

**FOUNDATION GOVERNANCE – BUILDING A LEARNING CULTURE**

**Introduction**

I was at a meeting this week to discuss ‘Good Governance’, a new code for the Voluntary and Community Sector (i.e. charity and NGO sector in the UK).

2 weeks ago, I was at the annual conference of the European Foundation Centre at which family, individual, community and corporate foundations from all over Europe were discussing two Codes (or – perhaps because a ‘Code’ is perceived as a bit prescriptive – two ‘Sets of Principles’): one on good practice in governance, the other (produced jointly with the US Council on Foundations) on the accountability of foundations engaged in international philanthropy; donors ‘in the north’ supporting work in developing countries.

Governance issues are racing up the agenda of the ‘non-profit’ and foundation sector – already high in the private sector and the public sector here in the UK. Now even the Foundation’s own membership associations are working on it and drafting ‘codes’ or ‘principles’ which Foundations will be expected to follow.

In this session, I’ll try and explore why this is happening. Is it just fashionable rhetoric and a source of employment for a new breed of cliché spouting consultants? What relevance, if any, does it have to private philanthropy and family foundations? What may be the practical implications?

This is a bit of a challenge to take all this on in a short session, not least because we have in the room philanthropists who are active in several different regulatory and tax jurisdictions – how to avoid a very superficial walk round the subject? I’m also conscious you have already had an information packed week – the idea of starting the last day with a session on governance unlikely to have made you leap out of bed with enthusiasm this morning.

So – a brief introduction from me, setting the scene, highlighting some of the issues that seem to me to be of special relevance to funders and foundations – then discussion.

First – what is Governance? The standard definition used now in the UK charity sector is:

*“The systems and procedures concerned with ensuring overall direction, effectiveness, supervision and accountability of an organisation.”*

And, when setting out the responsibilities of trustees, those who hold the assets of a charity – or foundation – ‘in trust’, the charity regulator in the UK, the Charity Commission states very firmly that:

*“trustees have, and must accept, ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run and meeting the needs for which it has been set up”*

and, specifically, that they must:

- comply with relevant legal and regulatory requirements
- not breach rules set out in governing document
- act with integrity and avoid personal conflicts of interest or misuse of funds/assets
- accept a duty of care and a duty of prudence.

UK rules and systems may be specific to charities registered here, but similar responsibilities apply to trustees in most countries.

Some foundation settlors here have grumbled about all this – why, they ask, does any of this apply to me? It's my money – why should a regulator (or anyone else) have any interest in what I choose to do with it? Or worse still, why should they insist on telling me how I organise the way I manage my philanthropy?

### **The justification?**

1. Some is defensive:

- scandals among private foundations in the US
- all tainted by 'bad apples' – concern among foundations that they may be exposed to heavy handed regulation unless they put their own house in order first

2. Some more positive:

- 'poor governance = poor practice' – and poor funder practice has an immediate and potentially harmful impact on work of recipient organisations – and, therefore, on beneficiaries. Effective and efficient processes, high quality grant-making should be the aim – so foundations should ensure they are organised to deliver high quality performance
- the reputational risk – to the foundation, the family or individual, the company if there is a link – of being perceived to be a poor quality funder. We have some foundations which have lousy reputations, reknowned for inconsistency, lack of clarity about what or why they fund, erratic timetables, apparently arbitrary, even prejudiced, decision making. We also have some that are deadly dull, rigid, preoccupied with compliance, not engaged in any credible way with the work they are supporting.

### **But is it just about observing the rules and regulations; and being efficient?**

As important (perhaps more so) a governance challenge is how to ensure that philanthropic resources have the greatest possible impact – if that is the aim, then many of the 'strategic philanthropy' questions you have been tackling this week have a governance dimension; for example:

1. what is our space or niche? Are we well informed about the arena in which we want to apply our philanthropy – the needs, the other players (funders and providers), what's the government's place and position, what's been learnt so far? *If we are not sure of the answers, how can we be sure our resources are well directed?*
2. do we have a theory of change to guide our priorities and decisions? *If not, are we perhaps in danger of floundering around, following the advice of the last person we spoke to?*

3. do potential applicants, partners and other funders know what we do/have done? *If not how can we be sure we are talking with the right people?*
4. when talking with a prospective grantee, are we sure we have considered how well equipped they are to carry out the proposed activity? And can we offer assistance (e.g. additional funds, other help) which will strengthen their capacity and confidence to do the job well? *If not, then there may be a danger of the sin of perverse grant-making – providing funds that are not going to deliver premium results – indeed, may harm or weaken the organisation we want to support.*
5. are we organising our time and resources so that we learn, consciously and deliberately, from the work we are supporting? What works and what doesn't? Are we using that learning not only to improve our own practice and the quality of our processes and the ways we engage with applicants and grantees? Are we also sharing that learning – with other funders and organisations? And are we applying some of our resources to ensure that the lessons learnt with our financial support influence policy development?

These are governance issues, I believe – they are about the “*overall direction, effectiveness, supervision and accountability of an organisation.*”

If that is so, then, it seems to me, good governance in a foundation would give priority to investment in:

- knowledge and independent advice
- transparency
- mutual accountability; and
- a holistic and strategic approach to the targets, needs or themes we want to tackle.

Foundations are privileged in their independence; as such, they can:

- do wonderfully imaginative and creative things
- take risks on maverick individuals
- provide essential seed capital for clever and original social entrepreneurs
- support noisy advocates
- be patient and long-term in their support.

As Rockefeller argued, foundations can undertake:

“the imaginative pursuit of less conventional charitable purposes than those normally undertaken by established public charitable organizations.”

Or as the settlor of the Nuffield Foundation observed:

“Those responsible for the disposal of private funds have a healthy duty imposed on them to accept risks which cannot be proper to those accountable for the tax payer’s money; they should venture those funds for experiments about whose success there may be some measure of doubt.”

That sort of ‘adventurous philanthropy’ can be a powerful lever for change in whatever arenas you operate within. But – I suggest – to do it really well, to achieve the most with your philanthropic resources (and to get the most personal satisfaction out of doing it) – there are some important governance challenges to get to grips with.

To end this introduction to the session – some questions that might help reinforce what I have said and shape some of our discussion; 4 questions which provide the skeleton for a good governance ‘health check’:

- Are we confident that we comply with our governing document, relevant laws, tax regulations and requirements of regulatory bodies?
- Do all the trustees have confidence that our grant-making and grant management functions and processes are effective, seen as well managed and fair by applicants and recipients, and are achieving the outcomes and impact that we planned?
- Do we produce an Annual Report which, together with our audited accounts, not only meet relevant reporting standards but demonstrate a high quality of transparency about what we do, how we work and what has been achieved with our grants?
- Are systems in place which are scrupulously implemented for managing potential conflicts of interest and issues of probity?

If ‘yes’ to all – then governance is probably in good shape: an excellent “Framework for Strategic Philanthropy.”

If ‘not sure’ (or ‘no’) – then maybe worth taking time out to get in better governance shape!

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