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## The Charity Law & Practice Review

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# CHARITIES AND GOVERNANCE: A STUDY IN EVOLUTION

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The use of the word "governance" has become common. In the charity sector it embraces a number of important ingredients with the result that the topic is of relevant interest both to those who are interested in issues of social policy and also to those who are concerned about the practical realities of running a charitable organisation.

The issues that emerge in the course of debate or discussion on charity governance are central to our contemporary notion of what a charity is, or ought to be, and also the question of how charities relate to the rest of society.

The expression "governance" can be defined either broadly or narrowly. It has usefully been defined as "the exercise of power within a framework". As explained later in this article, the role of charities has become highly significant in our contemporary society and much power, indeed, rests with charity trustees. The framework within which they exercise that power has a number of features, some of them somewhat arcane. These include:

- the constitution of the Board;
- the role of membership;
- the essential functions of the Board;
- the responsibility of the Chair;
- the conduct of the Board's business;
- the role of the Chief Executive and other staff;
- the regulation of Committees of the Board;
- the principles of openness and accountability;
- the involvement of beneficiaries;
- equal opportunity policies;
- audit in its wider sense and internal audit in particular;
- conduct and probity.

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Perhaps central to all these is the role and function of charity trustees, particularly their strategic function: how they preserve the core values of a charity and how they plan ahead.

The phrase "trustee" is here used to include any person who is actually in control of the affairs of the charity in accordance with the definition contained in section 97 of the Charities Act 1993. Hence, the word will include Committee Members, Members of Councils and other governing bodies.

Similarly, it is convenient use the phrase "Board" to include any Board or Committee or Council of Management of any charity.

Having dealt with these issues of definition, one should consider the context. The basic theme is that as a result of a number of trends the role of charitable activity in this country has grown to an extent that it is a central factor in maintaining social cohesion and quality of life. Accordingly, it is essential that the charitable sector commands both respect and support. Governance is essentially about "competence" and "accountability", which are central to this issue.

### **Increase in Scale and Diversity of Charitable Activity**

The role, diversity, professionalism and scale of charitable activity has expanded enormously since the passing of the Charities Act 1960. The following statistics are from the 1995 CIS publication *Dimensions of the Voluntary Sector*. They are daunting. The total number of charities now exceeds 171,000, of which it would seem that almost 100,000 are fairly active. The operating income of what is defined as the "broad Voluntary Sector" totals £29 billion. To put this in context, at 1994 figures the size of the Health budget is £38.6 billion, the size of the Education budget £36 billion, and the size of the Defence budget £23.8 billion. The National Lottery is having additional and varied effects. As at last Christmas the Charities Board had allocated grants totalling £160 million and continues to receive funds to the tune of £1 million per day.

On the International Classification of Non Profit Organisations criteria, over 25% of all charities are concerned with culture and recreation, over 24% with social services, over 17% with education and research, nearly 8% with health, nearly 8% with religion, 3½% with development and training, 2½% with the environment and nearly 1% international. The diversity of the Sector is quite remarkable. Not only does the size and style of charities vary immensely - the range of activities carried out is a phenomenon in itself.

Perhaps the most significant and impressive figure of all is the number of people who are charity trustees and the amount of time charity trustees devote, on a voluntary basis, to social purposes. Assuming nearly 100,000 active charities, and

a minimal five active trustees for each, this gives a lower estimate of half a million people engaged in public activity as charity trustees.

Diversity and professionalism are both important ingredients of the evolving world of charities. We live in a complex society which is producing a significant range of new needs. The ingenuity of sponsors and promoters of new charitable organisations in innovating to meet these new needs is remarkable. It might be compared with the ability of species in the natural world to develop and occupy specialist niches in the ecological sense. The latter is an essential characteristic of natural evolution, whilst the ability of the charitable sector to produce new organisations to meet new needs could be regarded as an essential feature in the development of a healthy society.

These factors amply demonstrate that the scale and nature of charitable activity is vast. The theme of this article is to question whether such charitable activity has achieved critical mass by looking at the nature of the activity and the trends which have brought it about.

### **Evolution of the Nature of Charitable Activity**

Traditionally, a major "head" of charitable activity has been the relief of poverty and it has become very important to consider carefully what we mean by "poverty" in a contemporary sense. However, absolute poverty in the old fashioned sense has diminished sharply in the post-War years. Reflecting on conversations which the writer had with his late father, it is very difficult for us now to imagine the depths of real deprivation that existed in Liverpool in the 1920s and 1930s. The Beveridge Report was a natural reaction and at the time of the 1960 Charities Act and following it there was a widespread expectation (which now seems almost unreal) that the State and Local Government could shoulder the burden of responsibility for the welfare of society. At that time the main topic of debate about charity law was that of the meaning or definition of charity. Consistent with the notion that the State should be responsible for the welfare of society there was a strong lobby that all non-profit distributing organisations might have a sort of charitable status.

With hindsight, it is not surprising that the pendulum swung and by the late 1970s and 1980s there was a widespread belief that the role of the State should not go too far. This was paralleled by a vast increase in charitable activity and by 1989, when the Government published its White Paper on Charity Law, there was much concern to preserve public confidence in charities and ensure that the good name of charities should be maintained.

In their Annual Report for 1993 at para 97 the Charity Commission confirmed charities must be prepared to adapt to meet changing economic and social

conditions. In this new environment the fundamental principles of public benefit and meeting needs are more not less important.

The withdrawal of the State from universal welfare provision is only one factor in generating the present scale of activity in the Charitable Sector. We live in an uncertain and rapidly changing world and it is easy to share the view of many commentators that the relentless development of technology has been dominant in changing the way we live. We have, however, also seen across the world a shift in political thinking, emphasising the effectiveness of free market conditions and the wish by Governments to expose every possible activity to market forces.

The combination of these technological and political factors is producing a dramatically changed labour market with major implications for social policy. In particular, for those who are not engaged in flourishing sectors (now particularly characterised by involvement in high technology), or who are not able to compete in market places, quality of life is severely threatened.

Consequently, there are important developments in charity law affecting the lives of those people in areas of high unemployment who, either individually or collectively, are "left behind" by market forces. If a pessimistic view is taken, a factual analysis of situations where high levels of relative poverty exist shows a high correlation with crime, violence, civil unrest and other disturbance, which are most expensive to resolve. The new forms of poverty are no less serious than the absolute forms of poverty and probably more difficult for society as a whole to deal with. The role of charities has become crucial.

It is significant that in many spheres of activity the Government now prefers to fund charities under a "contract culture" rather than make direct provision.

The combination of these political, technological and economic trends means that charities collectively are now "in the front line" of responsibility for social cohesion and quality of life and have direct responsibility to make such good provision as they can to meet the many needs where neither the market nor the State provides.

This effect is by no means confined to action to combat contemporary poverty. The charitable sector also provides a means by which other major issues of public policy can be addressed. After the Rio Earth Summit the importance of "sustainability" is widely understood. A practical response to environmental issues is being led by a significant number of environmental and heritage charities.

The fact that most people now live far longer as a result of progress in medicine is creating a far larger population of elderly people - it is estimated that in Britain alone there will be an extra 1.9 million elderly people in the 30 years from 1991. Again, at a practical and caring level, a major response to the needs of this ageing population is coming from the Charitable Sector. Just as the old have special

needs, so do the young. This is particularly so in the areas of high unemployment referred to above where it is particularly urgent that young people should have meaningful opportunities to be involved in the mainstream of social and economic life.

There are many further examples of situations where new needs are being created by forces of technology and the increasing complexity of society. In particular, the ability of the charitable sector to add considerably to the quality of life in the arts, cultural and recreational matters goes to the root of what we mean by "civilised society".

### **Increasing "Professionalism" and Changing Structure**

As charities are in the front line of making provision for many of the residual, but fundamental needs of society, it is essential that they should be able to act with a strong sense of purpose. This means that the power they exercise and the framework within which they exercise it (i.e., the governance arrangements) are quite crucial, and it is essential for the good health of society as a whole that these arrangements should work well and command confidence.

The regulatory system has evolved rapidly in recent years. In the latter half of the 1980s it became increasingly clear that the possibility of abuse existed and was unacceptable. The efficiency scrutiny of the supervision of charities, carried out by Sir Philip Woodfield in 1988, called for prompt and vigorous action to improve matters. The Public Accounts Committee had also produced a disturbing Report. When the 1992 Charities Act eventually arrived, its main thrust followed the 1989 White Paper. The intent was to enhance the quality of supervision, to make charities more accountable and generally to bring a sense of discipline to the charity scene. This caused many charity trustees to sit up and take notice. A new appreciation of the realities and of the duties and responsibilities spread rapidly. Charity trustees are sensible and thinking people and there was a wave of practical concern about how to bring about the better management of charities. Much sound work has been done.

David Selbourne, in his recent book *The Principle of Duty*, puts much, and in the writer's view, correct emphasis on the importance of "duties" as contrasted with rights. In considering particular duties he discusses the restoration of the civic order from desecration and looks at the individual's duty to help maintain that civic order. In effect, he might be talking about charity trusteeship with its specific duties. This is an emphasis which should be widely applauded and recognised. In matters of governance the concept of duties rather than rights is fundamental.

An important influence on the role of the trustees has been this remarkable increase in the professionalism of a great many charitable organisations. The realisation that charities must operate in an efficient, effective and businesslike way

is now deeply entrenched. The number of staff employed by charities has risen enormously and many of these staff are highly qualified. The most crucial relationship for many charities is that between the trustees of a charity on the one hand and the staff on the other hand. A great deal of difficulty is caused if the respective roles are not well understood and respected. Unfortunately, there is a natural human temptation for the trustees to take off their jackets and "meddle" in what should properly be delegated to staff as executive action and, indeed, for staff, especially senior staff, to wish to do the trustees' job of determining policy.

Against this background of change the recent debate on governance is healthy. At the same time as the 1989 White Paper on Charity Law was published there was increasing public concern about abuse in the corporate and commercial sector. The Cadbury Committee, on the financial aspects of corporate governance, was set up in May 1991 by the Financial Reporting Council, the London Stock Exchange and the accountancy profession. It reported in December 1992 and (somewhat to the surprise of that Committee) widespread publicity and public interest was generated. The public's concerns were heightened by the BCCI, the Maxwell affair and the controversies over Directors' pay. Deeper issues rose to the surface and it was widely appreciated that a financial audit was not enough, there should be a code on "best practice in corporate governance", which the Cadbury Committee defined as the system by which companies are directed and controlled. The Cadbury Code was based on principles of openness, integrity and accountability.

As a result of the 1988 Housing Act, Housing Associations had been exposed to market forces and to commercial risk taking and, accordingly, it was not surprising that it was the first area of charitable activity in which the relevance and principles of good governance were seen. As a result of the 1988 legislation there were major worries about the manner in which Associations operated. There were deep levels of disagreement about most of the key issues within the Housing Association movement. There were even conflicting views on what the problem was.

### **The Housing Association Governance Inquiry**

Again, it seemed as if a raw nerve had been touched and the National Federation of Housing Associations announced that it would arrange for an independent Inquiry. The task of the Inquiry was daunting and many thought the Panel would be in a "no win situation". Sir David Hancock, an eminent former Civil Servant and now banker, was appointed to Chair the Panel and the writer was glad to accept the invitation to be one of the Panel Members.

Although strictly independent, the Panel was admirably serviced by the NFHA and its own Secretariat. The outcome has been widely acknowledged as being successful and a great deal of this is attributable to the "process" which was undertaken.



The work of the Panel was organised in a highly consultative way. Evidence was called for in a well focused manner. Accordingly, the key topics of governance were debated up and down the country, not only within all Housing Associations, but in other quarters too, particularly Tenants' Associations, amongst the financial institutions funding Associations and amongst Local Authorities.

Evidence was submitted in quantity and quality. An excellent feature of the proceedings were five oral hearings in which the Panel had an opportunity to question some leading players and test some forthright views.

The result was that across the whole country those in responsible positions were forced to think about the issues and assist in a systematic way. A lively debate took place. After the Panel had reported, there was a further consultation period on the draft Code included in the Report. As a result, the Code was readily accepted by the Housing Association movement and adopted at their Annual Conference in September last year.

### **Principles of Governance**

The final Report was informed by four key principles, namely that Associations should be competent, accountable, independent and diverse. These principles are, it is suggested, equally applicable to the whole of the Voluntary and Charitable Sectors.

Reference was earlier made to a Charitable Sector which was portrayed as at the forefront of many key issues of social policy and which is evolving dynamically to meet today's charitable needs. The new needs generated by political, social and technological trends in particular require that charity trustees must be meticulous in ensuring that the charities they control are well focused in their work. This requires a high level of scrutiny. It is of the utmost importance that charities and charity trustees should continue to command public confidence and that they should operate competently and accountably.

The seven principles of public life set out in the first Report of the Nolan Committee on standards in public life are of fundamental importance. These principles, namely, selflessness, integrity, objectivity, accountability, openness, honesty and leadership should underlie any discussion of the detail of governance arrangements. They should apply both to the governmental (political) end and to the independent (especially charitable) parts of our public life.

The role and function of the Board of Trustees is the key issue in looking at the Governance of charities. Once this role is clearly understood, it is relatively easy to put the relationship between the Board and the staff on a proper basis and to make sense of some of the mysteries of "membership" as contrasted with

"trusteeship" of charitable organisations. It is also easier to consider proper policies for the composition of the Board and its selection.

In the Hancock Inquiry the panel identified eight specific "essential functions" of the Board:

**1. To define and ensure compliance with the values and objectives of the charity.**

Clearly this must be done within the specific legal objects set out in the Constitution for any particular charity, but the issue goes deeper than simply ensuring that all the activities are within the legal objects and powers.

For the executive management of a charity to be effective, the specific objectives of the charity should be carefully identified and defined. Of necessity, this involves having a high level of understanding, not only of the need which the charity is endeavouring to meet, but the social circumstances and wider context within which it is operating. It is easy for "values" to be taken for granted but unless they are constantly reviewed it is only too easy for charities to drift into a situation in which, in reality, their charitable status is being abused.

**2. To establish policies and plans to meet those objectives.**

The need for forward planning in the Charitable Sector is important. It is only too easy for the actual activities of charities to be driven by mere opportunism, in which the activities undertaken are governed by the availability of particular sources of funding. In my experience, a great many difficulties have been created simply because charity trustees have not been willing or able to scrutinise projects or plans by reference to fundamental questions, i.e., what precisely is the project, why is it being put forward and how does it advance the charity's stated objectives?

These questions can only be adequately addressed if the trustees have a reasonable understanding of the needs the charity is seeking to meet. Accordingly, trustees should take steps to acquire information about and understand these needs.

By focusing on forward plans and policies trustees, can do their work in a creative and useful way and avoid the danger of ignoring or giving too little time to the critically important questions of strategy. The emphasis on "policy" is, therefore, highly necessary. As a result, the question "What is policy?" frequently arises. The effectiveness of charitable work can often depend upon matters of detail. Accordingly, it is correct that trustees should scrutinise the work of the charity and be free to consider



the policy implications of every aspect. In doing this they should not act in a way which undermines the position of staff and others who work under delegated authority. Nor should attention to detail obscure the essential emphasis on strategic plans and policies.

**3. To approve an annual budget and accounts prior to publication.**

Sound financial procedures are essential to ensure that the trustees are exercising their duty of "prudence".

**4. Establish and oversee a framework of delegation and systems of control.**

As charities often now have large and efficient professional staff, it is essential that attention is given to delegation policies. They must be quite specific and have clear and practical systems of reporting back.

**5. To agree policies and make decisions on all matters that might create significant financial or other risk to the charity, or which raise material issues of principle.**

Again, these functions are essential to the trustees being "in control" of the situation.

**6. To monitor the charity's performance in relation to these plans, budgets, controls and decisions.**

The monitoring of performance is often overlooked, but it is not sensible to set plans, objectives and targets unless performance is monitored. It seemed to the members on the Hancock Inquiry that this was a fundamental function which required much emphasis. Assistance in monitoring performance can be gained by an effective internal audit answerable to an independent Audit Committee. The work of internal audit is becoming a most valuable tool for both charity trustees and executives. Issues of "Social Audit" should not be ignored. If a charity is setting appropriate targets and meeting them, this in itself is a valuable form of social audit.

**7. To appoint (and, if necessary, dismiss) a senior member of staff and be represented in the appointment of any key members of staff.**

In reality, a great deal of the effective day-to-day performance of a charity depends upon the senior members of staff and consequently the appointment of the Executive Head of a charity is of the utmost importance, as are the ongoing relationship, reviewing and appraisal of that person's performance.

8. **To satisfy itself that the charity's affairs are conducted lawfully and in accordance with generally accepted standards of performance and propriety.**

The Nolan principles on this point added emphasis.

### **Senior Staff**

If these functions are accepted, then the role of the Chief Executive or other staff member becomes much easier to comprehend. Clearly, it is that person's job to manage the affairs of the charity in accordance with the values and objectives determined by the Board and in accordance with its general policy and specific provisions.

Equally clearly in a modern operational charity, the Board cannot work out the policies and plans without assistance from the Chief Executive and consequently it is quite proper for and, indeed, should be the duty of the Chief Executive, to help the Board to determine its policies and strategy and draw its attention to matters that it should consider and decide. Providing the Board with comprehensive information about the needs the charity is seeking to meet is an important aspect of this role of supporting the Board, as is the technique of providing "Issues and Options" papers before future plans are submitted in detail.

The basis of delegation to the Chief Executive and staff should ensure that the Board are given all the information they need to perform their duties and, in particular, advice concerning compliance with its governing instrument, the law and the need to remain solvent.

When determining the systems of control it is essential that their establishment and maintenance should be delegated to the Chief Executive.

### **Board of Trustees**

It is now appropriate to turn to the closely related issues of the appointment of trustees and the role of membership. Having established the nature of the functions of the Board, it clearly follows that the Board should be composed of people who, in the interests of that particular charity, are best able to carry out those functions. Accordingly, it is rational for a charity to evolve a process by which the membership of the Board is periodically reviewed and steps are taken to ensure that it meets the continuing and future needs of the charity.

On the Hancock Inquiry there was some discussion about the optimum size of Boards and the panel was advised that 15 is the maximum size at which a group can operate sensibly without breaking down into a situation where there is in

reality "an inner sanctum". In the past, far too many charities have had excessively large Boards. In practice, in order to create a situation where individual members can act responsibly and, indeed, feel that their individual contribution matters, a much smaller size than 15, say, between 7 and 11, is desirable.

Most charities will need a balance of skills and experiences. These should be identified and listed. It is sensible for there to be a "nominations" committee which can review the position annually well in advance of the Annual General Meeting. The nominations committee can form a view of the "ideal" balances and experiences required and make recommendations for trustees to step down and for new appointments accordingly. They can and should work openly and in an accountable manner. In an ideal world there should be no embarrassment about the position of individual trustees being reviewed in this manner, as trustees are appointed not for their personal benefit, but for the contribution they can make to the work of the charity. The robust independence of undertaking this process in a manner in which the objectives of the charity are the sole criteria is a critically distinctive feature.

Once the nominations committee have done their work, the detailed nature of the process will depend upon the constitutional arrangements in the particular charity. In a charitable trust where the trustees deal with their own appointments, the constitutional position is simpler. In unincorporated associations and companies limited by guarantee where there is normally a membership structure, the work of the nominations committee will be at the mercy of the votes of the members at the AGM. This factor focuses on the difficult question of what "membership" is really about when charities have membership structures. This is the most arcane feature of governance arrangements in the charitable sector.

### **Membership**

On the Hancock Panel some progress was made in looking at this issue, but the diversity of the Charitable Sector (which is in itself an admirable quality which should be preserved) makes it difficult to set universal guidelines. In the code that was subsequently adopted by the NFHA, the Panel's recommendations were accepted, namely:

- i) that Associations should review their policies for admission to membership; and
- ii) decide the purpose and role of members in the Association's governance; and that

- iii) the way in which members are chosen should realistically serve their role in governance and contribute to the Association's long term constitutional stability.

Having made these positive statements, it is, perhaps, easier to proceed by setting out what membership of a charitable organisation is not, or should not be:

- It is by no means an automatic guarantee of "accountability" - this is a far more sophisticated notion and charities should aim to be accountable in a wide range of ways
- An "open membership" policy does not generally provide an easy or acceptable answer. There are grave dangers in "pseudo democracy" and, although open membership may work in some circumstances, it can lead to constitutional chaos and does not normally represent sensible deliberations about what membership should be for, and what the responsibilities of members are.
- Membership does not confer any proprietorial rights or benefits on members: in contrast, it should confer upon members responsibilities and duties to act in the interests of the charity.

Each charity should, therefore, give active consideration of how its work can actively be assisted by members. As one of the main practical jobs of the membership is to vote at an Annual General Meeting to fill places on the Board, it has been suggested that in some circumstances membership should actually have the role and function of a "Nominations Committee", thus squaring the circle and fixing the policy or criteria for admission to membership by reference to the qualities required to recruit the most appropriate Board Members. This is an extreme case. The reality is that a great many charities, particularly some of the large ones, like the National Trust and the Royal Horticultural Society, have active memberships which are a great asset. In community organisations membership is very important, but only works well if the disciplines are well understood and observed.

There is, one suspects, a general problem in that a switch is needed from emphasis on "benefits available to the members" to "benefits for the charity". This opens up the difficult question of the relationship between "membership" of a charity and being a "beneficiary" of that charity. On top of that question is the extent to which "beneficiaries" can be members of the Board of Trustees and recent work of Philip White of the Charity Commission has been most helpful. From a practical point of view, in order to ensure that the affairs of charities are open and accountable, it is suggested that in the vast majority of situations it would be wise for there to be a separate constituency of members who are also beneficiaries or potential beneficiaries, and for this constituency to have minority voting rights.

Very recently the Nolan Committee issued its second study, which included the recommendation that Housing Associations should be encouraged to develop Membership Schemes as a means of increasing accountability. The significance given to this recommendation contrasts with the view taken in the Hancock Inquiry in which it was stated:

"In our view, the accountability impact of membership structures is largely illusory and we recommend that Associations develop shareholding membership mechanisms that are more explicit about their purpose."

The conclusion of the Panel was that, although membership through shareholding could be a useful way of involving people in the work of the Association, it should not be regarded as a central element of the Association's system of governance.

Accordingly, if Housing Associations, and, indeed, other charities, are to use "membership" in the way suggested by Nolan, then the concept needs to undergo some development.

The sense of purpose and disciplines referred to above must be applied. The right to attend and vote at Annual and other General Meetings will remain basic to the role of the members. The significance of the ability to vote on elections to the Board will vary from charity to charity. The nature of membership and the obligations of members should be explicitly clarified in constitutional documents and in applications for membership.

Even when these steps are taken there are dangers that the role of "membership" may be illusory and misunderstood. The real challenge imposed by Nolan is, therefore, one of ascertaining whether a real and significant role can be devised for "members" which is both practical and realistic.

On the Hancock Inquiry much emphasis was placed on the "primacy of the Board". In view of the legal duties and obligations of the Board collectively and individually, it is most important that the role of the Board should not be undermined. In view of this factor, any role that might be devised for members should not undermine the essential functions of the Board as set out above.

It is possible, however, that a role for members in relation to "social audit" could be devised which would both enhance the ability of the Board to carry out its function and give membership a real function.

The Hancock Inquiry looked in vain for examples of the good practice in "social audit". By "social audit" is to be understood the process by which an independent appraisal could be made of the achievable social purposes of the charity and the charity would be "audited" in terms of its performance in achieving those purposes. It is possible that an independent mechanism of this kind could sharpen the focus and enhance the performance of the Board in relation to the first two

specific functions detailed above. This could be done, for example, if the charity were to appoint an independent "social auditor" who would be answerable to the members at Annual General Meetings.

The main thrust of this article is to explain how the evolution of our society has progressed to a point whereby it has become most important that the charitable sector should be a high quality performer in the achievement of its many and various social purposes. In this light, the audit of their performance in relation to their objectives becomes just as important as financial audit. Innovative work of this kind would not only give membership a real, rather than an illusory role, but it would also place much needed emphasis on measuring the achievement of social purposes. If, however, there is to be any hope that this idea might become reality, much high quality, well disciplined and innovative work needs to be done and great attention paid to the vital question of establishing criteria for membership to perform this function.

### **Openness and Accountability**

As charity trustees can exercise so much power, the issues of "accountability" and "openness" are most important.

"Accountability" is one of those difficult words which is not only frequently used, but also used in different senses and may mean different things to different individuals at different times.

On the Hancock Inquiry the Panel was of the view that, in the strict sense of the term, accountability exists where those to whom the account is given can exercise direct sanctions. Accordingly, financial accountability to funding organisations is relatively easy to understand. For the purposes of the Report the Panel preferred the term "responsibility" where there is a duty to provide information and give an account, but no sanctions; and where responsibilities run in both directions, as between Local Authorities and Housing Associations, we proffered the term "relationship". They also considered that where services are provided for the benefit of public or charitable funds there was a need for trustees to justify their role and stewardship, and we termed that "openness".

In practice, in making decisions from day-to-day, most Boards of trustees have to exercise judgment on issues of balance. Accordingly, it is realistic to expect trustees to justify priorities they have set.

In addition, on the Hancock Panel, it was also felt that a further relevant issue for "accountability" was that of "processes", i.e., ensuring that proper procedures have been followed. At a time when more emphasis is being placed on "outcome", this process should not be ignored. In addition trustees should also be accountable for



the quality of service offered by the Housing Association. No doubt the same applies to many other types of charities.

### **Implications for Constitutions**

The debate on governance is a recent one and, as yet, many of the early results, such as the content of the NFHA Code of Governance, are not reflected in constitutional documentation. At the present time the NFHA are innovating by preparing new Model sets of Rules which take into account the findings of the Hancock Inquiry. Specifically, they will clarify the basis of delegation and set out the essential functions of the Board and the Chair. This is important and merits much further attention.

In practice, charity trustees will face their biggest difficulties, problems, and liabilities when things go wrong. Consequently, they have a high motivation to ensure that things go right. Accordingly, from the perspective of individual trustees, guidance as to "governance", such as the NFHA Code, should be regarded as a good practical tool kit to assist them. If these principles are set out in constitutional documents then the position is much clearer to everyone concerned and there should be a higher chance of things going right. This will mean that charities will be more effective in fulfilling their vital role in national life of maintaining social cohesion and quality of life.