




Scottish **Arts** Council

care, diligence and skill

a corporate governance
handbook for arts organisations



This edition has been extensively revised by Graham Berry.

The information contained in *Care, Diligence and Skill* applies mainly to Scotland unless otherwise stated.

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Your role as a director, trustee,
committee or board member of
(what is more often than not) an
organisation with charitable status,
is of paramount importance

Author's foreword

Artistic visions of organisations are unlikely to be achieved in the absence of sound management and good governance, and whilst many aspects of legislative control have changed since the previous edition of this handbook, the basic principles of how organisations are established and governed remain the same.

The desire to take on an increasingly onerous task is usually accompanied by an equally strong desire to support the arts. It is invariably a passion for a particular art or artistic activity which drives this willingness to become involved, often in advance of understanding fully the legal and public requirements and expectations of holding such office.

The demand made on arts organisations and their governing bodies continues to grow, as does public scrutiny. The highest standards are now expected from those who voluntarily make themselves available and responsible for the stewardship of public funds.

Most if not all of the arts organisations which make use of this handbook will be in receipt of public funds either directly from government, through government agencies or from the public through charitable and philanthropic giving. Many will also receive support from the private commercial sector, where there is also a growing demand for transparency in how funds are handled in relation to other income and in reporting how corporate social responsibilities have been discharged.

Although regulation for charities in Scotland has become more robust since the creation of the Office of the Scottish Charity Regulator, many of the inherent checks and balances which exist in the commercial sector are not mirrored in the not-for-profit sector.

The debate on models of control, governance, funding and reporting in the arts continues to be active and lively. I hope that this new edition will add to the debate and help arts organisations, and indeed the wider charitable sector, to achieve their vision.

Graham Berry
December 2007

Introduction

It could be claimed that the role and responsibilities of boards are simple to understand and that therefore a guide of this sort is unnecessary. Most organisations have written terms of reference, and their boards have ultimate legal responsibility, within the scope of these terms, for setting the overall vision, aims and objectives, the strategy to achieve them, and for the supervision and review of everything the organisation does.

The constitution will usually set out what an organisation can do, how to establish the board and giving it the necessary powers to seek resources, employ staff and do all the things which might reasonably be required to achieve its aims.

Unfortunately, any apparent simplicity is illusory. The job of a board is complicated and as outlined in the introduction, is becoming increasingly so. Most organisations express their aims in very general and broad terms. It is the role of the board to interpret these overarching aims, often termed the 'objects', into a clear set of policies and objectives with strategies to meet them; the board must also establish business plans to achieve artistic aspirations and then set priorities that are consistent with the resources available, market demands and so on.

Arts organisations are by definition ambitious; they want to perform, create or display at the highest possible quality-levels with the best available materials. Achieving a balance between the desires of artistic directors or programmers and the resources available is a demanding and difficult task.

The board is empowered to gather the necessary resources, recruit the staff and delegate implementation of strategy and policy to senior executive staff or through committees and in so doing must ensure that the demands for resource do not outstrip the scarce and valuable resource available.

Little if anything stands still and it is often difficult to forecast income, for example when grant decisions are delayed, other circumstances alter, the organisation itself develops and wants to introduce yet more ambitious programming. Business planning has to be sufficiently dynamic and flexible to cope with such fast-moving change. Often this will simply involve minor adjustment of budgets; at other times it might involve a thorough reassessment of objectives and priorities.

Despite the increasing complexity and demands of the job, many boards comprise volunteer non-executives who meet rarely more than six times a year, typically for up to three hours per meeting, to carry out their duties. As a result, the board is obliged to delegate to executive employees and committees many of the matters for which board members remain ultimately responsible. This retention of legal responsibility without the ability to implement directly the actions to ensure compliance and the consequent perception of distance from urgent issues is at the heart of the paradox of non-executive boards in the arts and wider charitable sector. Good and clear communication between the board and those to whom work is delegated is as

essential for success as a robust reporting process.

This handbook aims to assist boards and management committees and their executive staff by clarifying some of the key principles and responsibilities and aspects of the work. It will help the boards of arts organisations operating in all aspects of the arts and possibly in the wider not-for-profit sector. If in any section, examples of terminology relate to only one or two types of business activity or entity, this is not intended to limit the appropriateness of the principle behind the matter being discussed.

The needs of all organisations and businesses are different and in most cases there is rarely a right answer but the principles of good practice and board responsibility do not change. This handbook is therefore intended to apply to the boards of both large and small organisations, whatever their legal form. Many, if not all, of the major difficulties which have been witnessed in the arts over the past 20 years stem from the same problems irrespective of size and activity. However, size does matter in some aspects of governance. For example, in a small organisation with no paid employees, the board may not only set the policy and vision but also implement them, whereas in a larger organisation the board may never get involved at all in implementation of their decisions because of the ability to delegate to senior executives and committees. Throughout this booklet these differences are reflected where relevant.

Some terminology

In arts organisations, senior executives are by tradition often given the title ‘director’, although they are not company directors of the organisation in the legal sense and do not have a place on the board of directors.

- In this handbook, the words ‘board members’ have been used to cover not only directors of guarantee companies and the like but also trustees of trusts and committee members of associations and other unincorporated bodies.
- As will be explained in Section Two, organisations may take one of three legal forms: an association, a trust, or a company – their respective executives being a committee, the trustees, and the board of directors.
- In this handbook, the word ‘organisation’ covers all three forms and the word ‘board’ covers all types of body which govern and oversee the functions of the organisation.
- To avoid confusion, arts organisations should use the appropriate legal title when describing their executive body. There are many examples of members of a board not realising that they were in fact company directors legally responsible for the organisation because the terms ‘management committee’, ‘governor’, ‘Council’ or other variations were in use.



Business parallels and differences

Although business ventures operate primarily for profit whilst artistic ventures in the main do not (other than through the operation of trading subsidiaries, see below), there are significantly more similarities than differences in the responsibilities of their boards. However, the differences are important, particularly since they make the task of the board member in the arts even more difficult than it is in business.

Three important similarities

The **first** similarity is that all limited companies, including artistic and business enterprises, in general operate within the same system of provisions and principles of company, contract and commercial law. Because by far the majority of companies are outside the not-for-profit sector, and aim to maximise value and make a return on shareholder investment, the law regulating the control of all companies is designed principally to respond to those circumstances. Not-for-profit arts boards do not have that commercial imperative yet they are subject to regulations which assume this will be the case. This often leads to confusion about which laws do or do not apply to arts bodies. Some of the legal issues are outlined in the second point below.

Corporate legislation in recent years has sought to reduce the burden of reporting by commercial companies whilst increasing the demands on governance in general. The reporting burdens of companies are dependent on size, usually measured by

value of turnover. Boards should check on the limits which apply, as these alter on a fairly regular basis. However, for all the reasons outlined in the introduction, boards of arts organisations are strongly recommended to follow best practice in ensuring independent scrutiny of their operations and accounts. Funding bodies are also seeking to reduce demands on recipients of public money to avoid unnecessary 'red tape'. For example, the Quality Framework issued by the Scottish Arts Council provides information and guidance as well as setting out their expectations for funding relationships. However, it states that 'for those organisations with income less than £90,000, we do require an accountant's report', which exceeds statutory reporting requirements.

The best advice is to follow best practice as applied in the commercial sector. Auditors are a useful source of such guidance, as are the professional accountancy bodies which regularly publish codes of practice.

The **second** point of similarity is that most organisations – whether in the arts, business or any other field – are started up by one or more highly committed individual(s) who already have a vision in at least an outline form, gather around them like-minded people to form a team and scrape together the money, materials and property to get things going. Many successful arts activities are still established by practitioners who are keen to move ahead quickly but a growing arts organisation is like any growing business,

whatever the ultimate financial, social or artistic goals and objectives might be, and as such:

- its ‘product’ is artistic output and its continual improvement is of direct concern to all of the people involved in the running of the organisation
- the operation is usually subject to strict financial constraints
- the ‘product’ often falls short of expectations, either because of these financial constraints or because of unrealistic expectations
- at least in the early stages, members of the board often have to assist in all aspects of the business.

However, as organisations grow, they, their ethos and their administrative systems have to cope with a wide range of possibilities. Boards must step back and become more involved with strategy, general policy and relations with government, public bodies, sponsors and audiences, and less involved with the hands-on approach and day-to-day management they started out with. If this change is not well managed and communicated within the board and fully understood or accepted by them, it can lead to resentment, particularly where it appears that the demand for change is being driven externally and is thus a diversion from the core objectives of the organisation.

Many of the tasks which were initially undertaken directly by the board must in these circumstances now be delegated.

Delegation does not, however, mean giving up the responsibility and it is important that the board introduce appropriate systems to ensure that work delegated is indeed being performed, is subject to formal performance review and reporting, and is leading to achievement of the overall organisational aims.

The **third** point of similarity is the common issue with which all boards in all sectors must become increasingly concerned, as they mean a greater personal responsibility and risk for the members:

- higher standards of accountability
- securing more sources of finance, each with its own reporting requirements
- the growth of new areas of legislation and increasing complexity of existing areas (many of which may not, through exemptions, apply to smaller organisations)
- the hazards of operating in an economy and society exposed to substantial change and responding to such changes
- the greater public scrutiny which arts organisations now experience
- growing interest in the environmental impact of business decisions and corporate social responsibilities
- and, above all, the relentless financial pressures of making ends meet.

All of these combine to increase the difficulty in being a board member of an arts organisation, and with the increasing risk of exposure to public censure, these issues make even the visionaries think twice about

joining an arts board. Most of the above points are familiar to the boards of businesses (which tend to enjoy better access to capital and professional management support), but perhaps less so to the boards of arts organisations.

Three key differences

There are three important differences between arts organisations and commercial companies. Each of them makes the board of an arts organisation's job more difficult.

The **first** difference is really a composite of two smaller issues. However, they are best treated together.

In most arts organisations (and certainly in all publicly subsidised arts organisations)

- the quality, content and style of the product or artistic output are more important than profit
- there are no shareholders.

In commercial organisations, although there is often a pride in the product or service and an increasing commitment to the community, to employees and to the environment, the primary objective is the creation of profit and adding to the value of shareholder funds. Boards must account and report to those investors who have provided the capital money which the business uses. If the return on investment is significantly lower than could be achieved elsewhere with comparable risk or if profitability is not achieved in reasonable time, the capital will eventually be withdrawn or transferred to more profitable

ventures, with the possibility of the business being discontinued.

Most arts organisations do not have any fixed capital funds invested in them on a long-term basis and they rely on annual subsidy to break even. Even 'working capital', where it exists at all, arises only from skilful juggling of small differences between money owed, money due, use of bank facilities and timing of subsidy payments. This lack of long-term investment makes the board's job more difficult in four ways:

- Public funds
 - however much an organisation might feel entitled to them, public funds bring with them the rigours of public accountability and thus scrutiny from the public, the press and politicians
 - the money is often granted on condition that certain kinds of activity are undertaken and sometimes for specific purposes which places constraints on the activities of the organisation
 - there is an underlying requirement that high artistic standards be maintained and improved.
- Commercial sponsors
 - if this is secured, there may be a conflict of artistic integrity, as commercial sponsors will be acting in the interests of the promotion of their image and public relations and this is tied into their funding.

The growing pressure on the resources of funding bodies in the arts, mainly local

authorities and Arts Councils, and the desire to achieve continuous improvement, has prompted introduction by the Scottish Arts Council of a 'Quality Framework' for organisations which it funds. Although this appears to add to the demands made on arts organisations, it in fact clarifies the Council's own expectations and provides very useful guidance on the levels organisations should aspire to in the areas within the notoriously subjective and often problematic area of 'quality', divided into leadership, public engagement and accountability.

The above four points, in conjunction with the demands and tastes of the general public in the marketplace, make both the organisation's life and the task of the board very difficult. They can also lead to conflicts of interest which the board is bound to weigh and make judgement on to balance as many interests as possible, including their own of achieving their initial aims. Boards cannot be all things to all people and must seek to maintain the integrity of their vision even if it might lead to loss of some funding.

The **second** difference is that the proportion of labour intensity in creating most of the arts limits the opportunities for the lowering of costs by employing modern technology. The input of resources required to mount a production of work is rarely less than that required when the work was first made. At the same time the arts organisation is subject to the full impact of cost increases which other industries might have been able to offset by having access to productivity

gains, for example by using new technologies.

Increasing the number of performances or exhibitions or extending the length of a run is likely to increase income but does not lead to a commensurate improvement in the overall financial position because of proportionate increases in expenditure. Regardless of the expertise and experience of an organisation's management, the need for additional financial resources tends to increase with time.

The **third** major difference is related to the first two. As has already been noted, arts organisations seldom have adequate financial capital. Because they are generally established as companies limited by guarantee, they usually start with too little core funding or fixed capital (if any) and have few opportunities thereafter to build reserves. From month to month and year to year they scrape by, balancing their costs against income from artistic productions, financial contributions from business and the public, and grants. In the commercial world, even a relatively small company is likely to be established with initial fixed capital and thereafter build reserves from the profits it generates from year to year. These reserves provide much-needed working capital simply to maintain effective business operations as well as being a cushion against unforeseen events. The inability of an arts organisation to do likewise prevents it from accumulating money to compensate for a bad year, allowing risks to be taken on new projects or permitting development of new artistic

activities. Typically such eventualities are resourced from specified new funds, for example a lottery grant or sponsorship, which by their nature cannot be used to add to a reserve or make a contribution to other fixed costs of the organisation. At worst the organisation accumulates debt rather than reserves, and pays the consequence in subsequent years as it struggles to balance the books and maintain artistic operations.

This lack of capital and uncertainty about their ongoing sources of funding and finance places a heavy burden on boards of arts organisations. Board members can only allow the organisation to enter into commitments with a reasonable expectation of being able to pay the bills when they fall due. And yet boards are also required to be visionary and to engage in long-term planning, which often requires making commitments to artistic programmes many months – or, for major and international works sometimes years – in advance.

It is hardly surprising that the boards of many arts organisations become cautious and unwilling to take risks.



Boards and their legal duties

This handbook is concerned primarily with the operational and practical responsibilities of boards of arts organisations. Nevertheless, it is important that boards should be aware of the overall legal framework within which they operate, and this chapter examines three aspects of this framework:

- the choice of the right legal form for the organisation, including group structures
- the issue of charitable status
- the legal duties of board members.

The examination is necessarily brief and must not be regarded as covering all legal aspects with which a board member must nowadays be concerned. It aims to prompt the board to ask appropriate questions and to alert the board to the most crucial of the many aspects of the organisation for which they have taken a responsibility; it should be treated merely as a general guideline; boards are encouraged to seek professional advice when appropriate.

Organisational form

In the first instance, an arts organisation must decide what legal form it should take. Broadly speaking, there are three forms: an unincorporated association, a trust, and a registered company.

An unincorporated association

An unincorporated association is a joint venture or project undertaken by two or more persons. A constitution must be drawn up which defines the aims of the project and the rules of operation of the project.

The unincorporated association does not have a legal identity that is separate from its members; it is simply an arrangement between its members as set out in the constitution which provides for its affairs to be run by a committee on behalf of the members. The constitution should not only make provision for such a committee but should also record what powers and responsibilities it has, how members of the association are to be chosen for this task, and how long they might be expected to serve and how they can be removed.

The advantage of the unincorporated body is that it can be set up very quickly and relatively cheaply. There are, however, two principal disadvantages of this style of organisation.

- **Firstly**, its form is rather loose. When the identity of its members changes, it often becomes unclear to third parties whether they are still dealing with the same body. This uncertainty about continuity can create problems in questions of property ownership; the ownership of intellectual property rights in the basic ideas of the project and in its name can be particularly contentious. This uncertainty might also discourage third parties from dealing with the unincorporated association or lending or granting funds to it, particularly if it is a new body.
- **Secondly**, the committee members incur unlimited personal liability for the obligations and debts of the association. This can only serve to discourage people from accepting office and to make those

who do accept office unwilling to take risks.

In short, the unincorporated association is not an appropriate form for any organisation proposing to undertake ventures of any significance, to handle large sums of money, to own or lease property, to employ staff or to assume any onerous legal commitments. It is ideal for activities which have few legal commitments and low-risk activities such as would normally be undertaken by a small members' club or for very specific short-term projects.

Many arts organisations start off as a project in a very informal way, some even without any form of written constitution, because of a desire to avoid what they might regard as unnecessary bureaucracy and paperwork. It is important to consider from the outset what the longer term objectives of the organisation are to ensure that the most appropriate constitutional form is chosen. Even the most low risk, short-term activities, for which an unincorporated body might be appropriate, should have a written form of constitution which records the objectives of the body, the membership, how it will be managed and by whom and for how long.

A trust

A trust is a legal form whereby arrangements can be made for funds to be made available or raised for a specific purpose. The aims and purposes of the trust are laid out in a Deed of Trust, which binds the trustees and which also appoints the first trustees, who accept office by signing the deed.

A trust exists independently of those who formed it. Funds transferred to it belong to the trust, with the trustees and their successors providing the central direction and ensuring that the objectives of the trust are met in accordance with the provisions of the Deed of Trust.

Because the trust has a legal identity of its own, many of the problems associated with the unincorporated association are thus avoided.

Trustees have a reasonable degree of protection, in that their liability is generally limited to the extent of the trust funds. However, trustees who enter knowingly into legal commitments or undertake obligations which cannot be met by the trust funds or who wilfully ignore the objectives of the trust and its provisions, will incur personal liability for these commitments and obligations.

The form of a trust is also somewhat static and is less easy to amend than other forms of constitution. The system of appointment and retirement of trustees is often cumbersome with the result that current trust members are often not properly recorded. Delegation of responsibilities to anyone other than a trustee is also problematic.

It follows that while a trust may be a suitable legal form for the long-term administration of an endowment fund or for the holding of property, it is not generally appropriate for an organisation which aspires to operate and manage arts projects or to trade.

A company

A company has a completely separate and independent legal entity totally distinct from its members, and as such it can, in its own name, hold property, open bank accounts, employ staff, enter into contracts and assume legal commitments.

The **members** are those who found the company and sign the constituting documents as subscribers. Thereafter members are appointed in terms of the constitution. In a commercial company the members are more commonly called shareholders. In the not-for-profit sector, members and directors are often one and the same.

The **board of directors** is the committee or group of people legally responsible for deciding strategy and policy and for managing and controlling the organisation. The board of directors is appointed by the members and can be dismissed by the members.

Neither the members nor the directors of a limited company who are responsible for it and enter into commitments on its behalf or authorise others to do likewise, incur any personal liability for the debts of that company unless they breach the rules relating to ‘insolvent trading’ (which are described later), or otherwise act outside their authority legally or breach the written constitution of the company in a material way. Although the obligations are more onerous, there can be no comparison with the risks undertaken by committee members of an unincorporated association or by the trustees of a trust. The single benefit of

limited liability generally outweighs the burdens imposed.

The term ‘limited’ in a limited liability company means that the liability of the members of the company is restricted. This is clearly one of the major advantages of this form of organisation. The limit of the liability of members in the case of a guarantee company is the specified value of the guarantee (typically £1 or a similar nominal amount).

The directors have no personal liability unless they trade through insolvency without proper financial advice, or breach the law in some other way, or wilfully act outside their terms of authority.

It is common for arts organisations to be non-profit distributing companies limited by guarantee. In most instances they also seek charitable status to accrue the associated benefits. The concept of share capital, where members, or shareholders, make an investment in expectation of a return, is generally inappropriate for such organisations, as no financial return on capital is permitted in a company with charitable objectives. That said, a company with charitable status may establish a share capital company to undertake commercial trading (eg a bar, café or bookshop).

A company’s constitution is set out in two documents, its Memorandum and Articles of Association. The standard form these should take is outlined in a schedule to the Companies Act 2006, although it may be varied to suit particular circumstances and requirements.

The Memorandum of Association crucially describes the main purposes of the company and the powers through which its board of directors will achieve them. It is important to ensure from the outset that the objectives of the company, as described in the Memorandum, are drawn widely enough to allow the organisation to develop, but not so widely as to lose clarity of purpose. Likewise the extent of the powers made available should be wide enough from the outset to cater for all foreseeable eventualities.

The Articles of Association cover more administrative matters about process, such as the rules governing the introduction, length of term and exclusion of members; the power members have over the company directors; rights of members to attend general meetings of the company and the procedural rules for both directors and general meetings.

The Memorandum of Association is scheduled to be phased out for new companies from October 2009 but these items can thereafter be included in the Articles of Association.

As noted above, the members appoint the board of directors and also have the power to dismiss them. This is one of the most important powers which members have and it is one which is often neglected in guarantee companies because of the perceived lack of authority and involvement of members in general in these companies. The general meetings where board members are appointed are often a formality with the board becoming a self-perpetuating group.

To avoid this and to encourage fresh thinking and challenge within the organisation, the founders should consider carefully from the outset what relationship will be most beneficial to the company in the long term and make sure that this is provided for expressly in the Articles. Members may themselves serve as directors of the board, this is not uncommon, but the trend for all company members and board members to be one and the same offers convenience but not the most effective governance.

The disadvantages of choosing to form a company include:

- it is more expensive to create and operate than an unincorporated association or a trust
- a company has to comply with the regulations of the Companies Acts which require the keeping of certain statutory records, detailed minutes of meetings and proper accounts and the making of various returns to the Companies Registration Office. A company needs to have a company secretary with some knowledge of the requirements of the Companies Acts and other relevant legislation or at least have access to legal advice about the meetings and returns needed. All but the smallest companies also need an auditor and are obliged to present audited accounts to Companies House.

Some companies because of their size are exempted from certain of the requirements, for example the need for independent audit

and preparation of detailed accounts. However, it is often the case that companies in receipt of public funds and whose stakeholders extend beyond those with a purely commercial interest must provide audited accounts or an accountant's report disclosing all relevant information. Following best practice of governance and financial reporting gives confidence to all who deal with the company, including staff, and where possible arts organisations should seek to lead by employing best practice.

These requirements are the price of limited liability. However, the discipline they impose is generally good for an organisation, particularly an organisation that is in receipt of substantial public grants, private donations and sponsorship. As has been mentioned, the existence of such disciplines is usually a requirement of grant-giving bodies, both public and private, and gives such bodies and the public more confidence in the organisation.

There is no doubt that the third form of association – the company – is the best for an organisation which proposes to undertake significant artistic ventures, acquire property, enter into legal commitments and contracts, employ staff and handle large sums of money. For such an organisation the costs of incorporation should not be excessive and, after registration of the company, the cost of compliance with the Companies Acts should not prove to be unreasonable for a body handling significant sums of money. In addition, the requirement for compliance with the Companies Acts (including the

requirement of an audit by a qualified auditor), and many other statutes to which corporations are now obliged to adhere, provides some assurance for the providers of funds.

Does a board member need to be appointed formally?

A board member is usually appointed by the members of the organisation or co-opted by the board. This appointment should, in the case of a company, be properly intimated to Companies House. Whatever form the constitution might take, new board members should ensure that their appointment has been made in terms of that constitution to avoid any doubt in the future.

It is, however, possible for a person to be treated as a *de facto* member of the board where, for example, that person attends board meetings and is treated as a board member. It is also possible in companies to have a 'shadow' director, being a person – or board (eg the board of a parent company) – in accordance with whose instructions the board of the organisation is accustomed to act upon. It is quite common for representatives of funding organisations to attend meetings of the board as observers as a condition of funding. Their position is unlikely to be regarded as a 'shadow' director as long as the board is aware of their status and their advice and comments are taken account of by the board as they see fit. Such observers should not be constrained in giving advice on meeting the conditions of funding and on circumstances which might lead to withdrawal of grant.

The duties and responsibilities of formally appointed directors apply also to *de facto* and shadow directors.

Executive and non-executive directors

A distinction is often drawn between non-executive and executive directors: in the latter case they are full or part-time employees of the organisation and combine with their board directorship certain responsibilities in relation to the day-to-day running of the organisation. It is desirable for there to be an appropriate proportion of non-executive to executive directors. In the arts world it is customary for non-executive directors to be in a substantial majority, with board directorship restricted usually to senior posts such as chief executive, artistic director and finance director where such posts exist. In many arts boards it is not uncommon to comprise entirely non-executive members with only the larger companies accepting staff as board members.

While this situation has an advantage, in that non-executive directors can bring a more independent and objective judgement to bear in their review of the performance of the management and of the overall performance of the organisation, the predominance of non-executives can lead to a certain remoteness from the day-to-day management. Boards of arts organisations should take account of this by inviting relevant senior officials and employees to join, and even participate in, board discussions, although they must not exercise votes and must ultimately defer to the decision making of the legally appointed directors in order to avoid any suggestion of

their being *de facto* directors. Any such arrangements should be managed with care to ensure that board discussion is not constrained by lack of detailed knowledge or is influenced unduly by expert staff members. In board meetings members should always be aware of their prime responsibilities which should not usually include discussing matters which are best delegated. It is good practice for a board to meet in the absence of staff for at least part of each meeting to allow free discussion.

Other forms of constitution

There are other possibilities for arts organisations but the three outlined above are the most common. Nowadays where resources are scarce, organisations seek to co-operate and work jointly or might be part of a larger institution such as a university. In all these circumstances the message is the same: those promoting the venture should be clear about their intentions and how they wish to achieve them, the rights and obligations of each party and how to manage, monitor and report on the venture, and set these out in writing. Such a partnership, co-production, and or tenancy agreement with a host organisation can clarify responsibilities and avoid difficulty in the longer term, irrespective of the constitutional status of the parties.

Group structures

It is also possible for an arts organisation to follow common commercial practice and operate through a 'group' so that different parts of its activities can be delivered by separate legal organisations: associations,

trusts or companies or by any combination of the same, which entities could be wholly owned by the main company or (being non-share capital entities) could operate in parallel with one another or with a partner organisation.

Why should an organisation choose to work through more than one legal entity where to do so involves extra administration and requires the preparation of separate accounts and probably consolidated group accounts?

The reasons for establishing a separate subsidiary are many and various, some of which are as follows.

Taxation

There are tax advantages to channelling certain activities through a separate entity. One such tax advantage would be achieved by establishing a separate company to undertake activities which are not charitable. As we have seen already, this is in fact necessary to ensure that charitable status is not lost. Liability to taxation can be avoided by the trading company ‘gift-aiding’ its profits to the charitable arts organisation. Activities for such a company might include catering, a bookshop, or the provision of presentation and communications skills training courses to business. These arrangements often require the two entities having joint contracts of employment with both companies.

Directors with special interests

By channelling certain activities through a separate organisation not only are the directors of the main board being relieved of

responsibility for the supervision of such activities, in which they may not have an interest or expertise, but the separate entity can appoint separate directors with a special interest or relevant experience in the activity being hived off.

De-centralisation

Responsibility for the operation of the activities of a separate entity rests with that of the entity’s board. This board can be composed of different persons who have sole responsibility for its operation. This contrasts with appointing a committee to undertake such activities where the board retains ultimate responsibility for management and supervision.

Regulation

By setting up a separate entity, it is possible to avoid the application of regulatory requirements which may apply to the main company or *vice versa*, eg regulations arising out of the fact that the main body is in receipt of public funds and/or operating as a public body.

Risk management

Where an arts organisation plans to undertake a particularly risky project there is a case for establishing a separate legal entity to ring-fence the liabilities arising out of that project: a parent company is not normally responsible for the obligations of its subsidiary except when guarantees have been given.

Joint venture

Where an arts organisation wants to enter into a joint venture with another party, either for the provision of shared services or to

pursue a joint project, there is a case for establishing a separate legal entity with its own joint board to ensure that there is full understanding of the obligations, costs and rewards for each party.

Endowment

Sometimes the conditions of receiving a substantial funding endowment or gift require that the funds be held by a separate trust the trustees of which can dispense funds to an arts organisation from time to time, in accordance with the terms of the endowment.

Pension schemes

Where an arts organisation wishes to operate a pension scheme, it is necessary for activities to be channelled through a separate trust because of the significant liabilities and long-term nature of such a fund.

Charitable status

Whichever way an arts organisation is constituted, the question of charitable status should be considered.

Charitable status offers fundamental advantages:

- it exempts the organisation from liability to Corporation and Income Tax on its earnings and on its investment income
- it enables the organisation to obtain both from companies and from private individuals sponsorship, donations and gifts which attract tax relief. That not only encourages such donations but enables the arts organisations to recover tax from

HM Revenue and Customs in respect of donations and gifts.

An organisation with charitable status is also eligible for relief from payment of business rates levied by local authorities and encourages the possibility of special rates for purchases from certain suppliers.

Charitable status does not provide any general exemption from Value Added Tax (VAT). However, there are some reliefs and exemptions available including, for example, fundraising concerts, some advertising costs in newspapers and tax on donated goods. Further concessions may be made in other areas in the future and arts organisations are advised to review these on a regular basis.

Many arts organisations work on the assumption that VAT can be recovered. This is not often the case because of the combination of the content of the organisation's work, which might include exempted activity, and any grant income which is generally regarded as being exempt from VAT. The proportion of VAT recoverable is usually restricted to the proportion of income which is derived from taxable activity. Recent changes to the regulations arising from European directives have introduced the possibility of not charging VAT on admission prices for certain organisations which are deemed to operate on a voluntary basis.

The rules are complicated and organisations seeking to alter their VAT status are advised to take appropriate professional advice well in advance of making any decisions. It is

open to arts organisations to seek different VAT recovery status for separate parts of their activity if these can be readily identified, or for separate projects introduced. Indeed, if the separate activities are significant there may be a requirement to treat each on its own merits. For example education work supported by a local authority grant will have a different tax status to a commercially run café. Again, organisations should seek advice on this as early as possible to avoid incurring unnecessary cost or assuming that tax might be recoverable when it is not.

When an organisation alters its activities in any significant way, for example during a period of closure to allow for major rebuilding or refurbishment, the tax status is likely to change. Advice should be sought on the recoverability or otherwise of the tax not only on the capital expenditure but also on the operating activity when reopening following major alterations.

Arts organisations should be aware that sponsorship income, or a proportion of it, is generally treated as a taxable supply for VAT purposes.

There is no relief from having to pay National Insurance Contributions for paid employees of the organisation, and tax deductions made under the (Pay As You Earn) PAYE system have to be accounted for to HM Revenue and Customs. The arts engage and commission many freelance workers, many of whom enjoy self-employed status for tax purposes. Organisations should not assume that freelancers have such a status and should not only verify this

but also have regard to the actual circumstances of the engagement which might mean that tax should be deducted and remitted to the authorities regardless of the individual's tax status.

The arrangements for registration and regulation of charities in Scotland has altered and clarified significantly in recent years. The Charities and Trustees Investment (Scotland) Act 2005 (the Charity Act), established a new and comprehensive regulatory framework which is overseen and implemented by the creation of the Office of the Scottish Charity Regulator (OSCR).

The 2005 Act defines clearly what charitable purposes are acceptable by the regulator. Previously the arts had to argue that they were within the category of 'the advancement of education' but now Section 7(2)(g) of the Charity Act states that 'the advancement of the arts, heritage, culture or science' is a charitable purpose. This welcome clarification removes any doubt about the acceptance of the arts as a charitable activity.

Having charitable objects in advancing the arts is not, however, the only test which is applied before registration as a Scottish charity is achieved. Here are some of the tests which will be applied:

- there must be public benefit
- the benefit must be in Scotland
- the organisation must have no non-charitable purposes
- it must not be a political party
- its constitution must not allow property to be distributed for non-charitable purposes

or allow its activities to be controlled or directed by government ministers

- the charitable purposes do not need to be defined within the constitution but if they are they must be defined in terms of the 2005 Act.

To be accepted as a Scottish Charity, the organisation, if it meets the basic tests of a charity as above, must be registered in the Scottish Register maintained by OSCR. This register will contain details, open to public inspection, of the name of the charity, the address of its principal office and its purposes. Each year the charity is required to submit to OSCR various reports and accounts prepared in accordance with the Charities Accounts (Scotland) Regulations 2006. The requirements are more onerous than before but the guidance is clear and is designed to protect the public and those who might be encouraged to support the work of the charity. OSCR has considerable powers in the event of allegations of abuse, which in the most serious of mismanagement cases would include: suspension of persons from management or control; directing a charity or other body not to take the action that is the cause of concern; or in the most extreme cases to take formal action seeking orders against a body into which OSCR is permitted to make inquiry or those in management or control. The orders sought may include the removal of persons concerned from management or control.

Formal directions and suspensions made by OSCR will be included on the Scottish Charity

Register against the charity to which they refer.

Small charities are exempt from producing full sets of accounts with those having a gross income of less than £100,000 only being asked to supply a receipts and payments account. Model sets of accounts and reports are produced by OSCR for guidance and all arts organisations which have or are seeking charitable status should consult the detailed guidance on the OSCR website before proceeding or making assumptions. Charities which fall into this category and produce only a receipts and payments account are also spared the requirement of a full audit. However, there is a requirement for independent scrutiny, as opposed to a full audit, which extends to charities with gross income of up to £500,000.

Charities which are companies or which produce accounts on a full accruals basis must follow the 2005 Charities SORP (Statement of Recommended Practice). All other organisations must follow the guidance in the Scottish Charity Accounts Regulations.

Requirements for the production of accounts and audit are subject to the terms of the constitutional requirements of the arts organisation which take precedence. If an arts organisation with income of £20,000 has a written constitution which requires it to produce a full set of accounts and have them audited independently by a registered auditor then the board must follow this requirement or change the constitution. The requirements of the Companies Act 2006 also have to be applied to those

organisations which are limited companies. The exemption levels for audit for small companies are at a level which few arts organisations will exceed but a combination of best practice, OSCR regulations, funding conditions and the organisation's own constitution suggests that a full set of accounts and an independent audit will in general be necessary.

The need for audit or independent examination of accounts is dependent on the answers to the following:

- is the organisation a limited company?
- is the organisation a charity?
- what is the total income?
- does the organisation receive public funds?
- what does the constitution require?
- what style of accounts do you prepare, ie a receipts and payments account, or a full accruals account?

The answers to these will help to decide what form of accounts should be prepared and whether a full audit is required.

Charities which are registered in England under the Charities Commission regulations are required to register with OSCR, and comply with their requirements, if they intend to operate in Scotland.

With all of the recent changes arts organisations are advised to consult their professional advisers to ensure that they are complying with all the new regulations. They are advised to take account of the regulatory requirements of OSCR, conditions imposed

by funding bodies, their own founding constitution and the requirements of the Companies Acts (if a company), and prepare a checklist of the demands to ensure that they are all being met. This should form an agenda item at a board meeting at least once a year.

Where an organisation has charitable status, great care must be taken in running ancillary activities which might not be regarded in law as 'charitable': eg the sale of books or the provision of catering facilities. If activities like this are significant, it is advisable to incorporate a wholly owned subsidiary to do this trading. This company should be carefully structured so that it can donate all or a proportion of its income to the charity and thus avoid paying tax unnecessarily. Failure to make the right legal arrangements could jeopardise the organisation's charitable status and result in unnecessary tax liabilities. Such trading companies are often very closely integrated with the parent body and often use the same staff and office premises. In these circumstances if such a company fails financially care must be taken to avoid cross-subsidy from the charitable organisation which is likely to be regarded as a breach of the charitable objectives. Clear agreements on cost-sharing and use of resources should be employed from the outset.

It should be pointed out that the Charity Act has strict rules regulating the remuneration of charity trustees. Charity trustees are those who run the charity and include board of directors, members of a management committee, trustees and any group or

individual responsible for the overall direction of the charitable body.

The recent trend for senior executives to become members of the governing boards of the arts organisation for which they work has continued and of course they are paid for the services which they provide. One of the basic premises on which charity law is founded is that the charity trustees are bound to act in the interests of the charity. It follows that there is an immediate apparent conflict if payment is made to trustees for their services: the Charity Act recognises this conflict and has made clear provision in Section 67 how it should be managed.

This is the link to the Charity Act on the Office of Public Sector information website – probably the most reliable.

www.opsi.gov.uk/legislation/scotland/acts2005/asp_20050010_en_1

This section states that a charity trustee must not be paid from charity assets unless certain conditions are met. Those conditions, listed in Section 67(3) require:

- the maximum amount of the remuneration to be written down
- for it to be reasonable in the circumstances
- for it to be in the interests of the charity
- such provisions to apply only to a minority of the trustees.

All of this is subject to the charity's own constitution permitting such payment.

This provides welcome clarification on what has often been a contentious area; to avoid

any difficulty in arts charities, it is advised that in addition to adhering to these rules, that payments to trustees be reported at a board meeting and minuted at least once a year. A register of interests of each trustee should also be maintained and exhibited to the board on an annual basis.

The introduction of the Charity Act and a regulatory body has provided welcome and much-needed clarity. Charitable status provides considerable benefits as does limited liability; in each case the price for these benefits is a requirement for openness, integrity and reporting which demonstrate that regulations are being adhered to and the public are protected from those who seek merely to take advantage of the benefits.

Legal duties of board members

All board members owe certain duties to their organisation. What follows is a description of the legal duties of company directors. These duties, other than the statutory duties under the Companies Acts and the Insolvency Act 1986, also apply to trustees and committee members. If the organisation is also a charity the provisions of the Charity Act also apply.

The Directors have seven legal duties:

- to act in accordance with the company's constitution *and* to exercise their powers for the purposes conferred
- to act in a way that the directors consider, in good faith, would most likely promote the success of the company for the benefit of its members as a whole

- to exercise reasonable care, skill and diligence
- not to accept benefits from third parties
- to declare interests in proposed transactions or arrangements
- to avoid conflicts of interest.

Duty to act within constitution and powers

Directors also have an obligation to act within their powers as set out in the constitution of the company, and only exercise these powers for the purposes for which they were conferred.

Directors must act in a way that they consider, in good faith, would most likely promote the success of the company and be for the benefit of its beneficiaries and the public as a whole.

The directors must exercise this duty whilst having regard to the following non-exhaustive list of 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 environment
- the desirability of the company maintaining a reputation for high standards of business conduct
- the need to act fairly as between members of the company.

In practice, directors should be presented with papers at board meetings to allow them to consider the above factors. For example, if a decision may have environmental consequences the papers relevant to this should be available to the board.

Duty to exercise independent judgement

The directors have a duty not to act in accordance with the will of others, whether that be through delegation or by simply acting in accordance with the wishes of others; rather, they must exercise independent judgement on matters affecting the company.

This does not prevent directors, particularly non-executive directors, from relying on the judgement of others in areas in which they are not expert or from properly delegating matters to committees or appropriate individuals.

The duty does not, however, affect any actions taken by the directors in accordance with the constitution of the company, or through any agreement entered into by the company that may restrict the future exercise of discretion by its directors. For example, making agreements for finance which could constrain future action, or entering into a joint venture or a licensing agreement. The board of directors should give careful consideration to their statutory duties when considering any such agreement, and if such an agreement hinders the company's ability to exercise its powers in the future, it may mean that the directors are breaching their duties by committing the company to such an agreement.

Duty to exercise reasonable care, skill and diligence

The level of care, skill and diligence brought to bear is considered to be that which would be exercised by a reasonably diligent person with the general knowledge, skill and experience that may be expected of a person in that role in addition to any general knowledge and skills that that director has.

Duty not to accept benefits from third parties

A director must not accept any benefits from third parties that arise by virtue of his office as director, or equally through his doing, or not doing, anything in his capacity as a director. This does not apply to any transaction approved by the members of a company or one for which it is provided that approval is needed. This obligation continues beyond the point where a director ceases to hold office, and a person can be held liable for things he did, or did not do, during his office as a director. There is no minimum threshold, but the duty is not infringed if accepting the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

Duty to declare interests in proposed transactions or arrangements

If a director is, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors before the company enters into the transaction or arrangement.

Failure to declare an interest in an existing transaction is covered under Section 182 of

the 2006 Companies Act. Failure to make such a declaration is a criminal offence. It is, however, unlikely to lead to the transaction in question being unenforceable.

Duty to avoid conflicts of interest

A duty is imposed on a director to avoid any situation that would give rise to a direct or indirect conflict of interest with the interests of the company. This applies particularly to the exploitation of any property, information or opportunity, regardless of whether the company could take advantage of the same. Conflicts may also arise when a director makes a profit in the course of being a director, without the knowledge and consent of the company. Conflicts of interest arising in relation to a transaction or arrangement with the company are covered by separate legislation.

Boards are advised to establish formal registers of interests to record declared interests and potential conflicts. Any declarations of interest should be formally recorded in the minutes of meetings of the board.

Delegation

The legal duties outlined are extensive and are added to as time passes. Directors should keep-up-to date with developments and discuss changes to legislation at board meetings and consider how they might be affected. Most directors will be non-executive, that is, they are not paid employees of the organisation, and as such are unlikely to be able to give and are not bound to give continuous attention to the affairs of the organisation. They are entitled

to rely on the managers and other officers of the organisation to carry out the day to day duties and functions which may properly be delegated, and directors may, in the absence of grounds for suspicion, trust that those managers and officials will perform those duties honestly and with integrity. Directors cannot therefore be liable for every breach of duty by a company official unless the director sanctions the conduct which constitutes the breach or if they fail to exercise any reasonable controls over the senior staff and/or do not undertake any regular monitoring of activity.

The right of delegation does not however relieve directors from the responsibility of appointing appropriate managers demonstrably capable of carrying out the tasks delegated to them, or from attending the meetings of directors at which the performance of the managers and officials of the organisation would be regularly supervised, monitored and reviewed. Directors also have a duty to act if anything suspicious arises.

Insolvency

Particular regard must be given to the impact of the Insolvency Act 1986 and the concept of ‘wrongful trading’.

Wrongful trading can arise where a director knows or ought to have concluded that there is no reasonable prospect of avoiding insolvent liquidation but allows the company to continue to operate despite such insolvency (where liabilities exceed the assets of the company). This situation should be disclosed in the company’s

accounts which must be prepared regularly and presented to the board (and this is the reason why the accounts must always be on the agenda).

Where the company is in a position of insolvency, directors must take steps to minimise the potential losses to the company’s creditors. It is necessary for the directors to take advice from the company’s auditors or other professional advisers, because there are circumstances where it is appropriate to continue to trade through insolvency, provided that this does not lead to a worsening of any of the creditors’ positions: there must be light at the end of the tunnel. For arts organisations, which are unlikely to have reserves, have no share capital and whose income for coming financial years is not clear, the threat of insolvency is ever present. In these circumstances making optimistic assumptions on future income is not a reliable way forward, but reasonable assumptions based on experience coupled with knowledge of past income should allow organisations to plan ahead with some confidence.

Minimum standards

Directors should seek to fulfil their duties in a full and positive manner and both directors and the companies which they direct would benefit from adherence to the following practices (which are by no means exhaustive):

- every director should be familiar with the activities of the organisation which he or she directs and should meet all of the

senior staff preferably regularly. When a new member of senior staff is engaged he or she should be introduced at the first board meeting after appointment to the board

- every director should make a point of getting to know all other co-directors and insist upon regular meetings of directors at which management accounts and reports on the activities of the organisation are presented
- he or she should satisfy himself or herself that there are adequate systems of financial and other internal controls operating within the organisation and of internal audit and, importantly, that these are being adhered to
- each director should ensure that the financial controller and other staff entrusted with the responsibility of financial management are properly qualified and competent (this is sometimes delegated to an audit committee). If there is such a committee the board should ensure that it reports regularly to the board and that it has clear terms of reference
- a director should also seek to ensure that the organisation has a properly balanced board with representatives from a range of interests in addition to those of the arts. Every organisation should have at least one, and preferably more, director who has a good knowledge of business matters including finance and accounting
- other important areas which require frequent attention and reporting are

artistic, public engagement (including marketing and public relations/communications, human resources, legal and regulatory matters

- directors should at all times be ready to act in whatever way may be appropriate as soon as any suspicion arises; if a director gets an instinctive feeling that things are not well such a feeling should not be ignored
- a director should be positive about the activities of the organisation, should attend board meetings regularly and at such meetings seek to participate effectively in the deliberations and decisions of the board by supporting the chair.

Compliance with the law

Board members also have to ensure that the organisation complies with the requirements of the Companies Acts and all other relevant legislation. Operating within the law is one of the prime responsibilities of the board, and this becomes more difficult as legislation and regulatory requirements increase.

Board members often look to the organisation's legal advisers and to the company secretary to ensure that the organisation is complying with the requirements of the Companies Acts. Board members should therefore obtain the appropriate guidelines from the legal advisers and ensure that the senior officials have at least a general working knowledge of the basic requirements. The company secretary should generally be responsible

for such matters but in small organisations this position is often held by an external party such as a lawyer who exercises only the main statutory requirements of this office. Small companies in the arts rarely have the funds to consult lawyers regularly and the board is advised to ensure that they have checklists of legislation and regulatory requirements, perhaps drawn up initially by professionals and thereafter maintained by senior officials and exhibited to the board on a regular basis.

Any organisation's constitution generally says little about how the board should run the organisation. In general, it states the objectives of the organisation in the broadest terms and provides rules for the appointment and periodic re-election of the board. The actual responsibility for the running of the organisation is in the hands of the board.

This lack of specific legal requirement allows boards the flexibility to act according to current needs and circumstances. However, in the absence of other directions, boards must take appropriate steps to ensure the good management and 'corporate governance' of their organisation. The next section suggests some guidelines for doing this.

Other relevant legislation

The requirement for company directors to operate within the law becomes more onerous each year. The amount of legislation which applies to general business life is considerable. Arts organisations are not immune from these requirements and, although board members do not need to be experts in any area of the law, they should

be aware of the areas of the law which affect directly their organisation.

Major areas now include: Employment Protection, Disability Discrimination, Race Relations Act, Equal Pay, Sex Discrimination, Health and Safety, Financial Services, Pensions, Insolvency, Data Protection, Freedom of Information (Scotland), Environmental Protection and Human Rights.

This list is far from exhaustive and each area is enshrined in legislation by at least one major Act of Parliament, with many associated codes of practice, regulations and guidelines. Organisations are subject to all of these areas and more, and are advised to undertake a risk assessment to identify the most relevant issues where action might have to be taken to comply with the law. As a newer area of the law is introduced or its scope extended, boards should be alert to such developments and add these to the risk profile. For example, the relatively recent legislation on Freedom of Information might apply to organisations in receipt of public funds. There are potential conflicts between Freedom of Information, Data Protection and the duty of confidentiality which directors have towards their company and the boundaries between potential areas of difficulty should be examined in advance of a problem occurring and internal guidelines developed on how to deal with them.

Failure to comply with aspects of employment law can bring heavy penalties, with industrial tribunals now able to make substantial awards where an employer has

acted unlawfully or unfairly. Penalties are particularly severe if discrimination based on gender or race has been evident. Boards should, in particular, ensure that practices in relation to recruitment and employment are fair and that agreed procedures are followed consistently. Clear arrangements should exist for dealing with problems and disciplinary matters and that a system for regular staff appraisal is in place. The board, a committee of the board or the chair should be responsible for the appraisal of the most senior executive.

The Disability Discrimination Act 1995 has been strengthened bringing additional requirements for employers to ensure that reasonable steps are taken to ensure that people with disabilities are provided for in the workplace. Access by the public to premises is also a requirement and organisations are advised to make detailed assessments of their property and their work and employment practices to ensure that this legislation is being complied with. Arts organisations, and particularly those which are publicly funded, have an added responsibility to ensure that adequate provision is made for performers with disabilities.

The Disability Discrimination Act imposes a requirement on some public bodies, including the Scottish Arts Council, to promote disability equality through publication and implementation of a formal scheme. This scheme is available on the Scottish Arts Council website and aims to 'go beyond legislative requirement towards best practice in supporting artists and

engaging audiences...' Organisations funded by the Scottish Arts Council will be expected to aid the Scottish Arts Council in meeting its obligations to promote equality in this area as well as in race and gender issues. (See the Scottish Arts Council's Quality Framework, Equalities section).

Health and Safety legislation has also become more robust in recent years, opening the possibility of substantial penalties and compensation claims from any employee or member of the public injured on the company premises. This is not restricted to obvious physical injury; regard should be made of situations where repetitive work or long-term exposure to poor working conditions can lead to physical or mental strain.

The board should be aware of any high-risk areas or activities but also look beyond these to occasionally assess all work situations and the equipment and make sure that procedures are in place to control hazardous items or activities and to assess the apparently mundane. Discrimination and bullying at work is also an area where major compensation awards have recently been made and boards should ensure that as far as possible work situations minimise the risk of these occurring.

Rights in intellectual property have also come under more intense scrutiny, with European Law driving a number of major changes in this important area for the arts. In general, copyright in literary, dramatic, musical and artistic works expires 70 years after the end of the year in which the author

died. However, this general rule is subject to a number of variations and again boards should be aware of the actions which their organisations take to ensure that agreements are in place for agreeing ownership of rights over works created by staff or contractors employed by the organisation. The board should also review arrangements for using material which may be subject to intellectual property protection, including music, texts, computer software and even press cuttings and so on.

As has been mentioned, the Human Rights Act 1998 applies to most organisations, requiring them to operate fairly and reasonably and with regard to proper procedures in all matters. The application of the Human Rights Act in Scotland should be carefully considered and appropriate advice taken.



Operational responsibilities

There is no law that tells a board what its detailed activities should be. Further, the organisation's constitution or rules provide only general guidance. Boards not only have the responsibility to govern an organisation, they also have the power to decide how that should be done.

The purpose of this chapter is to explain some of the activities that all boards should undertake.

Planning and review

Arts organisations do not have the overriding objective of profit that simplifies and eases the target-setting process in commerce. Moreover, their constitutions are likely to set out each organisation's purpose in a very generalised, vague, perhaps lengthy and probably legalistic way.

It is therefore essential for the board of an arts organisation to produce a forward plan which:

- provides a clear statement of the organisation's vision which drives it, and the artistic policy and aims and objectives which it proposes to pursue in the long term
- determines how it proposes to implement the vision and achieve its aims by setting realistic strategies with measurable goals and targets
- specifies the total resources which are likely to be available and matches and allocates these to the overall strategies and plans
- then arranges these aims and objectives, strategies and plans in priority order.

Establishing vision, policy, aims and objectives

The artistic vision which underpins all of the work of an arts organisation is often left unsaid. There is an assumption that all will somehow be aware of the overall driving ambition of the organisation. This is often not the case and boards which do not have a written long-term overarching vision or mission will inevitably not only have a harder time trying to establish the aims and objectives but will be more easily subject to external pressure to vary that vision. This may lead to possible loss of support and, more importantly, of the necessary artistic integrity to maintain the highest quality of work.

A draft statement of vision, policy, aims and objectives, as brief as possible, should be prepared and circulated well in advance to all board members. Discussion of it should form the principal item on the agenda of the meeting at which it is considered. There is even a case for enshrining the vision and/or policy statement in the constitution, trust deed or Memorandum of Association of the organisation rather than relying on general and vague wording.

The board must then take the next step: establishing its strategies and the ways in which it proposes to fulfil its vision and meet its objectives. Each objective should be reflected in the organisation's business plans and budgets or financial forecasts. Clear targets for the achievement of each within a specific time should be set in the business plan and the board should, at appropriate intervals, monitor and review what has been achieved. Objectives can be

amended in the light of experience as plans should be a dynamic tool to assist the organisation to move forward and continually improve its planning and forecasting techniques.

A forward plan for a period of no more than five years helps to clarify long-term aims. Within this there should be an annual business plan which contains an annual operating budget for the organisation. Establishing the current position in relation to the future ambition is also important, with the plan being the map and compass to navigate towards achievement of aims and objectives.

A series of linked strategies for functional aspects of the organisation such as Human Resources, Information and Communication Technology and Marketing should also be prepared depending on the size of the organisation.

Ordering of priorities

Financial resources and staff time are scarce and seldom adequate to achieve all the objectives simultaneously. Therefore in formulating its objectives and the targets for their achievement, the board must decide which objectives will get first, second and third priority, and so on, and what share of the resources each merits.

Too often, boards analyse and debate detailed budgets for individual programmes without reflecting and reviewing these in the broader context of all the organisation's objectives and priorities and how the budget allocations meet the overall vision.

Reviewing and approving business plans and budgets

The board must ensure that the organisation has a clear and specific annual business plan and budget that are consistent with the long-term vision, aims and objectives, the available financial resources and the skills of the staff.

Developing annual business plans

Planning and budgeting are a key responsibility of the board. It should outline the projects and plans to be undertaken and, in relation to each and every part of these, it should answer the basic questions of who is going to do what, when it will be done and how much it will cost.

Involving everyone

Planning should involve the whole organisation and individual staff members should have segments of the total plan that they can identify as their own. This is achieved in part through the process of developing the plan.

The board and chief executive must start the process by reviewing the current aims and objectives and priorities and refining these as a planning guideline for the coming year. The chief executive should then work with the staff to develop a complete programme of activities.

As far as possible the detailed planning should be done from the bottom up. This builds commitment to the content of the plan and ensures that the details have been prepared by the people who not only have the best knowledge of that area but will also be carrying it out.

Reviewing and evaluating performance

The board should review on a regular basis all aspects of the organisation's work, including the performance of management and the organisation's results. A review of performance of the board itself and its committees, collectively and individually, should also be undertaken.

Review performance regularly

There are some matters which the board should review at each meeting, for example, key figures such as audience numbers, and comparison of expenditure and income with budgets.

However, from time to time, a broader review is needed. The board must check whether the organisation is fulfilling its vision and if not, then why not? Is remedial action needed or do the vision and plans need to be refreshed in light of changing circumstances? The board must check progress against the group's objectives and current priorities. Is the quality of the work being maintained and improved? These are just some of the questions the board should consider.

Above all, the board must supervise and monitor its own and the staff's performance against plans. Have the board members and the individual staff members done what they undertook to do? Has the board worked well as a team? Has the staff? Have both worked well together? Have resources been used efficiently and effectively?

If public funds are received or are likely to be sought, has the organisation complied with grant conditions and with the general aims of public policy?

Allocating enough time

In a small organisation, the plan may result from a small group of staff, sometimes with a board member, together working out the broad outline, then developing the details of costing and implementation. In a large organisation, it may take several months of drafts and meetings and redrafts as the pieces of the complex puzzle are put together and as desired projects are balanced and sorted against forecasts of available resources.

But is it worth the effort?

The process of defining a vision, establishing the aims and objectives and agreeing strategy and policy, setting target dates and deciding priorities is neither easy nor quick. Once these tasks have been done, however, other decisions become much easier. Board members should have a shared view of what the organisation is trying to achieve and how they should use their own efforts and the organisation's resources.

All organisations should determine their objectives, set targets and allocate resources according to agreed priorities. Forward plans should be as detailed as possible and include cash forecasts to ensure that the resources required will be available to deliver the plan.

Terminology of planning is as beset with jargon as many other areas of management. This is unavoidable, but one thing organisations should do at least is to ensure consistency in the terms which it applies, and assign to them a hierarchy which is adhered to for at least the period of the long-term

plan. If the vision is the long-term ethos and purpose of why the organisation exists, how it intends to influence society, customers, audiences and so on, then the aims and objectives which follow should break down into more practicable actions and so on, until individuals in the organisation can see how their own work contributes to the achievement of the overall vision.

The very existence of a sound plan based on a clearly articulated vision is the basis for the sound management which will release rather than restrain artistic judgement and expression and foster a culture of trust, support and discipline throughout the organisation. The annual business plan and budget based on the longer-term plan provides the impetus and clarity for immediate work.

Communicating the vision and aims

If the board takes the further important step of communicating the vision, the aims, the objectives, the target dates and current priorities as set out in the business plan throughout the organisation, everyone in the organisation will understand where it is headed and how they should focus their efforts. If the plan is detailed enough it can add to the appraisal and target-setting process for individual departments and members of staff.

This avoids those instances when staff prepare detailed plans and even spend money to initiate a project, which appears laudable in itself, yet which is rejected when it comes to the board for approval. The price of the failure to communicate priorities until faced with a specific project is not only the

cost of effort and resources wrongly committed, but the erosion of morale which may result. And the fault lies entirely with the board. It should also prevent the situation where the board itself initiates a project which does not 'fit' the vision; the existence of a plan allows individual board members or even the senior staff to challenge such proposals.

Some may argue that the foregoing process is appropriate only for large organisations and too formalised for a small group.

Naturally, in large organisations with diversified activities, it is very important to set and communicate the aims, objectives, target dates and priorities. However, small organisations often need the process just as much, because resources of time and money are even more scarce and precious. If the group is voluntary and resources are limited, there is even greater need to agree what few things the organisation should seek to do.

Where possible, the organisation's senior staff and those with direct knowledge of specific activities should be fully involved in these processes.

The overall long-term plan is a useful tool for communicating externally as well. Funding bodies are likely to require it and sponsors can assess to what extent their own corporate message might fit with a clear plan available. The main target audience for a long-term plan is, however, the organisation itself and one should never be produced simply to satisfy external demands. It should be a working document which provides vision and focus for the organisation and its work.

Obtaining finance

It is the job of the board to seek vigorously and competitively the financial resources that the organisation will need to carry out its aims and achieve its objectives.

An arts organisation has available to it three types of revenue:

- the first is earned income – for example, from the box office, sales and income from related business activity such as bars, café, bookshops and so on (channelled through a trading subsidiary when appropriate)
- the second category consists of sponsorship and donations that the organisation receives from commercial sponsors and from donors
- the third is often the most significant, namely grants from public bodies.

The board must ensure that adequate attention has been given to obtaining all types of revenue. However, it has a particular executive responsibility in the second and third areas – to obtain funding from public bodies and to encourage and maximise income from sponsors and donors.

Helping to market the product

Too frequently, artists, actors and musicians play or exhibit to empty seats and galleries because of poor marketing – poor programme selection in relation to the organisation's 'brand' and vision, unrealistic pricing, poor promotion and advertising, or inaccessible ticket outlets. Since many smaller organisations cannot afford to

employ or retain a dedicated marketing expert, the board must give particular attention to this area. Reference will be made to this later under the heading of board membership.

Marketing is all too often confused with simple publicity. Marketing involves analysing the potential demands and preferences from the target public in relation to the organisations aims; publicity involves bringing the event to the attention of that public in an effective manner. Without such effective marketing, no amount of publicity will produce the results. To genuinely market a product, staff with knowledge of marketing have to be involved in discussion about policy and programming from the outset and not merely expected to publicise the programme as an afterthought.

A marketing strategy should be prepared as an integral part of the organisation's long-term plan. This should have both quantitative and qualitative targets for the organisation as a whole. Progress against this strategy should be monitored with appropriate data and evaluation.

Raising funds from the private sector

A board that fails to involve itself in fundraising both from business and from private individuals is leaving its organisation at a competitive disadvantage. It is a double disadvantage if the board contains people who have the influence to raise funds and who are not seen to use it. The obvious conclusion for an outsider is that they do not take either the organisation or its aims seriously.

Board members often have many contacts in the business or public sector and they should be prepared to make an initial approach to a potential sponsor before passing the detailed negotiation and discussion to the chief executive or fundraising expert.

Such fundraising should also take full account of the tax reliefs and benefits available to bodies having charitable status – and most arts organisations should qualify for this. The possibility of tax benefits arising from donations should be mentioned to businesses, commercial firms and private individuals.

Income from charitable trusts is another potential avenue for fundraising with which board members can become involved.

Lobbying for public grants

Principal sources for public subsidy of the arts in Scotland include the Scottish Arts Council, the National Lottery distributors (including the Scottish Arts Council), local authorities and the Scottish Government. Collectively they distribute a very significant sum of money.

A board which fails to lobby vigorously for grants from public bodies is also putting its organisation at a disadvantage relative to other arts organisations. It is inappropriate to explore here the intricacies of skilful and successful lobbying. However, any board that is unaware of how to go about it should quickly seek a board member who does.

The advent of the Scottish Parliament and the growing influence of the Scottish

Government in matters relating to the arts have added the need for political acumen being brought to bear in the process of lobbying.

The complexity and lengthy timescale of securing funds from European sources should not deter efforts in this area either. Significant funds for capital expenditure projects are often available.

Defining and delegating the board's responsibilities

The board has total responsibility for the organisation. Therefore, within the scope of the vision, policy, aims and objectives, immediate priorities which have been established, and the resources it can obtain as detailed in the business plan, the board must determine its own role and those of all other parties who are involved in the organisation's work.

Throughout the life of an organisation, the role of the board is likely to change markedly, particularly if the organisation has grown from small beginnings.

Initially the board not only conceives the long-term aims and objectives, sets the strategies and decides the priorities, but also frequently carries them out.

Later, as resources allow, the board may employ and supervise suitable staff.

Eventually, the organisation may have a number of specialist staff and its own premises.

At each stage in an organisation's history, the board must review its own role, the role of individual directors and that of its officers

and staff. In some organisations, years may elapse before any rearrangement is needed. In others, particularly if they are growing rapidly, changes may be needed several times each year. All boards should review the division of tasks between them and employed officials at least annually to check that the current arrangements are still satisfactory. It is desirable that every board member should be allocated a specific task or tasks.

Any review of the respective responsibilities of board and staff should be clearly stated and preferably recorded either in the board minutes or in a separate document available to all employees.

The less day-to-day implementation is carried out by the board itself, the more the board can provide 'objective' scrutiny of the performance of management.

One of the characteristics of arts organisations is that often the initial drive to form an organisation and provide its artistic vision is stimulated not by the board but by an individual or small group. That individual will build a board around him or her to form a company to legitimise the administration and to allow it to apply for public subsidy and so on, often at quite a late stage in the development of the artistic vision. In such circumstances the board members have to 'buy in' to an already mature artistic aim. However, beyond that point the board must assume control for ongoing business in line with the guidance in this handbook, because it is they who have the legal responsibility for the company regardless of the genesis of the artistic imperative.

The following paragraphs provide some generalised comments on the tasks and roles that the board may consider authorising others to perform.

The chair

The chief executive, who will often not be a board member, is the key person in determining the success or failure of an organisation. However, the chair frequently runs a close second. The relationship between these two individuals is of crucial importance for the success or otherwise of the organisation. It is important that this, as in the case of the distinct responsibility boundaries between board and employees, is recorded formally and agreed. The chair is also responsible for ensuring that individual board members make an effective contribution to the organisation and carry out any tasks allocated to them.

Chairing an arts organisation can be a thankless and onerous task, and whilst many might be prepared to join a board, few are willing to take on the work of the chair. The succession plan for chairs is one of the most difficult a board has to deal with and it should be planned openly well in advance. The role of chair should be subject to the same terms as other directors and the chair him or herself should make provision for replacement in due course.

Leading the team

It is not the individual board members but the board itself which holds the powers conferred by the organisation's constitution and which has the collective responsibility for the organisation.

It is therefore essential that the chair involves all board members and makes the board work as a co-ordinated and cohesive team in performing the tasks allocated to them, both in reaching decisions and importantly, in living with them after the event.

To achieve this, the chair must find ways to resolve or, if necessary, table for discussion any differences between individual board members or cliques.

Divisions within a board frequently exist because the board has failed to discuss and agree the organisation's aims and objectives or because these have not been communicated successfully. Some boards have found it helpful to hold an occasional retreat or 'away day' policy meeting. Such occasions not only allow longer time for discussions and resolution of key issues but also provide opportunities to get to know one another outside the meeting room. It can also be a useful opportunity to invite the views of independent bodies which have an interest in the organisation's success. Independent facilitation can be a useful way of prompting discussion and challenging entrenched views.

The successful team depends upon the involvement of all its board members. If it is considered that particular board members are not pulling their weight, the chair should ask them to resign. There is no room for board members who will not work particularly nowadays when the trend is towards smaller boards. Organisations should try to recruit board members with a wide spread of interests and experience.

However, care should be taken to prevent the board from fragmenting with board members taking responsibility only for those tasks which fall within their own area of interest or expertise. A board has collective responsibility for ensuring the health and success of the organisation in the long term.

Keeping the board on the subject

The chair must guide the board in recognising what its duties are and, sometimes more importantly, what they are not.

Board members can easily be sidetracked into discussions of an artistic nature, such as the merits of a proposed production or exhibition, even though they might lack the necessary expertise and despite having employed a professional to advise them on such questions. This may lead to a deferral of discussions of crucial matters like private sector fundraising at a time when funds are desperately needed.

Such deviation from purpose can be avoided by strong chairing and having a timed agenda for the chair as a guide.

Drawing out skills

The chair must ensure that board discussion benefits from the expertise of all members. If necessary, the chair must draw out reticent members, or those with specific skills, and attempt to curtail discussion by those with little or nothing to contribute on a particular issue. Considerable diplomatic skills are often needed to succeed.

Pacing the meeting

The chair must apportion the time of the meeting. As noted above, a timed agenda,

discussed and agreed with the chief executive, is invaluable in achieving this. To ensure discussion of priority items, the chair may order the agenda so that, if slippage occurs, it is minor items that are deferred. Too often, the order of items on the agenda reflects more about the history of the organisation than it does about current priorities. The basic agenda stays the same from meeting to meeting and new items, even if they are important, are added on at the end eventually becoming part of the standard agenda which becomes as a result unmanageably long.

Counselling the senior staff

The chair must meet regularly with the chief executive or senior staff or committees and must, prior to board meetings, find out what is going on, thus determining the best approach to the agenda. During regular meetings with the chief executive the chair should discuss possible agenda items well in advance of the meeting to allow time for information to be gathered or papers prepared.

The chair must also be available to act as a guide, counsellor and mentor to the senior employees. In many smaller arts organisations, staff may have had little executive experience and frequently no formal training in basic management skills such as budgeting, marketing, staff development, and so on. If this is the case, the chair should ensure that there are adequate staff development programmes in place to allow them to obtain the appropriate skills.

Giving the chief executive room

While the chair must guide and assist, he or she must not dominate the executive staff or interfere in executive decision making.

Chairs who have either dominating personalities or substantial prestige in the community must take particular pains to avoid undermining the chief executive and indeed other senior staff. There are cases where senior arts executives make almost no decisions without reference to the chair. If the chair is out of town, or just too busy, the organisation waits and suffers.

Board members should themselves ensure that the chair is doing his or her job effectively, and, if not, should take steps to change the chair. Board members can also help a chair by reading papers to prepare for board meetings and working with the chair to ensure the orderly and effective progress of the business of the meeting and by participating in the discussions without dominating them or moving off the point. There is nothing more discouraging for a chair than to find his or her board members ill-prepared and unable to participate effectively in board discussions. The chair should also ensure that attendance by members is reasonable. Any member who is absent frequently should be approached by the chair in an effort to improve attendance. A board member is not absolved from decisions taken by the remainder of the board in his or her absence.

Committees

Committees have a useful role to play, but occasionally become more powerful than the board itself. It is important to make it clear whether the board is delegating power to the committee or whether the board is required to approve or ratify any decision recommended to the board by the committee.

Getting jobs done

Establishing a committee can be a useful means of focusing board attention or expertise on a particular problem or area of work. Appropriate members can meet separately, thrash out a problem and come back to the full board with a recommendation.

Disbanding

Notwithstanding their usefulness, it is worth considering whether all committees should not be ad hoc and disband at least annually. At the very least an annual review of the usefulness of any standing committee should be carried out.

Committees can sometimes usurp the power of the board in a particular area and make other decision making by the board problematic because of this. Experience suggests that finance committees are particularly prone to this behaviour. Such a committee is normally established for excellent reasons – to use the expertise of accountants or other financially experienced people on the board to best advantage, and to free the time of the board to concentrate on broader issues. The committee is frequently set up in a time of crisis.

However, it is likely to remain and, if care is not taken, to usurp the board's chief role: the balancing of objectives and priorities against valuable resources. Even worse, it may have the effect of reducing annual budgeting to a mere process following the pattern of prior years.

Any committee set up by a board, regardless of its purpose, should be broadly representative of the board, be entrusted with a specific role and be asked to report back to the board on a regular basis. An organisation's major decisions can sometimes be put in the hands of people who place too much emphasis on a single issue when a balanced approach is necessary. Committees should have written terms of reference agreed and minuted at a board meeting.

Board development is an area which requires consideration by the chair. As can be seen from this handbook, the responsibilities are wide and the skills required vary from those gleaned in a business setting. Bringing the board together for a development programme which concentrates specifically on the context of the arts and/or not-for-profit organisations will have major results in improving the effectiveness and commitment of the board. The chair should also consider conducting a brief appraisal of each board member each year to ensure that there are no misunderstandings on the conduct and content of board meetings and the contribution of each member.

Staff

As has been indicated already, many boards meet too infrequently. Committee work, fundraising and other activities may extend the involvement of individual board members. However, even if this doubles the average time commitment, the total is unlikely to exceed more than 5% of the organisation's working life.

Not surprisingly, therefore, boards authorise their employed or voluntary staff to do most of the organisation's detailed work.

Defining the authority

Boards seldom commit to paper either what they will do or what they will authorise others to do on their behalf – particularly when it comes to artistic decisions.

Also, boards seldom seem to alter the details of the delegated authority to reflect the skills or experience of individual staff members. A new recruit frequently receives the same, but undefined, authority as his or her predecessor, regardless of differences in experiences or qualification. It is more than helpful for every employee or voluntary worker to have a clear specification outlining the agreed scope of the post and limits of authority; it is an integral part of a system of governance which affects the whole organisation. Limits of delegated authority for financial decisions in particular should be listed and agreed with the board once a year.

Structuring the organisation and defining key jobs

In the majority of cases, it is the board's responsibility to design an organisational structure appropriate to carry out the objectives that have been established, within the resources available. However, there are exceptions, and these will be dealt with first.

Entrepreneurial exceptions

In the arts, perhaps more so than in other fields of human activity, it is often gifted individuals, or a small group of activists, all with a high degree of motivation and creativity, who have an idea and build an organisation around it.

Their ideas form the organisation's aims, and initially they are usually on the board that has the legal responsibility for the running of the organisation. If they invite other people to join the board, the new members recognise the primacy of the entrepreneurs and their vision. In these circumstances the tasks are built around the skills, experience and interests of the members of the group.

However, once most groups have been going for a period of years, changes in the board team and a host of other influences can lead to a situation where the board is forced to assume responsibility for the survival of the organisation. In many cases, the board must bring in new staff to fill gaps left by the departure of founders or to do jobs that were not previously necessary.

The following paragraphs concentrate on organisations that have either reached this position or are heading in this direction.

However, some artistic endeavours have a natural lifespan and it is often not serving the wider artistic community to tie up resources in an organisation whose artistic driving force has moved on. Boards of companies which have experienced a serious decline in artistic quality because of the loss of the driving force must consider the possibility of closure.

Importance of a sole chief executive

In general, it is preferable to have a sole chief executive responsible for the executive running of the organisation.

Some arts organisations, particularly in the theatre, work splendidly with joint artistic and administrative hierarchies, each having a senior executive reporting to the board. In these cases, mutual respect and give-and-take are the keys to harmony and success.

However, the joint situation should be adopted only where there is no individual with appropriate skills available (combining an understanding of the process of delivery of artistic output of a high standard with an understanding of the demands of the marketplace, people management skills and financial management) to run and lead the whole organisation. All too frequently, shared responsibility leads to tension between the artistic and administrative staff and forces the board to spend its time balancing artistic objectives against administrative constraints, rather than reviewing proposal options based on available finance and the aims and objectives that have been set for the organisation.

Defining the key jobs

Below the chief executive, the division of responsibilities depends on what the organisation does and how the chief executive wants to deliver the aims.

It is inappropriate here to go into the details of possible structures and the differing functional responsibilities in theatre, dance, crafts, music, visual arts and so on. However, the board should be concerned directly in designing or agreeing the structure of responsibilities one level below the chief executive and in the appointment of key staff to lead those functions.

It is at this level that the key functions of the organisation are normally split – production, curatorial activity, human resources, communication, finance, IT, regulatory compliance or whatever – and if these are badly structured, the organisation will suffer.

Serving the organisation's aims

Some commentators on arts management state that the administrative staff are in the organisation to serve the artists.

In part this is correct but the statement can be misleading. In an arts organisation, the people with artistic training and skill form the backbone of the organisation, curators in a gallery, musicians in an orchestra and so on.

These people determine the organisation's artistic output and achievements; other staff assist them in doing this. However, the fact that all staff, both artistic and administrative, should be serving the artistic aims and objectives of the organisation is frequently overlooked. Therefore the board

must not only define the organisation's aims and objectives, but it must then ensure that all staff members recognise that they are serving those aims and objectives and all are striving towards the agreed common vision of artistic creativity and quality.

Recruiting the chief executive and senior staff

The board must establish the overall staff structure and seek the best possible team to run the organisation.

Choosing the chief executive

The single most important task that a board undertakes is the recruitment and selection of the chief executive who will work towards the vision, carry out the aims, objectives and priorities that the board has defined and with a level of resources that the board believes it can achieve.

Some may argue that this circumscribes the artistic freedom of the chief executive. However, experience suggests that a board which has not decided what artistic activities it wishes to provide tends to interfere with the detailed choice of repertoire, exhibitions and so on, and tries to achieve its aim through day-to-day decisions. By contrast, a board that first decides what artistic activities it wishes to promote, and what section of the community it seeks to serve, can then select an appropriate chief executive and give him or her complete artistic freedom within those bounds. The chief executive will thereafter work with the board in developing and refining aims and objectives and develop strategies to achieve them.

The larger the organisation and the greater its public subsidy the more homework the board must do before selecting the chief executive. The task of recruitment is one which most board members will take part in perhaps only once during their term of office, if at all, so getting it right first time is crucial.

Recruitment of staff below the most senior level should normally be the responsibility of the chief executive although as noted before the board should approve the outline staff structure.

Qualifications for the job

Most authorities on arts management believe that the chief executive must have an arts background.

This seems unarguable as far as small organisations are concerned. However, sometimes in a larger organisation, which has a substantial and highly qualified artistic staff to develop the organisation's programme, a chief executive with outstanding political, managerial and administrative skill may be able to do a better job of furthering the organisation's artistic aims than a gifted artist or art scholar. The board should take time to fully scope the requirements of the post and the competencies required before rushing to recruit a like-for-like replacement. Specialist advisers and 'head-hunters' are nowadays often employed because of the competitive nature of arts management and the scarcity of top-quality candidates.

Appropriate remuneration

A key issue in staffing is remuneration and reward packages and boards must be

prepared to pay realistic rates to compete with the general employment market.

There are many examples where, because of low salaries, the board is unable to attract adequate talent – particularly for senior administrative posts.

If the board's resources are limited, then it must face up to the need to provide extensive guidance and training to a less qualified appointee; this is a high-risk approach which should only be taken if the board is certain of the potential of such a candidate. The arts world is becoming increasingly complex, as this handbook repeats frequently. The ability of the senior managers to lead and adapt is paramount and such qualities are not easy to find.

It might be appropriate to establish a remuneration committee to deal with setting the reward structure of senior staff and to undertake regular benchmarking with other arts bodies and the private sector to ensure that the pay rates do not lag too far behind.

Giving time to recruiting

As noted earlier, the recruitment of a chief executive is a one-off task for most board members and chairs. It is important to get it right. The recruiting process demands attention and it would be wise for the board, after agreeing overall search criteria and a recruitment timetable, to appoint a search committee to undertake the detailed work.

Too often boards muddle through the selection process and individual members absolve themselves by saying the choice was not really theirs! Reliance on the traditional interview where representatives

of a number of interests from the board, and often external parties, ask a routine question is simply not good enough. Specialist advice should be taken to assess the competencies nowadays required for senior jobs and appropriate means agreed to measure how the candidates meet these.

Whatever the constraints and whatever other demands are made on the time of board members, they must give priority to the process of recruiting and selecting the right senior executives. This will ensure that the organisation gets the best people for the job and help the board fulfil its aims and objectives and do a better job too. Reliance on traditional short interviews and formal references has often proved to be an unwise and expensive mistake; more effective methods of selection should be sought.

Development of staff and in particular the chief executive is a function which the board should ensure is in place. The leadership skills required in an international, competitive environment and an ability to respond to constant challenge need to be learned and kept up-to-date. The issue of succession planning, common throughout business, is rarely considered in the arts. This is an essential matter for the board to consider to avoid losing momentum when senior staff decide to move on. This is often seen as incompatible with equal opportunities, but allowing movement within an organisation is acceptable as long as the process is open and understood and restricted to specific jobs. Internal candidates should be measured against set criteria which are agreed independently and the assessment of candidates against those

criteria should also be made with independent guidance.

Briefing new staff

Having selected the key staff, the board must ensure that they are properly briefed on the operating context of the organisation and, its partners and stakeholders and the current forward plan. Senior employees should of course be aware of these matters in advance, but the board has to be sure that sufficient information is given to ensure continuity in achievement of aims and objectives. All new staff, including chief executives, should have a job description.

Organisations frequently recruit people and then leave them to find out, by trial and error, what their jobs actually are.

Terminating employment

If the chief executive or any other staff member is no longer effective, it is the board's task to take prompt action to redress the situation.

The board should not however, terminate an employment contract without taking legal advice as the law requires that employees of more than one year's standing not only have a right not to be unfairly dismissed but also have a right not to be dismissed in an unfair manner. There is no length of service requirement in relation to 'automatically unfair grounds' for dismissal. These automatic grounds include dismissal for pregnancy and discrimination on grounds of age, sex, race or disability, sexual orientation, religion or belief. The employment of staff under short fixed-term contracts does not offer the

board as much protection as it did in the past and boards should not assume that termination of employment occurs automatically on the expiry of the fixed term.

The board should ensure that human resources policies and procedures are in place, and are followed, to ensure that all staff are treated reasonably and fairly. Staff management is an integral part of good governance and a strategy for human resources should be adopted as part of the long-term plan. All organisations should have as a minimum a series of codes of practice on matters such as discipline, grievance, redundancy, maternity and so on. An ethical code which explains the organisation's approach to conflicts of interest and equal opportunities is also highly advisable.

Practical assistance from the board

In no arts organisation can the board sit back and deal only with policy and strategic matters. As has been suggested, each director should have a specific task or tasks to fulfil in addition to his or her general responsibilities. The level and type of involvement will depend on the size of the organisation and the skills of its staff. In small organisations the need for the board to be more 'hands on' is evident in larger organisations it is less so, but at least they should be involved directly in matters such as fundraising. However, in all organisations, every year brings its own special opportunities, problems and challenges with which the board and its members must deal.

Reviewing staff performance

It is important that the board should let its staff know how their performance is regarded. Praise and encouragement to staff from board members is usually welcome and has a positive effect on morale, particularly if the organisation is experiencing difficult times.

Too often a board becomes concerned about an employee's work, yet fails to communicate its disquiet or indicate how performance should be improved.

Disciplinary action is sometimes the first review the employee receives. This is unfair to the individual and undermines the morale of other employees. A regular system of staff appraisal should be introduced, as should procedures for dealing with any grievances or disputes.

It should be noted that any disciplinary action against a member of staff by an organisation which has no proper code of practice or disciplinary procedure should only be undertaken after taking legal advice.

General support for the organisation and related groups

The board also has an important external relations task, including the management of the organisation's relationships with funding bodies, audience, the community and public bodies, and it can play a useful part in promoting goodwill and respect for the organisation.

Attending performances

Board members should be seen at the organisation's performances, showcases,

trade fairs, exhibitions or other major events. Absence may suggest a lack of interest and hence call into question their value as board members.

Supporting the supporters

If the organisation has a group of friends or supporters, some board members – as well as some staff members – should be seen at their functions. It is the best way of showing that the group's support is welcomed and valued. Groups such as this can be a good source for future board members when they might otherwise be difficult to find.



Board membership

With the increasing complexity of arts management, the public scrutiny and fierce competition for funding, it is becoming more difficult to recruit people to arts boards. However difficult the task might be, it is important to ensure that when considering potential new members the priority should remain to choose the best possible group of people to carry out these duties.

Considerations include: the size of the board, the backgrounds of board members, age and tenure, and finally, the question of payments to board members.

Size of boards

With the difficulty of recruiting good people and, because it is considered to be more efficient, boards are tending to become smaller. However, a board that is too small casts a heavy load on a few people and limits the range of talent and experience that is available for the board's work. On the other hand when a board is too large, lines of responsibility are often blurred. It is difficult to find commonly acceptable meeting dates, discussion becomes lengthy and diffuse and, worst of all, cliques begin to develop.

General criteria for board members

There are several general criteria for assessing the suitability of proposed board members.

Quality

Regardless of age, profession or other characteristics, each board member should have integrity, intelligence and a successful record of achievement so as to command

the respect of fellow board members, the staff and the outside world. They must have an understanding of the different requirements of a not-for-profit organisation and the division of responsibilities between the board and the executive staff.

Ability to co-operate

Each board member must be able to work as part of a team. A brilliant person can make a negative contribution to a board if he or she is unable to work easily with other people. Members must be able to discuss issues vigorously but harmoniously without dominating the discussion and to move quickly towards a group consensus. Attendance at board meetings should be an enjoyable and rewarding experience.

Genuine interest

A person should have a genuine interest in and commitment to the organisation's activities and its artform and be willing to learn about the context in which arts organisations operate. This is particularly relevant where people are likely to seek membership of the board for social contact or prestige.

Discretion

Boards should not be secretive but their business often requires discretion. For example, in a financial crisis, a staffing dispute or where there is public concern about the content of programme. Board members should therefore have a proper respect for confidentiality and are in fact legally obliged not to disclose confidential information to any third party without the agreement of the board.

Availability

A potential board member must be willing to devote enough time to attend to the organisation's business.

Absence of conflicts

People should not serve on a board if they have, or are publicly believed to have, interests that conflict with those of the organisation itself. Every organisation should maintain a register of interests and have clear procedures for dealing with any conflict or potential conflict of interest.

Willingness to retire

The needs of an organisation change over time and the right mix of skills today may be unsuitable tomorrow. Board members must be willing to retire when their skills are no longer relevant. If the constitution does not provide for retirement of board members after a maximum period of six years, consideration should be given to altering this or to introducing a standing order which has this effect.

If members of organisations fail to apply these tests when electing or re-electing new board members, they have only themselves to blame if the organisation begins to falter, fail or be less vital.

Professional qualifications of board members

What mix of professional skills does the board of an arts organisation need?

- For all except perhaps the largest organisations, a board needs one or more members with professional knowledge of the relevant artform.

- A person with knowledge and experience of management and organisation.
- Of equal importance is having a person or persons with knowledge of finance, banking, accounts and legal and regulatory matters.
- A business executive, particularly with marketing and/or public relations skills is very valuable.
- A person with human resources experience is becoming more necessary, particularly for those organisations which employ a lot of staff.
- People with good contacts and with proven fundraising skills are also very important.
- People with experience of local and central government can be helpful, and those with an educational or community background can advise on outreach, audience development and educational aspects of the organisation's work.

Every organisation should look at its current challenges and plans, and then piece together the best set of skills for the board to complement and support the skills of its staff.

Representation on boards

Many people ask whether specific interest groups, such as friends' groups, staff artists or local authorities, should be represented on boards, and some long-established companies have a nominating system enshrined in their constitution.

On balance and where possible it is best to avoid representation as a right and to treat any consideration of this on its merits and in

light of the candidates likely to be nominated. There are means other than formal nomination to ensure a broad spectrum of interest and it is always open to a board to invite people who are not members to attend and contribute to meetings.

There are, however, some benefits in allowing interest groups to nominate members for election to a board, they are:

- interest groups are likely to select people whose personal qualities and competence equip them for membership
- that particular group's confidence in the board is promoted, and a means of liaison is provided between that group and the board
- the board, as a single entity, has available in its deliberations the views of all the interest groups.

It must be emphasised, however, that all board interests must pursue the interests of the organisation as a whole. A board member nominated by an interest group should not treat his or her appointment merely as an opportunity to promote the interests of the nominating group. All board members must also respect the confidential nature of the organisation's business: this can affect the extent to which a nominated board member can report back to the nominating group.

Age and terms of appointment of board members

A board whose membership reflects the mix of age, gender, abilities and races of the wider community within which the organisation works is probably best equipped to carry out the duties described in this booklet. For those seeking public funding the responsibility is more acute and is extended to the entire community.

Boards are urged to review their range of membership each year and make positive efforts to redress any obvious imbalance.

Many organisations limit the time that people can serve on boards. Good practice is to restrict this to two terms of three years each.

The arguments in support of limited appointments include:

- getting rid of dead wood
- forcing a search for new talent
- avoiding the development of self-perpetuating cliques.

However, many of the arguments against are direct contradictions of the above:

- the strong contributors are lost along with the dead wood
- there is a scarcity of alternative available talent
- continuity is lost.

Clearly an organisation should give careful consideration to the advantages and disadvantages before determining its own practice, but in principle the review of

membership is one which the board should undertake along with its annual review of progress.

It is possible to obtain continuing involvement of a retired director by appointing him or her a patron or honorary adviser.

The disadvantages can be minimised by ensuring that the board gets some new blood at each annual meeting.

All boards should consider actively the representation on the board from the point of view of geographical area, gender, disability and cultural diversity. Those organisations which claim to have a national remit or in receipt of public funding are expected to pay particular attention to this.

Remuneration of board members and trustees

As we have seen in the section on charitable status, no board members of organisations having charitable status may receive a salary, fee or other form of remuneration for any of their services to the charity unless the conditions outlined in the chapter on charitable status are complied with.

This is because HM Revenue and Customs and the OSCR regard board members as the trustees of the organisation's charitable objects.

This frequently gives rise to difficulties – for example where an organisation wishes to have its professional administrator or chief executive on the board. To ignore the restrictions, however, is to jeopardise the organisation's charitable status.

It is becoming increasingly common for boards to have the chief executive as a board member. This is an acceptable, and in many ways welcome, trend, subject to adherence to the above procedures. The issue of director remuneration may also be subject to conditions laid down in conditions of funding by grant-givers and of course in the organisation's own constitution.

This does not, however, affect reimbursement for a board member's reasonable and proper out-of-pocket expenses.

If a board wishes to give remuneration to any board member it is advised to take advice on the requirements of Sections 67 and 68 of the Charity Act and to discuss the issue at a meeting of the board and ensure that any decision is recorded. A standing instruction on how to proceed with any request for payment of board members should be agreed. The register of interests should be maintained to ensure all payments are reflected in this and reported to the board regularly.

The restrictions on payment to trustees extends to 'connected' parties such as close family and related organisations. OSCR can instruct a charity to recover any remuneration paid incorrectly and can instigate an investigation of such instances.



Operation of the board

This considers the ways to make three important aspects of board operation easier:

- meetings practice
- information to the board and
- communication from the board.

Meeting frequency

A board must meet as often as it thinks necessary to fulfil its responsibilities of managing the organisation.

Meeting regularly

For some organisations it is necessary to meet weekly, for others monthly, but in no case should it be less than quarterly. However, there may be times when a board must meet almost daily, in the case of a financial or other serious crisis, for example.

Notwithstanding the need to respond to unusual situations, most boards must set their schedule of meetings well in advance and keep to a regular pattern. Otherwise board members may not be able to attend although boards should be open to changing the pattern of meetings to meet different circumstances.

Duration

The chair must ensure that meetings do not last too long. If they do go beyond two or three hours there is a danger of discouraging attendance and of drifting away from the prime role of the board, which is to maintain an overview and not descend into taking executive decisions. Managing the time available can be achieved by careful control of the agenda, which should

be discussed and agreed in advance between the chief executive and the chair with a pre-meeting to consider each item and its relative importance, to ensure that the main items are given full consideration.

Papers should be brief and circulated in advance with an indication on each one whether it is for information, discussion or decision. They should contain a clear recommendation or series of options which can focus discussion.

Meeting only when necessary

A board should not be called together unless there is important business (provided that the board does not meet less than every quarter). Few things annoy busy people more than a feeling their time has been wasted. There are times when it is better to cancel a meeting, particularly if there are other time-consuming duties currently being undertaken by the board, such as fundraising.

A chair should make a point of ensuring that any director who undertakes an important strategic task carries this out between meetings.

Whilst the bulk of the work at board meetings will be formal, administrative or financial, the chair and chief executive should not let the board lose sight of the artistic vision, their task is to facilitate the creation of high-quality, stimulating and challenging art. Inviting artistic staff and external experts to address the board on broader topics on an occasional basis can provide necessary impetus, encouragement and inspiration to the board.

Information for the board

There are two types of information that a board requires:

- the material including up-to-date financial information that the staff provide for each meeting
- the details board members can gain from talking to staff members, visiting the organisation's premises and keeping in touch with the rest of the arts world.

Careful thought should be given as to what information should be in board papers.

Providing basic financial and operating information

Board papers should provide adequate detail and perspective to allow the board to make well-informed decisions and to check progress against the organisation's aims, objectives and priorities.

Basic requirements are:

- financial data, such as a statement of income and expenditure for the current period, and year to date, compared with the budget and corresponding figures for the previous year
- forecasts of income and expenditure to the current year end
- a cash flow forecast and a note of current bank balances
- operating statistics for the key aspects of the organisation's affairs, including qualitative assessments of the work.

If there are large differences between budgets and actual figures, the board will

also require explanations for any differences and, more importantly, proposals for action to improve the situation which is what they must concentrate on.

Beyond listing basic financial data, it is impossible to generalise about the types of information that a board needs. Differences of artform, organisational size and objectives can change the requirements entirely. However, there are three further points that are worth noting.

Developing special information

The type of information that the board needs is not necessarily the same as that required by management.

For example, an artistic director might be rightly concerned with the past record, style and reputation of a designer and how his or her work complements his or her own aims, style and talent.

The board whilst being equally concerned with quality will also want to know if the cost of attracting such a designer can be justified in terms of current budgets and comparable rates of other designers. They will want to be assured of the quality but also to know what options exist and to avoid unnecessary extravagance and that which might alienate audiences and antagonise funders.

How much information is enough?

If a board receives too much printed material, members tend not to read it. If they receive too little, then meeting time is wasted while members find out the facts. Time and practice should develop the right balance.

What is required is a clear agenda for the meeting together with sufficient information on each item to give the necessary background for a useful discussion and for decisions to be made.

Every effort should be made to avoid the tabling of papers (the chair should strongly discourage this practice if it exists), particularly those which contain figures such as budgets, accounts and other financial data. These are often difficult to absorb quickly and tabling does not allow sufficient consideration of important matters.

It is important that board papers are circulated not later than one week before the relevant board meeting.

Looking for background information

All board members should keep in touch with staff members and drop in on the organisation's exhibitions, performances or other activities to get a feel for how things are going. Board members should make a special effort to attend touring, community and educational activities to gain some experience of an area which is often less understood than the mainstream work.

There can be no formula for this activity. However, boards often discuss issues without practical knowledge of them. Board members who carry out effective reconnaissance can bring problems to the early attention of their colleagues and take remedial action before the problem gets worse.

Communication from the board

Boards frequently labour hard at their decisions but give little thought to communicating them to the organisation's staff.

Employees need to know what has been decided, and it is helpful for them to know why – particularly if the decision is unpalatable or likely to be contentious or misunderstood. Whether the board has just decided the organisation's current priorities, or resolved to appoint a new artistic director or to cancel an exhibition, the immediate question should be 'who is going to tell the staff?'

In many cases, the chief executive can pass on the information but, in some cases, he or she may not be there. Equally, certain news, such as a change in chief executive, must come from the chair.

Too often employees learn of a key development in their own organisation by reading about it in the newspapers or from an outsider.

In general, the board should encourage all members of staff and be supportive of the chief executive. Attendance at staff meetings or events throughout the year is something that can also be considered to strengthen the bond between board and staff and again to increase the board's understanding of current issues. Care must be taken however to avoid the board usurping the position of the senior staff and they should observe and listen rather than being too ready to offer opinions and answers.

Some boards are extremely secretive about their decisions and strictly control distribution of the minutes. This is justifiable where the minutes contain, for example, staff details which are confidential to the directors. Confidential issues apart, there is a case for following good practice of some highly successful arts organisations which pin up the minutes on a staff notice-board or circulate them by e-mail for everyone to see.

This is a good example with which to conclude this handbook. Sound management is the foundation on which artistic achievement can be built. If you follow the practical guidance within it, your organisation is more likely to be successful and you'll find being a board member a more satisfying and worthwhile experience.



Checklist

General

Are board members familiar with the work of the organisation; do they understand and want to contribute to the vision; are they passionate about the work and committed to excellence and constant improvement?

Are board members all aware of their role; are they briefed in the aims of their organisation and what the context is within which they operate; and are they clear about the distinction between executive responsibility and the responsibility of the board?

Does the board ensure that there is a register of interests which is updated at least once a year?

Do all members know the regulations for remuneration of trustees and is there a procedure in place for declaring and recording any conflict of interest?

Does the board undertake a regular review to ensure it is taking advantage of the best group structure in relation to tax advantages and charitable benefits?

Does the board delegate effectively and does it review its regime of delegated responsibilities at least once a year?

Does the board consider the members of the company and whether the best use is being made of the membership?

Has the board or other management committee reviewed the constitutional status of the organisation to ensure it is fit for purpose?

Planning and review

Do the board and senior management review the vision and aims of the organisation on at least an annual basis?

Does the board hold an annual 'retreat'?

Does the board ever invite independent commentators to such retreats to hear different views?

Does the board listen to staff at such events and are the results of planning communicated to the staff?

Does the board review its aims and objectives each year and set these out in an annual business plan with related financial projections?

Are the objectives adequately documented and readily available to the staff and other people with an interest in the organisation?

Does the board ensure that the organisation measures its performance against these objectives and discusses these at board meetings?

Is artistic planning a strong, creative element within the business plan?

What steps are taken to ensure that longer term planning, three years or more, is carried out?

Are the results of all management reviews adequately documented?

Does the board receive adequate information to judge whether the aims are being achieved including qualitative information on artistic output?

Boards and their legal responsibilities

Have all the board members and senior staff received a copy of *Care, Diligence and Skill* and the Quality Framework published by the Scottish Arts Council?

Has the organisation's chair made sure that all board members are aware of their legal duties?

Have all board members read the organisation's Memorandum and Articles of Association, or other constitutional documents, and the conditions and requirements laid down by bodies lending money or giving grants to the company?

Does the board meet regularly and maintain adequate minutes, in particular recording decisions taken?

Does the board invite relevant managers to attend board meetings for items dealing with their area of responsibility and expertise?

Does the board undertake a risk assessment and review this at least once a year?

Does the board maintain a checklist of the legislation most likely to affect it and how it is meeting the requirements? (This can be combined with the risk assessment.)

Does the board undertake an annual review of its obligations under equal opportunities legislation and in particular the Disability Discrimination Act and ensure that both the spirit and the letter of the law are being adhered to?

Are all board members familiar with the requirements of charitable law and aware of the role of the charities regulator in Scotland?

Has the organisation registered with the Office of the Charity Regulator and does it check annually that it is complying with reporting and regulatory requirements?

Does the board maintain a register of interests which is reported at least once a year and is there a robust procedure for dealing with conflicts of interest?

Organisation and management

Have all members of staff been issued with contracts of employment and job specifications?

Does the board check that codes of practice are in existence and are applied for staff management issues, covering such areas as discipline, recruitment and dismissal?

Are annual appraisals made of all staff and does the chair appraise the chief executive effectively?

Does the board assess its own performance and that of any committees it has established?

Does the board review its membership annually to ensure it is refreshed, is reasonably representative of the community the organisation serves and has a good balance of ages and gender?

Has the board reviewed the organisational structure within the past 12 months, especially the duties of senior staff?

Do the board and senior management take an active interest in the relations between staff and management?

Does the board ensure that its meetings are well organised to ensure:

- a schedule of dates is agreed in advance?
- that papers are sent out at least a week in advance?
- the tabling of papers is discouraged or prohibited?
- the chair works to a timed and prioritised agenda?

Within the past six months, have board members ensured that sufficient checks and balances exist to guard against misuse of the organisation's funds or manipulation of information going to the board or funding bodies?

Does the board seek specialist advice from external consultants on issues which fall outside the skills of board members and staff?

Do the chair and/or a board nominee meet regularly with staff?

Do the senior staff, including artistic director and administrator, have regular meetings with staff?

Is independent legal advice sought before any significant or controversial decisions are taken and before any significant contract is signed?

Are all directors, employees and consultants carrying out their tasks and duties effectively and timeously and adding value to the activities of the organisation?

Is an annual assessment made of the skills required of the board as circumstances and contexts within the arts and public life change?

Does the board collectively or individually undertake any annual training or development and is such activity reported and discussed by the board?

Is the board aware of the status of all those who attend regularly at board meetings and are they aware of the implications for those who might be deemed *de facto* or shadow directors?

Financial management

Do all members of the board have some degree of understanding of financial matters and do they understand the concept and dangers of wrongful trading?

Does the board member with qualifications and experience in finance, or if none, the organisation's financial controller, regularly advise the board in financial matters and, in particular, in the consideration and appraisal of financial reports?

Does that board member attend all board meetings?

Does the person responsible for preparing the financial statements for the board attend that part of the board meeting at which finance is discussed and is he or she free to raise with the board any matters relating to the accounts?

Does the chief executive personally review all financial reports before they are distributed to the board?

Is a standard format used consistently for all financial reports?

Does the board receive:

- monthly financial statements prepared on a full accruals basis of accounting?
- monthly cash-flow statements?
- all reports on a timely basis?

Does the board receive a regular, written report from the administrator highlighting any exceptional items in the financial statements?

Is a regular comparison made of budgeted income and expenditure with actual income and expenditure?

Does the board take appropriate action if actual results differ significantly from the budget? For example, does the board ensure that revised forecasts are prepared for the balance of the year (to reflect actual income and expenditure to date) for each board meeting?

Are detailed budgets prepared for all activities of the organisation, indicating the underlying assumptions on numbers, attendances, pricing, wage rates and so on?

Is a forward projection prepared which links the cash requirements of the programme of productions, exhibitions or other activity with the budget and the availability of cash?

Does the board insist that:

- detailed budgets, including option appraisals with cost-benefit assumptions, are prepared for all capital expenditure proposals?
- feasibility, sensitivity and appraisal studies are carried out and circulated to

the board showing how all capital expenditure above an agreed amount will be paid for before any financial commitments are made?

- at least three quotations are obtained from potential suppliers before any major financial commitment is entered into and they are assured that cash is available to meet such commitments as they fall due?

Does the board ensure that actual capital expenditure is compared with budgeted capital expenditure throughout the progress of a major contract and at other times on a regular basis?

Are detailed working papers prepared and kept by staff to support figures in all financial statements prepared for the board?

Are all questions asked at a board meeting properly answered or, if not, deferred to the next meeting?

Does the board ensure that the investment of company funds at call or otherwise with a financial institution is in line with company policy and within charitable guidelines?

Does the chair meet with the company's external auditor at least once a year?

Are the management letter and auditor's report presented to the board and discussed every year?

Does the board review its VAT status every three years and always when any major change in operations is planned?

Is the board satisfied with the quality of the financial information provided for board meetings? Are the reports understandable

and do they contain the information the board would expect to see?

Liaison with funding bodies

Have all members of the board and management read the most recent conditions of grant or loans from funding or lending bodies?

Is the board provided with reports of all meetings between the senior staff and funding bodies?

Are the board and senior staff aware of what the funding bodies expect from the organisation?

Do the board and senior management meet representatives of funding authorities when required to discuss mutual plans and problems?

Has the board ensured that any specific conditions relating to finance in the conditions of grant will be complied with?

Marketing and public relations

Does the board ensure that the organisation maintains a high public profile in order to attract audiences and public support?

Do individual board members:

- attend all first nights, openings and other important functions, and take an interest in the organisation's operations, especially in the less prominent activities such as workshops, education programmes, play readings and small-scale tours and so on?
- make sure that they are known to senior and middle management?

- familiarise themselves with the location and state of the repair of all premises used by the organisation and review an assessment each year of compliance of all premises with the Disability Discrimination Act?

Do individual board members take an active interest in helping to promote the arts by:

- inviting parliamentarians, local authority councillors and potential corporate sponsors to performances, exhibitions and other events?
- personally seeking private support from individuals and others?

Does the board have a member skilled in marketing and public relations?

Does the board monitor market growth rates, target group indices, social trends and similar measures?

Has the board considered using unsold seats to promote the organisation's interests or social objectives, such as increasing access for disadvantaged groups?

This checklist is not intended, and should not be used, as a substitute for a full and proper review by boards and managers of their duties and responsibilities. We suggest that boards and managers may wish to develop their own checklists which are reviewed regularly as part of a risk assessment.

Useful websites

Scottish Arts Council

www.scottisharts.org.uk

Office of Public Sector Information:

www.opsi.gov.uk

(Copies of all legislative acts and associated documents can be obtained)

Scottish Information Commissioner

www.itspublicknowledge.com

(Freedom of Information in Scotland)

Information Commissioner

www.ico.gov.uk

(Data Protection – whole of UK)

OSCR

www.oscr.org.uk

(Office of the Scottish Charity Regulator)

Scottish Government

www.scotland.gov.uk

The Charities Commissioners

www.charity-commission.gov.uk

(For England and Wales)

Inland Revenue / Financial Intermediaries and Claims Office

www.inlandrevenue.gov.uk

Companies House

www.companies-house.gov.uk

'Care, Diligence and Skill: a corporate governance handbook for arts organisations can be relied upon for accuracy and accessibility... it provides a sound guide to the core governance issues that all organisations, regardless of size, must consider... a concise resource that could usefully be incorporated into an organisation's induction pack for management and board members'

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