



Plunkett
Foundation



Creating good governance and resolving conflict

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ANTHONY COLLINS SOLICITORS – WHO ARE THEY?

- Based in Birmingham and Manchester, working all over the country
- Nationally leading support to charities, cooperatives, social enterprises
- Long history in delivering community led solutions since the 1990s

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Presenting today

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WHERE ARE WE GOING?

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Looking at:

- The role of a Board member
- The legal duties of Board members
- Conduct issues and how we deal with them

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- Governance matters

Governance is about who gets to decide what

It's all fine... until it isn't



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In almost every organisation

Two “tiers” of involvement

Members / shareholders...

... and Directors / Committee members /
the Board

The Board have legal obligations to the
organisation

Generally, the members do not – or not to
the same extent

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What do members do?

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The “stewards” of the organisation

What is the role of members?

- Big Picture
- Structure
- No day to day responsibilities

What are their rights?

- Receive notice, attend, and vote at General meetings
- Receive a copy of the accounts
- Approve changes to the rules
- Call a Special GM

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So what is the Board for?

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To **manage** what the organisation does

To exercise all of the organisation's **powers** (except for those reserved to members)

But... does that mean Board members have to DO everything?

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The duties of Board members



- Duties and Responsibilities in the general law
 - sometimes called “fiduciary duties”
 - obligations owed to the organisation itself
 - no comprehensive list
- Statutory Duties and Responsibilities
 - Company / society legislation, other laws
- Other Duties and Responsibilities
 - arise out of your work
 - or from your constitution

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Duties under the general law

Good faith

Acting in the organisation's best interests

- Not about one aspect, one area, or one street but about the whole work of the organisation
- Knowing why you're there



Other aspects of the duty of good faith

Truthfulness and honesty

Confidentiality

Avoiding conflicts of interest

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Other duties under the general law

Using reasonable skill and care

Complying with your constitution

Regulatory requirements

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- HOW WE BEHAVE - THINGS TO DO ON A CALM DAY

- Review your rules. Do you have:
 - The power to remove a Board member or Member for misconduct?
 - The power to suspend a Board member during an investigation?
 - The power to bar someone who has previously been removed?

- Do you also have:
 - A clear and agreed code of conduct?
 - An agreed process for investigating any complaint?



- MORE THINGS TO DO ON A CALM DAY

- Ensure your board understand what is expected of them
 - Workshops
 - Examples
 - Collective culture

- Understand who can make what decision and when



- CASE STUDY NUMBER 1

A community organisation involved in working with their local school, an academy. One of the Board disagreed with the academization programme and gave an interview to the local paper, in which he criticized the Board decision to work with the school...

- OH NO! WE MIGHT HAVE A CONDUCT ISSUE

- First, breathe...
- It will all be right (eventually)

- DO NOT MAKE ANY ASSUMPTIONS
- The rules of natural justice apply:
 - Rule against bias, or appearance of bias
 - Right to a fair hearing

• OH NO! WE MIGHT HAVE A CONDUCT ISSUE

- How serious is the matter complained of?
 - Does the person need to be suspended (if a board member)
- What should the investigation process be?
 - Who will investigate and how?
 - Who will be the decision makers on the complaint?
 - Is there any right of appeal, and who to?

Initial steps:

- Inform Chair / Vice Chair / whoever needs to know
- Inform person who has been complained about
- Inform them of any suspension and what it means
- Tell them about process (as far as you can)
- If possible, set out some sort of timetable

- Investigation

- Anything from “did you actually say this?” right up to formal interviews with those involved
- At this stage, you are fact finding. You are not determining any outcome
- Include the person complained about – get their view
- Should be independent from decision making

- The job of decision makers

- 1 – did it actually happen? (balance of probabilities)
- 2 – if it did, did the conduct breach the standard we would reasonably expect?
- 3 – if it did, what is the sanction that should apply?

- CASE STUDY NUMBER 2

Large membership charity with a significant turnover and a volunteer board, alongside a professional management team. The chair and vice chair were both accused of bullying senior staff and other board members...

• UNEXPECTED OUTCOMES...

- Resignations
 - Sometimes followed by immediately seeking re-election...
- Collateral damage
 - Relationships, staff time, possible costs

• A CAUTIONARY TALE...

- R. (on the application of Oyeyi-Effiong) v Bridge NDC Seven Sisters Partnership (2007)

- “Decisions of a partnership board, which ran an association formed to combat local problems, to remove two individuals permanently from membership of the board, from any sub-body of the association, and from any office of the association, were quashed in circumstances ***where the conclusion that those individuals had acted in breach of the association's code of conduct had been reached by a process that was procedurally flawed.***”

• BORDERLINE CONDUCT

- Serial complainers
- People getting cross / oversensitive in meetings
- ... but what is “banter”?



• CONDUCT - KEY LEARNING POINTS

- Be prepared
- Have a process
- Stick to that process
- Be fair and transparent
- Keep your nerve and your temper!

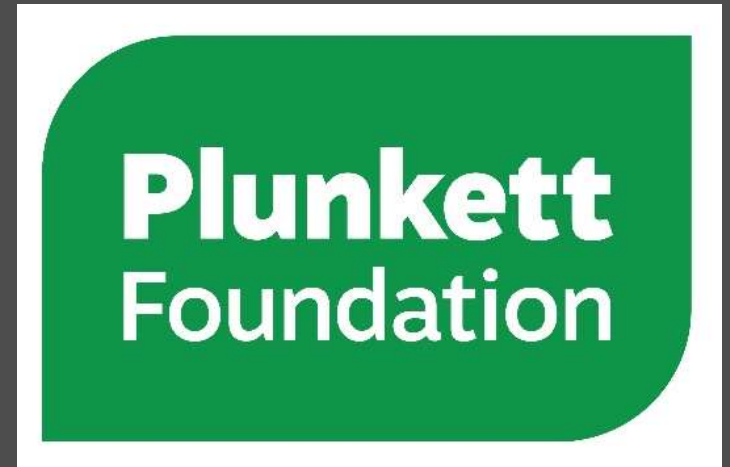


Do your best, and don't nick the teaspoons

Read the papers, attend meetings,
ask for advice when you need it

Board and staff must co-operate
to make the governance work

Talk to each other
Listen to each other
Challenge each other, and
Strive to understand each other





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QUESTIONS?

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To get information and support for your community business, please contact the Plunkett Helpline on 01993 630022 or info@plunkett.co.uk