

Motability

GOVERNANCE REVIEW

SUMMARY OF RECOMMENDATIONS

Governance reviews

1. That there be a rolling programme of reviewing aspects of the charity's governance, perhaps in line with the principles in the Code and wider reviews (such as this) undertaken every three or five years.

Governing documents

2. The Governors review the Governing Documents shortly and on a regular basis (say every three or five years).
3. That the Governors adopt Regulations setting out rules and procedures to govern their meetings and similar matters.
4. When next updating the Royal Charter and Bye-Laws or preparing Regulations:
 - 4.1. the Governors might consider:
 - 4.1.1. removing redundant references to the predecessor charity;
 - 4.1.2. including an express power to borrow for the purposes of investment (sometimes required by banks if borrowing to make investments);
 - 4.1.3. including provisions to allow electronic communications with members;
 - 4.2. the Governors should:
 - 4.2.1. include conflicts of interest provisions;
 - 4.2.2. remove the provision allowing the Chairman a second vote at general meetings;
 - 4.2.3. amend the provisions for the removal of members and Governors to bring them into line with the rules of natural justice;
 - 4.2.4. Include a quorum requirement for meetings of the Governors.

Governors

5. The role description for Governors should be amended.
6. The Governors undertake a planned "refresh" of the board over time following the report of the Nominations Committee in July 2018.

7. The Governors consider whether they wish to continue with the differing terms of office for the Chairman and Vice Chairman on the one hand and the other Governors on the other hand.
8. The Governors consider whether there should be a limit in the Bye-Laws on the number of times a Governor may be re-appointed.
9. NomCom institute annual assessment of the performance and skill gaps of the Board as a whole and of individual Governors.
10. The charity institute a programme of regular training for trustees. General trustees training courses are widely available but, given the unusual nature of the charity and its relationship, the trustees should consider bespoke training on charity and other legal matters which is sensitive to the specific circumstances of the charity.
11. In reducing his executive role over time, Lord Sterling should use his experience to nurture the Director's abilities and pass on his knowledge.
12. The conduct of board meetings should be reviewed to see how more time can be afforded for collective discussion and debate on key issues;
13. Given that it is generally considered advisable for a new chair to serve a period as a trustee before taking the chair, a plan for Lord Sterling's succession should be developed, with steps being taken shortly to identify the skills and characteristics needed of a new chairman, and a role specification, and implemented in good time to enable a new chair to gain experience ahead of Lord Sterling's retirement.
14. Lord Sterling should not chair the meetings of the committee charged with planning his succession.

Risk

15. The risk policy should:
 - 15.1. be reviewed in light of the updated serious incident reporting guidance from the Charity Commission (22 September 2017);
 - 15.2. include a date or frequency for review;
 - 15.3. be approved by the board rather than the ARGCC.

Risk register

16. The ARGCC meets at least quarterly.

Committees

17. The number, nature, memberships and terms of reference of committees are reviewed.
18. The terms of reference of each committee should contain:
 - 18.1 a review date and provisions relating to the normal duration for service on the committee; and
 - 18.2 the requirement that conflicts of interest are dealt with at each meeting.

19. The ARGC (or the committee with responsibility for risk) should meet at least quarterly.
20. The ARGC meetings with the charity's auditors are minuted.
21. The role of the IGRAC is reviewed.
22. The remit of the SOC is reviewed and expanded to include a clear statement on the level and scope of its oversight.
23. That the terms of reference of NomCom are revised to take account of the Charity Commission's guidance on trustee recruitment.
24. The role (and name) of and need for a Chairman's Committee and/or the transfer of some of its functions to other committees are reconsidered. Care should be taken to ensure that these meetings do not inadvertently encroach on matters within the decision-making responsibility of the board.

Policies

25. The Governors (or a committee of the board) should have responsibility to undertake a rolling programme for reviewing the charity's policies.
26. The Governors complete work on the formulation of a more developed grants policy with robust criteria to enable requests for support to be handled in an appropriate proper manner.

Resources

27. The staffing needs and competencies of the existing staff should be reviewed by the Director once he has settled into his new role to ensure that the charity has the human resources it needs:
 - 27.1. for the proper running and governance of the charity;
 - 27.2. to support the charity's oversight of the Scheme;
 - 27.3. to support its grant making function (which will be of greater importance if a significant donation is to be received from MOL).

Intellectual Property

28. The Governors should explore whether the Motability logo can be registered on its own.

Motability Enterprises Limited (MEL)

29. A Governor be appointed to the MEL board.
30. That new Articles be adopted by MEL.
31. The arrangements for the transfer of funds from MEL to the charity should be reviewed.

Motability Tenth Anniversary Trust

32. The Governors and the trustees of MTAT should review the rationale for there being two charities and consider whether their common beneficiaries and the funds of the two charities might be more effectively served/used if Motability and MTAT were combined into a single charity or whether maintaining separate identities is preferable.

MOL and the Scheme

33. Governors consider the inclusion of MOG plc as a party to the Scheme Agreement when the Scheme Agreement is updated.
34. Consideration should be given to other steps in the Scheme Agreement (or elsewhere) which could make the relationship between the charity and MOL clearer.
35. [Redacted: commercially sensitive]
36. The Scheme Agreement should be updated (including to incorporate all the changes that have occurred since 2003) and:
 - 36.1. a more explicit statement is made on the face of the Scheme Agreement (which perhaps refers to the Deed of Covenant) stating that the Scheme is the charity's;
 - 36.2. an explicit statement is made in the Scheme Agreement that the charity's core objectives of customer service, value for money and sustainability are the principles by which any KPIs and Service Targets should be set;
 - 36.3. provision is made for continuing independent benchmarking, and the commissioning by the charity of independent surveys not only of Scheme customer satisfaction, but also of the demands and expectations of disabled people who are not Scheme customers;
 - 36.4. a wider right of access for the charity to MOG plc / MOL information is included in the Scheme Agreement;
 - 36.5. reputational impact and such benchmarks as the Governors consider appropriate (as well as the attainment of Service Targets, currently the only criterion).
37. A mechanism enabling better control of MOG plc / MOL executive remuneration (which does not run the risk of making Governors or the Charity shadow directors of MOL or MOG plc) is developed, perhaps by emphasising the criteria to be taken into account or simply by giving the Charity rights of veto, if these can be negotiated.
38. The charity commissions an independent review of the Motability Operations Reserves Management (now Capital) Policy and the technical methodologies that underpin it, focusing on focusing on the Economic Capital model and capital management (in relation to maintenance of the Scheme's stability and ability to withstand economic shocks).
39. The charity commissions a review of the references to donations in the Motability Operations Capital Management Policy, and whether the treatment of donations would be better handled separately, including whether there should be a deed of covenant..
40. A legal opinion be commissioned to provide a more definitive view on whether or not surplus funds held in MOL / MOG plc are charitable funds.

41. The Governors consider whether anything emerging from the NAO review should be reflected in an update of the Scheme Agreement in due course.
42. The advantages and disadvantages of competitive tendering are considered when the Scheme Agreement is next reviewed or updated, and the conclusions reached, as well as the reasons for them, are fully minuted.
43. When the Scheme Agreement is updated, the Data Sharing Agreement is reviewed to ensure that it remains consistent, and also that it reflects any developments in the law following implementation of the Data Protection Act 2018 and the new General Data Protection Regulations.
44. The MOL trade mark licence should be updated to cover all of the charity's trade marks that are used by MOL and associated entities.