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CO-OPERATIVES UK  
**COOP**

# Simply GOVERNANCE

A comprehensive guide to understanding the systems and processes concerned with the running of a sustainable community enterprise



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Co-operatives UK is the national trade body that campaigns for co-operation and works to promote, develop and unite co-operative enterprises. Co-operatives UK aims to bring together all those with a passion and interest in co-operative action.

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# Foreword

Co-operatives UK has come up with a worthy sister publication to the highly respected Simply Legal guide.

Good governance is critical to the success of any enterprise and is particularly important in an enterprise which is owned by a large number of people. It is vital to balance the needs and aspirations of all members in a way that also allows the membership to participate in the decision-making process. It is also vital that the organisation is legally compliant and financially sound, and that this occurs by design and not by accident.

Time and again we encounter organisations which have regarded their structure and governance as bureaucratic obstacles to overcome whilst setting up, rather than as living systems and processes which will help throughout the lifetime of the organisation if they are allowed to.

This guide demystifies governance in a way that makes it possible for every member of any community enterprise to understand how their organisation ticks and how they can engage positively with the rest of the membership to ensure the organisation is effective, accountable and sustainable in all senses of the word.

## **David Button**

Chair, Co-operatives UK

*David Button has over thirty years' experience in the co-operative sector, having held key senior positions in 'Food from Britain', both as agricultural co-operative development director and as financial controller.*

*David is the past chair of the Plunkett Foundation and to date represents The Food and Farming Foundation, whose mission is to strengthen the supply chain between agriculture and the market.*

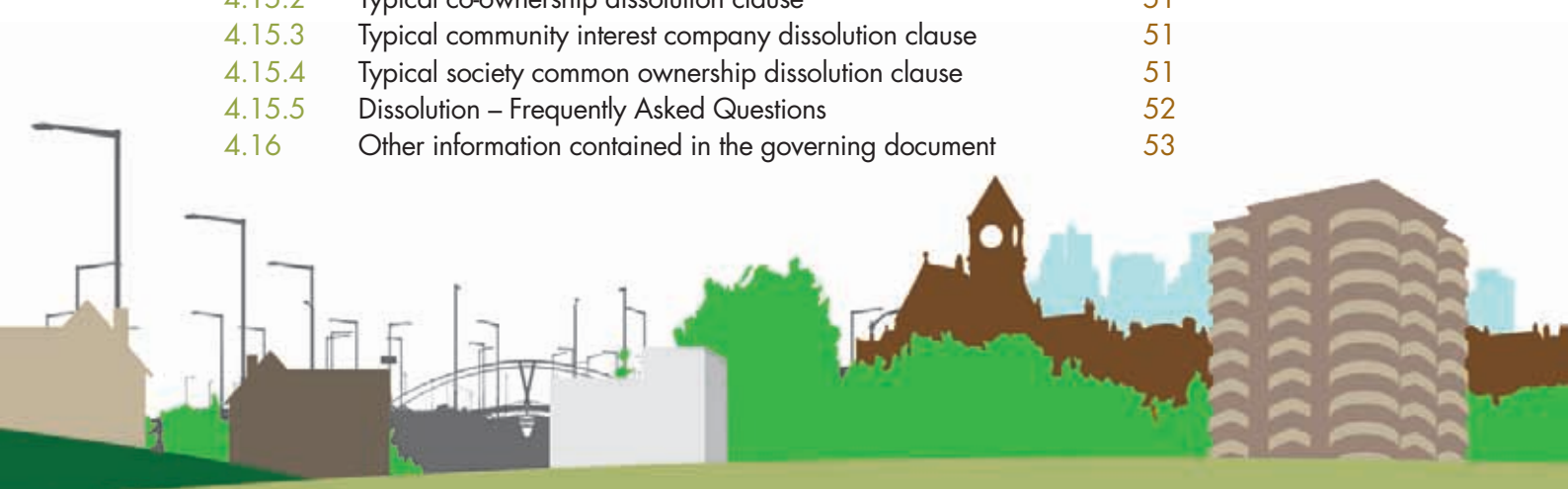


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# 1

## Introduction

In this section we define the purpose and scope of this guide and define some of the types of organisation that the guide is aimed at.

We, Co-operatives UK, are the national trade body for co-operative enterprises that:

- provides a strategic voice for co-operation;
- works to safeguard and increase awareness and understanding of co-operative values and principles;
- supports the development and growth of new co-operatives; and
- is the centre of excellence for the provision of services to co-operatives.

For over 20 years our Legal Services team (previously called ICOM legal services) has been highly regarded for its considerable expertise in legal structures and corporate governance, not only for co-operatives but also for organisations across the voluntary, community, charitable and social enterprise sectors.

### 1.1: Acknowledgements

Simply Governance has been written by Mark Simmonds of Co-operatives UK as a distillation of the collective expertise of the organisation and its members around the governance of co-operative and community enterprises.

We would like to thank Emma Laycock of Co-operatives UK, Kate Whittle of Somerset Co-operative Services and Malcolm Lynch of Wrigleys Solicitors LLP for their constructive criticisms of the text.

### 1.2: What this guide does

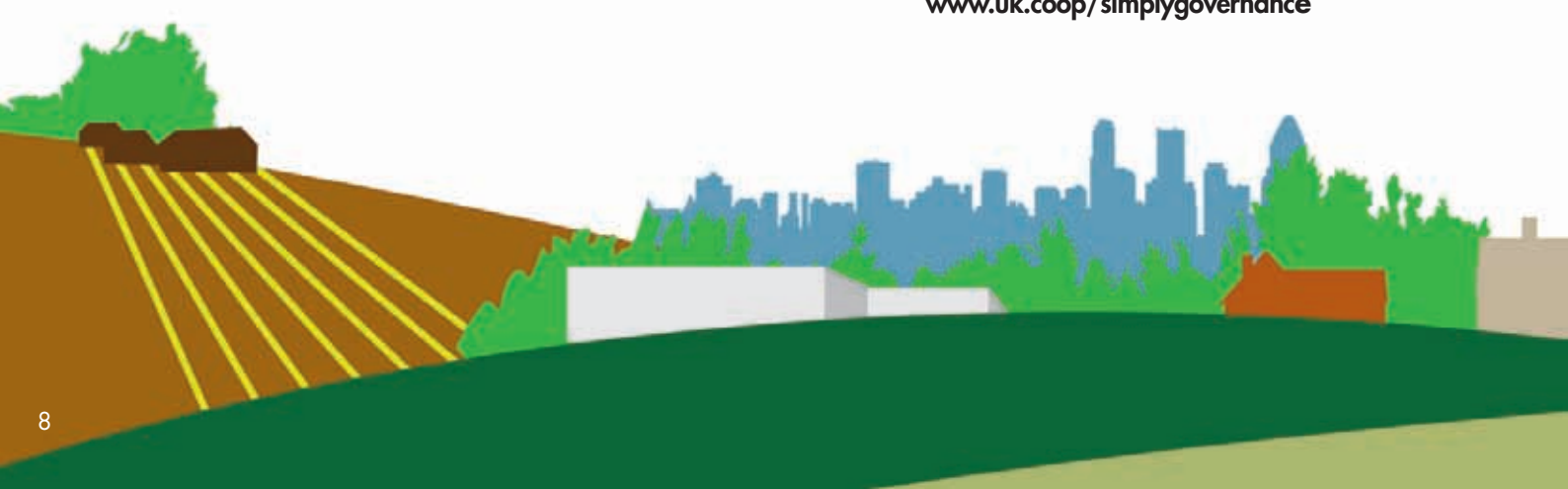
This guide:

- explains what governance is and why it is important;
- gives a detailed overview of the governing documents of any organisation;
- gives a detailed overview of the role and responsibilities of the governing body;
- gives an overview of the legal requirements relating to the governance of co-operative and community enterprises;
- explains the importance of good governance in co-operative and community enterprises;
- gives an overview of the typical governance problems of co-operative and community enterprises;
- provides practical strategies to avoid the common governance problems; and
- provides tools to allow an organisation to audit its governance.

As this is a guide, use the content to help understand and formulate your ideas, then seek the appropriate professional advice as highlighted in the appendices.

### 1.3: Supporting web resources

This guide can be downloaded as a pdf document and additional resources relating to governance can be seen at the Simply Governance support web pages at [www.uk.coop/simplygovernance](http://www.uk.coop/simplygovernance)





## 1.4: Who this guide is for

This guide is designed as a reference for anyone involved in advising or supporting a co-operative, social or community enterprise and may also be relevant to the governance of any third sector organisation. It is also suitable for any member of such an enterprise and is designed to be particularly relevant to a member of any governing body. The terms co-operative, social enterprise and community enterprise are defined below.

### 1.4.1: Co-operative

Co-operatives are trading organisations owned by their members and governed on the principle of one member, one vote, regardless of shareholding. A co-operative is a type of social enterprise, but is more clearly defined as it has an internationally recognised definition:

*“A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise.”*

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility, and caring for others.

The co-operative principles, i.e. how these values are put into practice, are:

- voluntary and open membership;
- democratic member control;
- member economic participation;
- autonomy and independence;
- education, training and information;
- co-operation between co-operatives; and
- concern for community.

There is a large range of organisations which can be characterised as co-operatives. Co-operatives are usually classified by their relationship with their members.

Members of a co-operative can be:

- employees, as in a worker co-operative;
- tenants or owners, as in a housing co-operative;
- savers and borrowers, as in a credit union;
- users, producers or sole traders, as in a co-operative consortium (agricultural co-operatives or other land-based co-operatives are these);
- consumers, as in the retail sector – or indeed locally-based food co-operatives; or
- a combination of the above in what is commonly known as a multi-stakeholder co-operative.



Co-operatives can be registered as a variety of legal forms, such as companies limited by guarantee, companies limited by shares, societies or community interest companies. The co-operative society is generally considered to be the most appropriate legal form for a co-operative.

### 1.4.2: Social Enterprise

A social enterprise is, first and foremost, a trading organisation. It is engaged in some form of trading, but it trades primarily to support a social purpose. Like any organisation, it aims to generate surpluses, but it seeks to principally reinvest those surpluses in the organisation or in the community to enable it to deliver on its social objectives. It is a common misconception that a social enterprise cannot make or distribute a surplus.

There is an accepted definition of a social enterprise:

*“A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.”*  
(Social Enterprise – a strategy for success, DTI, 2004)

There is no single legal form for social enterprise. Social enterprises can include companies limited by guarantee, companies limited by shares, societies and community interest companies. Some social enterprises are even unincorporated and others are registered charities.

In summary, key elements that define an organisation as a social enterprise are:

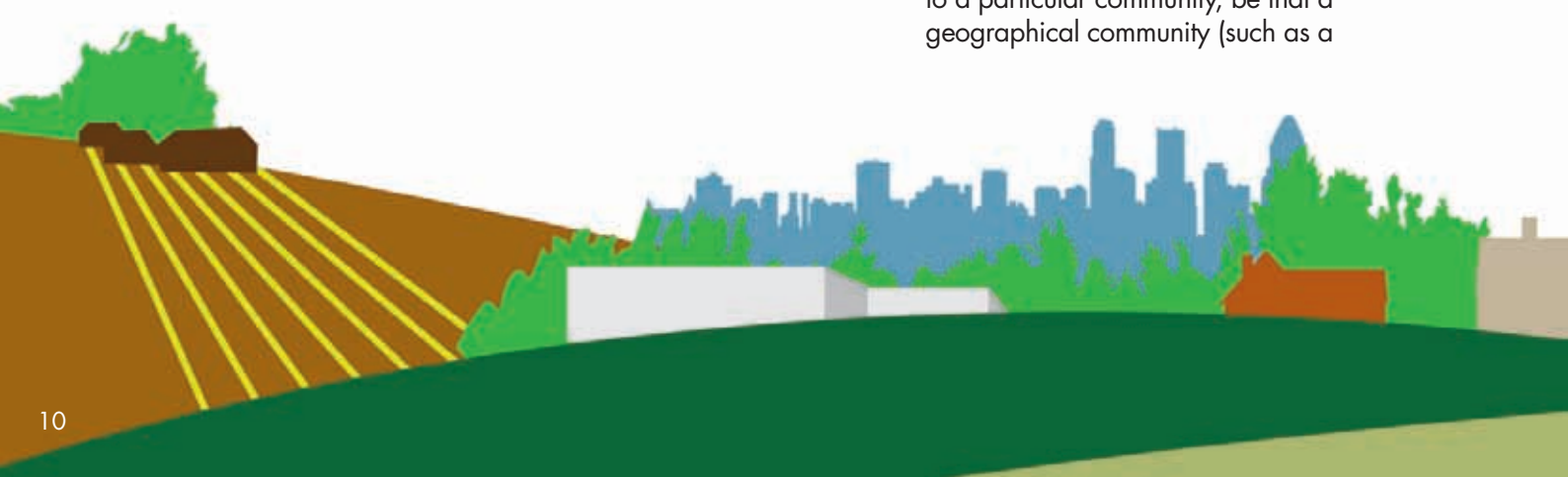
- its planned activity has social aims;
- its organisational structure is democratic and participative;
- its planned activity has social benefits, specifically related to their community; and
- financial sustainability is a primary goal of the organisation.

Social enterprises embrace a variety of ways of working and tend to embody the following characteristics:

- they gain independence and autonomy through trading;
- they are entrepreneurial, innovative, with risk-taking behaviour;
- they adopt flexible and adaptable practices;
- they have a customer and community focus;
- they engage their stakeholders;
- they have democratic and participative management;
- they deliver socially and/or environmentally as well as financially; and
- they are financially viable, gaining their income from selling goods and services.

### 1.4.3: Community enterprise

The term community enterprise does not have a generally accepted definition. Some use the term to define any social enterprise where the social benefit applies to a particular community, be that a geographical community (such as a



neighbourhood or town) or a community of interest (such as farmers or community development workers). Some use it only to define enterprises which benefit disadvantaged communities.

There is, however, a definition for a community organisation:

*“A trading organisation which is set up, owned and controlled by the local community and which aims to create ultimately self-supporting jobs for local people and to be a focus for local development. The term community organisation is normally used for social enterprises that have a strong geographical definition and focus on local markets and local services.”*

In this guide, we will use the term community enterprise to define a social enterprise which is owned and run by the community which it benefits – a community co-operative by another name.

#### **1.4.4: Applicability of this guide to different types of organisation**

Many of the issues addressed here, particularly those relating to legal requirements, are generic and will apply across all organisations, but a large part of this guide addresses the particular governance requirements of any organisation which has a democratic and participative governance structure. Where a particular governance issue relates to a particular legal form, this will be made clear.

### **1.5: Sister publications**

This guide has been created as part of a “Simply” series of publications to support the set-up and governance of co-operative and community enterprises. The series will include:

**Simply Legal** – a comprehensive guide to the legal forms and organisational types for community enterprises.  
[www.uk.coop/simplylegal](http://www.uk.coop/simplylegal)

**Simply Start-up** – a guide for any community; demystifying the process of creating a community enterprise.  
[www.uk.coop/simplystartup](http://www.uk.coop/simplystartup)

**Simply Finance** – a comprehensive guide to the different options for financing a community enterprise.  
[www.uk.coop/simplyfinance](http://www.uk.coop/simplyfinance)

This “Simply Governance” guide is also supported by the “From Conflict to Co-operation” series of booklets, also produced by Co-operatives UK. This series shows how to deal with conflict by:

- improving communication;
- improving meetings and decision-making;
- managing the change caused by organisational growth and development; and
- clarifying the role of the governing body.

[www.fromconflict2co-operation.uk.coop](http://www.fromconflict2co-operation.uk.coop)



# 2

## Governance

This section defines governance and how it relates to co-operative and community enterprises.

### 2.1: What is governance?

There are many definitions of governance in common use, but a useful definition is:

*"The systems and processes concerned with ensuring the overall direction, supervision and accountability of an organisation."*

(Chris Cornforth Governance Overview, Governance and Participation project, Co-operatives UK, 2004)

The key distinction to be made is between the governance of an organisation and the day-to-day running of it. For example, governance is not about paying wages or bills, but rather ensuring that there are effective systems in place to ensure that wages and bills are paid in a timely manner.

The word itself is derived from the Latin "gubernare" – to steer (a ship) – and the analogy of the strategic governance role of the captain versus the executive role of stoking the boilers is commonly used. Someone needs to plot the course and look out for icebergs!

In large organisations, it is common to divorce the strategic governance role from the day-to-day executive role, with different people carrying out these different roles. In small organisations it is more common for

the same people to carry out both the strategic governance and the executive role, but it is vital that the strategic governance role is not neglected – a common governance problem.

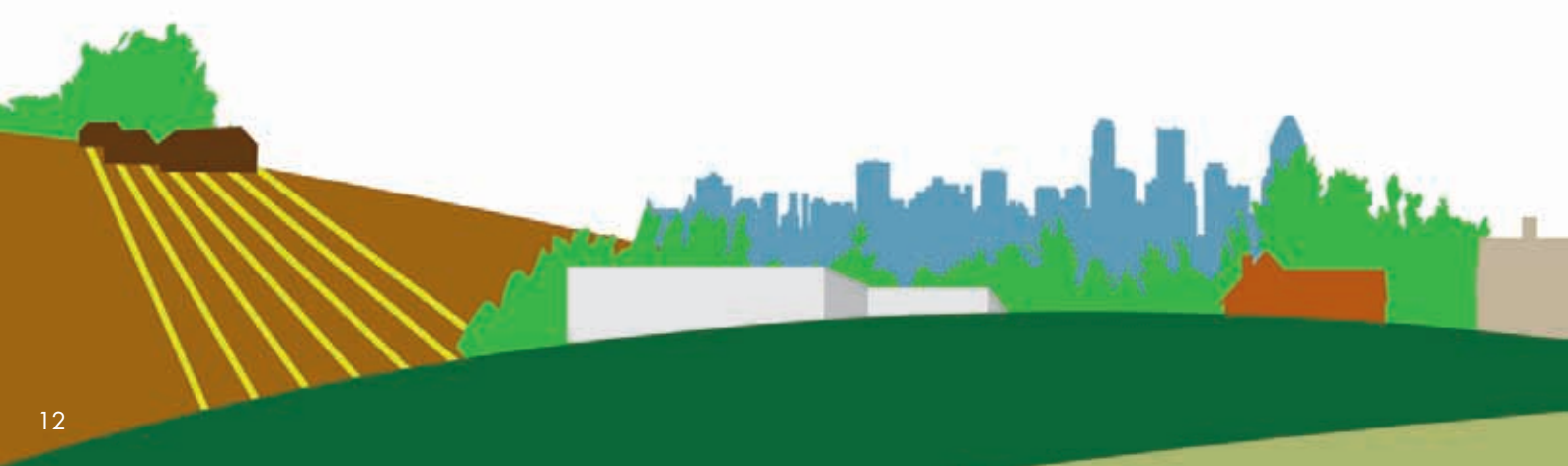
Governance is also used as a term to describe all the internal processes within an organisation which relate to accountability to any stakeholder both within and outside the organisation.

The governance of an organisation is primarily the responsibility of the governing body of that organisation.

### 2.2: Why is governance important?

Work undertaken by Co-operatives UK on behalf of the Home Office (Governance & Participation – Enhancing Democratic Participation in Communities, Active Communities Unit, April 2002 – March 2005) demonstrated a lack of knowledge within the third sector on what makes for good governance and how it might be achieved.

There is also awareness that good governance matters and is crucial to the health and sustainability of organisations, particularly those trading as social enterprises. One of the objectives of the





Governance Hub, set up as a result of a government programme known as Change Up, was to increase the governance capacity of organisations to deliver their missions. It commissioned research into the governance needs of social enterprises.

The results of this research are now hosted by the National Council for Voluntary Organisations: [www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

As a result of the lack of specialist skills and knowledge about governance many organisations find themselves unable to access appropriate advice, resulting in them operating under unsuitable structures and procedures that can have a negative effect on their future sustainability.

### **2.3: Governance of co-operative and community enterprises**

Whilst a social enterprise may involve very few people in the actual running of the organisation, co-operative and community enterprises face additional challenges in that the internal processes and decision-making need to involve a larger number of people – the members.

Community enterprises, whilst more sustainable due to their community ownership, are prone to governance problems relating to the breakdown of the relationship between the members and the governing body and also problems relating to a lack of clarity around roles and responsibilities. This is not a reason to be less co-operative or democratic, but rather a challenge to be a more co-operative, accountable and effective organisation.

### **2.4: Governance of community investment organisations**

There has been an upsurge recently in the creation of community enterprises which use the society legal form to raise funds from a geographical community or a community of interest. These organisations will often have members who are simply investors rather than having a direct trading relationship (as worker or customer). The governance issues for such organisations are practically the same as for other community enterprises although there will be additional responsibilities for those creating such organisations around exercising due diligence and accountability to shareholders.

The Community Shares Project run jointly by Co-operatives UK and the Development Trust Association has produced resources to help anyone involved in the setting up and governance of a community investment enterprise – see: [www.communityshares.org.uk](http://www.communityshares.org.uk)



# 3

## Legal forms and organisational types in community enterprise

In this section we cover the terms legal forms and organisational types. Any organisation has both a legal form and at least one organisational type and it is easy to confuse the two terms.

### 3.1: Legal Form

The legal form of an organisation is how it is regarded in law and in any incorporated legal form it is the form that has been registered with the relevant external registrar such as Companies

House. Unincorporated organisations still have a legal form, but they have no existence separate to that of their members. For a full explanation of incorporation, see section 4.9 of this guide.

**Table: Overview of the legal forms in the UK and the associated registrar**

<b>Unincorporated Legal Forms</b>
Unincorporated Association
Partnership
Trust

<b>Incorporated Legal Forms</b>	<b>Registered with</b>
Private Limited Company	Companies House
Public Limited Company (PLC)	Companies House
Limited Liability Partnership (LLP)	Companies House
Society*	Financial Services Authority (FSA)
Community Interest Company (CIC)	Companies House and Community Interest Company Regulator
Charitable Incorporated Organisation	Charity Commission
Scottish Charitable Incorporated Organisation	Office of the Scottish Charity Regulator (OSCR)

*\* At the time of writing 'Society' refers to Industrial and Provident Societies. The term 'Industrial and Provident Society' will change to either 'Co-operative' or 'Community Benefit Society' in the autumn of 2011, due to recent changes in legislation.*

For a comprehensive overview of the legal forms and organisational types of third sector organisations, we have produced a sister publication called Simply Legal. This guide can be downloaded as a pdf document from [www.uk.coop/simplylegal](http://www.uk.coop/simplylegal) or you can obtain a hard copy by contacting Co-operatives UK.

### 3.2: Organisational Type

Many organisations may want to be known as a particular type of organisation in addition to their legal form. There are many different types of organisation that are recognised in the UK, although it is important to realise that, in the eyes of the law, an organisation is identified purely by its legal form.

The organisational type of an organisation is related to how it is organised internally and what it does. For instance a community supported agriculture scheme might be incorporated as a society; this is its legal form. Its organisational type could be any or all of co-operative, social enterprise and community enterprise. Indeed community supported agriculture is itself another organisational type.

#### 3.2.1: Common organisational types of community enterprises

**Buying group** – a group of consumers who, by pooling their buying power and ordering food in bulk, direct from farmers or suppliers, buy good quality food at a more affordable price.

**Community enterprise** – a trading organisation which is set up, owned and controlled by a geographical community or a community of interest. They generally also trade for a social purpose.

**Community-owned shop** – a shop owned and generally also run by a local community. For more information, visit: [www.plunkett.uk.net](http://www.plunkett.uk.net)

**Community supported agriculture or CSA** – an organisation which is generally a partnership between grower and

consumer, where the risks and reward of farming are shared. For more information, visit: [www.soilassociation.org](http://www.soilassociation.org)

**Co-operative** – an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise which conforms to the 7 co-operative principles. For more information, visit: [www.uk.coop](http://www.uk.coop)

**Development trust** – a community-owned and led organisation, which develops community assets and community enterprise. For more information, visit: [www.dta.org.uk](http://www.dta.org.uk)

**Farmers' market** – a public market at which farmers and other producers sell directly to consumers. Some are privately run, some are run by local authorities and some are co-operatives of the farmers and producers. For more information, visit: [www.farma.org.uk](http://www.farma.org.uk)

**Social enterprise** – a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. Social enterprises tackle a wide range of social and environmental issues and operate in all parts of the economy. For more information on social enterprise, visit: [www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

For a comprehensive overview of organisational types, see Co-operatives UK's guide Simply Legal, which can be downloaded as a pdf document from: [www.uk.coop/simplylegal](http://www.uk.coop/simplylegal)



### 3.3: Typical structures of community enterprises

Irrespective of the legal form or organisational type of a community enterprise, it will generally have a governing body and a wider membership.

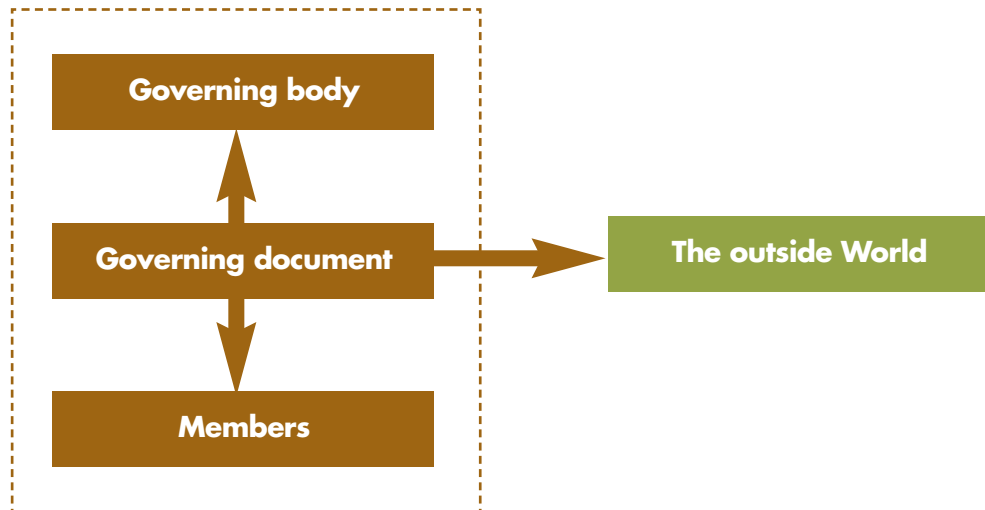
Once an organisation has a membership greater than 12-15, it becomes harder for all of the membership to be directly involved in its governance. It becomes harder for all members to attend meetings and the decision-making is more challenging in a larger group. It is common in this situation for the membership to elect a smaller committee (the governing body) and delegate some of its powers to it. This committee can meet more easily and make decisions between general meetings of the entire membership.

See section 4.11 of this guide for more details about the governing body.

The relationship between the members and the governing body is defined in the governing document, which will also define the relationship between the organisation and the rest of the world.

Please see section 5 of this guide for further information relating to the governing document.

#### Organisational structure and the governing document





### 3.4: Charitable status and community enterprise

Being a charity grants an organisation a legal status on top of its legal form. An unincorporated charity would also be an association or a trust and an incorporated charity would be a company (but not a community interest company) or a society. In time there will also be another legal form, the charitable incorporated organisation.

Many organisations may want to apply to register with the Charity Commission for the advantages that it brings in terms of tax relief, fundraising and public image.

Organisations that meet the minimum requirements for registration must apply for registration under the provisions of the Charities Acts 1993 and 2006. Associations, trusts and companies limited by guarantee which meet these minimum requirements have to apply for registration as a charity with the Charity Commission. Community benefit societies can apply for exempt charity status with HM Revenue & Customs, although it has been passed under legislation that they come under the regulation of the Charity Commission.

There are additional governance implications for organisations with charitable status, relating to member benefit and the composition and duties of the governing body.

Charity law can be a complicated subject and cannot be dealt with in detail in this guide. For a comprehensive overview of charitable status, see our publication called Simply Legal. This guide can be downloaded as a pdf from: [www.uk.coop/simplylegal](http://www.uk.coop/simplylegal) or you can obtain a hard copy by contacting Co-operatives UK.



# 4

## Governing documents

In this section we cover the different types and the typical contents of governing documents.

### 4.1: What is a governing document?

A governing document is a record of the governance arrangements of an organisation, typically detailing the purpose of the organisation and its relationship both to its members and to the outside world. The governing document will generally define why an organisation exists, what it intends to do and how it will do it.

The legal structure of an organisation is generally defined as the combination of its legal form and its governing document. The following section will deal in detail with the types and typical contents of governing documents along with related governance issues.

### 4.2: Purpose of the governing document

The governing document of most incorporated organisations is a public document. It allows the outside world, for instance funders and regulators, to see why an organisation exists, what it intends to do and how. It should also provide a resource to members of the organisation, facilitating smooth internal governance. The governing document of a limited liability partnership is not a public document and whilst there is not even a legal requirement to have one, it is deemed good governance practice to do so.

In order for the governing document to be effective, it should be written in clear and easy-to-understand language. However, it is a legal document (a contract) and oversimplification of the language used could lead to it becoming ambiguous and of little practical use. As a result, in practice, some governing documents can appear to be complicated and hard to understand.

One of the main purposes of this guide is to familiarise the reader with the governing document, its terminology and typical contents.



### 4.3: Types of governing document

The following table details the different names for governing documents of the common legal forms used by community enterprises:

<b>Legal Form</b>	<b>Governing Document</b>
Association	Constitution
Partnership	Partnership Agreement or Deed
Trust	Trust Deed
Limited Liability Partnership	Partnership Agreement or Members' Agreement
Limited Company	Articles
Community Interest Company	Articles
Society	Rules
Charitable Incorporated Organisation	Constitution

Note that prior to October 2010, the governing documents of a limited company were the memorandum and articles. They have now been merged into a single document – the articles. The memorandum is still used during the process of company registration but does not form part of the governing document after this process.



#### 4.4: Governing document – Frequently Asked Questions

##### *Do we need to have a governing document?*

An unincorporated association is not required to have a governing document and neither is a partnership or a limited liability partnership. However, in all these cases it would be good governance to have a record of what the purpose of the organisation is and the relationship of the members to the organisation. Any charitable organisation must have a governing document whether incorporated or not. All incorporated organisations apart from a limited liability partnership will not be able to incorporate without a governing document.

Any organisation seeking grant funding will almost certainly have to supply a governing document as part of the application process.

##### *Where can I get a copy of an organisation's governing document?*

In all cases a member of the public should in the first instance go to the organisation in question to ask to see a copy of the governing document. Some may charge to provide a copy. The Industrial and Provident Society Act 1965 states that the rules of a society must be provided to any person who demands them, for a charge not exceeding the statutory limit.

If, for whatever reason, the direct approach is unsuccessful, then a company's articles can be downloaded from the Companies House Web Check service: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

In the case of a society, the rules can be obtained by contacting the Records Section of the Financial Services Authority: [www.fsa.gov.uk/register/home.do](http://www.fsa.gov.uk/register/home.do) (or whoever may succeed this function).

In both cases a fee is payable.

If the organisation is unincorporated and not a charity then there is no other recourse than to just ask the organisation.

In the case of a charitable organisation there is much information available for free on the Charity Commission website, such as accounts, reporting history and objects, but not the full governing document. See [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk) for more information.

Any member of the organisation has the right to see the governing document.

##### *Can we put what we like in our governing document?*

That really depends on the legal form of the organisation.

There is no prescription as to what needs to be included in the constitution of an unincorporated association. There is no "unincorporated association" Act of Parliament to prescribe the contents. Any dispute arising in unincorporated associations which end up in court would be resolved by referring to case law – the decisions made in similar cases. So it may be that, although you can put anything in the constitution of an unincorporated association, a court may take a different view as to whether it is reasonable.



With companies there is less prescription apart from community interest companies which have to have certain provisions. However, whatever is in the articles of a company, the Companies Act defines what should in fact happen and it takes precedence. A good example would be that you can't insist on consensus decision-making at a general meeting of a company when the Companies Act states that 75% of the members can make a decision.

In a society, there is some prescription as to what the rules must contain and the Industrial and Provident Societies Act 1965 does specify "matters to be provided for" in a society's rules. These include:

- the name of the society;
- the objects of the society;
- the address of the registered office of the society;
- the terms of admission of members;
- the holding of meetings;

- how the rules can be amended;
- the appointment, removal and powers of the committee of management;
- determination of the interest on shares;
- how the profits of the society are applied;
- how the funds of the society can be invested;
- provision for the audit of accounts;
- provisions relating to the types of, registration of and withdrawal of shares; and
- other provisions relating to common seals, deceased members, receiving deposits etc.

The Financial Services Authority should not register a set of rules which are unsuitable. The associated necessary scrutiny is one of the reasons for the higher costs of registration of a society and the use of pre-approved model rules. The use of an approved set of model rules also ensures that all of the appropriate matters are covered.

#### 4.5: Typical contents of the governing document

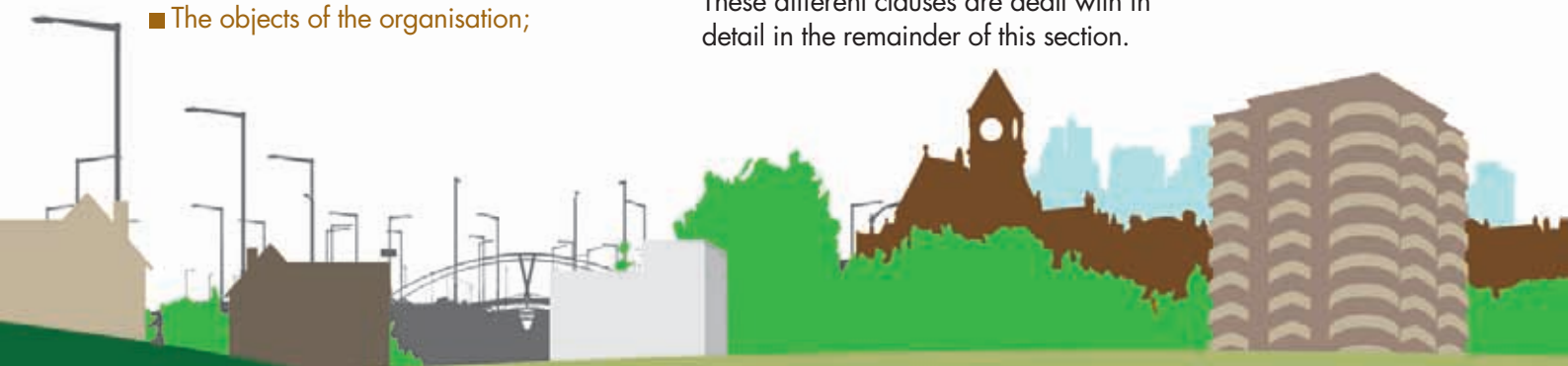
There is a great deal of flexibility as to exactly what a governing document contains, although some legal forms, for example community interest companies, are required to have certain clauses in their governing document in order to be able to register as such.

A governing document will typically contain clauses relating to:

- The name of the organisation;
- The objects of the organisation;

- The powers of the organisation;
- The personal liability of the members;
- Membership of the organisation;
- The governing body;
- Meetings;
- Application of surplus;
- How the governing document can be amended or replaced; and
- Dissolution and the distribution of assets of the organisation.

These different clauses are dealt with in detail in the remainder of this section.



## 4.6: Name of the organisation

Every organisation needs a name to differentiate it from its members.

Organisations wishing to incorporate should search the Register of Company Names at Companies House as you cannot register with the same name, or with a name that is too similar to an existing company or society name.

Companies House also advises that you check the Trade Marks Register of the UK Intellectual Property Office to ensure that you are not infringing other laws such as trade mark laws. It would also be advisable for any organisation considering charitable status to check the Charity Commission website: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

### 4.6.1: Sensitive words

In the case of companies and societies, certain words are deemed “sensitive” and either cannot be used, can only be used in certain circumstances or require the approval of a separate body.

For instance:

- the use of the word “Bank” in the name of an organisation requires the approval of the Financial Services Authority;
- the use of the word “Ministry” might imply a connection with government and would require the approval of the Secretary of State.

It may not be possible to register names which include words considered offensive, undesirable or misleading.

A full list of sensitive names can be found on the Companies House or Financial Services Authority websites.

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)  
[www.fsa.gov.uk](http://www.fsa.gov.uk)

In addition, a society cannot usually register with a name that has been used in the last 10 years.

### 4.6.2: Use of Ltd and CIC in the name

There are certain requirements with regard to the public use of the name of your organisation. These requirements are defined in the Companies Trading Disclosures Regulations, 2008.

Organisations that are incorporated as a private limited company must put **Ltd** or **Limited** (or the Welsh equivalent) after their name, unless they are a community interest company (CIC), in which case they must put **CIC** or **Community Interest Company** (or the Welsh equivalent) after their name.

If you are a society, then you must put **Limited** in full after your name although you can apply for an exemption.

In certain circumstances, such as charitable status, it is possible to apply to the relevant regulator for an exemption from the requirements to have **Limited** or **Ltd** after the name.

Complete up-to-date guidance on the requirements with regard to the display of company names can be found on the Companies House website: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or, alternatively, you can refer to the Companies Trading Disclosures Regulations – these regulations can be found at: [www.legislation.gov.uk](http://www.legislation.gov.uk)

### 4.6.3: Trading names or business names

It is possible to trade with a different name to that which has been used to incorporate the organisation. Complete guidance on the use of trading or business names can be found on the Companies House website: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

#### 4.6.4: Display of organisation's name

Companies and societies must display their full registered name, on the outside of the premises, at their registered office. They are also required to display their names on all premises which the organisation operates from (unless the address is primarily used as a residential property). For companies which have opted to keep their records somewhere other than their registered office they must also display their full registered name at this address.

Companies are also required to include details of their full registered name on all business letters (including emails), invoices, purchase orders and receipts and their website. Societies do not have the same legal obligations as companies, but it is considered good governance that they conform to the same requirements with regards to the display of their name.

#### 4.7: Objects

The objects of an organisation define why it exists and what it will achieve.

Objects fall into two categories:

**General objects** define why the organisation exists, for example: to increase the consumption of locally-grown food.

**Specific objects** define what it intends to achieve, for example: the establishment of local food co-operatives.

##### 4.7.1: Restricted objects

Companies are no longer obliged to have stated objects in their governing document. They are said to have unrestricted objects and can do all things provided that they are legal. Any company can restrict its objects, it just doesn't have to.

Charities and community interest companies must have restricted objects. In the case of a charitable organisation, all of its objects must be charitable in nature (i.e. relate directly to one or more of the 13 charitable purposes).

In the case of a community interest company, the objects will go some way to defining the community benefit that a community interest company must demonstrate. The community benefit of a community interest company is also detailed in its Community Interest Statement.

Any organisation wishing to apply for funding would be advised to have restricted objects as these form part of the assessment of any grant application.



#### 4.7.2: Acts outside of objects – ultra vires

When drafting the objects it is advisable not to make them too restrictive, unless the organisation is being established to undertake a very specific activity or has a limited life. By making the objects reasonably flexible the organisation is free to carry out a wide number of activities and can easily change the direction of the organisation. Wide ranging objects can be an issue as it means that the original reason for establishing an organisation can be lost and that it can be difficult to be clear what the organisation is actually set up to achieve.

Where the objects of an organisation are restricted, any acts which do not fall within those objects, for instance operating in a wider geographical area than that specified in the objects, are known as ultra vires. Ultra vires literally means “beyond the powers”. Similarly, acts outside of the powers where they are restricted are taken to be ultra vires.

#### 4.8: Powers

Powers are what the organisation can do in order to achieve the objects. Powers are generally left fairly broad so as not to restrict the activities of the organisation, but if no powers are stated then it is assumed that the organisation is able to use all lawful powers necessary. Banks may require that your governing document includes a stated power to borrow before they will lend to you.

Examples of powers include the power to:

- employ staff;
- borrow money;
- take out investments;
- own property;

- make payments to others;
- take out insurance;
- enter into contracts; and
- enter into partnerships.

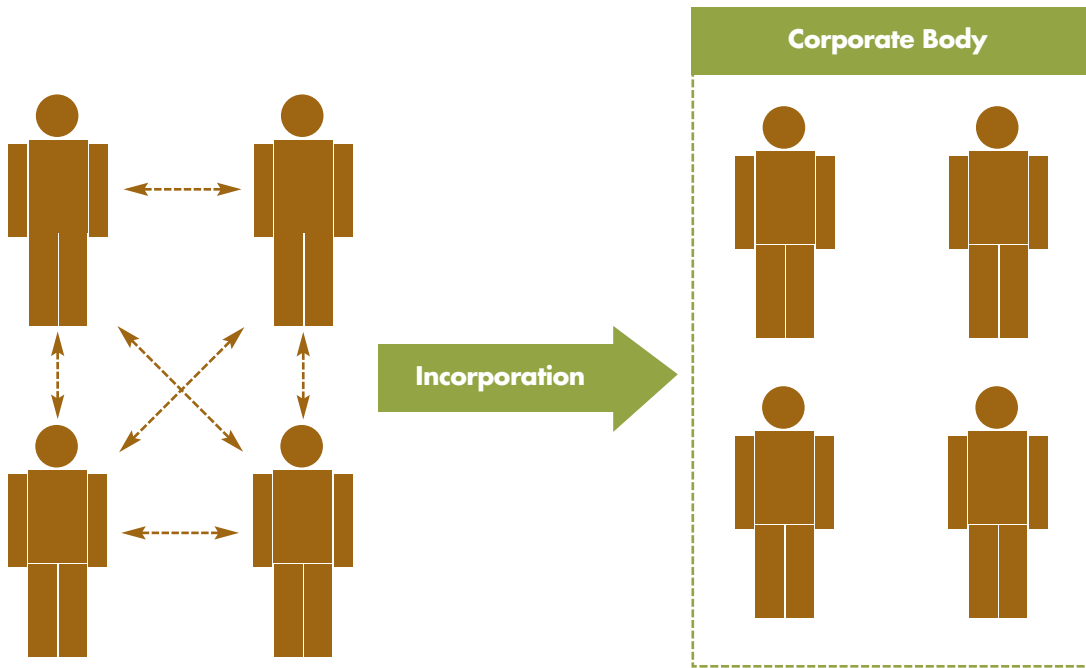
#### 4.9: Statement of liability

This is a statement which defines the limit of the personal liability of a member in the event that the organisation is wound up and is unable to pay its creditors. Such a statement is unlikely in the governing document of an unincorporated organisation as the liability of members is unlimited in that case.

In a company limited by guarantee, the personal liability of the member is limited to a fixed amount, typically £1 – the member, in effect, guarantees to pay £1 in the event that the organisation is wound up and is unable to meet its debts. In a company limited by shares or a society, the liability is limited to the value of the paid up shares held by the member.

It is worth mentioning that limited liability does not exempt those acting in the role of director from liability in all eventualities. If a director is found guilty of a criminal offence or a breach of their statutory duties it is possible that they will be personally liable. Directors may also be deemed negligent and, as a result, liable for the actions of others if they are found to have allowed such actions to take place. Directors will also be liable for debts for which they have signed a personal guarantee – required by some lenders where there is insufficient security to cover a debt.





Incorporation is the creation of a new “person” in law – a corporate body with a separate identity to its members.

<b>Unincorporated</b>	<b>Incorporated</b>
<p>Members have unlimited personal liability. The liability is also “joint and several” which means that a creditor can “pursue an obligation” against any of the members who must then pursue the other members for their share of the liability.</p>	<p>Members’ personal liability is limited to their guarantee or their shareholding in the organisation.</p>



## 4.10: Membership

All organisations have members (even if only one – see section 4.10.6 of this guide). Simply put, the members are those who own and control the organisation – they are the people (or other organisations) who can attend and vote at a general meeting of the organisation.

See also Section 7 of this guide for more information relating to voting and decision-making.

### 4.10.1: Who can be a member?

The governing document should define who the members are and who is eligible to apply for membership. For example, it may state that someone is eligible for membership if they meet one or several of the criteria in the following list, which is by no means exhaustive. Criteria could include:

- living or working in a particular area;
- working for the organisation;
- being a customer of the organisation;
- investing in the organisation;
- supporting the objects of the organisation; or
- participating in a certain activity.

### 4.10.2: How members join the organisation

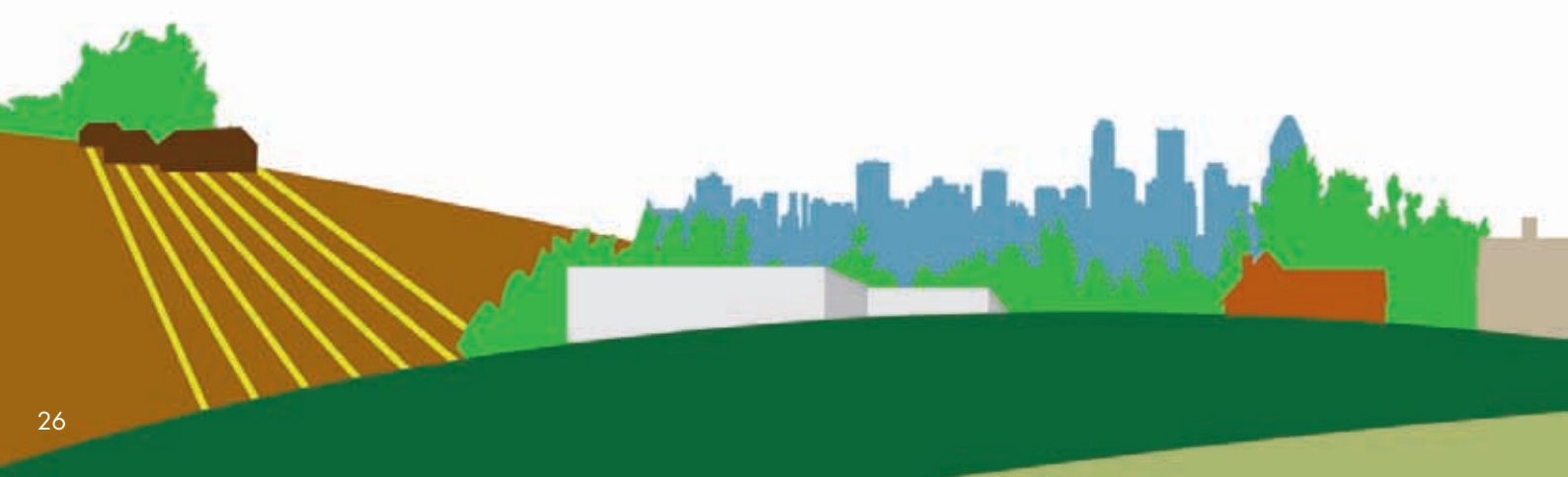
Membership of any organisation must be voluntary – you can't make someone a member without their knowledge or consent, but membership may be at the

discretion of the existing membership or governing body. Some organisations have a completely open membership, with those who support the objects being accepted into membership on application. Other organisations have much more defined and restrictive membership criteria. The governing document may define an application process or a subscription payable on joining.

One of the International Co-operative Alliance (ICA) principles is that membership of a co-operative must be "voluntary and open". This is sometimes misinterpreted to mean that anyone has the right to join any co-operative. In some co-operatives this may be the case, but not always. The principle of open membership is further defined by the ICA as:

*"Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination."*

Therefore a co-operative does not discriminate unfairly with regard to who can be a member but can restrict membership to a geographical area or to a general class of persons or organisations. For instance a consumer co-operative by definition restricts its membership to its customers whereas a worker co-operative restricts its membership to its employees. In the case of a worker co-operative, the open membership doesn't mean that anyone can demand a job, but rather that anyone



who is an employee of the co-operative can become a member.

A co-operative may also close its membership where it cannot service further members. A classic example would be an allotment society where the number of members is limited to the number of plots.

#### 4.10.3: How membership ceases

The governing document should also define how a member leaves the organisation, or ceases to be a member, both voluntarily and involuntarily.

Typical routes to non-membership would include:

- death or winding up, where the member is an organisation;
- failure to pay any subscription (an annual subscription is often used to help manage the membership register);
- resignation;
- no longer satisfying the criteria for membership, for example by leaving employment in the case of the member of a worker co-operative.

There will typically be a mechanism defined in the governing document for the removal of a member for behaviour “prejudicial to the success of the organisation”. Such a clause will typically give the member concerned a right of reply, arbitration and/or appeal, but, as a last resort, there should be a mechanism for the removal of a member however unlikely or unpalatable the process might seem.

#### 4.10.4: Classes of membership and multi-stakeholder governance

Some organisations, known as multi-stakeholder organisations, define different classes of member who will have different relationships with the organisation. Where there are different classes of member, the governing document should define:

- how to become a member or a particular class of member;
- whether you can be a member of more than one class;
- the relationship between each class of member and the organisation; and
- the rights of each class of member.

For instance a community supported agriculture (CSA) enterprise might have members who are consumers, workers (the growers) and/or investors, all with a vote. It is possible to define different membership criteria for different classes of member and some organisations will alter the voting rights of different classes of membership in order to balance the different interests of the different member classes.

Multi-stakeholder organisations have their own particular governance problems relating to the complexity of the arrangements above. It may be difficult to balance the different interests and aspirations of the different classes of member. Some model rules introduce weighted voting for the different membership classes, giving one class of member more power in relation to the importance of their role within the organisation. Such a weighting of voting



may conflict with the co-operative principle of democratic member control, which is generally defined as “one member, one vote”.

In the example of the CSA project above, this may mean increasing the power of the grower members at the expense of the investor members as such a project is likely to have many more investors than growers. The downside of such a skewed arrangement is that, whilst it redresses the power imbalance, it makes the governance more complicated and harder for the members to engage with, especially where any voting process has to be adjusted by a complicated formula.

Other multi-stakeholder organisations have taken the approach not to skew the power within the different member categories, but rather rely on the more numerous members being guided by the importance and wisdom of the less numerous member category. In the CSA case above it would mean relying on the consumer and investor members’ respect for the opinion of the grower members. This has the advantage of being simpler and does not allow a few members to dictate to the rest of the organisation.

#### 4.10.5: Legal responsibilities – register of members

It is critical that an organisation knows who its members are and when they cease to be a member, not least because the quorum required for a general meeting to make legitimate decisions is often defined as a percentage of the total membership. It is impossible to know what the quorum

should be if you don’t know how many members you’ve got. An organisation also needs to know who to send notice of general meetings to and who, at a meeting, is eligible to vote. The passing of a written resolution also requires that you know how many members you have, so that you know once 75% (or whatever proportion is specified in the governing document) of them have voted for the resolution.

All companies must keep a register of members but it is good practice for any organisation to do so whether legally required to or not. Membership of a company carries certain rights and responsibilities and, therefore, accurate and up-to-date records must be kept to ensure those who own the company and have the right to vote are kept informed of relevant company issues.

As a company, the organisation must keep the following details for each member:

- their name and address;
- the date on which the person became a member;
- the date any person ceased to be a member;
- the class of membership, if appropriate;
- the statement of shares held by each member, if appropriate; and
- the registered office address of any corporate member.



Any entry in the register of a person who ceases to be a member can be removed from the register after 10 years from the date on which the person ceased to be a member.

The register can be kept as a paper document, or an electronic document, including a database, as long as the information can be reproduced in paper form. If the register is held at a place other than the registered office of the company, the company must inform Companies House.

The register of members must be made available for inspection by any member or other person with a relevant interest. For companies registered within England and Wales, the register must be kept at an address in either England or Wales.

Societies are required to keep a register of members at the registered office.

The register of a society must contain:

- members' names and addresses;
- dates they entered and/or left membership;
- officers' names and addresses;
- dates they entered and/or left membership;
- the number of shares held by each member; and
- a statement of any other property such as loans or deposits held by the member.

A duplicate register, which includes only the first 4 items listed above, must be kept available for inspection by any member of a society. Any member must be allowed to inspect all of the information on the register relating to their own membership. The registrar or a representative of the registrar must be able to inspect at all reasonable hours.

#### 4.10.6: Single member organisations

It is possible for a limited company to have only one member and that member can also be another organisation. This is particularly useful for sole traders who may wish to limit their personal liability or change their personal taxation. Another common use of single member companies is as a trading subsidiary of another organisation. For instance charitable organisations will often create a single member company (the charity being the sole member) to carry out trading activity which would not be permitted of the parent charity. They are also used to separate out "riskier activities".





#### 4.10.7: Membership: Frequently Asked Questions

*Our organisation has people who want to be involved and volunteer, but who don't want to have to go to meetings. Is this OK?*

Many organisations have people involved who don't want to engage with the governance of the organisation, but just want to volunteer now and then. Such people can be admitted into membership, but you run the risk of the bulk of the governance falling on the shoulders of a few people who resent the non-participation of the rest of the membership. Alternatively, you can create an organisation run by a smaller group of committed members who own and control the organisation, with a "friends" of the organisation category who have no control of the organisation, but receive a service such as a newsletter or opportunities to attend social events or work days. These "friends" of the organisation are typically referred to in the governing document as associate members or supporter members. Whichever option you choose, it is important that people getting involved with the organisation are clear as to their degree of involvement, control and ownership.

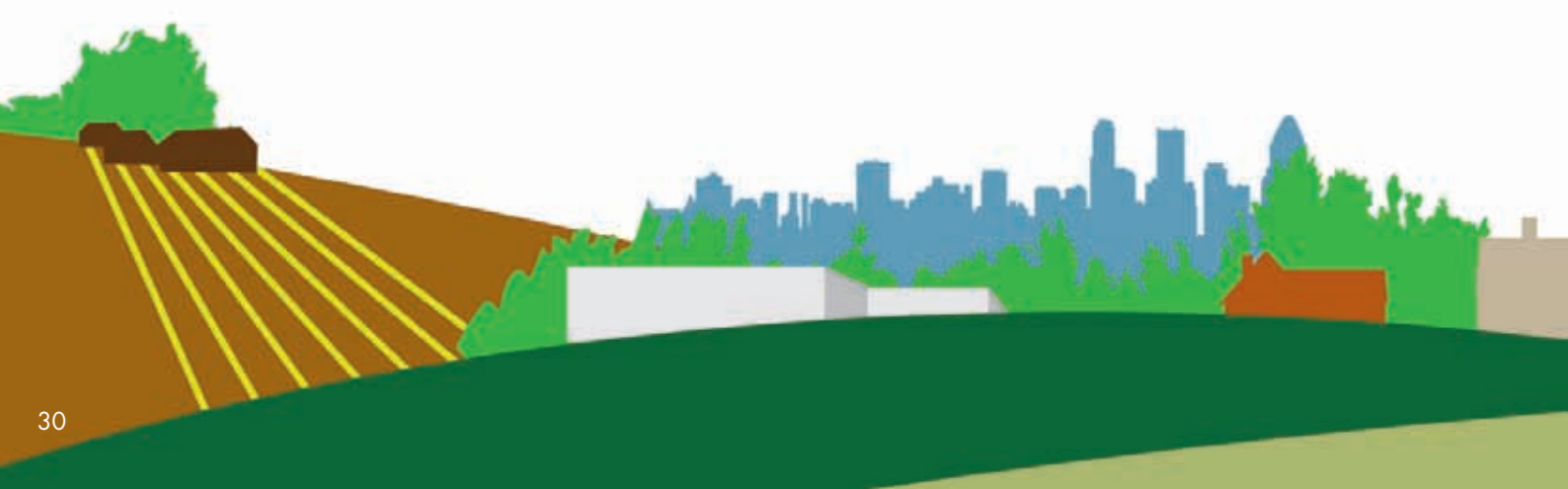
*We have an important AGM coming up but we're not sure if we have up-to-date contact details for all members. What should we do?*

The organisation should make reasonable attempts to contact all members, for example:

- send a notice to their last known address, and try to contact with all known addresses i.e. electronic ones too;
- if the member is an incorporated organisation, check at Companies House to see if the address has been changed. If an individual check on Equifax (or similar database) for an address. If unincorporated, but a charity, check the Charity Commission's website. Obviously with organisations you can also search for them using an internet search engine;
- put the details of the meeting etc. on the website of the organisation; and
- depending on the type of organisation there may be other appropriate actions, e.g. if it is a shop, put a notice(s) up in the window of the premises.

The governing document of the organisation may also specify how and when a notice is deemed to have been served.

The question as to what is reasonable is subjective but, really, you just try to exhaust all possibilities and you should be able to prove that you have tried.



#### 4.11: The governing body

The governing body is a group of people who are delegated by the membership of an organisation to undertake the strategic management of that organisation. In a co-operative or community enterprise they are typically elected from the membership. The members of the governing body, by virtue of the fact that they act for the members, have additional duties in law over and above those of a member. This section is concerned with the relationship between members and the governing body and those additional duties.

##### 4.11.1: Collective or committee management?

In smaller co-operative organisations, where all members are also members of the governing body, the strategic decision-making is typically undertaken

by meetings of the entire membership. This style of collective management becomes harder as the size of the membership increases. Organisations with more than 12 to 15 members often move towards committee management, where the members elect a smaller governing body and delegate some of their powers to it.

##### 4.11.2: Governing body name

The governing body may be known by many different names, with similar organisations using different names. The most common forms are listed in the table below. Irrespective of the name of the governing body or its members, their duties and responsibilities are defined in law although they vary slightly dependent on the legal form of the organisation. This is covered in more detail in the remainder of this section.

#### Governing body related terms for the common legal forms of UK organisations

Legal Form	Most common name for governing body	Members of governing body
Unincorporated Association	Committee	Committee members
Partnership	Has no governing body separate to the partners	Has no governing body separate to the partners
Trust	Board of Trustees	Trustees
Limited Company (inc CIC)	Board of Directors	Directors
Society	Committee of management although Board is becoming more common	Committee members or directors



#### 4.11.3: Who is eligible to serve on the governing body?

The governing document should define who can be a member of the governing body. In a co-operative or community enterprise, the governing body is typically elected from within the membership, although it is possible to appoint governing body members who are not members of the organisation.

For companies and societies (which are not registered charities), having paid members of staff on the governing body – sometimes referred to as executive directors – is also deemed acceptable, and may be actively encouraged to help steer the organisation and provide a vital link between the organisation's operations and its governance. A governing body will then be made up of a mixture of executive and non-executive directors.

In the case of a registered charity, whether it is incorporated or not, it is more complicated for an employee of the organisation to be a member of the governing body. Some charities make provision for one or two senior employees to be trustees, although this does still require the approval of the Charity Commission. It is more unusual for a trustee to become an employee and remain a trustee. Employment of a trustee must be done "without favouritism or improper influence" – the trustee should not gain an unfair advantage because of their inside knowledge and position and any conflicts of interest must be managed. Employment of a trustee will require the approval of the Charity Commission. The Charity Commission publish a document – "CC3 – The Essential Trustee: What you need to know", which can be downloaded from their website: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

Until 2010 it was possible for persons who were disqualified from being a company director to serve on the governing body of a society. At the time of writing this is still the case, but the Co-operative and Community Benefit Societies and Credit Unions Act 2010 will have the effect of applying the Company Directors Disqualification Act 1986 to societies. Many societies already prohibit such people from serving and this is certainly considered best governance practice.

#### 4.11.4: Joining the governing body

The governing document should define how to become a member of the governing body. There are often several ways that a governing body can recruit or change its composition, to give it maximum flexibility in maintaining a balance of skills, diversity, democracy and experience.

Typical routes into the governing body will be defined in the governing document and will include:

- **Election by and from the membership** – this is typically a prime function of the annual general meeting;
- **Co-option on to the governing body by the existing governing body** – co-option is often used to bring someone onto the governing body with a particular skill or expertise. This option is also often used where an existing member of the governing body steps down mid-term or dies – a new governing body member is appointed to fill the "casual vacancy" without the need to hold a general meeting. The governing document will often define a maximum number or proportion of governing body members who can be co-opted at one time;

- **Ex-officio** – the governing body may include ex-officio members, whereby an individual is entitled to a position on the governing body by virtue of the position they hold. For example, there may be a place on the governing body for the head of the local school, whoever they are;
- **Appointment** – a member organisation appoints someone to serve on the governing body and the governing body has no choice but to accept the appointment; and
- **Nomination** – a member organisation can nominate an individual to represent them on the governing body, but in this case the governing body can refuse the nomination where they would have to accept an appointment.

Sometimes a governing document details the process for joining the governing body, for example it may state that members must be nominated and seconded if they wish to stand for the governing body, whilst others may not require such conditions. There may also be a time period before which all nominations or members wishing to stand must put their names forward, whilst others require the governing body to endorse all nominations for election. For most member-based organisations, members of the governing body are elected by voting members of the organisation at a general meeting, or at an annual general meeting if specified.

Following good practice in electing members to the governing body encourages greater transparency and accountability of the organisation to its members. It would be advisable to document this good practice in a policy.

#### 4.11.5: Leaving the governing body

There are various ways that a member of a governing body can leave, voluntarily or otherwise:

- **Retiring** – many governing documents specify a maximum length of time, or term of office, which members of the governing body may serve. The individual may also decide to retire voluntarily;
- **Resignation** – a member of the governing body may resign from the governing body, except where the governing document prevents resignation if this reduces the number of directors below a specified minimum;
- **Disqualification** – it is good governance that persons who are disqualified from standing as company directors, or charity trustees, may not act as directors of a company or a society;
- **Disqualification** – by virtue of mental incapacity or bankruptcy;
- **Removal** – members of a governing body or even the entire governing body may be removed by the membership. The governing document will define any process, often including rights of reply by the person being removed and recourse to arbitration. The governing body may also have powers to remove its own members;
- **No longer being eligible** – as defined by the governing document;
- **Replacement** – by a member organisation of which they are the representative.





#### 4.11.6: Powers of the governing body

The governing body has delegated powers from the membership. Some powers cannot be delegated, such as winding up the organisation, but the governing document will often define the limits on the power of the governing body, for instance a limit on expenditure which the governing body can approve without consulting the membership.

#### 4.11.7: Duties of company directors

A director is defined as any person occupying the position of director howsoever called (section 250, Companies Act 2006). The term director may therefore be applied to any person who has been validly appointed as a director (de jure director) and to a person who acts as a director without having been appointed validly or at all (de facto director).

A de facto director owes exactly the same duties to the company as a formally and properly appointed de jure director, i.e. he or she is subject to both statutory duties and prohibitions. Accordingly, he or she may be personally liable for breach of duty.

As well as de facto and de jure directors, the Companies Act also defines a further category, the shadow director, a person, who is not a director, but instructs other directors what to do and those directors follow his or her instructions. Individuals who act in this way are deemed to have the same liabilities as properly appointed directors. Shadow directors would typically be senior employees or major shareholders.

Similarly the law makes no distinction between the duties of executive and non-executive directors.

The important message here is that directors are defined by what they do, not what they are called.

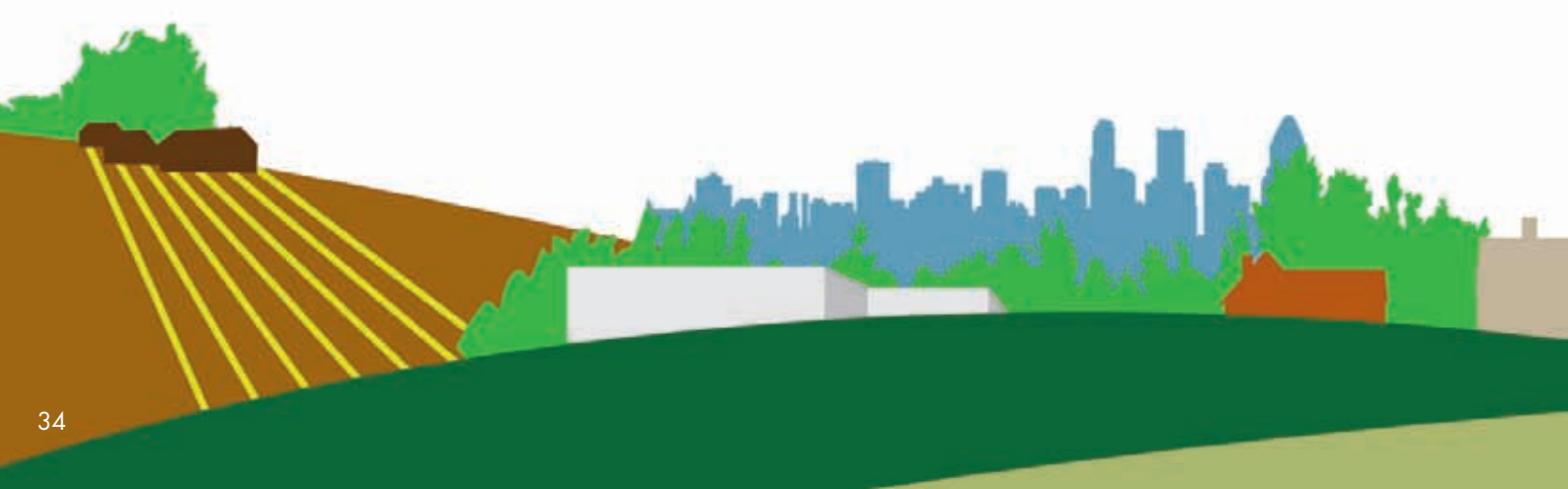
Whilst all the members of a company may be other organisations and directors are sometimes corporate bodies in themselves, a company must have at least one director who is a natural person.

The Companies Act 2006 codified the duties for company directors. These duties do not currently apply to the members of the governing body of a society, but it is considered best practice to act as if they do.

The duties are as follows:

- Duty to act within powers;
- Duty to promote the success of the company;
- Duty to exercise independent judgement;
- Duty to exercise reasonable care, skill and diligence;
- Duty to avoid conflicts of interest;
- Duty not to accept benefits from third parties;
- Duty to declare interest in a proposed transaction or arrangement; and
- Duty to declare an interest in an existing transaction or arrangement.

The overriding duty is that a director is required to act in the way he or she considers, in good faith, will be most likely to promote the success of the company for the benefit of its members as a whole. In





doing so, he or she must have regard (amongst other matters) to various additional factors:

- the likely consequences of any decision in the long term;
- the interests of the company's employees;
- the need to foster the company's business relationships with suppliers, customers and others;
- the impact of the company's operations on the community and the environment;
- the desirability of the company maintaining a reputation for high standards of business conduct; and
- the need to act fairly between members of the company.

Company directors may also have additional duties under the following legislation:

- Financial Services and Markets Act 2000;
- The Health and Safety at Work Act 1974;
- Environment Protection Act 1999;
- Insolvency Act 1986;
- Company Directors Disqualification Act 1986;
- Corporate Manslaughter and Corporate Homicide Act 2007; and
- Enterprise Act 2002.

**Important** – Failure by a company director to act in accordance with the duties may lead to prosecution and may also result in the person being liable for any loss or debt incurred as a result.

#### 4.11.8: Duties of the committee members of a society

Every society must have a governing body, commonly and hereafter referred to as the committee. Although a society must have at least three members there is no minimum number of committee members required – any minimum will be specified in the rules of the society. It is however unlikely that the Financial Services Authority would register a society with only one committee member.

The names of the committee members of a society must be entered in the "register of officers".

The duties of the committee members of a society are:

- a fiduciary (in good faith) duty to act in the best interest of the society as a whole and its members;
- a duty not to misuse information for their own benefit;
- a duty not to misuse the society's property; and
- a duty not to allow their personal interests to over-ride the interests of the society as a whole.

Note that the duties relate to the society and its members as a whole and not some section of it such as employees or any sub-group of members. This duty doesn't apply to the committee member's role as a member – in a general meeting they can vote without regard to their duties as committee members.

Additional duties may also be defined in the governing document.



It is considered good governance practice to act as if the duties of company directors also applied to the members of the governing body of societies.

#### 4.11.9: Duties of the committee members of an unincorporated association

If the association is non-charitable, then a committee member has the following duties:

- a fiduciary duty to act in the best interest of the members of the association;
- a duty not to misuse powers; and
- a duty of care comparable to that of committee members.

If the association is charitable, then the committee members have all the duties of charity trustees as defined in charity law. See the Charity Commission website for more details: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

#### 4.11.10: Officers

The members of the board of directors of a company are known as the officers of the company. In addition, any organisation may define additional roles within the organisation and these are known as officers too, although they may not necessarily be part of the governing body.

There is no requirement in law to have these officers, but they facilitate the internal governance of the organisation. They may also be known as honorary officers. Honorary officers are not required to act in accordance with the duties of company directors unless they are also a director.

Their duties and responsibilities are normally defined by the governing documents of the organisation. They may include:

**President** – a figure-head role often occupied by someone who brings kudos to the organisation by virtue of their standing within the community. The president may also have other duties relating to the governance of the organisation. This title is also used in some older organisations to describe the role of chair (see below).

**Chairperson or Chair** – someone who chairs or facilitates at meetings.

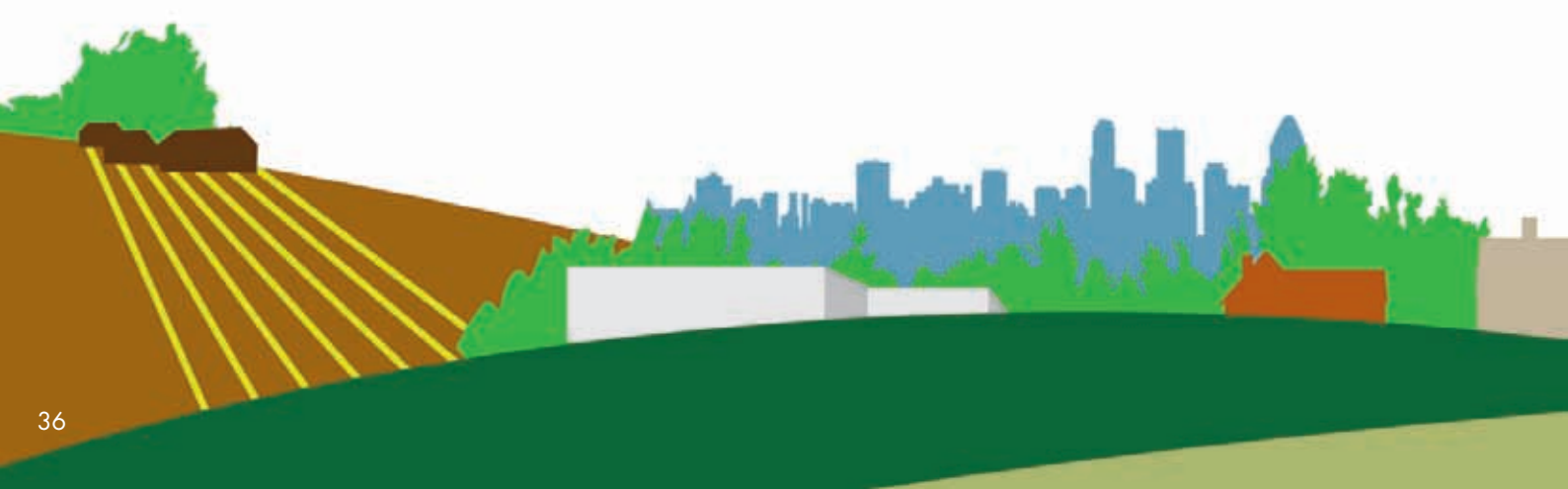
**Vice-chair** – someone who stands in for the chairperson when they are not available or are unable to act for whatever reason.

**Honorary secretary** – someone who deals with the correspondence of the organisation. Note this is a different role to that of company secretary.

**Treasurer** – someone who takes responsibility for monitoring the organisation's finances and the reporting of the same to the governing body.

#### 4.11.11: Company secretary

The company secretary generally acts as the link between the organisation and the outside world, particularly regulators. Societies must have a secretary, whereas companies no longer have to have one unless their governing document requires it. All the duties typically associated with the company secretary still need to be carried out by somebody and it is considered good practice to have one nonetheless.



#### 4.11.12: Governing Body: Frequently Asked Questions

##### *How do we, as members, change a decision of the governing body?*

Generally there is little that a member of the organisation can do if they disagree with decisions made by the governing body, other than if:

- the decision made by the governing body is unlawful; or
- the decision is not in the best interests of the organisation or its members; or
- the decision has been made without following the correct procedures for passing a resolution, as outlined in the governing document.

If the decision does not fall into one of the categories above, the members may consider raising the issue at the next general meeting to further ascertain the reasoning and judgements behind the decisions. The members may also see if other members agree, and establish a course of action to elect other governing body members. The members may also wish to remove the governing body members through, for example, an ordinary resolution with special notice, although the consequences of such action should be carefully assessed.

As a last resort, the members may choose to leave the organisation.

##### *I'm a member of the governing body, but I don't agree with a decision it has made. What can I personally do?*

If the decision was lawfully agreed, at a quorate meeting with a majority of directors voting in favour, there is little that the governing body member can do, other than register their objection to the decision at the next meeting and ensure that this is recorded in the minutes, with the reasons for not agreeing.

The members of any governing body also have a duty to act collectively. The membership has delegated much of its power to the governing body, which has made a decision and the governing body members must at the very least not openly oppose this decision. If a governing body member is unable to do this and wishes to speak out criticising a decision (other than noting their objection in the minutes), then they should resign from the governing body before doing so.

In any organisation, a governing body member may choose to resign, but company directors, in particular, should be aware that they can still be held to be personally liable at a later date if they have resigned as a director and walked away from a problem which they had a duty to remain and address.



***Our governing body is low in numbers due to several resignations. What can we do?***

By law both a company and an unincorporated trust must have at least one director at all times. The Industrial and Provident Society Acts do not set a minimum for societies and there is no minimum for unincorporated associations. It is likely that the governing document of the organisation may specify a higher minimum and, if the company is also a registered charity, it is usual to have no less than three directors.

The governing document of an organisation will often anticipate this situation. The governing body, whilst unable to make legitimate decisions, will retain the powers to co-opt people on to the governing body or to call a general meeting to elect new governing body members. The inquorate governing body will not be able to exercise any other powers until it is quorate again.

See also section 9.6 of this guide for information relating to the performance of the governing body.

#### **4.12: Meetings**

Meetings are essential to the governance of any organisation and are often the area where good governance breaks down. From a corporate governance point of view, meetings fall into two categories: general meetings and meetings of the governing body.

The governing document should have clauses relating to both types of meeting and in addition many organisations will have an additional document often known as Standing Orders relating to the fine detail of the conduct of meetings.

Please see section 5.3 of this guide for more information relating to Standing Orders.

##### **4.12.1: General meetings (including annual general meetings)**

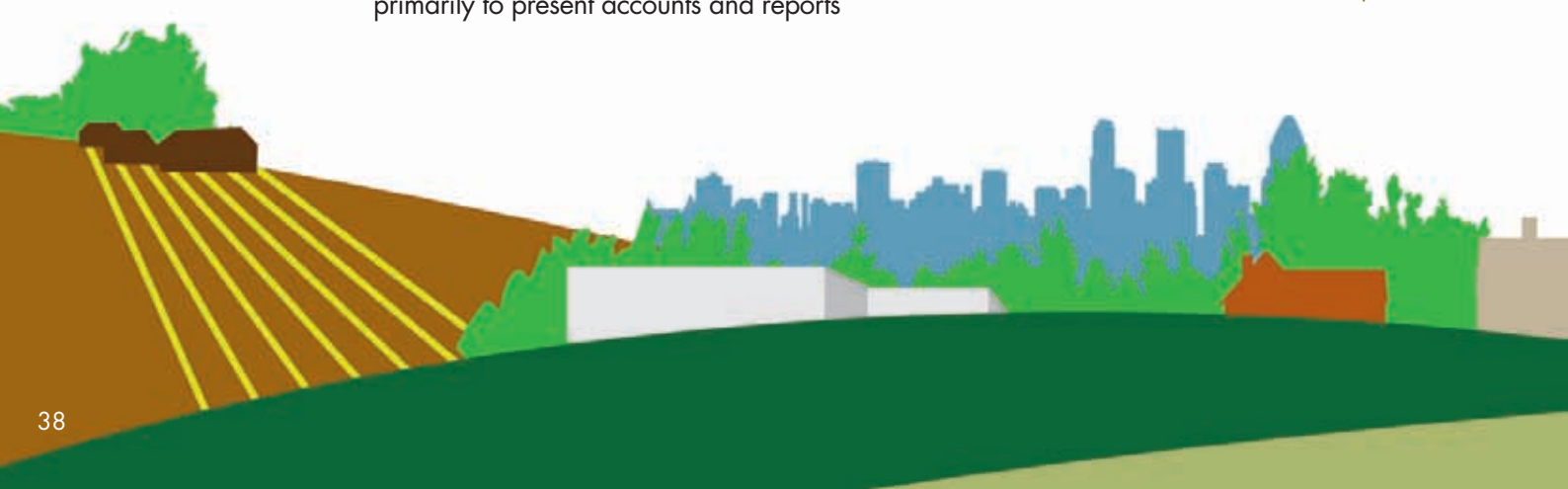
General meetings are meetings of the entire membership and are sometimes called members' meetings. These are used primarily to present accounts and reports

to the membership, elect the governing body, consider resolutions and to make major strategic decisions. In an organisation with collective governance, all meetings will be general meetings.

Societies have to have an annual general meeting (AGM) and although this used to also be the case with companies, since October 2009 they are now no longer required to unless their articles state otherwise. It is, however, still best practice for a membership organisation to have an annual general meeting.

The AGM of any organisation will usually include the following:

- agreeing the minutes from the last meeting;
- presentation and consideration of the accounts, balance sheet, annual report and auditors' report (if required) from the previous year;
- election of the governing body or declaration of the results of elections;



- appointment of the auditor for the year ahead (if required) and setting the remuneration or authorising the governing body to set it.

Many organisations will schedule additional general meetings as required throughout the year. Members will also be able to instruct the governing body to call additional special general meetings (these used to be referred to as extraordinary general meetings) and the governing document should define how and in what circumstances this can be done.

#### 4.12.2: Meetings of the governing body

These take place to monitor and have a strategic overview of the organisation. In smaller organisations, these meetings may also deal with the day-to-day running of the organisation, although ideally this should be delegated to employees or sub-committees.

It is at meetings of the governing body that the members of the governing body demonstrate their adherence to any relevant duties, such as those of company directors. As a result, and also in the interests of accountability to the members, it is important that accurate records are kept of governing body meetings, including attendance, minutes and records of decisions.

#### 4.12.3: Notice of meetings

The governing document should specify the notice required to be given to those entitled to attend a particular meeting.

For a general meeting, company law specifies that a minimum of 14 days' notice must be given to all members entitled to vote at an annual general meeting. The governing document may specify a longer period of notice but not a shorter period. If the organisation in question is not a company then you will need to consult the governing document to determine notice requirements. If the governing document is silent then 14 days should be used as a default.

In some organisations, where the governing document allows, it is possible under certain conditions for a general meeting to be called at no, or reduced, notice within a meeting of the governing body. This would typically occur in a smaller organisation where the members and the governing body were the same people.

The notice of a general meeting should contain:

- the date and time of the meeting;
- the location of the meeting;
- a description of the business to be transacted at the meeting; and
- the full text of any proposed amendments to the governing document or other proposals – it will not be possible to conduct any business at the meeting which is not specified in the notice.





The governing document should also specify how notice of a meeting can be given, for instance by post, public notice, electronic means or website. In a society it is possible to give notice of a general meeting by posting a notice in a prominent position at the place of business of the society, where this is explicitly allowed for in the rules.

If a general meeting is adjourned, there is no requirement to issue a new notice, unless it is stated that you must do so in the governing document. When the adjourned meeting reconvenes, no new business may be considered which was not on the notice of the original meeting – it is in fact the same meeting.

#### 4.12.4: Quorum

The quorum is the number of persons required to attend a meeting of an organisation in order for that meeting to have the authority to make binding decisions. The quorum may be a set number of members or can also be defined as a percentage of the membership.

Unless the governing document specifies otherwise, the quorum for an AGM is two members (except in the case of a single member company, where it is obviously one). It is possible for members to be present electronically, for instance by telephone or internet. In the case of a company the proxies count towards the quorum unless the governing documents state otherwise.

Generally, there must be a quorum to transact the business of the meeting and for any decisions to be valid. Therefore, if a meeting starts as quorate and sufficient members leave to make the meeting

inquorate, no further decisions may be made legally, and the meeting must be adjourned. The governing document may, however, state that as long as a meeting starts as quorate, all decisions remain valid, even if numbers fall below the quorum, and in this case there is no need to adjourn the meeting.

A member with voting rights who declares a conflict of interest on a particular issue under consideration may not be counted towards the quorum for a vote on the issue concerned, or for that part of the meeting where the issue is discussed.

If a quorum is not present at the start of a meeting the meeting may continue, but cannot make any valid decisions. Alternatively the meeting is generally adjourned to reconvene at a future date. Some governing documents state that however many members turn up at the reconvened meeting, they shall be the quorum. This does mean however that a small proportion of the membership may be taking quite important decisions.

#### 4.12.5: Voting

The process of voting in any meeting is also generally known as a ballot. It is important at any meeting that it is clear:

- who is eligible to vote, and by what method;
- how many votes each member has;
- what the required level of support is for a proposal to be passed;
- who holds any proxy votes and for whom; and
- the process for the conduct of any ballot.



Postal voting is often used for elections, with the members completing a ballot and returning it to the organisation before the general meeting at which the result is announced. Casting votes are allowed but it is only permitted if the governing document allows for it.

The use of referenda in societies, for issues other than elections, is also possible where the governing document makes provision for it. A company will generally use a written resolution in a similar situation where it is desirable that the organisation votes on an important proposal without holding a general meeting. [See section 4.14.1 for a description of written resolutions.](#)

Electronic voting refers to using electronic methods, including telephone, email and the internet, to cast a vote either prior to or during a meeting.

If an organisation is considering using electronic voting, it must refer to its governing document to ensure the provision to vote electronically is included. It is also important to include whether those persons participating and voting at a meeting by electronic means are included in the quorum, which will have an impact on whether the meeting is deemed quorate or not.

It is also important to ensure that votes cast where members cannot see each other are authenticated and verified to make sure that only those persons entitled to vote are able to do so and that they can only vote once. This may require an appointed electoral teller to be present during the time of voting, and for the organisation to establish a system of voting which ensures that votes can be cast and recorded in a systematic and accountable manner.

Most organisations will also make provision for a poll vote, where a show of hands is not conclusive or where a sufficient number of members demand one. A poll vote may be conducted as a secret ballot where members will generally place a card or paper into a ballot box for counting by the teller or tellers.

#### **4.12.6: Proxy votes and proxies**

A proxy is a person appointed to represent a member who cannot attend a meeting. It also refers to the form or document used for the purpose of making the appointment.

All company members have a statutory right to appoint a proxy to attend, speak and vote (either on a show of hands or on a poll) on their behalf at general meetings of the company. This is the case even if the company articles say otherwise. The proxy can either be instructed by the member how to vote or given discretion to vote as they see fit.



All companies need to make the following administrative arrangements:

- proxies have the right to speak as well as to attend;
- the notice of the general meeting must tell members of their statutory right to appoint a proxy; and
- the proxy form must state that it must be returned more than 48 hours before the general meeting.

Any completed proxy form, submitted by a member, must be received at the registered office of the company, not less than 48 hours before the meeting time. The form can be submitted electronically if the governing document allows.

For organisations which are not companies, the use of proxies is not a statutory right and any procedure with regard to the use of proxies should be specified in the governing document.

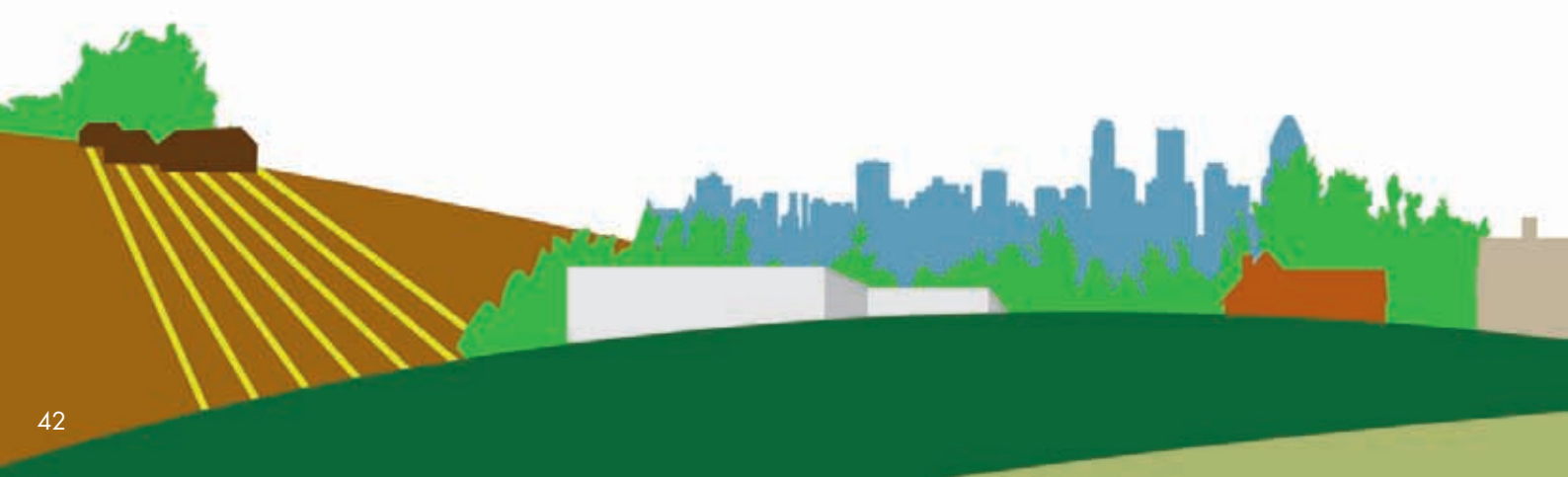
The Russell-Cooke Voluntary Sector Legal Handbook edited by Sandy Adirondack has an example of a proxy form which can be adapted to suit. The Handbook can be obtained from the Directory for Social Change: <http://www.dsc.org.uk>

#### 4.12.7: Frequency of meetings

The frequency of general meetings and governing body meetings will generally be defined in the governing documents. As an example, worker co-operative society Suma holds three quarterly general meetings in addition to the annual general meeting. This makes four scheduled meetings in total which the society must now have as this is stipulated in the society rules. In addition members may call additional general meetings to deal with particular issues. There is a particular balance to be found for any organisation between enough meetings for accountability and meeting overload.

The first AGM of a company or society must be held within 18 months of incorporation. Each subsequent meeting must be held no more than 15 months apart, provided at least one is held in every calendar year, unless stated otherwise in your governing document.

Although the governing document may define the frequency of governing body meetings, it is generally left to the governing body to agree how frequently it should meet and change the frequency to suit. Again there is a balance to be struck, but governing body meetings will be more frequent than general meetings and sufficient to allow the governing body members to discharge their legal responsibilities.



#### 4.12.8: Meetings: Frequently Asked Questions

##### ***Our governing document says that we have to have a quorum at a general meeting. What does this mean?***

At any general meeting there needs to be a sufficient proportion of the membership present for any decisions taken by the meeting to be valid – the quorum.

See section 4.12.4 of this guide for more information relating to the quorum.

##### ***As a member, I disagree with the decisions of our governing body. What can I do?***

Generally there is little that a member of the organisation can do if they disagree with decisions made by the governing body, other than if:

- the decision made by the governing body is unlawful; or
- the decision is not in the best interests of the organisation or its members; or
- the decision has been made without following the correct procedures for passing a resolution, as outlined in the governing document.

If the decision does not fall into one of the categories above, you may consider raising the issue at the next general meeting to further ascertain the reasoning and judgements behind the decisions. You may also see if other members agree, and establish a course of action to elect other governing body members. You may also wish to try removing the governing body members

through, for example, an ordinary resolution with special notice, although the consequences of such action should be carefully assessed.

As a last resort, the member may choose either to leave the organisation, or, as a very last resort, in the case of a company, a member, with the permission of the High Court, can make a “derivative claim” against a director or directors with regard to their failure to act in accordance with their legal duties.

##### ***What can I do if I want to vote at a general meeting, but cannot attend in person?***

Assuming that you are entitled to vote at the meeting, where the organisation is either obliged to (any company) or has voluntarily made provision for the use of proxy votes, you can nominate someone to act as your proxy. There will be a procedure for doing this and in the case of a company, there should be a proxy form issued with the notice of the general meeting. You will need to be clear about whether you are empowering someone to vote in a certain way on a proposal or to cast your vote as they see fit.

Company members have a statutory right to appoint a proxy, who (unless the governing document states otherwise) can be anyone, and have a right to speak at the meeting. Members of organisations with other legal forms can only appoint a proxy where this is explicitly allowed for in the governing document. The right of the proxy to speak must also be explicitly allowed.



#### 4.13: Application of surplus or profit

Any profit or surplus made by an organisation can be applied in a number of different ways. The governing document will usually define what can be done with any profit or surplus. There are various choices as to what can be done depending on the legal form of the organisation.

In addition some legal forms such as the community interest company are restricted as to what proportion of their profits they can distribute to members. For further details on the dividend cap for community interest companies, visit: [www.cicregulator.gov.uk](http://www.cicregulator.gov.uk)

Just because a particular legal form has the power to distribute surplus in a certain way, as detailed in the table below, it doesn't mean that it has to. Some organisations will specify in their governing document exactly what proportions of a surplus will be distributed in a given way; some will decide at their AGM and some will remove such powers completely from their governing document. At the end of the day it is the members who decide, subject to any restrictions on the legal form.

Profit distribution has a big effect on grant funding eligibility; many organisations remove any power to distribute surplus to make themselves more attractive to grant funders. Such organisations, as a result, may find it harder to attract investors as they cannot reward that investment.

Application of surplus	Legal form
Reinvest in the organisation to further the objects	Any
Give it away to a good cause	Any non-charitable
Pay a bonus to members	Not unincorporated association, anything charitable, or community benefit society
Pay money to members in proportion to their trade with the organisation	Only co-operative society, company limited by shares and CIC limited by shares
Pay interest on shares	Only societies
Pay dividend on shares	Only companies limited by shares and CIC limited by shares





#### 4.13.1: Application of surplus: Frequently Asked Questions

***We are a co-operative society and our governing document says that we have the power to pay our profits to members as a dividend. Does this mean that we have to do this?***

The short answer is no. A dividend in the case of a co-operative society is taken to mean a distribution of surplus to members in proportion to their trade with the co-operative. So in a worker co-operative, the more hours worked, and in a consumer co-operative, the more goods or services bought from the co-operative, the bigger the dividend. The rationale is that if there is a surplus, then either the workers haven't been paid enough or the consumers have paid too much for their purchases and all the dividend does is return the members' money or top up their wages. A co-operative dividend is a prudent fiscal mechanism for ensuring that the business is profitable and has the additional advantage that it is paid before corporation tax.

The governing document will define the way or ways that any surplus may be distributed. A typical "application of surplus" clause of a co-operative would be:

*Any surplus of the co-operative shall be applied as follows in such proportions and in such manner as may be decided by the co-operative at the annual general meeting:*

- a) first, to a general reserve for the continuation and development of the co-operative;*
- b) secondly, to paying interest on issued share capital at such rate or rates as determined by the committee from time to time, but not exceeding 5 per cent per annum or 2 per cent above the Co-operative Bank plc base rate, whichever is the greater;*
- c) thirdly, to paying dividends to members, either equally or in accordance with some other equitable formula which recognises the relative contribution made by each member to the business of the co-operative; and*
- d) fourthly, to making payments for social, co-operative or community purposes within the community served by the co-operative.*

The key words here are "**shall**" and "**may**" – "shall" means that any surplus has to be applied in at least one of the 4 ways listed and "may" means that the organisation has the power to do any or all of the options but it doesn't have to do any particular one. In this case the members may decide to distribute half the surplus as a dividend to themselves, reinvest a quarter in the co-operative and give the remaining quarter to a charity.



### ***What is the difference between equal and equitable distribution of surplus?***

An equal distribution of surplus means that everyone gets the same amount, whereas an equitable distribution means that the surplus is shared amongst the members in accordance with some formula that recognises their relative contribution. For instance the proportion of surplus received by a member may be proportional to:

- hours worked; or
- trade with the organisation; or
- the investment in the organisation; or
- length of membership; or
- a combination of any or all the above.

***We have the power to distribute surplus in our governing document, but we never have and don't want to. Will this affect any funding applications we make?***

It will really depend on the funder. Many funders will not fund an organisation where there is any power to distribute

surplus, whether by bonus, co-operative dividend or payment of interest on shares. In addition, some funders are unable to fund any organisation which is not charitable.

The important consideration is to be aware of the criteria of the organisation's potential funders and whether the governing document is consistent with the criteria of that funder. Funders will generally scrutinise carefully:

- the objects of the organisation; and
- any clause relating to distribution of surplus; and
- any dissolution clause.

It is better governance, when creating a community enterprise, to design it to meet the objects, ethos and aspirations of the members and then see if it fits a funder's criteria, rather than to design an organisation in order to access a particular piece of funding. If the funding bid is unsuccessful or when the funding runs out then the organisation may be less sustainable as a result.

## **4.14: Changing the governing document**

The governing document can only be changed by a vote of the membership, either at a quorate general meeting or by written resolution. Some legal forms such as societies and organisations which are charitable will also require approval by the relevant regulator before the change is valid. In the case of a non-charitable company, the changes are immediately valid, but must be registered with Companies House within 14 days of the meeting.

### **4.14.1: General meetings – proposals**

When members of organisations want to make changes they can propose a motion, which will require seconding by another member.

The decision on that motion is generally made, usually after some debate, by the members of the organisation at a general meeting. If a motion is passed by a vote of the members, it becomes a resolution (it is resolved). This terminology, whilst correct, is not used as much now and organisations will generally refer to proposals at general meetings. Just to

make it more complicated, the term “resolution” is often used to refer to the whole decision-making process rather than just the decision.

The term resolution has a specific meaning within company law, applicable to companies. There are different types of resolutions that are each applicable for certain decisions; they will require different notice periods and different majorities in order to pass them.

The various types of resolution are as follows:

### **Special resolution**

A special resolution requires a notice period to members of at least 14 clear days and a 75% majority of those present at a quorate general meeting, and eligible to vote (two thirds in the case of a society), must agree to it. A special resolution is required for certain decisions, such as amending a governing document or changing the name of an organisation.

This type of company resolution needs to be documented and signed by the chairperson or secretary of a company. A company is required to file a copy of the resolution at Companies House, once it has been passed.

### **Written resolution**

A written resolution can be made without the need to hold a meeting. It can be used to make most decisions that other types of resolutions can, except the decision to remove an auditor or director before a date previously agreed. A written resolution must be signed by 75% of the members (or whatever is specified in the governing document) entitled to vote at a meeting.

### **Ordinary resolution**

An ordinary resolution can be used if there is no requirement in the governing document or in company law to use a specific type of resolution. An ordinary resolution does not have to be filed with Companies House, but it does need to be agreed at a meeting held with 14 days’ notice and, to pass the resolution, a simple majority of more than half the votes is required.

Decision-making for societies is less well defined in statute. The Industrial and Provident Societies Acts merely state that the rules of a society should provide for “the mode of holding meetings, the scale and rights of voting and the mode of making, altering and rescinding rules”. Acts do not specify the majorities required for making decisions except in very special cases such as dissolution of the society. The majorities required for different types of resolution are defined in the rules; societies generally make decisions by majority voting, although some decisions require higher majorities. At least two thirds of votes cast at a general meeting of a society are required for a rule change and at least three quarters of the entire membership must agree for the society to be dissolved.

#### **4.14.2: Filing requirements for changes in governance**

Unincorporated organisations without charitable status are not required to file any resolutions passed with any regulator; they should simply minute whether the resolution was passed and then keep a copy of the signed resolution along with the ratified minutes. This also applies to ordinary resolutions passed by incorporated organisations.



Companies are required to file special resolutions, signed appropriately, with Companies House within 14 days of the date that the resolution was passed along with a copy of the amended governing document if the resolution changed it.

When societies amend their rules they should pass either:

- a partial amendment of rules – generally used when only one or two minor amendments are made. The amendments do not figure in the main body of the rules, rather they are appended to the back of it; or
- a complete amendment of rules – generally used when a greater number of amendments are being made or when a completely new set of rules have been adopted. The amendments form part of the main body of the rules.

Regardless of whether a partial or a complete amendment has been passed a society must complete the appropriate Financial Services Authority statutory form and submit the amended rules to the registrar. No amendment of rules is deemed valid until it has been registered by the Financial Services Authority.

#### 4.14.3: Limits on changes to the governing document

Some organisations will not be able to change some provisions in their governing document, for example:

Charitable organisations require prior approval of the Charity Commission for certain changes to their governing

document. The Charity Commission is unlikely to allow changes to the objects such that they are no longer wholly charitable or changes which allow distribution of profit to or paid employment of trustees.

Community interest companies are required to have an asset lock clause and clauses limiting distribution of surplus – these cannot be removed without the approval of the Community Interest Company Regulator.

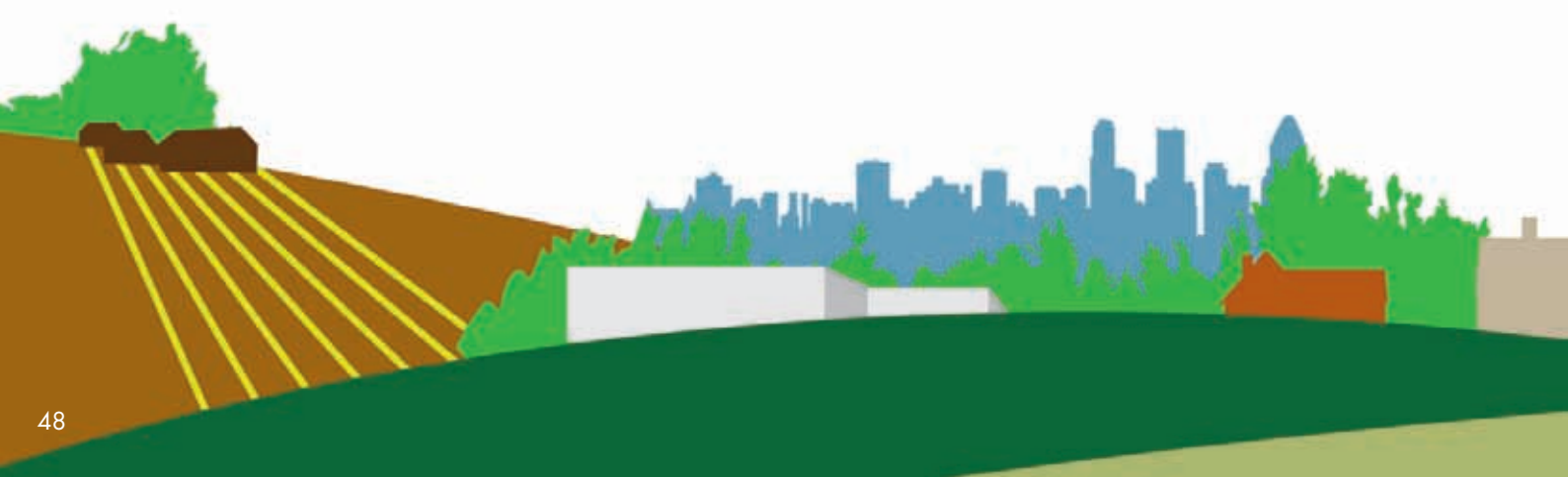
Community benefit societies again must have certain provisions relating to profit distribution and community benefit to which the Financial Services Authority is unlikely to allow changes.

In societies, the Financial Services Authority can in theory refuse to accept changes to the rules if it feels that the change goes against the original legal status of the society as a co-operative society or makes it more like a company if it is a community benefit society.

#### 4.14.4: Entrenchment of provisions in companies

Since October 2009, it has been possible to entrench provisions or clauses in the articles of a company so that amending or removing that clause requires a higher proportion of the votes of members over and above that for a normal special resolution (see section 14.4.1).

Provisions can be entrenched on formation of the company or at any other time by special resolution. Companies House has





to be notified of the entrenched clauses and any future changes to them using the appropriate forms.

In a community enterprise without an asset lock, the members may wish to entrench the common ownership provision to require that amendments to the clause will

require a higher proportion of the membership (up to 100%) to agree them, rather than the 75% required for a special resolution. The members could still remove or amend the clause in the future, but it will make it harder for a future membership to personally benefit from the liquidation of the organisation.

#### 4.14.5: Changing governing document: Frequently Asked Questions

***We only need to make a small change to our governing document. We need to do it quickly and it costs a lot of time and money to run a general meeting as we have lots of members. Is there any alternative?***

Yes, you can use a written resolution, although the practicalities of using a written resolution with a large number of members may make a general meeting seem more attractive.

Please see section 4.14.1 of this guide for more details relating to the different types of resolution.

***Can we make our decisions at general meetings by consensus?***

Consensus is generally defined as the situation where either all in a meeting are in agreement with a proposal or at the very least are prepared not to maintain an objection to it. Whilst an organisation can aspire to consensus, there will be situations where it is not suitable or lawful. For instance company law states that the

articles of a company can be changed by a vote of 75% of the members at a quorate general meeting. If 65% of members present were in favour of a proposal and 35% didn't maintain an objection by abstaining from the vote, this could be defined as a consensus for the proposal but under company law the proposal would fail. Conversely the members might want all decisions of the company to require all members to be actively in agreement, but if 75% of the members of a company vote for the dissolution of the company then it must dissolve. It is, however, possible to increase the majority required for specific articles by entrenching them.

Please see section 4.14.4 of this guide for more information relating to the entrenchment of provisions.

In societies it would be theoretically possible to register a set of rules which required a majority of 100% for all decisions, although it is debatable as to whether this would be advisable as one member could block all decision-making.

Many organisations which aspire to consensus in decision-making will often





have a fall-back to a majority such as 75% if it is not possible to achieve consensus.

In an unincorporated association it would be possible to have consensus decision-making, but the qualifications above with regard to its desirability still apply.

***We've just voted at a general meeting to make changes to our governing document. What do we do now?***

It depends on your legal form. If you are unincorporated then you need do nothing more than record the fact unless you are a registered charity, in which case you will need to notify the Charity Commission and the change will be subject to their approval. Any change to the governing document is generally known as a special resolution and must be treated in certain ways depending on the legal form of the organisation.

If you are a company, you must notify Companies House within 14 days of the resolution being passed. For further information, see: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

If you are a society, you should notify the Financial Services Authority as soon as possible of the resolution being passed as the resolution does not take effect until registered by them. For further information see: [www.fsa.gov.uk](http://www.fsa.gov.uk) or contact Co-operatives UK.

***We've just voted for the governing body to "make all the necessary changes" to our governing document to enable us to get some funding. Is this OK?***

No, it isn't. Only the members have the power to change the governing document and they can't delegate this power to the governing body or anyone else. The governing body can draft the amendments, but the decision to change the governing document must be made at a general meeting or by written resolution but the member voting must know exactly what they are agreeing to in terms of what words are being deleted, changed or replaced.

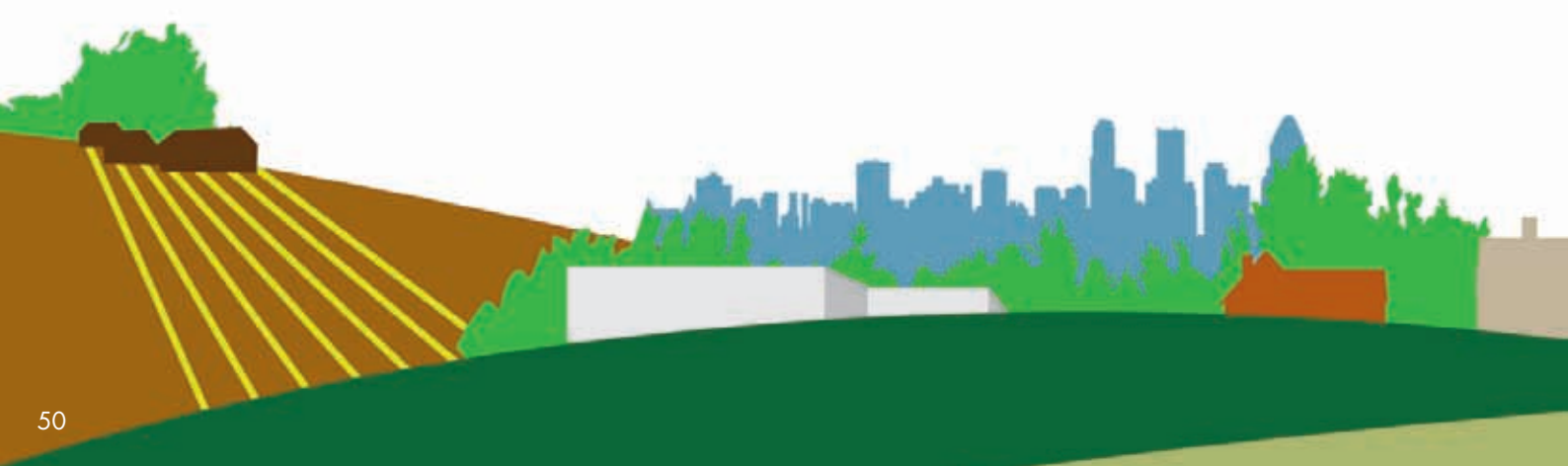
#### **4.15: Dissolution**

The governing document should define how the organisation can be wound up and what happens to the assets on winding up. It will also often define whether the assets of the organisation are held in common (a commonwealth) or are jointly owned by the members.

Any organisation can be wound up by a vote of the membership. The proportion of

the membership required to vote for this will vary depending on the legal form of the organisation but it is generally 75% of those attending a quorate general meeting.

The dissolution will specify how any remaining assets of the organisation are to be disposed of. Typical dissolution clauses are shown overleaf:



#### **4.15.1: Typical common ownership dissolution clause**

*“The organisation is a common ownership enterprise. If on the winding up or dissolution of the organisation any of its assets remain to be disposed of after its liabilities are satisfied, these assets shall not be distributed among the Members, but shall be transferred instead to some other common ownership enterprise(s), or to the Co-operative Movement or some other non-profit organisation(s) promoting and supporting co-operative and common ownership enterprises, as may be decided by the Members at the time of or prior to the dissolution. In the event that for whatever reason any residual assets cannot be so transferred, they shall be given for charitable purposes.”*

#### **4.15.2: Typical co-ownership dissolution clause**

*“In the event of the winding up or dissolution of the organisation the Liquidator shall first, according to law, use the assets of the organisation to satisfy its debts and liabilities. Any assets remaining shall be distributed amongst the Members of the organisation at the time of its dissolution and those persons or bodies who were Members at any time during a period of six years prior to the date of dissolution, in proportion to each Member’s and past Member’s trade with the organisation.*

*If such residual assets cannot be distributed in this manner they shall be transferred to a common ownership co-operative.”*

#### **4.15.3: Typical community interest company dissolution clause**

*“If the Company is wound up under the Insolvency Act 1986 (as amended); and all its liabilities have been satisfied, any residual assets shall be given or transferred to the asset-locked body specified in the article below.*

*For the purposes of this article, the following asset-locked body is specified as a potential recipient of the Company’s assets under:*

*Details of specified body – Name, number, registered office.”*

#### **4.15.4: Typical society common ownership dissolution clause**

*“The Co-operative may be dissolved by the consent of three quarters of the members by their signatures to an instrument of dissolution, or by winding up in a manner provided by the Act. If on the winding up or dissolution of the Co-operative any of its assets remain to be disposed of after its liabilities are satisfied and the repayment at par value of share capital and any loan stock held by members and former members and any dividends due to members, these assets shall not be distributed among the members, but shall be transferred instead to some other non-profit, Co-operative or charitable body or bodies subject to at least the same degree of restriction on the distribution of surpluses and assets as is imposed on this Co-operative by virtue of these Rules, as may be decided by the members at the time of or prior to the dissolution.”*

Please see section 6 of this guide for a full discussion of ownership and assets.



#### 4.15.5: Dissolution: Frequently Asked Questions

***We are a co-operative society which has ceased trading. Can we wind up like a company?***

A solvent society can be wound up by an instrument of dissolution signed by at least 75% of the members.

An insolvent society can be wound up and dissolved under the Insolvency Act 1986 (as amended), but the administration procedures used for companies are not available to societies. At the time of writing the Co-operative and Community Benefit Societies and Credit Unions Act 2010, which is not yet in force, will give the Treasury powers to apply company law with regard to dissolution to societies.

It has been more common in the past for societies to merge with another society or “transfer their engagements” to another society or even a company rather than wind up.

***We are a community interest company limited by shares. What happens to our assets if we wind up the organisation?***

Any assets remaining after all creditors have been paid, and all paid up shares have been repaid, cannot pass to the members but must pass to another asset-locked body, either:

- an organisation specified in the community interest company articles; or
- an organisation to be decided by the members at the time of dissolution; or

- the decision to be left to the Community Interest Company Regulator at the time of dissolution.

The only exception to this is where a member is itself an asset-locked body.

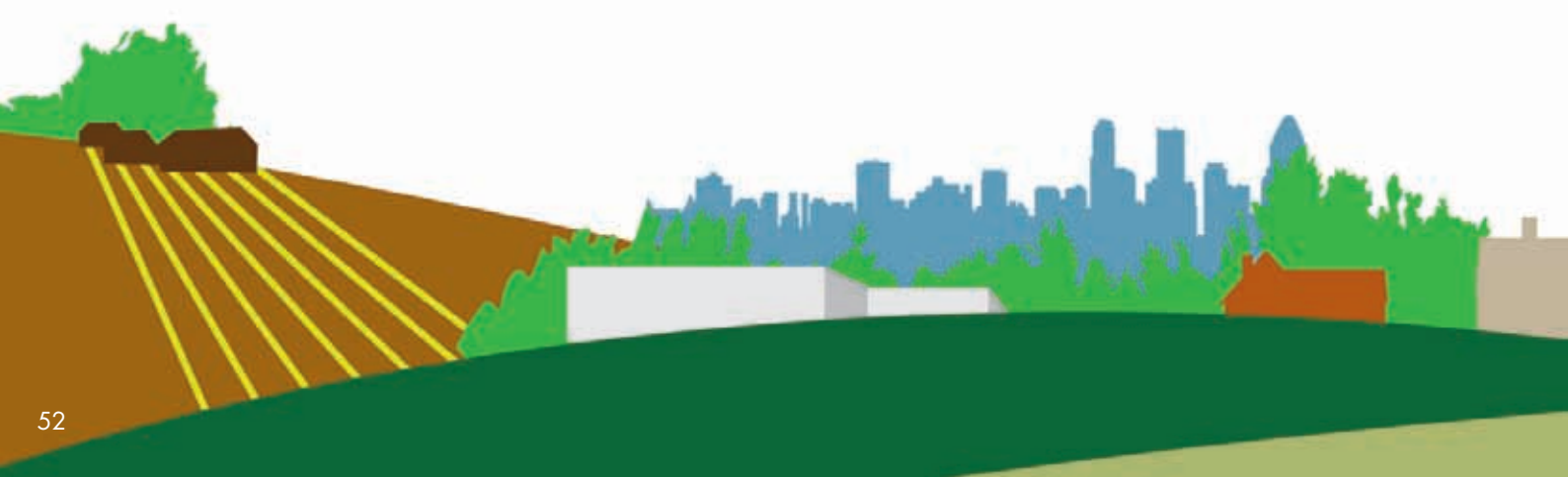
An asset-locked organisation can be:

- another community interest company
- a community benefit society with an asset lock
- any charitable organisation

The asset lock of a community interest company, whilst particularly important on dissolution, also applies throughout the lifetime of an organisation. It basically means that a community interest company’s assets can only be transferred for less than “full consideration” to other organisations which meet specific criteria.

***We are a community benefit society with an asset lock provision. Our members have shares as a result of a community share issue. If we wind up the organisation do the members get their shares back?***

Yes, providing that there is sufficient money to pay any creditors on dissolution – i.e. the organisation is solvent. After payment of creditors, the shares are repaid either partially or hopefully in full and any remaining assets are then subject to the asset lock and must pass to another asset-locked body.



#### 4.16: Other information contained in the governing document

The governing document may also contain the following information or additional clauses:

- Details of the initial subscribers to the governing document;
- The amount of share capital in the case of a share company;
- Any requirements with regard to auditing of the accounts to be presented at the AGM;
- Any requirement for the governing body to produce an annual report;
- A clause explicitly stating the power to create additional governance related documents – regulations, secondary rules, bye-laws, standing orders etc.;
- A clause detailing any procedure to be used to resolve disputes within the organisation;
- A statement of indemnity;
- Methods of communication between the organisation and the members;
- Records which are to be kept by the organisation;
- Any social audit provision; and
- Date of incorporation or adoption of the governing document.



# 5

## Additional governance related documents

Many organisations find it useful to create additional governing documentation, to add more detail and to support the primary governing document. In Co-operatives UK's model governing documents, there will often be a clause towards the end of the governing document something like this:

### Regulations

"The organisation in General Meeting or the governing body may from time to time make, adopt and amend such regulations in the form of bye-laws, standing orders, and secondary rules or otherwise as they may think fit for the management, conduct and regulation of the affairs of the organisation and the proceedings and powers of the governing body and sub-committees. No regulation shall be made which is inconsistent with these Articles or the Act. All members of the organisation and the governing body shall be bound by such regulations whether or not they have received a copy of them."

The creation of additional regulations to supplement and add to the primary governing document is useful as otherwise this information would need to be in the governing document itself. For example, the governing document may specify that one condition for membership is the payment of a subscription, whereas the amount of the subscription can be specified in the secondary rules or any membership agreement.

As stated in the clause above, any additional governance related documents should not contradict the primary governing document and, if they did, the governing document would take precedence.

Unlike changes to the governing document, changes to any regulations or secondary rules generally do not have to be registered with any regulator.

In addition to the primary governing document, an organisation will typically have the following additional documentation related to its governance:

- Secondary rules;
- Membership description and agreement;
- Standing orders;
- Policies; and
- Procedures.

These additional documents are dealt with in detail in the following sections.





### 5.1: Secondary rules

Secondary rules typically contain clauses relating to:

- the conduct of meetings (often known as standing orders);
- any detailed additional membership criteria;
- membership rights and responsibilities; and
- the amount of any membership fees or subscriptions and when due.

Secondary rules are also known in some organisations as bye-laws.

The secondary rules can often be changed by the governing body, but ratification of any changes by the membership at the next general meeting would be good governance.

One of the reasons for having secondary rules is to avoid the time and expense of calling a general meeting to make minor changes to the governance of an organisation.

### 5.2: Membership descriptions and agreements

In addition to any membership clauses in the governing document the organisation may also have a separate, more detailed, document relating to the roles and responsibilities of membership. For example, a consumer co-operative such as a community supported agriculture (CSA) project may specify:

- the amount of any annual subscription and when it is payable;
- any commitment expected from the member – attendance at meetings or workdays etc.; and
- any benefits the member can expect in return from the organisation in terms of produce, access to the land and any additional benefits such as a newsletter.

Where such a membership document is signed, it becomes an agreement and is a legal contract between the member and the organisation.

### 5.3: Standing orders

Standing orders are secondary rules which relate exclusively to the conduct of meetings. As with any secondary rules, they cannot contradict the governing document of the organisation or any legal requirements which apply to the legal form of the organisation.

Standing orders will typically specify arrangements with regard to:

- when to vote by show of hands or secret ballot;
- tellers and the counting of votes;
- the rights of the chair to adjourn or close the meeting; and
- who can speak and when.



## 5.4: Policies

As well as secondary rules, organisations will often have a range of other documents, policies and procedures. Policies are a set of principles which guide decision-making, whereas procedures are a set of steps in order to accomplish something. **Procedures are dealt with in detail in section 5.5 of this guide.**

Some procedures are a legal requirement, such as a grievance procedure for organisations which employ people. Some policies, such as a child protection policy, are required by some grant funders or regulators such as the Charity Commission, and some just facilitate the internal governance of an organisation.

There are a vast range of different possible policies, some of which are detailed below. Whatever policies an organisation has, they should be clear, up-to-date and readily accessible. Policies should also be reviewed on a regular basis.

NAVCA (National Association for Voluntary and Community Action) has lots of information, including their own policies and procedures, published on their website: **[www.navca.org.uk](http://www.navca.org.uk)**

There is a checklist for policies and procedures for voluntary organisations maintained at: **[www.volresource.org.uk](http://www.volresource.org.uk)**, which is applicable to community enterprises.

Some examples of the types of policies are given in the following pages.

### 5.4.1: Job descriptions

If you employ someone, you are required by law to provide them with a contract of employment which details the terms and conditions of employment. Whilst the contract will contain some information relating to the job it generally will not contain a detailed job description. Job descriptions are best created as separate documents, which are easier to change and update without changing the contract of employment. The job description should state that it does not form part of the contract of employment.

You do not have to create or provide job descriptions, but they will assist you greatly in recruitment and also enable you to monitor and assess work. From the point of view of the person in the job, it provides a valuable reference as to what is expected of them and the limits of their roles and responsibilities. As well as job descriptions for paid posts, it is also worth drawing up descriptions for other roles (paid or otherwise) within the organisation, such as:

- **member;**
- **governing body member;**
- **officer posts, e.g. chairperson; and**
- **volunteers.**

Typical contents of a job description would include a list of responsibilities, duties and a person specification.

Information relating to model job and role descriptions can also be found at the website of the NCVO (National Council for Voluntary Organisations), **[www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)**



### 5.4.2: Recruitment policy

A typical recruitment policy would specify the procedures for:

- commitment to equality of opportunity;
- generating a person specification and job description;
- advertising and internal/external recruitment;
- policy/timeline of recruitment process;
- any interview process;
- any process of appointment and notification;
- any criminal record and any other checking; and
- any appeals process.

As with any other policy it should also specify when the policy is due for review and who is responsible for reviewing it.

### 5.4.3: Volunteer agreements

It is useful to have a document which defines the relationship between the organisation and any volunteers. The agreement may also be underpinned by a volunteering policy.

As well as a general description of the voluntary work, a typical volunteer agreement will contain clauses related to what the volunteer can expect from the organisation, such as:

- any induction and training to be provided by the organisation;
- a commitment to equal opportunities;

- a statement about commitment to health and safety;
- details of any expenses payable; and
- details of what support, supervision and feedback the organisation will provide.

The agreement should also define what is expected from the volunteer, such as:

- any skills required by the volunteer;
- the following of agreed policies and procedures;
- maintenance of confidentiality;
- the degree of commitment needed from the volunteer;
- the provision of references where required; and
- any notice required by the organisation if the volunteer is unable to do their voluntary work.

Some organisations avoid having volunteer agreements as they incorrectly believe that having one creates a contract of employment. It is important therefore that any volunteer agreement has a clear statement that it is not a contract of employment.

An employment relationship is created, whether there is a contract or not, if there is an exchange of value in return for labour. So for example if a volunteer is given vegetables in return for labour then this could be considered employment – a contract of employment is implied. This becomes a problem if you wish to terminate the volunteer arrangement – it could be seen as making the volunteer



redundant. All of the above does not preclude the organisation providing training related to the voluntary work or providing a meal during the working day. An organisation using volunteers would be well advised to seek appropriate legal advice relating to their particular circumstances.

As with all policies and agreements your volunteer policy and agreements should be a working document which is regularly reviewed.

More information and model documents around working with volunteers can be found at:

**Civil Society:** [www.civilsociety.co.uk](http://www.civilsociety.co.uk)  
**Volunteering England:**  
[www.volunteering.org.uk](http://www.volunteering.org.uk)

#### 5.4.4: Health and Safety policy

A health and safety policy will set out the organisation's approach to health and safety and the management of risk within the organisation. It will generally detail roles, responsibilities, risk assessment and training.

Whilst there is a duty for everyone under the Health and Safety at Work Act, there are particular duties that apply to the governing body, particularly with regard to ensuring that policies and procedures are sufficiently robust.

Much useful information and model health and safety policies can be found at the Health and Safety Executive website:  
[www.hse.gov.uk](http://www.hse.gov.uk)

#### 5.4.5: Environmental and/ or Ethical policy

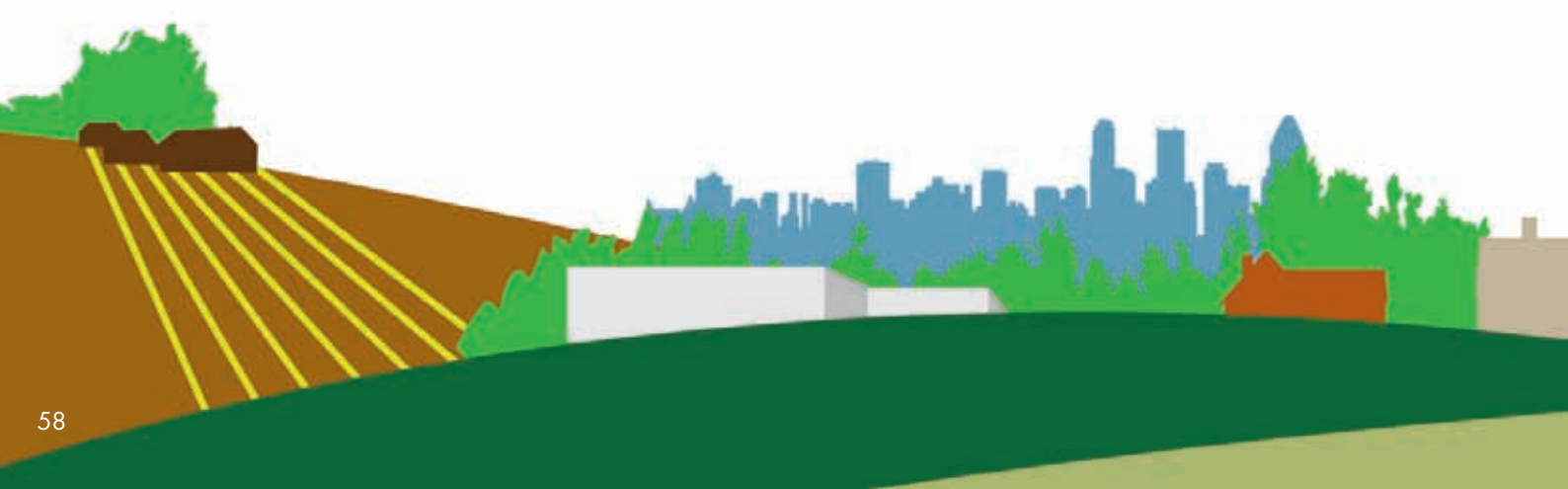
Many organisations will create a statement detailing their approach to things such as:

- energy consumption;
- waste management;
- who they will procure from – this may be a separate procurement policy; and
- who they will work with or accept as customers.

The exact content of any ethical or environmental policy will depend to a large extent on exactly what the organisation does, but there is generic advice available from the Institute of Business Ethics at: [www.ibe.org.uk](http://www.ibe.org.uk)

#### 5.4.6: Child protection (and vulnerable adults)

If an organisation is working with or comes into regular contact with children (or vulnerable adults) they are well advised to have a policy which details the duties and responsibility of staff, volunteers, members and governing body members working on behalf of the organisation in relation to child protection (or vulnerable adult) procedures. It may also detail the organisation's policy with regard to recruitment of staff and should provide clear procedures in the event that a child (or vulnerable adult) protection issue arises.



The Charity Commission provides guidance on child protection policies which can be found on its website and additional information can be found on the websites of:

- NSPCC (National Society for the Prevention of Cruelty to Children): [www.nspcc.org.uk](http://www.nspcc.org.uk)
- ISA (Independent Safeguarding Authority): [www.isa.gov.org.uk](http://www.isa.gov.org.uk)
- NAVCA (National Association for Voluntary and Community Action) have examples of child protection and vulnerable adult policies published on their website: [www.navca.org.uk](http://www.navca.org.uk)

#### 5.4.7: Equality of opportunity and diversity policy

This section could be expanded to become a guide in its own right. Here we will not deal with it in any detail and will only provide a brief overview and signposting.

The Equality and Human Rights Commission (EHRC) states that:

*“An equality policy states your organisation’s attitude to rights and equality in the workplace. By drawing up an official policy you are making a commitment to rights and equality that you can be held accountable for.”*

There is a large amount of legislation that organisations need to be aware of, particularly in the area of employment rights, such as the Equality Act 2010.

Fortunately the EHRC provides comprehensive guidance, toolkits and model policies to enable you to develop an appropriate policy in this area. See [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

There is specific guidance, toolkits and case studies around the issue of diversity available to co-operative enterprises courtesy of Co-operative Diversity Action: [www.diversityaction.coop](http://www.diversityaction.coop)

### 5.5: Procedures

Procedures are a set of steps in order to accomplish something rather than a statement of principles. Procedures are informed by policies.

#### 5.5.1: Grievance and disciplinary procedures

With the best will in the world, organisations don’t always get it right. It is recommended that any organisation has a mechanism for dealing with conflict and grievance and if the organisation is employing anyone, it is essential. The Advisory, Conciliation and Arbitration Service (ACAS) produce an excellent guide “Discipline and grievances at work” which can be downloaded from its website: [www.acas.org.uk](http://www.acas.org.uk)





### 5.5.2: Risk management/ disaster recovery plans

One of the responsibilities of the governing body is to manage the risks to the organisation by assessing risks and their possible effects and mediating those risks.

All of the above should be planned for, with mitigation or controls put in place which balance the potential harm with the potential likelihood of the risk becoming a reality. It is the responsibility of the governing body to ensure that this process happens and keeps happening.

Typical risks faced by community enterprises, although not necessarily peculiar to them, might include:

- Fire, flood or other disaster;
- Change of funding regime;
- Decline in market;
- Competition;
- Crop failure;
- Health scare;
- Fraud or theft;
- Lack of members;
- Computer virus or hardware failure;
- Change in government legislation;
- Changes in taxation; and
- Loss of key people.

In smaller organisations a risk could be something as “trivial” as the breakdown of a delivery vehicle, a low crop yield or a failure to recruit members.

In the case of threats to the organisation related to the trading environment, membership, markets etc., these should be considered as the context in which the Business Plan of the organisation is developed and reviewed.

In the case of physical threats to the organisation (fires, floods, power cuts, computer disaster etc.) many organisations create a document which details those risks, avoidance strategies and contingency plans. This document is often called a Disaster Recovery Procedure or Plan, and provides step by step guidance as to what to do in the event of a particular crisis.

For example, in the event of a major IT failure or fire, it may be necessary to set up temporary IT infrastructure at a different site. This process will be much easier if you have anticipated and planned for it. Any such documents require regular review to ensure that they accurately reflect the risks the organisation faces.



In summary, whilst you can't plan for every eventuality, it helps greatly if the organisation has at least:

- assessed the potential risks to the organisation;
- put control measures in place to make it less likely that the risk becomes reality;
- put mitigation measures in place to lessen any adverse impacts; and
- considered what to do in complete disaster situations.

### 5.5.3: Frequently Asked Questions relating to additional governance related documents

***We have just noticed that we have been electing our governing body in accordance with our secondary rules but in a way that is contrary to our primary governing document. Is this OK?***

No. You must operate in accordance with your primary governing document. You will need to elect a new governing body (which may well be the same as your existing one) in accordance with your governing document. You then have two possible courses of action, either:

1. change your secondary rules to agree with your governing document; or
2. change your governing document to agree with your secondary rules. This option will require a general meeting or a written resolution.



# 6

## Ownership and assets

One of the most important aspects of an organisation's structure and governance is how the ownership of assets of the organisation is treated. The choice of ownership model will often have a profound effect on the possible legal form of the organisation, the attitude of grant funders to the organisation and the applicability of some taxation law.

The governing document will nearly always define the ownership and treatment of assets on dissolution.

Common ownership is normally defined in the governing document as follows:

### 6.1: Common ownership

Common ownership is a principle whereby the assets of an organisation are deemed to be held in common (sometimes known as the commonwealth), the members acting as trustees of the organisation rather than owners who can benefit from its sale or dissolution.

A dissolution clause stating that the remaining assets of the organisation on dissolution and after payment of creditors (including shareholders) shall be transferred to another organisation with similar objects – see also 6.3 Asset Lock. This form of ownership is particularly common in co-operatives.

### Common ownership Case Study: Suma Wholefoods

Suma Wholefoods is a large worker co-operative in the north of England. It is a co-operative society with approximately 120 members.

Although this legal form has no statutory asset lock, the founder members have included a common ownership clause in the rule book:

**Dissolution.** *The Co-operative may be dissolved by the consent of three quarters of the Members by their signature to an instrument of dissolution provided for in the Treasury Regulations or by winding up in a manner provided by the Act. If on winding up or dissolution of the Co-operative, there remains after the satisfaction of all its debts, and liabilities, any funds whatever, the same shall not be paid to or distributed among the members of the Co-operative but shall be transferred in whole or part to some other co-operative or co-operatives or other like body having objects similar to the Co-operative, as decided by a General Meeting.*

This rule, which has been there throughout the 30-plus years of the organisation, has never been challenged by the members and whilst it is highly unlikely, it could, as for any rule of the society, be revoked or changed by a vote of three quarters of the current or any future membership at a general meeting. It is however possible that such a major change in the rules of a society may not be accepted by the registrar or may be subject to legal challenge as being "changes outside the contemplation of the original parties".

## 6.2: Co-ownership or joint ownership

Co-ownership is the other main ownership model adopted by co-operative organisations. The assets of the organisation are deemed to be jointly owned by the members, such that the residual assets of the organisation on dissolution and payment of creditors (including shareholders) shall be divided amongst the members (and in some cases amongst ex-members). The rationale is

that this residual capital represents the “sweat equity” of the workers in a worker co-operative, or the members’ own money in the case of a consumer or producer co-operative.

Organisations qualifying for the discretionary mutual trading status, which exempts trade between the members of an organisation from corporation tax, must be co-ownership organisations.

### Co-ownership Case Study: English Mustard Growers Co-operative Limited

This organisation is a co-operative society which exists to market the products of and provide services to its members, who are all agricultural businesses in their own right. This sort of organisation is known as a co-operative consortium.

The society has the following dissolution clause relating to surplus assets:

*On the dissolution or winding up of the Society any surplus remaining after the satisfaction of all its debts and liabilities (including the payment to members of any sums which are payable to them under member agreements by reference to allocated reserves or otherwise) shall be applied first to repaying the sums paid up on shares. Any remaining surplus shall be divided between the persons who during the whole or a part of the period of five years immediately preceding the date of the instrument of dissolution or of commencement of winding up were members of the Society in proportion to the respective aggregate sums received during that period by the Society by way of charges under member agreements.*

This basically means that any remaining assets (effectively the accumulated profits of the organisation) are distributed amongst the members in proportion to their trade with the co-operative in the last five years. This would make it unlikely that the co-operative could be funded by most traditional funding bodies but does mean that, assuming that the organisation satisfied other criteria, it would be eligible for Mutual Trading Status which exempts it from paying corporation tax.

For a full overview of Mutual Trading Status, see the guidance on the HMRC website: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)



### 6.3: Asset lock

An asset lock is a clause in the governing document which has the effect that, on dissolution and payment of creditors (including shareholders), any remaining assets shall be transferred to another asset-locked organisation with similar objects. The governing document can specify the recipient organisation in several ways:

- by specifying an organisation or several organisations; or
- by leaving the decision to the membership at the time of dissolution; or
- by leaving the decision to any regulator at the time of dissolution.

Any organisation can insert a clause in its governing document, which has the same effect as an asset lock, but where the asset lock is not statutory the membership may be able to vote to remove or amend such a clause.

Many asset-locking clauses will also apply to the assets of the organisation whilst it is still in existence, preventing them being disposed of for less than their full value unless to another asset-locked body.

#### 6.3.1: Statutory asset lock

A statutory asset lock is an asset lock which the members of the organisation cannot remove. Community interest companies and any charitable organisation have a statutory asset lock.

#### 6.3.2: Elective asset lock

A community benefit society may elect on incorporation or at a later date to put an asset lock into its rules. Once the society has put such an asset lock in place the members cannot remove it.





#### 6.4: Frequently Asked Questions relating to ownership

*We have an asset lock in our governing document; does this mean our land is protected for ever?*

No. It is a common misconception, especially where the asset is land, that an asset lock protects the assets of the organisation in the same way that a covenant might protect land from development or particular use. An asset lock simply means that the assets of the organisation cannot be easily transferred for less than full value. In this case, the land could be sold but the asset lock means that the money could not be distributed amongst the members. This may make the sale of the land less likely, but the organisation might want to sell the land to use the money raised to further the objects of the organisation, maybe by purchasing a better piece of land. The asset lock doesn't prevent this.

In a share-based organisation which is asset-locked, such as a community interest company limited by shares or a community benefit society with an asset lock, the assets of the organisation (in this case the land) may be sold and the money used to repay the paid up shares of the members. Any residual money is then subject to the asset lock.

Similarly, if the organisation is insolvent the land and its other assets can be sold to pay the creditors. The assets of any trading organisation are at risk whether they are asset-locked or not.

*We are a producer co-operative with mutual trading status, but we want to be able to apply for Lottery funding too by removing any distribution of surplus from our governing document and putting in an asset lock or common ownership clause. Is this OK?*

It is perfectly possible to make these changes with the requisite approval of the membership as for any changes to the governing document. However, the changes, whilst making the organisation more attractive to grant funders, may make the organisation unsuitable for Mutual Trading Status – a discretionary status awarded by HMRC to organisations such as producer co-operatives which trade with their own members. The principle is that the organisation does not pay corporation tax on its profits as they are distributed to members and are taxed at that point – i.e. you aren't taxed twice for trading with your own membership.

The difficulty that may arise in this case is as there is no distribution of surplus to members either at the time or at any future dissolution, then the Mutual Trading Status could be open to challenge. For a full overview of mutual trading status, see the guidance on the HMRC website: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)



# 7

## Decision making

Whilst for many organisations it is a legal requirement to hold some meetings, we should not lose sight of the reason for meetings, which is to make decisions. This section will explore some of the different options available.

### 7.1: Traditional meeting styles

There is no legal code specifying how meetings should be conducted but, many of us, as a result of attending numerous meetings, will be familiar with what appears to be an unwritten, and to a certain extent, secret code which is never explained, but which you gradually come to think you understand. This code is based on how the business of the House of Commons is conducted and is called the "Rules of Procedure" or "Rules of Debate".

Whilst these rules have come to be used by "custom and practice", many organisations have written down their own versions of these rules as "standing orders", which detail how the meetings of a given organisation are to be conducted.

In a meeting run along traditional lines, there will generally be a chair who facilitates the meeting and has authority.

Decisions at a more traditional meeting are made by debating and voting on motions. Motions are proposals which are the "property" of those proposing the motion. The motion will normally be seconded and there may be rules as to who can speak for or against the motion and how many times. Then there can be a whole range of rules relating to rights of reply, points of order, amendments etc. The outcome of such a process is that after

this adversarial process the motion either stands or falls by vote of those at the meeting. When a motion passes, it becomes a resolution (it has been resolved).

It can be very complicated, but if the rules are accepted and understood by those at the meeting, it does supply a solid and effective basis for making decisions.

#### 7.1.1: Advantages of a traditional meeting style

There are advantages of using a traditional meeting style, such as:

- the process has been tried and tested over many years;
- members are likely to be familiar with the process from their involvement in similar meetings of other organisations; and
- decisions made are more likely to be consistent with company and society law.



### 7.1.2: Disadvantages of traditional meeting style

The downsides of this more traditional approach to decision-making are several, such as:

- the process can seem convoluted and opaque, especially to new people, and as a result those who understand the process can manipulate it to their advantage or may have more control simply by virtue of the fact that they are more confident in engaging with the process;
- any creative approach to problems is prevented – there are only two possible outcomes – the proposal either stands or falls. If another solution arises during the meeting, it would need to be proposed as another motion, which may require another meeting with the corresponding period of notice and associated communication to members; and
- the meetings can be very staid and boring.

For a very comprehensive and readable overview of this traditional meeting style, see the “A.B.C. of Chairmanship” by Walter Maclennan Citrine, ISBN-10: 0716350173 or ISBN-13: 978-0716350170.

### 7.2: Alternative decision-making and meeting strategies

There are many alternatives to the traditional decision-making process detailed above. The main thing that they have in common is that they try to make any meeting or decision-making process more inclusive, less confrontational and less subject to domination by individuals, and they make better use of the skills and experience of those in the meeting.

Alternative meeting strategies may not actually make decisions but rather inform the participants, add to the debate, generate novel solutions and inform the formal subsequent decision process. Some examples of alternative strategies are given in the remainder of this section.

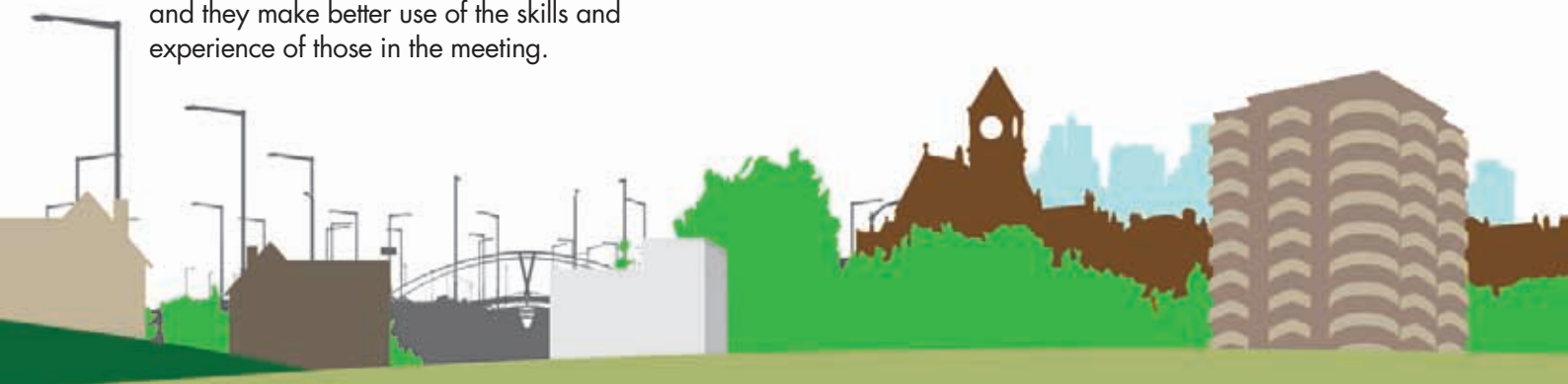
#### 7.2.1: Open Space

This is a meeting “technology” which has been used around the world for meetings of 5 to thousands of people. The structure of the meeting is relatively open, and whilst the meeting will have a theme or a purpose, it allows meeting participants to create their own agenda as part of the meeting and then participate in one, several or all of the discussion groups which the participants have defined. Open Space meetings tend to be fun, lively and anarchic.

Key principles of Open Space:

- Whoever goes to the session are the right people;
- Whatever happens is the only thing that could happen;
- Whenever it starts is the right time;
- When it is over it is over; and
- The ‘law of two feet’: if you find yourself in a situation where you aren’t learning or contributing, go somewhere else.

For a full description of the Open Space meeting method, visit: [www.openspaceworld.org](http://www.openspaceworld.org)



### 7.2.2: World Café

World Café is, effectively, a collaborative conversation, which allows a group to discuss a variety of questions in smaller sub-groups whose findings are then fed back to the whole group. This is similar to the Open Space technique described above but with more structure imposed by the facilitator and it allows for the exploration of specific questions or issues rather than all questions.

A typical World Café session would consist of a group of tables at which the participants would sit. On each table would be a large sheet of paper with a question on it. The participants would be asked to discuss the question and record information such as issues, challenges and solutions. After a set period of time, either the paper or the participants move to another table and the participants then consider a different question. In some variations, the original piece of paper returns to the group who first worked on it who then try to impose some sort of order or prioritisation on it.

Once all participants have worked on all questions there needs to be a process of feeding back to the whole group. This is generally done by one member of each group presenting one of the pieces of paper and summarising the findings of all the groups.

For more information about the World Café, visit: [www.theworldcafe.com](http://www.theworldcafe.com)

### 7.2.3: Talking stick

The use of a token to confer temporary authority to speak is based on techniques used in tribal cultures, the principle being that only the person holding a particular item, such as a stick or a feather, can talk at that time. The token is passed by the speaker to the next person to speak. This technique has the advantage of encouraging active listening and also reducing conflict within a meeting. There is also the effect that speakers are more likely to consider their contributions carefully before speaking.

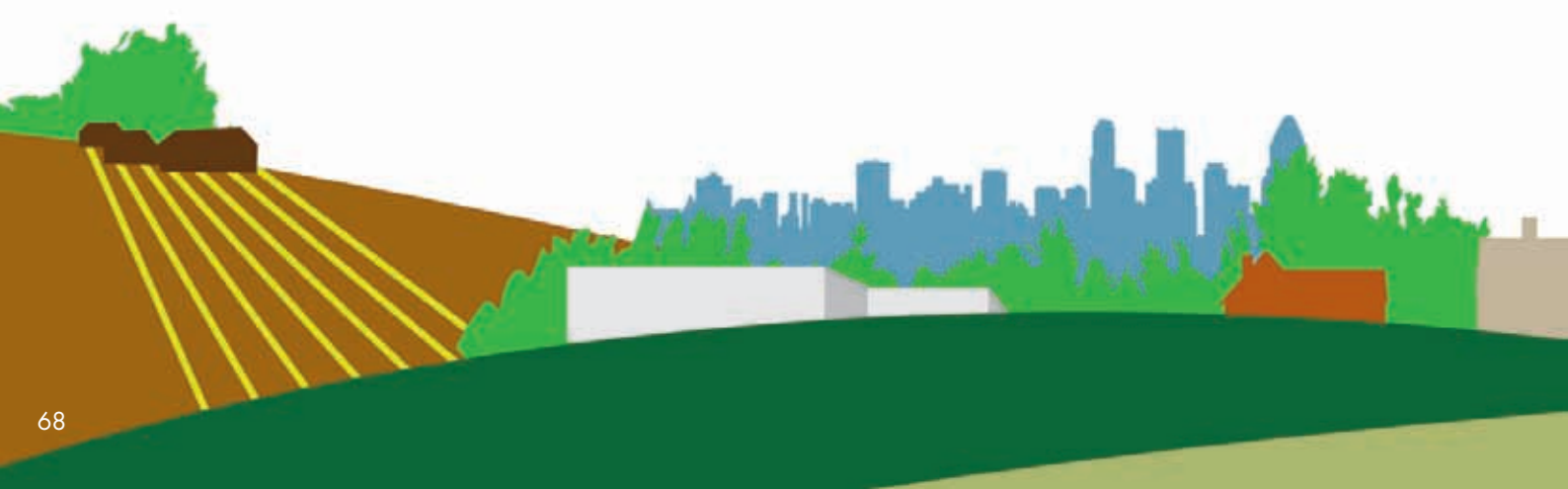
### 7.3: Consensus decision-making

Consensus decision-making is a process whereby rather than debating a proposal or resolution, which either stands or falls by vote of the meeting, the meeting endeavours to work towards a decision which is mutually acceptable to everyone present.

The mutual acceptance is defined as:

- everyone agreeing to the decision; or
- not agreeing, as such, but willing to accept the decision of the majority by not maintaining an objection.

It should be made clear that we are not talking about “consensus voting” but rather consensus decision-making. There is often confusion with the more traditional decision-making process and the resultant hybrid process – debating only one possible solution which then needs 100% agreement to pass is cumbersome and ineffective.



This then leads to the common misconception that consensus decision-making is unworkable in the real world. It isn't, it just needs to be done correctly and appropriately.

Some consensus decision-making processes allow for a certain number of objections with the decision still being carried, but there is still the emphasis on working towards complete agreement.

There are very useful on-line resources for anyone using consensus decision-making at the Seeds For Change website: [www.seedsforchange.org.uk](http://www.seedsforchange.org.uk) including a suggested consensus decision-making procedure.

Consensus decision-making is dealt with in more detail in booklet 3 of Co-operatives UK's "From Conflict to Co-operation" series – Improving meetings and decision-making: [www.fromconflict2co-operation.uk.coop](http://www.fromconflict2co-operation.uk.coop)

#### 7.4: Decision-making – the legal position

Whilst it may be desirable to work towards consensus in any meeting or decision-making process, most incorporated legal forms and the legislation associated with them make no provision for this style of decision-making. There will normally be a defined percentage of the membership or of those present at a meeting which, if they agree with a proposal, pass it. This is irrespective of whether the membership wants to achieve consensus or not. An example of this would be any special business as defined under company law.

See section 4.14.1 of this guide for a complete overview of special and ordinary business.

Company directors have a duty to work towards unanimity in decision-making at board level, but there is no obligation to achieve it.





# 8

## Start-up governance

It is important that the start-up process, which occurs in a chaotic, exciting and less structured part of the lifetime of any organisation, is also conducted with a view to good governance. Many of the decisions taken at this stage will affect the organisation for years to come and may ultimately affect its long term sustainability.

### 8.1: Types of start-up

Start-ups of community enterprise fall into two main categories:

- Entrepreneur led, where one individual or a few individuals design and create the organisation and then recruit a membership to the organisation just prior to and even continuing into the early trading period; and
- Community led (or community as entrepreneur) where even if the original idea came from one person, the community is involved from a very early stage in the planning and design of the organisation.

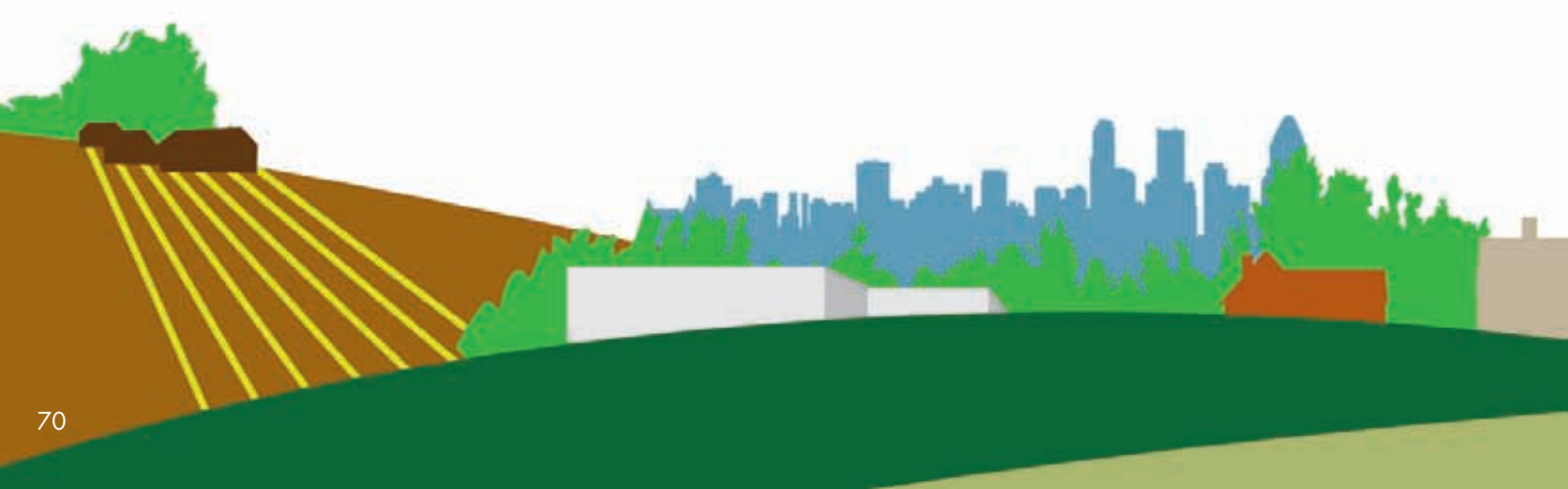
In addition there are various facilitated start-ups, such as franchising, replication or just assistance from another (parent) organisation, where an existing community enterprise produces or helps others to produce versions of itself. In this case, the “parent” organisation can act as entrepreneur or facilitate others to act as entrepreneur.

### 8.2: Entrepreneurial start-up

This type of start-up has the advantage that it can be very focussed and fast, without the need for a large amount of participatory planning.

The “downside” for any entrepreneur who creates a community enterprise and indeed any organisations that help create replicants of themselves, is that whilst the importance of their role may be maintained into the future of the new organisation, it and their original vision are not guaranteed without limiting the democratic control of future members. The “community entrepreneur” must be prepared for the possibility that “their” organisation may decide to diverge from the entrepreneur’s original vision. Although they have a large degree of control over the initial phase of the organisation, they are creating something in which their final control will be highly diluted. Indeed the organisation must be able to exist without them should they leave the organisation for whatever reason.

Many social entrepreneurs do continue to play an important and respected role within the organisation that they help create.



### 8.3: Community as entrepreneur

An example of this type of start-up would be Hazelhurst Community Supported Agriculture Co-operative, a community enterprise which grew out of Transition Sheffield to acquire land and produce food for its members.

The design of and the decisions around the structure and organisation of this enterprise were facilitated by a whole series of public meetings involving the potential future membership of the CSA. The process was driven forward by a steering group and various sub-groups who reported to and were accountable to the public meetings. The whole process was further facilitated by e-mail discussion groups and a website to share all associated documents.

The website is still used as a way for members to communicate and can be seen as an example of both start-up and continuing participatory community enterprise planning, at: [http://wiki.transitionsheffield.org.uk/Hazelhurst\\_CSA](http://wiki.transitionsheffield.org.uk/Hazelhurst_CSA)

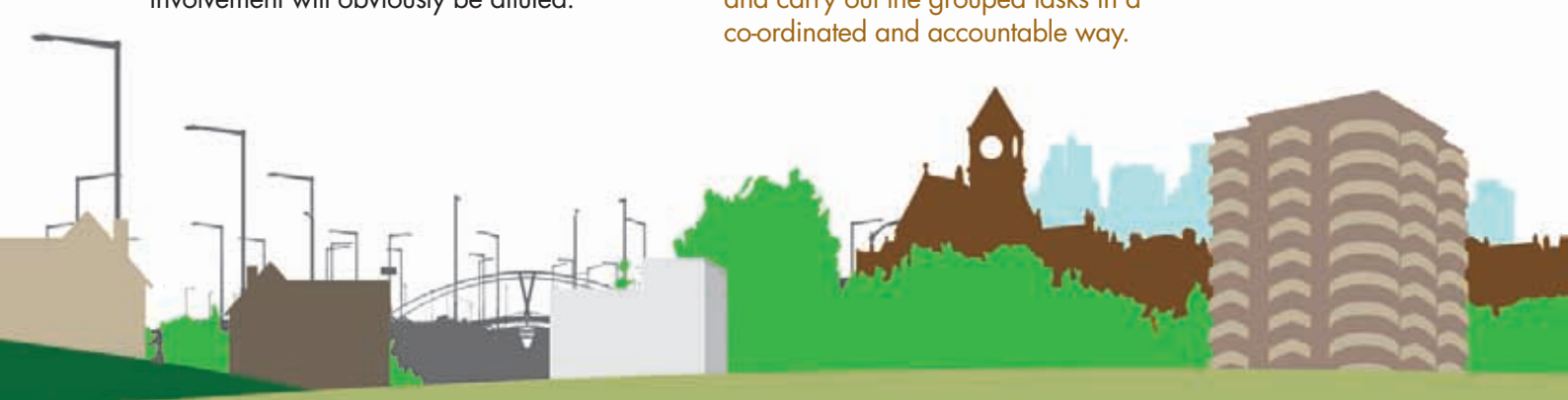
One possible advantage of this method of start-up is that despite the additional resources and time required it is less dependent on key individuals with the risk that that entails, and the members have a greater sense of ownership.

This type of start-up is particularly prevalent amongst the wave of consumer led CSA projects starting up around the country, where membership will typically be less than 150. In organisations which will have very large memberships the positive effect of pre-start-up member involvement will obviously be diluted.

### 8.4: Participatory planning

There are many techniques for planning involving large numbers of people, including some of those (such as Open Space) discussed in the decision-making section. The key thing is that they allow everyone to contribute. They will often follow a process such as that laid out below, with the outcomes of each part being recorded in a way that allows those present to see the progress throughout the session (flipchart paper stuck on the wall, for example):

- An overview of the idea, opportunity or need – the ‘where we are now’ scenario. This may take the form of a presentation from those who instigated the meeting or can be generated by those present;
- A brainstorming exploration of what those present want to happen, exploring many possibilities, some of which may be incompatible;
- Some sort of exploration and rationalisation as to what the group will definitely commit to in terms of concrete outcomes. This may include a SWOT type analysis to explore the strengths, weakness, opportunities and threats to the project and also a stakeholder analysis (see 8.5);
- A discussion as to what tasks need to be done in order for the outcomes to actually happen;
- A clustering of related tasks together to allow people to identify with those areas which interest them and volunteer to be part of a group which takes responsibility for those tasks; and
- The creation of sub-groups to develop and carry out the grouped tasks in a co-ordinated and accountable way.



### 8.5: Stakeholder Analysis

At some point in the start-up process, whatever type of start-up it is, it will prove useful to carry out a stakeholder analysis. List the stakeholders (any person, or organisation who will have a relationship with, or be affected by, the activities of the organisation). The key outcome of this analysis will be knowledge of who your stakeholders are and whether their relationship with the organisation is that:

- they are members who own and control the organisation;
  - they need to be kept informed about the activities of the organisation;
  - they are dependent on the organisation for their livelihood;
  - they are suppliers to the organisation;
  - they are funders, who want to know how their money is being used;
  - they are investors, who want to know how their money is being used;
  - they are subscribers who receive a service from the organisation:
- or any combination of the above.

This knowledge will be vital both in deciding the structure of the organisation and also the business model.

### 8.6: Steering group

In all of these participatory start-ups, there will generally be a co-ordinating group, often known as a steering group, which oversees the various sub-groups and organises subsequent meetings of the whole group to report, revise the plan and take new direction. This steering group is accountable to the community within which the organisation is being created and will often become the first governing body of the organisation which is created as a result.

### 8.7: Transition to trading

Any enterprise in the start-up phase needs to plan for trading and the post-launch period. The start-up process is exciting and, whilst there is often a lot of work to do, there is often a focus on the launch or a particular milestone such as getting the funding. Anyone creating any enterprise needs to be mindful that there will be plenty to do once the organisation is up, running and trading and there needs to be planning around this important aspect too. This planning will also form part of the business plan.



## 8.8: Expert advice and outside help

It is important that the organisation chooses an appropriate legal form and also has a business plan. For many of those involved in creating a community enterprise, it will be the first time they have done anything like this. Help is available from a variety of sources, which are listed in the back of this guide. These vary from other organisations doing similar things who will often be prepared to help with advice, visits or even mentoring; through to development workers whose job is to support new enterprises. Many organisations find this help invaluable and it can help prevent expensive or time-consuming mistakes.

Please see section 9.1 of this guide for further information relating to governance mistakes at start-up, and how to avoid them.



# 9

## Common governance problems of community enterprises

This section explores the typical governance problems experienced by community enterprises, and explores solutions and strategies to avoid these problems.

The definition of community enterprises has been limited in this guide to mean businesses which are controlled by a community membership. The members of the organisation, be they customers, employees or simply members of the community in general, are the people who own and ultimately control the organisation. Larger organisations of this type will typically have a governing body elected by, separate to and responsible to the wider membership and we will see that the typical governance problems will mostly relate to this governing body and how it relates to that wider membership.

It is accepted that some organisations which describe themselves as community enterprises by virtue of their benefit to the community will not fit the above restricted definition. Such organisations have not been explicitly included here as they will have some different governance issues, although there will be problems in common around governing body performance and accountability.

This guide defines 11 typical governance problems, although we will find that one problem often causes another or makes other problems harder to deal with. We will also see that the solutions to one problem will apply to several others too.

The typical governance problems are:

1. Mistakes at start-up;
2. Inflexible structures and systems;
3. Poor clarity of roles;
4. Difficulty recruiting to governing body;
5. Poor accountability to stakeholders;
6. Poorly performing governing body;
7. Poor membership participation;
8. Ineffective meetings;
9. Mission drift;
10. Founder syndrome; and
11. Poorly handled conflict

The following section discusses each problem in more detail.





## 9.1: Mistakes at start-up

Many governance problems have their roots in mistakes made at start-up. In the excitement of creating the organisation, or the rush to submit a funding application, the process is often poorly planned and uninformed decisions are made which hamstring the future progress of the organisation. A rushed start-up process which does not involve the potential members or thoroughly explore the potential business and governance models is more likely to fail.

An effective start-up process should involve all key stakeholders and answer the following key questions:

- Exactly what is it you want to achieve?
- Why do you want to achieve it (your ethos)?
- Where does the organisation want to be in 10 years time?
- Where's the money going to come from?
  - Start-up capital
  - Income
- What will you do with any surplus?
- Who will be involved and how?
- Will the organisation have joint or common ownership of assets?
- Future membership – does the current membership want to limit the changes that a future membership can make to the governance and operation of the organisation?
- Dissolution or wind-up – what happens to remaining assets on dissolution.
- Is there a sound business case?

### 9.1.1: Suggested strategies

The suggested strategies to avoid mistakes at start-up can be summarised as a combination of participatory planning, involving all potential members, but taking advice from other organisations be they support organisations or other organisations undertaking similar enterprises. Specific strategies include:

#### Good Planning

- Thorough research of the need or market being addressed by the organisation is very important.
- Don't reinvent the wheel – thoroughly research similar organisations and how they have approached their start-up. Many community enterprises actively support other enterprises and will make lots of useful resources available. Some will even be willing to act as a mentor.
- Participatory planning involving visioning by the "community". Involve everybody who may be a member of the organisation as they will then own the decisions – this is very important.
- Explore the needs and motivations of those involved at this early stage. What are the "deal-breaking" issues? It's no good creating an enterprise where half those involved want to run on co-operative principles and half don't. It's better to discuss this early on and then people can either agree to compromise or set up two organisations.
- Consider having external facilitation of planning meetings.
- Treat the planning stage seriously – there may be funding available to explore the idea and consult with stakeholders.



- Visit other similar enterprises – again, funding may be available to help with this.
- Will it fly? – create a good business plan. There is lots of help available around business planning and it is vital to know whether the enterprise is economically viable before committing a lot of time and resources to further planning.
- The planning stage should be open and inclusive. Some organisations create websites, wikis or mailing lists to keep everyone informed at all stages of the start-up process. These resources then also become useful for other organisations.
- Take your time. Creating an organisation is a complicated process and shouldn't be rushed.

### Get help

- There are many organisations that exist to help you. Many of them will work for free. Many of them are listed in section 13 of this guide.
- Delegate. If you are creating an organisation with a large potential membership, it's going to be hard

for all of them to be involved in every decision. Create working groups or steering groups to address particular aspects of the start-up. These can then report back regularly to the whole group.

### Make it fun!

- Try to avoid a few people taking on all the work. This is a risk to the process as they may burn out. Spread the responsibility and build the democracy in from day one.
- Don't forget that building a community enterprise can be enjoyable. Take regular opportunities to celebrate key achievements along the way.



## 9.1.2: Unsuitable structure case study

### **The organisation:**

A community-owned village shop.

### **Legal form:**

Company limited by shares.

### **The members:**

A few relatively wealthy village inhabitants as shareholders.

### **The issue:**

When the village shop was threatened with closure, in order to save the shop quickly, a few local inhabitants got together, pooled their money and set up a private company limited by shares. They bought the shop and started running it.

The problem is that the local community don't fully support the shop as there is a perception that it is not "their shop" but rather a money-making exercise by the local "great and good," even though the shareholders take no profit from the shop.

### **Suggested solution:**

The community need to feel that it is their shop and will then both shop and volunteer there more, making it more sustainable. One way to do this is to sell shares in the shop to the rest of the community who are willing to buy. The problem with doing this using the current legal form (company limited by shares) is that they cannot easily do a public share issue without contravening the Financial Services and Markets Act (FSMA) 2000 and Companies Act 2006. There is also a danger that the original members will retain power in proportion to their major shareholding (on the basis of one share, one vote) and the original "them and us" perception will persist.

A better solution would be to convert the company to a co-operative society, preserving the shareholdings of the shareholders, but the democracy would now work on the basis of one member, one vote. It would now be possible to easily do a public share issue as societies have specific exemptions from parts of the FSMA regulations. It is also possible to pay a dividend to members who are customers in proportion to their trade with the society – i.e. the more they shop the larger their share of any "surplus".

Any such decision to convert would require the approval of the current members at a general meeting.

For more information on the use of community shares and community shops, visit:

**Community Shares project:**  
[www.communityshares.org.uk](http://www.communityshares.org.uk)  
**Community Shops Network:**  
[www.plunkett.uk.net](http://www.plunkett.uk.net)

### **Strategy for avoiding such problems in the first place:**

It would have been better to arrive at a more suitable legal form in the first instance, but the creation of a society is a less familiar process and a public share issue is no small undertaking. It may be that a quick incorporation as a company and then a thorough exploration of the further options was the most appropriate process in this case where speed was important.



## 9.2: Inflexible structures and systems

The decision as to which structure to adopt often stalls the development of an organisation. This is a reflection of both the complexity of the choices available and the importance of making the correct decision. Organisations often set up with inappropriate structures which limit what they can do or even prevent access to sources of funding which they had intended to use. Conversely, it is equally possible to create an organisation which, whilst it is attractive to funders, is inappropriate for the aims and aspirations of the members.

In addition, the applicability, suitability and use of charitable status are often poorly understood in relation to the organisation's objectives and legal structure. The financial advantages of charitable status, whilst attractive, may be incompatible with the way the organisation will be run or its activities.

Even when organisations are set up with appropriate structures there are often misconceptions and ignorance amongst members, employees, governing body members etc. as to what the structure is and the implications thereof.

The suggested strategies to avoid problems relating to structure can be summarised as:

### Good start-up process

See all of the above in section 9.1 of this guide – Mistakes at Start-up.

### Learn from others

- Take expert advice from support organisations such as Co-operatives UK.
- Learn from the mistakes of other organisations.
- Plan strategically and effectively in the initial stages, with external help where appropriate, to ensure that the organisational structure is both appropriate and flexible.

### General good governance

- Ensure that the governing documents and associated policies are accessible and regularly reviewed.
- Have a system for the thorough induction of new members to ensure that the organisation is "self-aware" with regard to its governance. The members know what they're part of, how to affect the running of the organisation and how to change things if need be.



## 9.2.1: Unsuitable structure case study 2

### **The organisation:**

A Community Supported Agriculture (CSA) project

### **Legal form:**

Community interest company limited by shares.

### **The members:**

Consumers and volunteer growers.

The organisation was created to have two different classes of membership: i) consumers, who would also be volunteer growers; ii) investors who would invest to help to purchase land.

The CSA project would make a profit from the subscriptions of the CSA members enabling interest to be paid on the shares of the investor members (subject to the CIC dividend cap).

### **The issue:**

On applying for Lottery funding, the organisation was refused on the basis that it would be distributing profit. Many funders will not fund an organisation where there is any distribution of surplus or profit, whether as a bonus, dividend or interest on shares. If there is money left over at the end of the financial year and it finds its way back to the members in any way, then the funding will be refused. The fact that the organisation was a community interest company had no influence over the problem – community interest companies can still distribute profit.

There is an additional issue that the organisation in its current legal form would not be able to advertise to potential investors without contravening the Financial Services and Markets Act (FSMA) 2000.

### **Suggested solution:**

The organisation could have removed all power to distribute profit from their articles in order to be more attractive to funders, but then it would be less likely to attract investor members whose investment would actually get smaller due to inflation. They could also convert to a society, and whilst they could now do a public share issue, they would have exactly the same dilemma with regard to funding and profit distribution.

### **Strategy for avoiding this in the first place:**

Get professional advice with regard to your organisation's legal form, particularly if you intend to create some form of share-based organisation. Any organisation needs to be clear as to its business model, how it relates to its structure, and the tension between rewarding members who finance the organisation and the criteria of grant funders.





### 9.3: Poor clarity of roles within the organisation

This issue can arise from a lack of written policies and procedures, for instance grievance policy, disciplinary policy, member agreements, job descriptions etc. As a result, people don't know the limit of their roles and responsibilities. Where there is such a situation, there is a tendency for unspoken rules and "custom and practice" to fill the vacuum, leading to further confusion. Different people within the organisation operate different systems and new people become confused and disheartened.

In a flat non-hierarchical organisation roles and responsibilities are harder to define than in a more traditional hierarchical organisation. Responsibility is often shared and there is then a tendency for individuals to fail to take responsibility, as they know others will take up the slack. There is also a tendency to try to involve the entire organisation in decision-making. Whilst this is fine in a small organisation, there comes a point when as an organisation grows, some decision-making must be delegated.

The solution to the problem of poor role clarity is (surprise, surprise) clarity of roles and procedures. Remember also that we are talking about different types of role, such as:

- member;
- governing body member;
- officer roles, such as chairperson; and
- job specific roles.

Clarity is achieved by having role descriptions. All role descriptions need to be:

- appropriate;
- easy to understand;
- easily accessible by members; and
- reviewed regularly.

It is suggested that anyone becoming a member, joining the governing body or taking on a new role within the organisation receives a thorough induction into that role, with this being an ideal opportunity for role review, giving ownership of the role to the new incumbent.

Clarity of role is also achieved by a culture of transparency and good communication, which doesn't give the opportunity for uncertainty to creep in. This culture may be organic, as a result of good governance across all aspects of the organisation, or may even be planned for using a communication plan.

So it all comes down to clear structures, systems and documentation so that everyone knows where they stand, what they need to do and how to change things if need be.



## 9.3.1: Poor role clarity and Board performance case study

### The organisation:

A co-operative running several markets at which its members trade.

### Legal form:

Company limited by guarantee.

### The members:

Market traders.

### The issue:

The board of directors is elected from and by the members and it meets for several hours on a monthly basis. The co-operative employs market managers and the meetings of the board are devoted to reviewing and approving the decisions of the market managers, some of whom are present although they are not members of the company or the board. There is no business plan or strategic plan for the future of the co-operative.

There are two issues here:

The board is overworked because they are spending a lot of time micro-managing the market managers rather than leaving them to do the job that they employ them to do.

As a result of their focus on the day-to-day management of the organisation, the board is neglecting its key strategic governance role. The board has misunderstood its purpose.

### Suggested solution:

The board needs to reassess its purpose and the business at its board meetings and limit its oversight of the trading at individual markets to receiving reports from market managers. The board is not there to decide where the cones are going in the market car park. This will greatly reduce the time needed for the meetings.

The board needs to get to grips with the strategic oversight of the organisation. One possible way would be to actively develop a new 3-year rolling business plan which revisits the objects of the organisation and, in consultation with the members, decides where the organisation wants to be in the future and how it is going to get there. The organisation can then set itself performance criteria in terms of members, turnover, profitability, number of markets etc. and monitor its own performance against those targets.

### Strategy for avoiding this situation in the first place:

Having a clear business plan from day one and a system to make it a living document, reviewed throughout the lifetime of the organisation. This situation would also have been avoided if there was an appropriate system of induction for new board members as to their role and responsibilities.



## 9.4: Difficulty recruiting to the governing body

This issue is closely related to the ineffective meetings problem (see section 9.8). Who wants to take part in a democratic process that they perceive as inefficient or a stressful and large additional workload? Potential members of the governing body may also be unsure of exactly what it entails to be a board member.

Poor recruitment can lead to poor performance (9.7) as the skills needed for a good governing body are not represented and founder syndrome can develop (9.11), as existing members of the governing body are forced to remain in position. The governing body can also become distant from the membership and less accountable as a result.

Strategies to improve recruitment to the governing body are a mix mostly of carrot strategies with a smattering of sticks.

Membership of the governing body can be encouraged by:

### Carrot

- Demystify serving on the governing body and making it seem less of a challenge.
- Invite potential members of the governing body to a few meetings for a taster.
- Make the meetings of the governing body open to all members.
- Review the timing, location etc. of the meetings of the governing body. Are there any barriers to participation?
- Have refreshments available.

- Institute good communication between governing body and members, to ensure that members already feel part of the governance.

- Ensure governing body meetings are effective and well run.

### Stick

- Alternatively elements of compulsion can be used, for example, stipulating that everyone has to serve on the governing body at some point.

### Strategic solutions

- Plan a recruitment process. Don't wait for the problem to arise before addressing it. Review the process regularly.
- Make sure the governing body has the power to co-opt members onto the governing body to address any skills shortages.
- Have a clear role description for members of the governing body; people need to know what they're being asked to do.
- Review the work of the governing body. Are they micro-managing rather than having a more strategic role?

## 9.5: Poor accountability to stakeholders

The governing body has what is known as a fiduciary duty to the membership which has devolved some of its power to them. As part of this duty they are accountable to the membership and one of the key events of the organisational year – the AGM – exists to allow the members to hold the governing body to account.

When the governing body does not represent the membership effectively and/or the membership have little or no idea what the governing body is doing in their name and how they are arriving at their decisions, it can lead to a “them and us” perception with all the associated knock-on adverse effects.

The governing body also has a duty, and those in the role of director have duties, to ensure that they and the organisation are accountable to a wider range of stakeholders including regulators.

Solutions include effective communication, meetings and networking across the organisation, facilitated by an effective, informed and trained governing body in touch with an informed and engaged wider membership:

- Ensure that the governance of the organisation, and the documents relating to it, are easy to understand;
- Ensure that there is regular and high quality communication between governing body and membership;
- Regularly review the governance of the organisation and involve the members;
- Have well run, effective general meetings; and
- Carry out efficient record-keeping with documentation easily available to all members.

## 9.6: Poorly performing governing body

The governing bodies of many organisations frequently do not have the range of skills to effectively carry out the strategic management role required of them.

The governing body members should have a basic level of financial and business knowledge in order to be able to scrutinise financial reports and determine whether the organisation is on course and compliant with relevant legislation. Members of a governing body should also be aware of their own duties and legal responsibilities.

Please see section 4.11.7-9 for further information relating to the duties of the members of any governing body.

Again the solution is simply down to effective planning and review, with a commitment to training and recruitment to ensure a balanced and well-trained governing body.

Specific strategies include:

### Constitutional strategies

- Make sure the governing body has the power to co-opt members onto it to address any skills shortages.
- Consider limiting the length of service on the governing body. Use this strategy with caution as you may lose a skilled governing body member.



## Planning

- Conduct a regular skills audit of the governing body to determine what skills are required and whether the governing body has those skills.
- Have a regular review of relevant legislation – are any changes a threat to the organisation and will it be compliant?
- Have strategic away-days for the governing body. The governing body can focus on strategic planning without distraction.
- Plan for capacity development of the governing body.
- Review the governing body performance as part of a governance review of the whole organisation.

## General

- Have a system for thorough induction and training of new members of the governing body.
- Consider the involvement of outside specialists or consultants in training and review.
- Set targets for governing body performance – attendance etc. – and report against board objectives at the annual general meeting.
- Have clear job descriptions for governing body members.





## 9.6.1: Poorly performing and unaccountable governing body case study

### **The organisation:**

An urban community allotment project.

### **Legal form:**

Company limited by guarantee.

### **The members:**

Anyone interested in supporting the organisation who applies and is accepted by the board of directors. Employees can be members but not directors.

### **The issue:**

The organisation is run by a self-appointing core group who act in the role of company directors, but have not been elected by the membership (as specified in the articles).

There is no up-to-date register of members available as required by law.

Most of the "directors" refuse to register as such with Companies House for "personal reasons". Whilst they are not therefore "de jure" directors they will still be considered in law as "de facto" directors with all the corresponding duties.

Employees have raised concerns about the above with the "core group", but have been ignored.

As a result of all the above, there are a whole lot of risks to this organisation, which, whilst not charitable, is dependent on funding. The funders would not be happy with this. There is also the general point that those directing this organisation are not accountable to the members.

### **Suggested solution:**

Requests to the governing body having failed, the concerned members need to call a general meeting using the most up-to-date register of members. At that meeting there would be a number of possible proposals, but the most obvious one would be to remove the directors and replace them with a new board.

### **Strategy for avoiding this situation in the first place:**

This would not have occurred had the board been aware of their true responsibilities rather than seeing themselves as a "steering group" with no actual responsibilities. An induction process for new directors as to their duties in law would have avoided the problem.

It would also be advisable in this case, where the organisation is not charitable, to allow or encourage members of staff to serve on the board and benefit from their knowledge and insight.



## 9.7: Poor membership participation

Member apathy can, by default, be a problem for any member-based organisation and also a threat to its continued existence.

Member apathy arises in two main ways:

- Poor governance leads to disempowered and undervalued members who may continue to receive any membership benefits, but disengage from any democratic involvement with the organisation, leaving the governing body feeling overworked and undervalued.
- During the initial set-up a democratic organisation based on membership participation may be created for altruistic reasons, but in practice it may fail because the members join for the benefits but have no interest in controlling the organisation, or for other reasons, such as lack of time/geographical distance from meetings, are unable to participate.

It is good practice to investigate why there is poor membership participation and then address that problem. As with other common governance problems, the solutions are a mixture of carrot and stick, together with general good governance practice (particularly open and honest communication) which will lead to a more empowered membership.

### Carrot – make the meetings and engagement more attractive

- Make meetings more attractive. Many organisations combine their AGM with a celebration, food and drink or an interesting speaker.
- Have dedicated events to encourage member engagement. These events could include a visioning exercise to inform the strategic planning of the organisation or a celebration event. Try to recreate some of the excitement from the early days of the organisation.

- Another mechanism available to some legal forms is to reinforce member engagement through profit distribution. The Rochdale Pioneers weren't the first co-operative, but they were the first really successful one, partly due to the payment of the "divi".

### Stick – make non-attendance less attractive

- Some worker co-operatives make attendance at general meetings part of the working day. This recognises that governance is vital rather than an afterthought once the day-to-day running of the organisation has been done.

### Strategic

- Make attendance less important. If meetings are poorly attended and the members are not engaging with the governance of the organisation, a strategy of last resort would be to reduce the quorum required at general meetings to allow a smaller percentage of the membership to be able to make legitimate decisions. This has the disadvantage that it will reinforce the tendency for members not to engage and it may be that a change in the structure of the organisation is required.
- Find out why participation is poor using a member questionnaire and then address any barriers to participation, both real and perceived.
- Improve communication between the governing body and the membership.
- Joining an existing organisation and then getting involved in the governance can be daunting. Empower new members using a thorough induction so that they engage with the governance early on rather than waiting for them to find their feet. Some organisations assign an existing member to a new member in a mentor role.

## 9.7.1: Poor member application case study

### The organisation:

A large producer co-operative which runs markets for its members. The markets are spread over a large geographical area.

### Legal form:

A co-operative society.

### The members:

Primary and secondary producers of meat, dairy, vegetables, alcohol, bread, preserves and crafts.

### The issue:

The annual general meetings (AGMs) are poorly attended and struggle to reach a quorum. In this case, the general meeting is adjourned until the same time a week later when however many members turn up (understandably fewer), then that is the quorum. The problem for the society is that its members join mainly for the benefits of membership and are too busy to engage easily with the governance of the organisation they have joined. Two AGMs mean additional expense and the second meeting is poorly attended meaning that the governing body is accountable to fewer members, and as the next year's governing body is elected at the AGM, there are fewer people willing to stand.

### Suggested solution:

There are 3 possible immediate solutions:

- make the general meetings more attractive by holding them at a different time or by combining them with a social event; or
- make non-attendance less attractive by making serial non-attendance a reason to suspend membership; or
- make attendance less important by reducing the quorum.

The first solution would be preferred as it makes everybody happy. The second may be effective but is a bit draconian and the third will work but there are risks to the organisation in making it less accountable. The third solution would, however, still result in higher attendances than the status quo.

### Strategy for avoiding this situation in the first place:

As well as anticipating the attractiveness of attendance at the start and incentivising attendance, one other possible solution could also have been implemented in the start-up phase. It is possible that this organisation would operate more efficiently with a different structure. If the producers just want to pay their stall fees and turn up without having to attend meetings, then a smaller organisation might be more appropriate with the markets or market organisers as the members rather than the producers. The producers could then be involved just with the market(s) at which they trade.



## 9.8: Ineffective meetings

Meetings which are too long, are indecisive, or which leave attendees feeling that they have not had their say, are very disempowering. As well as reducing the efficiency of the organisation at that meeting and resulting in poor planning and decision-making, they also make attendance at future meetings less likely.

Poor attendance can also mean that meetings are inquorate and unable to take legitimate decisions.

Effective facilitation, together with clear responsibilities and good planning, is crucial to running effective meetings. Organisations may wish to try alternative ways of decision-making (see section 7.2 of this guide).

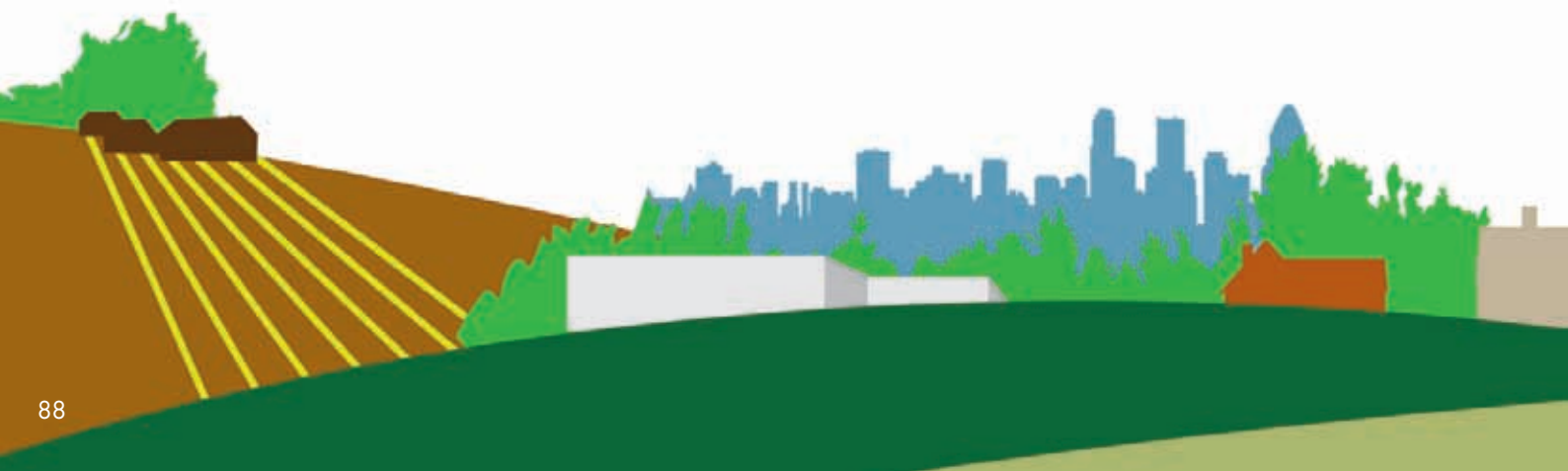
Consideration should also be given to making meetings more attractive with regard to venue and timing as well as their process:

- Good facilitation is vital, particularly around timekeeping;
- The agenda should be pre-circulated in plenty of time before the meeting;
- Any associated documents or reports should be pre-circulated with sufficient time for attendees to read beforehand;
- Minutes should be circulated afterwards and reviewed at the next meeting;

- Assess meeting effectiveness as part of any governance review;
- Consider alternative meeting styles to increase member participation;
- Use an external facilitator for critical meetings;
- Give due consideration to the venue and timing of meetings – are some members discouraged from attending?;
- Good record keeping. It's no good making a decision and then not recording it. Many organisations find themselves making the same decision twice as a result of poor record-keeping or wasting time discussing procedure which is already clearly defined; and
- Have an informed membership which understands the meeting process and any associated standing orders.

## 9.9: Mission drift

Mission drift is a term commonly used to describe the situation where, without any planning, the activities or purpose of an organisation drift over time and become different to the original mission (why the organisation exists and what it wants to achieve). It is common to find that an organisation's actual activities are not reflected in its objects as defined in its governing document. In some cases the organisation is acting outside of its powers, with possible legal ramifications,



and is open to challenge with regard to decisions made in the past.

Please see section 4.7 of this guide for a full overview of the objects of an organisation.

For a combination of reasons, many members of organisations are ignorant of the structure of their member-based organisation and may never even have seen the governing document.

There are a large range of preventive strategies, characterised by good communication and good start-up governance with a commitment to review the mission of the organisation as it and its environment grow and evolve. Legislation also changes and may need to be reflected in the governing document.

### **Informed members**

- At the very least all new members need a copy of the governing document, preferably as part of a structured induction to the organisation.
- Governing documents need to be clear and accessible and the members need to be aware of their power to change the governing document.
- Have a system in place for thorough induction of new members as to the governance of the organisation and their role as members.
- Maintain good communication between members and the governing body.

### **Audit and review**

- The whole organisation should be involved in regular reviews of the mission of the organisation.
- Make the business plan a living document and the focus of the organisation, and review it regularly.
- Review the progress of the organisation against its mission and objects and business plan. If progress isn't being made then either change the organisation to fit the mission or change the mission.
- Review the mission and ethos of the organisation against the aspirations of the members.
- The governing body should have regular strategic away-days, where there is a governance audit including a review of the compliance of the organisation with its own governing document.





## 9.9.1: Mission drift case study

### **The organisation:**

A community supported agriculture (CSA) project originally set up by a group of growers who ran a box scheme for subscribers.

### **Legal form:**

Company limited by shares.

### **The members:**

The original growers.

### **The issue:**

The current people running the organisation are the consumers (the subscribers to the box scheme) and the organisation has all the features of a consumer-led CSA. However, the underlying governance is still that of a worker co-operative although the worker members are no longer involved with the organisation.

This is a classic situation where the incorporation of the organisation was carried out purely to provide limited liability and a legal vehicle for the members' activities. The governing document was then ignored as the organisation evolved into something different. This is not to say that organisations cannot change, even from a worker to a consumer co-operative, but that the governance

must also be changed. There is a danger here that the original worker co-operative members may reappear and, in a worst case scenario, sell or wind up the organisation (as they own it) and pocket any residual assets.

### **Suggested solution:**

The original members need to change the governance structure to fit the current activities and operation of the organisation. They are the only people who can vote to do this.

If this is not possible, then the consumers of this organisation may need to consider creating a new organisation and trade with that, leaving the original organisation to its own devices. This would be a last resort as it would doubtless mean a loss of access to the land and other assets of the original organisation.

### **Strategy for avoiding this situation in the first place:**

The governing document should be a living document, used in the governance of the organisation and reviewed and changed if necessary. All new members should receive a copy of the governing document on joining as part of an induction process into the governance and operation of the organisation.



## 9.10: Founder syndrome

Founder syndrome is the term used to describe the negative or undesirable behaviour of a member of an organisation's governing body who, by virtue of their long involvement in, or importance to, the organisation has, or expects to have, undue power or influence within the organisation.

Often the governing body has long-standing members who are, or are perceived to be, entrenched and hold a great deal of influence. This "founder syndrome" may also be the result of the unwillingness of newer members to get involved, especially if they perceive that the existing members of the governing body don't need their help.

All of the above contribute to poor change management – the organisation can maybe cope with standing still but cannot plan for and manage change.

Founder syndrome may also occur in organisations where the governing body has an executive officer, whose job is to implement the strategic decisions of the governing body.

Possible strategies to deal with this include a range of preventive and remedial measures, creating an organisational structure which is open and where roles are clearly defined. New members and members of the governing body need thorough induction to empower them to get involved in the organisation's governance.

### Suggested strategies:

- Have a system for the induction of new members to empower them to engage with the governance of the organisation.
- Use the "founders" to mentor possible successors to their role.
- Limit the time served on the governing body and consider having a proportion of the governing body retire annually (possibly with the option to stand again immediately or after a break).
- Consider alternative meeting styles which are more participative and less subject to domination by individuals.
- Rotate roles within the organisation, maintaining a balance between reliance on key individuals and losing experienced people just as they become proficient.
- As a last resort there must be a mechanism for removing members of the governing body.

## 9.11: Poorly handled conflict within the organisation

Conflict is actually one of the most valuable resources that an organisation has and can be a positive force for change. Conflict, in itself, is not necessarily a problem; it is rather the poor handling of conflict that can lead to difficult situations.

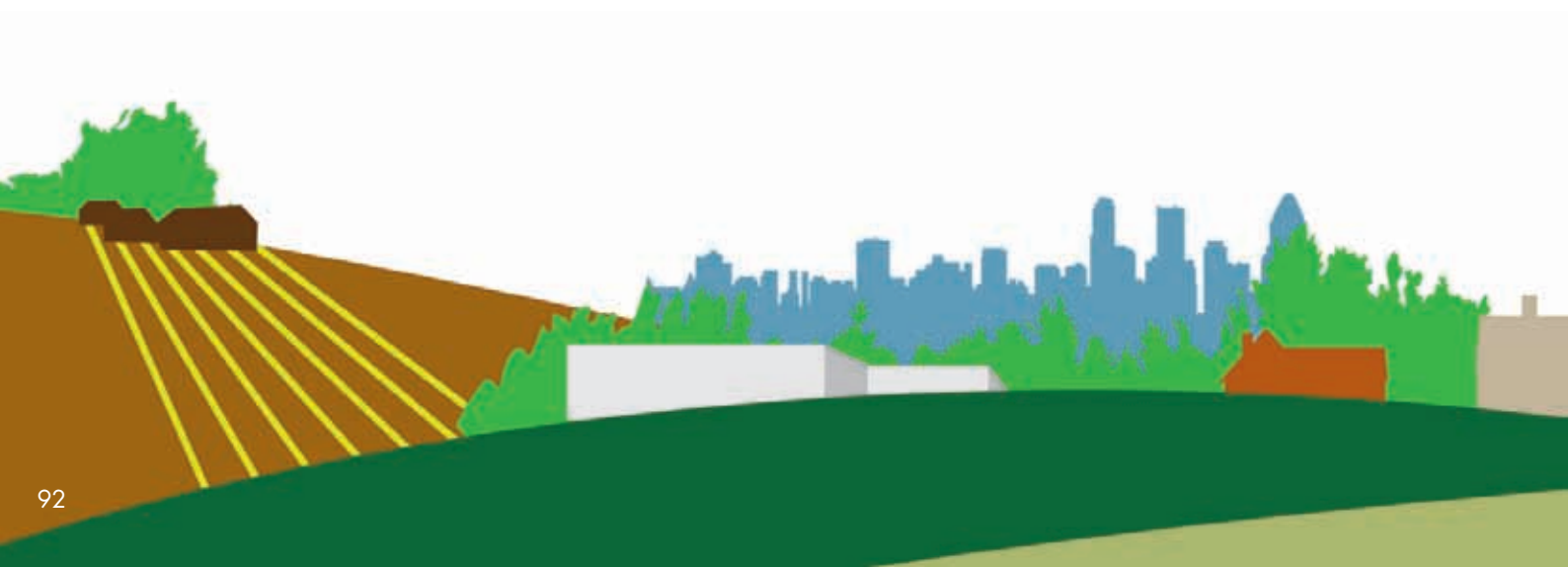


Decisions often get made by groups of people on the basis that they are the least controversial option, generating the least amount of conflict, rather than that they are the most appropriate course of action.

The key to any conflict resolution is perception – two people can be looking at the same scenario with very different outlooks. Try to put yourself in the position of the “other” in the conflict.

Possible strategies for managing conflict range from having effective meetings with clear ground rules, through the training of members, ultimately to having and implementing effective grievance and disciplinary procedures. All of this has to operate within an appropriate structure with clear governing documents – much conflict arises within organisations where there is confusion about the internal governance and roles and responsibilities.

**For a comprehensive overview of the positive handling of conflict within an organisation, see the “From Conflict to Co-operation” series of booklets available from Co-operatives UK.  
[www.fromconflict2co-operation.uk.coop](http://www.fromconflict2co-operation.uk.coop)**



# Codes of governance

# 10

Many support organisations, trade associations and regulatory bodies have produced advisory codes of governance to allow organisations to assess the health of their own governance. This section lists those relevant to co-operative and community enterprises.

## 10.1: Worker co-operative code

Co-operatives UK, working with its worker co-operative members, has devised a code of governance for worker co-operatives which is based on the International Co-operative Alliance co-operative principles (section 1.5.1 of this guide). Information on the worker co-operative code of governance can be found at: [www.uk.coop/workercode](http://www.uk.coop/workercode)

## 10.2: Code of best practice for consumer co-operative societies

This Code was originally adopted in 1995 for large consumer co-operative retail societies, but was later developed to allow for its adaptation and use by other co-operative sectors. The code is available from Co-operatives UK: [www.uk.coop](http://www.uk.coop)

## 10.3: Governance Standards for co-operatives and farmer controlled businesses

Straightforward and easy-to-understand guidelines and best practice aimed at the governing bodies of co-operative farmer controlled businesses, produced by the English Farming and Food Partnership (EFFP) and Scottish Agricultural Organisation Society (SAOS), are available as a pdf download from: [www.saos.co.uk](http://www.saos.co.uk)

## 10.4: Good Governance: a code for the voluntary and community sector

These were originally created as part of the Governance Hub within the ChangeUp programme to build capacity and improve the infrastructure of the voluntary and community sector. They were reviewed in 2010 by a group of voluntary sector bodies, including Acevo, the Charity Trustee Network and the NCVO. The code sets out six key principles for a good board, which include being open and accountable, understanding the role of trustees and behaving with integrity.

The code can be downloaded as a pdf document from the governance section of the Charity Commission website: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

## 10.5: Community enterprise code

Whilst there is no accepted code specifically aimed at a community enterprise, the governance audit in the following appendix could form the basis of such a code.



# 11

## Appendix A – Governance audit

This governance audit tool has been designed as part of the Making Local Food Work programme, to allow the assessment of the overall governance of any community enterprise.

The functionality of the tool was adapted from that used in the Social Enterprise London diagnostic tool for support advisers to assess the overall health of any Social Enterprise. This additional tool may be obtained from Social Enterprise London, [www.sel.org.uk](http://www.sel.org.uk)

This tool has been further developed into an on-line governance audit, which can be found at: [www.uk.coop/simplygovernance](http://www.uk.coop/simplygovernance)

### How to use the governance audit tool

The tool may be used by a governing body for self-assessment, but it was designed to be used by a facilitator or adviser working with a governing body.

A discussion with the governing body is facilitated using the 9 sections in the following pages. Each statement is rated by the governing body as to how true it is.

For example, if the statement were "Processes and policies are practised and embedded in the organisation and continuous improvements to them are made", then the following scoring would apply:

1. **Statement is false:** e.g. there are no processes or policies in place or the governing body is not aware of any. Choose this option also if the governing body (or member of the governing body) is unsure as to whether the statement is true or false, as this is an issue in itself;

2. **Statement is partly false:** e.g. the organisation is able to reference some of the documents, policies or procedures, but there is no evidence of these being embedded or implemented in practice;
3. **Statement is neutral:** e.g. the organisation has the policies, procedures and documents in place, and can reference them, but the evidence of them being embedded and live is weak;
4. **Statement is partly true:** e.g. the organisation has relevant policies and knowledge, but there is room for improvement in terms of embedding and using the processes, or undertaking the actions; and
5. **Statement is true:** e.g. processes and policies are practised and embedded in the organisation and continuous improvements to them are made.

The results can be charted to create a graphical representation of the overall governance of the organisation, which can then act as a catalyst for further discussion between the adviser and the governing body as to any actions or further work required.





## 11.1: Structure and organisation

This section relates to the structure of the organisation. Here we assess the familiarity of the members, and particularly the governing body, with the structure and governing document in which the structure is defined.

Many governance problems have their roots in mistakes made at start-up. In the excitement of creating the organisation, or the rush to submit a funding application, the process is often poorly planned and the organisation may choose an inappropriate structure.

Even when organisations are set up with appropriate structures, there are often misconceptions and ignorance amongst members, staff, governing body members etc. as to what the structure is and the implications thereof.

The structure of the organisation is fit for purpose.

The members of the organisation are familiar with the structure and governance of the organisation.

The governing document is consistent with any other documentation used in the governance of the organisation, such as secondary rules policies and procedures, membership agreements etc.

The members of the organisation are familiar with their powers, including how they can change the governing document of the organisation or change the governing body.

The governing body is confident that the organisation is running in accordance with its governing document.

**Average score:**



## 11.2: Policies and procedures

This section explores the policies and procedures which the organisation uses to supplement the primary governing document.

Problems can arise from of a lack of written policies dealing with, for instance, grievances, disciplinary issues, member agreements, job descriptions etc. As a result, people don't know where they stand and the limit of their roles and responsibilities. Where there is such a situation, there is a tendency for unspoken rules and "custom and practice" to fill the vacuum, leading to further confusion. Different people within the organisation operate different systems and new people become confused and disheartened.

Lack of appropriate policies may also affect the eligibility of an organisation for funding and even the legality of its operation.

The organisation is aware of policies that it needs to have in place.

The policies of the organisation comply fully with legal requirements.

The policies of the organisation are reviewed regularly.

The policies of the organisation are easily accessible.

**Average score:**



### 11.3: Accountability to stakeholders

This section explores the relationship between the governing body and the wider membership and the awareness of the governing body with regard to its responsibilities. Stakeholders are defined as anyone who is affected by the activities of the organisation.

Here we are mainly concerned with accountability of the governing body to members and also the accountability of the whole organisation to external stakeholders, such as regulators and the tax authorities.

When the governing body does not represent the membership effectively and/or the membership have little or no idea what the governing body is doing in the organisation's name and how it is arriving at its decisions, this can lead to a "them and us" perception with all the associated knock-on adverse effects.

The organisation's governing body also has a duty to ensure that it and the organisation are legally compliant with regard to external regulators.

The members of the governing body are aware of their responsibilities in law.

The organisation is fully compliant in its reporting to the relevant regulators.

The organisation maintains appropriate records of members, officers and the meetings of the organisation.

The governing body has all the information it needs to ensure that the organisation is legally compliant and is "on course".

The membership knows what the governing body does.

**Average score:**



## 11.4: Membership participation and general meetings

This section explores the efficiency of the general meetings of the organisation. Ineffective meetings often generate or reinforce poor member participation – a vicious circle.

Poor member participation, reflected in poor meetings and inability to recruit to the governing body can, by default, be a problem for any member-based organisation and a threat to its continued existence.

Membership apathy generally arises in two main ways:

1. Poor governance leads to disempowered and undervalued members who may continue to receive membership benefits, but disengage from any democratic involvement with the organisation, leaving the governing body to continue alone and unaccountable.
2. During the initial set-up a democratic organisation, based on membership participation, may be created for altruistic reasons but, in practice, it may fail because the members join for the benefits but have no interest in controlling the organisation, or for other reasons, such as lack of time or geographical distance from meetings, which make them unable to participate.

General meetings are well attended (here we are referring to meetings of the whole membership, as opposed to meetings of the governing body, which we'll address later).

Members understand the process at general meetings and how they can engage with the internal governance of the organisation.

General meetings are well facilitated.

General meetings are effective at holding the governing body to account.

General meetings are effective at making decisions.

Any conflict at general meetings is handled constructively and in accordance with the organisation's policies and the law.

The timing and venues for general meetings are good.

Members feel part of the organisation.

Members have easy access to a copy of the governing document of the organisation.

General meetings are called and held in accordance with the provisions in the governing document.

**Average score:**

## 11.5: Clarity of roles

In a flat non-hierarchical organisation roles and responsibilities can be harder to define than in a more traditional hierarchical organisation. Responsibility is often shared and there is then a tendency for individuals to fail to take responsibility, as they know others will take up the slack. There is also a tendency to try to involve the entire organisation in decision-making. This may work well in a small organisation, but as an organisation grows, some decision-making must be delegated.

In this section, we explore the clarity of roles, their review, communication and any associated training or induction.

Typical roles would be a particular job, volunteer, member or governing body member or officer (e.g. Chair or Treasurer).

There are clear role descriptions available where appropriate.

The governing body is aware of any roles defined in the governing document(s).

Anyone taking on a new role is thoroughly inducted into that role.

Role descriptions are easily accessible and up-to-date.

New members of the organisation undergo an induction process.

New members of the governing body undergo an induction process.

The organisation regularly reviews role descriptions.

**Average score:**





## 11.6: Composition and recruitment of the governing body

Poor recruitment to the governing body is a major concern for any organisation; more work and responsibility falls on a few shoulders, with the danger of burn-out, and the organisation is less democratic.

Poor recruitment can also lead to founder syndrome where some members come to dominate an organisation, as existing governing body members are forced to remain in position. The governing body can also then become distant from the membership and less accountable as a result.

Any organisation needs to be aware of its requirements with regard to the skills balance required on the governing body and also the danger of over-reliance on a few individuals.

The composition of the governing body and its appointment is consistent with the governing document.

It is easy to recruit members to serve on the governing body.

The membership is fully aware of what it entails to serve on the governing body.

There is a regular audit of the skills of the governing body.

There is an effective induction for new governing body members.

There is a policy for the training of governing body members.

**Average score:**



## 11.7: Performance of the governing body

This section explores the competence of the governing body, and its awareness of its strategic role and accountability.

The governing body members should have a basic level of financial and business acumen in order to be able to scrutinise financial reports and determine whether the organisation is on course and compliant with relevant legislation.

Members of a governing body should also be aware of their own duties and legal responsibilities.

The members of the governing body are completely familiar with the contents of the governing document.

The members of the governing body are fully aware of their duties, powers and responsibilities.

The governing body has a good understanding of the current financial health of the organisation.

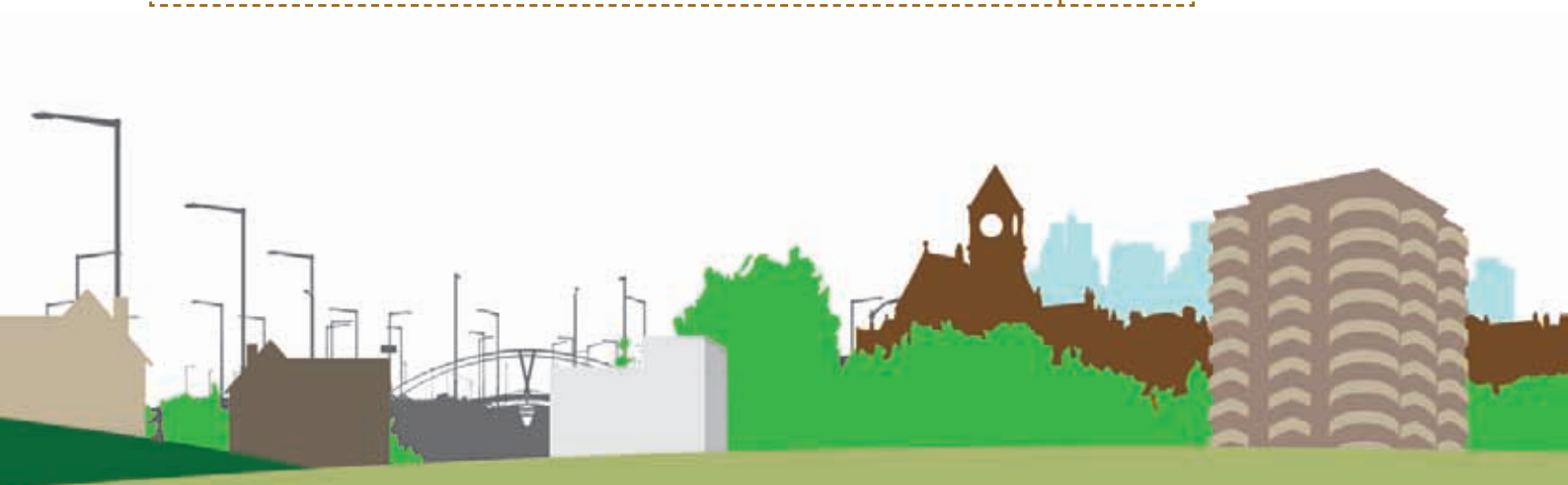
There are accurate and up-to-date records kept in accordance with the law.

The governing body communicates regularly with the membership.

The governing body concentrates on strategic direction rather than day-to-day running of the organisation.

The governing body regularly reviews its own performance or ensures that its performance is reviewed.

**Average score:**



## 11.8: Meetings of the governing body

This section explores the effectiveness of the meetings of the governing body as opposed to general meetings of the membership.

It is important that meetings of the governing body are effective and well attended, both from the point of view of the overall efficiency of the organisation and also to allow the members of the governing body to discharge their duties effectively.

It is also important that the business of the governing body relates to the strategic governance of the organisation and doesn't get bogged down in operational issues.

Meetings of the governing body are efficient and well attended.

Members of the governing body understand the process and systems relating to meetings of the governing body.

Supporting documentation (agendas, reports, minutes etc.) is timely, appropriate and circulated in advance.

The venues for meetings of the governing body are comfortable and appropriate.

The business of governing body meetings is strategic rather than operational.

Meetings of the governing body are open to all members.

Any conflict of interest is declared and dealt with in accordance with the organisation's policies and the law.

Governing body meetings are well facilitated (chaired).

**Average score:**



## 11.9: Strategic planning and risk management

This section explores the strategic role the governing body plays in directing the organisation.

The role of the governing body is to direct and manage the overall strategic direction of the organisation rather than get involved in the day-to-day running. As part of this strategic role, the governing body needs to monitor the progress of the organisation on its "voyage" and also to "watch out for icebergs".

In a smaller organisation, the governing body often also takes on the role of managing the day-to-day stuff, but must not forget its primary strategic responsibility.

The governing body has a strong idea of the strategic direction of the organisation.

There is an up-to-date business plan, which is a regularly reviewed, working document.

The vision and direction of the organisation is reviewed regularly with the membership.

The performance of the organisation is monitored against targets.

The governing body regularly assesses the threats to the organisation, both internal and external.

Critical roles within the organisation are not overly dependent on one or a few individuals.

**Average score:**



### 11.10: Radar chart representation

Plot the average values on the chart below to create a graphical representation of the governance of the organisation.

High points represent areas where the organisation is performing well and low points indicate areas of concern. Where there is a low score, revisit that section in the audit to see what was causing the low score and either address that issue as an organisation or, if you decide that the issue is not relevant to your organisation, then at least you've considered it and made an

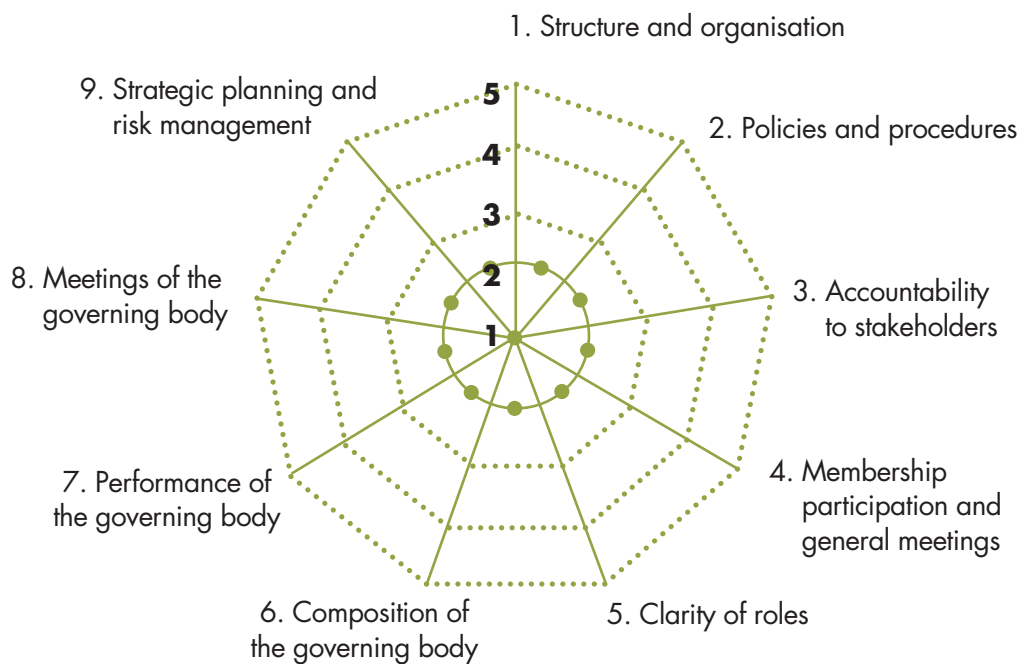
informed decision to ignore it and have documented the fact.

You might like to repeat the audit as part of an annual review of your organisation's governance. You can then see where you have improved and maybe even use the results as part of your organisation's social accounting.

Alternatively you can complete the whole diagnostic tool on-line at:

[www.uk.coop/simplygovernance](http://www.uk.coop/simplygovernance)

### Diagnostic Results





# Glossary of common terms

# 12

**Annual accounts:** an annual report of an organisation's financial activity during the last financial year.

**Annual general meeting (AGM):** a scheduled yearly meeting of the members of an organisation, normally to receive the accounts and elect the governing body.

**Annual return:** a form giving details of the current information filed on public record (a list of directors' details, the registered office address etc.).

**Approved governing document:** a governing document that has been agreed between the Charity Commission and a national, umbrella or other body that can be used by charities associated with them.

**Articles:** the governing document of a limited company.

**Artificial restrictions:** unreasonable barriers to membership such as 'no people over six feet tall can become a member'.

**Asset lock:** a restriction on distributing (or dividing) assets of an organisation to (or between) members (or shareholders), including on winding up, for example, by providing that the assets must be held for charitable purposes or passed on to other organisations with an asset lock.

**Bona fide co-operative:** the term used in the Industrial and Provident Societies Acts to describe one type of organisation that can register under this legislation. This term is expected to change to "co-operative".

**Bye-laws (secondary rules):** a document or documents used in addition to the governing document of an organisation designed to provide additional information with regard to governance arrangements.

**Case law:** includes decisions made by the courts on individual cases and the court's interpretations of statute and regulations.

**Central register of charities:** the list (kept by the Charity Commission in England and Wales and the Office of the Scottish Charities Regulator in Scotland) of all registered charities.

**Charity Commission:** the regulator and registrar of charitable organisations in England and Wales.

**Collective:** a co-operative enterprise with no governing body separate to the membership.

**Community benefit society:** see society for the benefit of the community.

**Community co-operative:** a co-operative owned and run by a community.

**Community enterprise:** an organisation that trades for community benefit and is primarily owned and controlled by that community, whether it is a geographical community or a community of interest.



**Community interest company:**

a corporate body which is a limited company that has satisfied the Community Interest Company Regulator that it operates for community benefit. It is a distinct legal form with the key characteristics of an asset lock and a cap on the distribution of its profits.

**Community investment:** the practice of financing community enterprises by issuing shares or bonds to the community.

**Community land trust:** a not-for-private-profit corporate body which exists to acquire, hold and manage assets for community benefit and is at least partly owned by that community.

**Company limited by guarantee:**

a corporate body registered under the Companies Act 2006. Members guarantee an amount in the event of the company being wound up with outstanding debts.

**Company limited by shares:**

a corporate body registered under the Companies Act 2006. Members' liability is limited to the amount of their shareholding in the event of the company being wound up with outstanding debts.

**Constitution:** the governing document of an unincorporated association. The term is also used to refer to the structure and governance of any organisation – i.e. how it is constituted.

**Co-operative:** the International Co-operative Alliance's Statement of Co-operative Identity defines a co-operative as "...an autonomous association of persons united voluntarily to meet their social, economic and cultural needs and aspirations through a jointly owned and democratically controlled enterprise".

**Co-operative consortium:**

a co-operative set up on the basis of international co-operative principles which mainly trades with its own members.

**Co-operative principles:**

internationally recognised principles which define co-operatives, as laid down by the International Co-operative Alliance.

**Co-operative society:** see bona fide co-operative.

**Consumer co-operative:**

a co-operative where the members are customers of the organisation.

**Corporate body:** an organisation with a separate legal identity from its members.

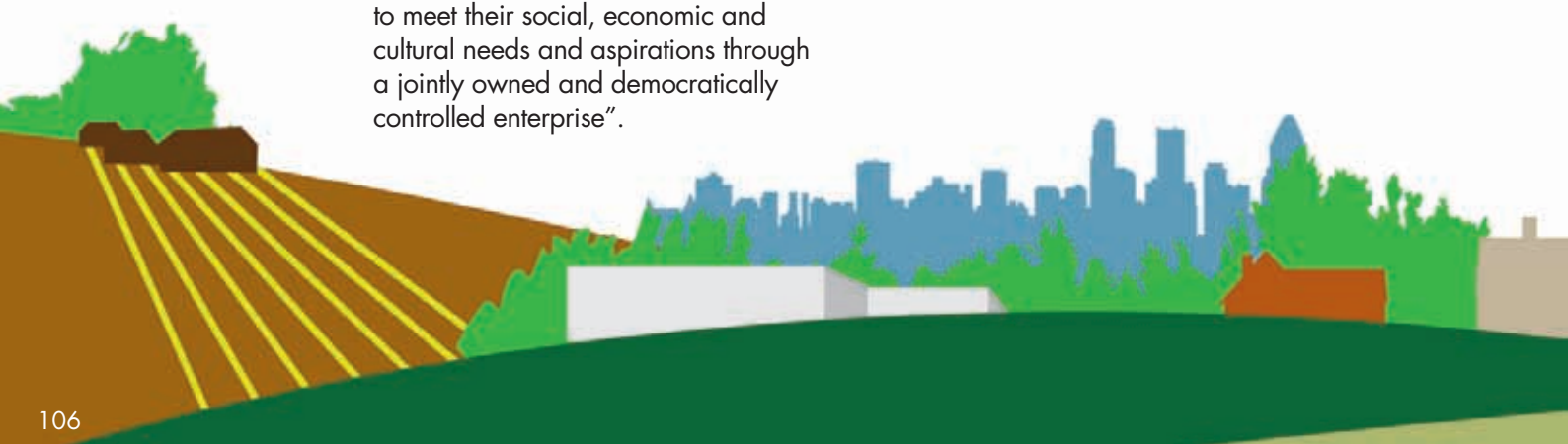
**Development trust:** a community-owned and led organisation, which develops community assets and community enterprise.

**Director:** a member of the governing body of a limited company. The Companies Act 2006 defines a director as: "any person occupying the position of director, by whatever name called."

**Exempt charity:** charities which are under the authority of supervisory bodies other than the Charity Commission.

**Financial Services Authority (FSA):**

an independent, non-governmental body given statutory powers by the Financial Services and Markets Act 2000. Its four areas of statutory powers are i) market confidence; ii) public awareness; iii) consumer protection and iv) reduction of financial crime.



**General meeting:** any meeting to which the entire membership is invited. The general meeting is the ultimate authority in an organisation.

**Governance:** the systems and processes concerned with ensuring the overall direction, supervision and accountability of an organisation.

**Governing body:** the general term used to describe the individuals appointed to manage the affairs of an organisation (often called the board of directors, the board of trustees or the management committee).

**Her Majesty's Revenue & Customs (HMRC):** a non-ministerial department of the Government primarily responsible for the collection of taxes and the detection and protection of smuggling. Formed in 2005 by a merger of the Inland Revenue and Her Majesty's Customs & Excise.

**Holding trustee:** an individual or organisation who holds legal title to a charity's property on its behalf.

**Industrial and Provident Society (IPS):** an incorporated legal form registered under the Industrial and Provident Societies Acts 1965-2002. To qualify for registration an organisation must be either a "bona fide co-operative" or a "society for the benefit of the community". See separate entries for each society type for how these names will soon change.

**Insolvent:** being unable to meet debt obligations, the opposite of being solvent.

**Loan stock:** a term used to describe several loans given to a corporate body on the same terms at the same time. Loan stock may be secured on assets of the corporate body. A person who takes out loan stock is a creditor of the corporate body and does not have any say (by virtue of being a loan stock holder) in the running of the corporate body concerned.

**Memorandum and articles of association:** the governing document for an organisation registered under the Companies Acts. Since October 2010 the governing document is known simply as the articles of association.

**Members:** the people or other organisations which own and control an organisation.

**Multi-stakeholder co-operative:** a co-operative with different classes of membership which have different trading relationships with the co-operative.

**Natural justice:** acting in a fair and reasonable way (for example, in the case of removing members, giving them the opportunity to question their removal).

**Not for profit:** the principle of operating an enterprise such that, whilst it makes a profit, it does not distribute it to members or shareholders. Sometimes referred to more accurately as "not for private profit".

**Objects:** Clauses in the governing document which define why the organisation exists and what it intends to do.

**Natural person:** a human being.



**Partnership:** a contractual arrangement between two or more people that is set up with a view to generating profit and sharing those profits.

**Periodic fee:** the annual fee paid to the Financial Services Authority by societies.

**Personal guarantee:** when an individual signs in their own name to confirm that if another person fails to make a payment or perform a service, he or she will be personally liable to compensate whoever has the benefit of the guarantee.

**Powers:** what the organisation can do in order to achieve its objects (for example, borrow money).

**Principal Regulator:** an organisation with the jurisdiction to regulate some forms of exempt charities. Such regulators include the Department for Culture, Media & Sport, the Department for the Environment, Food and Rural Affairs and the Higher Education & Funding Council for England.

**Proxy:** a person authorised by a member to act for a member at a general meeting, where the member is unable to attend themselves.

**Quorum:** the number of persons required to attend a meeting of an organisation in order for that meeting to have the authority to make binding decisions.

**Registered charity:** an organisation that has been formally recognised as a charity by the Charity Commission.

**Rules:** the governing document for an organisation registered under the Industrial and Provident Societies Act.

**Secondary Rules (bye-laws):** a document or documents used in addition to the governing document of an organisation designed to provide additional information with regard to governance arrangements.

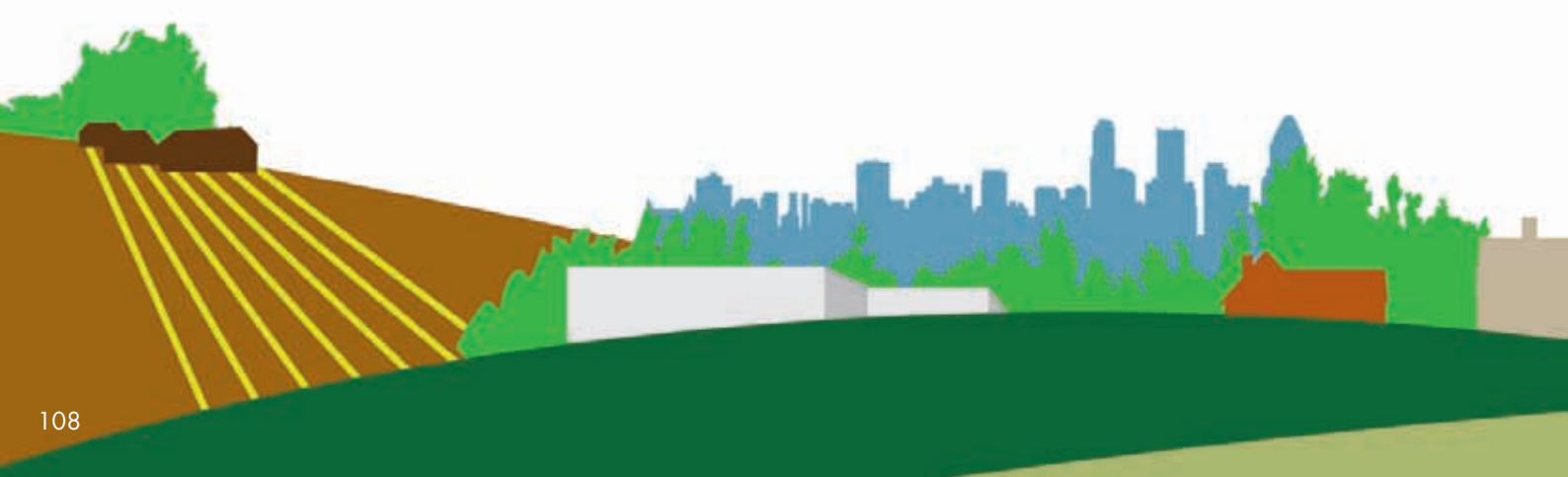
**Social enterprise:** "A business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. Social enterprises tackle a wide range of social and environmental issues and operate in all parts of the economy."

**Society for the benefit of the community:** the term used in the Industrial and Provident Societies Act to describe one type of organisation that can register under this legislation. This term is expected to change to "community benefit society" under the Co-operative and Community Benefit Societies and Credit Unions Act 2010.

**Sole object:** when an organisation has only one object or objective.

**Special general meeting:** a general meeting called to discuss business which is too important to wait until the AGM or next scheduled general meeting.

**Sponsoring body:** an organisation which has registered a set of rules with the FSA as a model, and provides a service to those organisations that work to register using the model.



**Stakeholder:** generally taken to mean any person or organisation which is affected by the activities of the organisation, whether they are members of the organisation or not.

**Standing orders:** procedures for the maintenance and management of meetings of organisations.

**Sweat equity:** the term used to describe the contribution made to an organisation by people who contribute their time and effort. The term is sometimes used to describe the efforts put into a start-up organisation by the founder members in exchange for a higher percentage of the profits within the first couple of years.

**Third sector:** a diverse sector encompassing voluntary and community organisations and charities, social enterprises, co-operatives and mutuals both large and small. Now also known as the Civil Society.

**Trustee:** a member of the governing body of a charitable organisation.

**Unincorporated association:** a group of people who voluntarily enter into an agreement to accomplish something without a view to making a profit.

**Worker co-operative:** a co-operative where the members are employees of the organisation.





# 13 Additional resources

**Simply Governance support website:** download this guide and access additional governance related resources  
[www.uk.coop/simplygovernance](http://www.uk.coop/simplygovernance)

**Advisory, Conciliation and Arbitration Service (ACAS)**  
0845 7474747  
[www.acas.org.uk](http://www.acas.org.uk)

**Campaign to Protect Rural England (CPRE)**  
National Office  
128 Southwark Street  
London  
SE1 0SW  
020 7981 2800  
[www.cpre.org.uk](http://www.cpre.org.uk)

**Charity Commission**  
Helpline: 0845 3000 218  
[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

**Civil Society**  
15 Prescott Place  
Clapham  
London  
SW4 6BS  
020 7819 1200  
[www.civilsociety.co.uk](http://www.civilsociety.co.uk)

**Community Interest Company Regulator**  
029 20346228  
[www.cicregulator.gov.uk](http://www.cicregulator.gov.uk)

**Community shares project**  
[www.communityshares.org.uk](http://www.communityshares.org.uk)

**Companies House**  
Registrar of Companies  
Crown Way  
Maindy  
Cardiff  
CF14 3UZ  
0303 1234 500  
[www.companies-house.gov.uk](http://www.companies-house.gov.uk)

**Co-operatives UK**  
Holyoake House  
Hanover Street  
Manchester  
M60 0AS  
0161 246 2900  
[www.uk.coop](http://www.uk.coop)

**Development Trusts Association**  
33 Corsham Street  
London  
N1 6DR  
0845 458 8336  
[www.dta.org.uk](http://www.dta.org.uk)

**European Food and Farming Partnership LLP**  
45 Ludgate Hill  
London  
EC4M 7JU  
0207 213 0430  
[www.effp.com](http://www.effp.com)

**Equality and Human Rights Commission**  
0845 604 6610  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

**Financial Services Authority**  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS  
020 7066 1000  
[www.fsa.gov.uk](http://www.fsa.gov.uk)

**Health and Safety Executive (HSE)**  
0845 345 0055  
[www.hse.gov.uk](http://www.hse.gov.uk)

**HM Revenue & Customs**  
St John's House  
Merton Road  
Liverpool  
L75 1BB  
0845 302 0203  
[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

**Independent Safeguarding Authority (ISA)**  
0300 123 1111  
[www.isa.gov.org.uk](http://www.isa.gov.org.uk)

**Institute of Business Ethics (IBE)**  
24 Greencoat Place  
London  
SW1P 1BE  
[www.ibe.org.uk](http://www.ibe.org.uk)

**International Co-operative Alliance**  
15 Route Des Morillons  
1218 Grand Saconnex  
Geneva  
Switzerland  
(+41) 022 929 88 88  
[www.ica.coop](http://www.ica.coop)

### **Making Local Food Work**

The Plunkett Foundation  
Units 2 & 3  
The Quadrangle  
Banbury Road  
Woodstock  
Oxfordshire  
OX20 1LH  
01993 810 730  
[www.makinglocalfoodwork.co.uk](http://www.makinglocalfoodwork.co.uk)

### **National Association for Voluntary and Community Action (NAVCA)**

The Tower  
2 Furnival Square  
Sheffield  
S1 4QL  
0114 278 6636  
[www.navca.org.uk](http://www.navca.org.uk)

### **National Council for Voluntary Organisations (NCVO)**

Regent's Wharf  
8 All Saints Street  
London  
N1 9RL  
020 7713 616  
[www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

### **National Farmers' Retail & Markets Association (FARMA)**

12 Southgate Street  
Winchester  
Hampshire  
SO23 9EF  
0845 4588 420  
[www.farma.org.uk](http://www.farma.org.uk)

### **National Society for the Prevention of Cruelty to Children (NSPCC)**

Weston House  
42 Curtain Road  
London  
EC2A 3NH  
Tel: 020 7825 2500  
[www.nspcc.org.uk](http://www.nspcc.org.uk)

### **Office of the Scottish Charity Regulator (OSCR)**

2nd Floor  
Quadrant House  
9 Riverside Drive  
Dundee  
DD1 4NY  
01382 220 446  
[www.oscr.org.uk](http://www.oscr.org.uk)

### **Plunkett Foundation**

The Quadrangle  
Woodstock  
Oxfordshire  
OX20 1LH  
01993 810 730  
[www.plunkett.co.uk](http://www.plunkett.co.uk)

### **Rural Community Shops (formerly ViRSA)**

Plunkett Foundation  
The Quadrangle  
Woodstock  
Oxfordshire  
OX20 1LH  
01993 814 377  
[www.plunkett.co.uk](http://www.plunkett.co.uk)

### **SAOS Ltd**

Developing co-operation  
in farming, food and  
rural Scotland

Rural Centre  
West Mains  
Ingliston  
Newbridge  
EH28 8NZ  
0131 472 4100  
[www.saos.co.uk](http://www.saos.co.uk)

### **Soil Association**

South Plaza  
Marlborough Street  
Bristol  
BS1 3NX  
0117 314 5000  
[www.soilassociation.org.uk](http://www.soilassociation.org.uk)

### **SUSTAIN – The Alliance for Better Food and Farming**

94 White Lion Street  
London  
N1 9PF  
0207 837 1228  
[www.sustainweb.org](http://www.sustainweb.org)

### **VolResource – information for voluntary and community organisations**

070 9235 7720  
[www.volresource.org.uk](http://www.volresource.org.uk)

### **Volunteering England**

Regent's Wharf  
8 All Saints Street  
London N1 9RL  
United Kingdom  
020 7520 8900  
[www.volunteering.org.uk](http://www.volunteering.org.uk)





CO-OPERATIVES UK



Co-operatives UK  
Holyoake House  
Hanover Street  
Manchester  
M60 0AS

Tel: 0161 214 1750  
Web: [www.uk.coop](http://www.uk.coop)

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