20		
To ensure refreshment of the relationship, do you have fixed appointment terms for Treasurers?		
Is there mutual agreement between the Treasurer and Finance Director on how they will work together and their respective roles?		
Does the Finance Director have a suitable reporting line to the board?		
Conflicts Between Transparency and Your Charity's Reputation – Page 22		
Do you have a process in place for dealing with serious incidents?		
Does your process for dealing with incidents take into consideration reporting to the Charity Commission?		
Do you regularly ensure your information is correct with the Charity Regulatory Bodies and Companies House?		

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