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## Governance Dilemma April 26<sup>th</sup> 2023

On April 26<sup>th</sup>, 2023, Carmichael held a webinar in which a panel of experts discussed a real governance issue which an Irish nonprofit had faced and suggested actions to take. There was also an opportunity for the audience to ask governance-related questions.

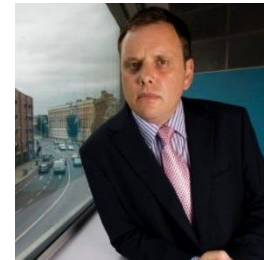
This webinar was a live discussion based on Carmichael's Governance Dilemma newsletter, formerly the Trustees' Quandary. In each edition, we look at a real-life challenge that a nonprofit Board has faced and considers a range of responses. The scenarios are anonymised so as not to identify any particular nonprofit. If you would like to sign up to this mailing list, see [here](#).

This resource outlines the panel's responses to the dilemma and their answers to some of the questions submitted by the audience.

### The panel consisted of:

#### Andrew Madden

Head of Training, Consultancy & Communications at Carmichael. Andrew enjoys working in the non-profit sector where he sees people motivated by a desire to make a real and positive difference. He is particularly passionate about governance in non-profit organisations as he believes that well-governed organisations are best placed to achieve and realise their own objectives to the fullest.



#### Jillian van Turnhout

Consultant, Chartered Director and certified by INSEAD in corporate governance. Jillian has been a CEO, Chair and is an experienced Non-Executive Director (State, Charity and Commercial boards).



#### Gerry Egan

Chartered Director, Company Secretary, consultant and trainer. Gerry works with a variety of commercial and non-profit clients specialising in corporate governance, data protection and strategy and change.



#### Diarmaid Ó Corrbuí

CEO of Carmichael.

Diarmaid has extensive experience as a board chair and a board member in a number of charities and with working with boards and providing governance support and advice. He is actively involved in the Good Governance Awards, Mentoring and the Board Chairs Network initiatives led by Carmichael.



### The scenario which was considered at this webinar was:

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"Frank has been recently elected to a board position with a large charity. The board could have been described as 'light weight' in regard to its level of governance and corporate knowledge. This led to a culture where the CEO would respond to board queries by asserting that the matter of interest was "an operational issue" and that the CEO "has it under control". The board recognised its weakness and sought out some new directors with governance experience and corporate understanding; hence Frank's invitation to stand for election. Frank is encountering opposition from both the CEO and the Board in asking critical questions of the CEO and trying to probe for information.

He is concerned the board has a weak Chairperson who does not support the board in taking effective control or oversight. He is seriously considering if he should stay and try to improve matters slowly or if he should leave as he truly feels the board is dangerously negligent. However, he likes a challenge, believes in the objectives of the charity, and feels that his fellow directors are honest and well intentioned. What should Frank do?"

## **Andrew Madden's response to the Dilemma**

The first thing Frank needs to do is find allies on the Board, especially those who recognised the need to recruit in Directors with governance experience. Frank should outline what the problem is as he sees it and make sure those allies recognise there is a serious problem. He should communicate the solution he is proposing and deal with any hesitations or reservations from his allies at that point to make sure they are fully behind the plan of action.

That plan should include an external Board evaluation so that somebody outside of the organisation can come in with a comprehensive assessment questionnaire and have meetings with members of the Board to be able to clearly and objectively communicate to the Board that there are issues and what those issues are. The consultant can also carry out a Board skills audit to see what skills and experience gaps there are on the Board.

In addition to the evaluation, the Board should examine where they are in relation to their compliance with the Charities Governance Code. There would be an issue here if the Board had declared the charity to be in compliance with the code when the serious issues set out in the dilemma indicate that the Board cannot possibly be fully compliant. It would be hard to imagine that a Board with the type of issues outlined above would, at the same time, have excellent financial oversight, risk management, compliance with legal and regulatory obligations and be successfully monitoring implementation of the strategic plan. Where there are some issues at this scale there are often others.

## **Jillian van Turnhout's response to the Dilemma**

As a first step, Frank needs to reflect on why he stood for election to this Board and his understanding of the current situation. He should review key Board documents, including if they exist, the Board (governance) handbook, the schedule of matters reserved for the Board and the scheme of delegation, as well as the role descriptions of the CEO and the Chair.

If a Board skills audit exists, he should ask for a copy. In its absence, he should look around the board table at the skills, knowledge, and mindsets and if there are gaps. Having identified what he thinks needs to change, he should assess if his views are aligned with the organisation's object and appetite for change of its members. He should do a personal assessment as this is likely to be a long road, and he is not in the driver's seat.

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If we assume that Frank has decided to stay and has completed his review, the challenge is to write down what change would ideally look like for the organisation and the Board in a year's time, including the milestones. What will success look like? As Andrew mentioned, he needs to work out who his allies are. He needs to always keep the purpose and objective of the organisation at the forefront of his mind and ensure he isn't distracted from them. He needs to be constructive and work to build up the Board in terms of their governance and compliance role. He could have a one-to-one with the Chair and consider whether the Chair needs additional support in their role in terms of training, mentoring or resources. He would need to be considerate in how he has those discussions with the Chair.

Frank and the Board should use the Charities Governance Code as a tool to help keep the Board on track in their governance responsibilities. Ensure that there's Board-only time when Directors (Trustees) can meet briefly without any staff or non-Board members present, for example, at the end of a Board meeting, examine what went well in the meeting and what could be improved.

Frank might suggest to the Chair that other members of staff, not just the CEO, should also present to the Board.

At the end of the first year, Frank should go back to that list and assess where they are on their pathway to success and whether they are moving in the right direction. He also needs to reflect on his behaviour to ensure each action he takes is in the organisation's best interest.

## **Gerry Egan's response to the Dilemma**

Frank needs to make a plan and needs to seriously consider whether he has the stomach for the challenges ahead because it will require a sustained effort and a consistent approach by him and by other people to bring about the necessary changes.

It's important to enlist allies and not to discount or alienate those who may not seem to be supportive of the the changes that Frank knows are necessary. It can take people time to come around to the idea that change is needed for a variety of reasons including loyalty, inexperience or lack of confidence. He needs to be judicious in building those coalitions of support to achieve what he wants to do.

It's very important that he's approaching this challenge positively and communicates from the outset in all his conversations and interactions that his genuine purpose in raising issues is to improve the performance of the board and its leadership of the organisation. Frank needs to make it clear at all times that this is about the good of the organisation and is not a personal matter. He needs to resist the urge to make it about particular individuals on the Board. We're here to talk about the issues, not the people.

In the spirit of being positive and constructive, and without ducking the issues, Frank instead of saying, "the CEO was not open with the board on financial matters", could say "I'm not satisfied with the quality of explanations we've received about the shortfall in fundraising." So now it's about the issue not the individual.

If he's talking about the board and the fact that the chair has been described as weak, rather than saying "the chair is not very effective," he might say something like, "We would like to see the chair doing a better job of including directors in the discussion and asking them to raise questions or issues". So now we're talking about incremental things which, if they're done correctly, will mean the whole Board will have the opportunity to contribute and provide

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solutions. So rather than pushing the Chair or the CEO into a defensive posture, Frank can make concrete suggestions like “the financial reports should include the variance analysis with commentary from the Finance Manager or the CEO on the corrective action that's planned.”

Hopefully, by making practical suggestions that are perceived by others as fair and reasonable and demonstrating that his actions are being done in good faith, other directors will come to realise that there's potential for improvement and will see that change is necessary.

The final thing to say is that while this change is very important, it's not Frank's job alone to solve all of these problems. He needs to mind himself as part of this process because it could be very easy to feel overwhelmed by the challenge.

## **Closing Remarks from Chair of the Panel, Diarmaid Ó Corrbuí**

It can be extremely stressful for people who have stepped onto boards in a voluntary capacity and are trying to do their best but are coming up against difficulties like this. That can be really challenging for a person's mental health so that's important to bear in mind and again to make sure there is a team of allies behind you.

The Charities Governance Code can be a great tool to help review your governance structures and compliance. You can use it as a conversation starter since all charities are required to comply with it so it can be a way to encourage the Board to consider a Board evaluation, address trustee recruitment or review its strategy as these are all specific standards in the Code.

## **Questions and Answers**

Members of the audience were given the opportunity to ask the panel questions relating to nonprofit governance.

### **1. What should a Board member do if there are governance documents but ignored in practice?**

Governance and compliance are significant responsibilities which rest with the Board and for charities, they need to be compliant with the Charities Governance Code. The Charities Regulator is beginning to do spot checks to assess levels of compliance with the Code. This would be something to leverage to impress upon other Board members the importance of having and complying with governance documents.

Arranging training for Board members on their roles and responsibilities may also help impress upon them the importance of good governance.

### **2. Sometimes the Chair needs support but does not want to accept help. What can other Board members do?**

The role of Chairperson can be quite isolating, and it can be difficult for Chairs to get the support they need. Carmichael set up the [Board Chairs' Network](#) to allow Chairs of nonprofit Boards to access peer support. Other Board members and even members of the Executive might encourage the Chair and Vice Chair of their nonprofit to join this free network.

It can also be easier for an external facilitator to raise that point if a member of the Board has tried to raise it but isn't being listened to. An external Board evaluation can assess the situation using a questionnaire and interviews, spot the issues and provide objective recommendations.

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### **3. What is the recommended best practise in relation to rotating auditors?**

The test is whether the auditors can still be truly independent. They may become less effective just from becoming too familiar with the organisation. The organisation also needs to consider value for money. We're seeing a general trend of keeping the same auditor for shorter periods. There are specific guidelines for Publicly Listed Companies but not for charities. Generally, auditors would not be appointed for more than 7-10 years but a change in the audit partner within the firm may be sufficient changeover to maintain independence and objectivity.

### **4. What can a Board member do if they have raised their concern with the Board and with the Chair, but people are not willing to engage?**

The first thing to do in a scenario where a Board member find themselves completely isolated from the rest of the Board is reflect on what has gotten them to that point. It does not necessarily mean that the Board member in the minority is in the wrong, but it is certainly cause for reflection.

They need to think about how they are communicating with the Board and how that is coming across. For example, when a Board presents a new strategy to the staff, even if it is a really good strategy, that uncertainty is going to make the staff feel threatened and they will not be able to engage with that new strategy until they have been told whether their jobs are safe and whether their roles are changing.

Similarly, the Board might feel threatened or attacked by suggestions to improve governance. Role playing the interactions with a good friend may highlight potential for miscommunication. The Board member needs to make sure they are focusing on positive steps the Board can take rather than finding fault with individuals.

### **5. If a Board member requests financial information such as bank statements or invoices but is refused and told that they should trust the CEO and Treasurer, what can they do?**

Generally, bank statements and invoices would not go to a Board meeting. Detailed financial information go to a finance subcommittee of the Board which ensure that the proper processes are in place when it comes to financial controls. Be wary of overstepping from the governance role of the Board into the operational space of the executive by asking to see operational documents especially given that a Board member would not necessarily be able to glean useful information from a bank statement.

The more important thing, rather than seeing individual bank statements, is getting reassurance that those processes are in place. Requesting written reassurance of this can prompt someone to pause and re-examine the processes in place before putting their name to that reassurance.

Again, if this highlights an issue, the Board member should focus on steps to rectify this and prevent in the future rather than playing a blame game.

Sometimes Boards which have recently done some training or completed an external evaluation can begin to demand more paperwork from the Executive. This takes up the Executive's time and the paperwork may not be of much value to the Board. Boards should be clear about the information needed, the rationale for seeking that information and should be mindful of the resources needed to produce and send that paperwork versus the value of it to the Board.

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## **6. What should a Board member do if they have raised serious governance concerns with the wider Board and feel they have exhausted all options but cannot affect change?**

In this instance, the Board member may need to accept that they are not the right person to make the changes needed. Perhaps things have become too personal. From personal experience, sometimes bridges can be burned when trying to bring in new systems or approaches and the best thing to do can be to step back and enable someone else to take that place on the Board.

If a Board member finds themselves unable to affect any positive change, they need to ask themselves what they are contributing to that Board and whether they would prefer to give their time and energy to a Board where they are empowered to make a difference.

The Board member should ensure that their concerns are known to the entire Board, not just to the Chair and those concerns have been recorded in writing.

If the Board member decides to step down, they might also inform the members of the organisation of their concerns at the AGM when they are stepping down. In the case of really serious concerns, the Charities Regulator may need to be informed so that the Regulator can consider carrying out an investigation.