The Scottish Governance Code for the Third Sector

Consultation recommendations

August 2022

Contents

Scope and purpose of the review

A review of the Scottish Governance Code for the Third Sector was launched on behalf of the Third Sector Governance Forum on the 30th of May 2022 running for 13 weeks. The scope of the review was to engage with third sector organisations, advisors, stakeholders and governance specialists across Scotland to gather feedback on:

- o the awareness and uptake of the Code
- o the impact the Code has enabled within organisations
- o the challenges people have faced when using the Code
- o any emerging areas of relevance to third sector governance that are not currently included or not sufficiently addressed in the current version

This report sets out a summary of findings and recommendations as a result of this review.

For the purposes of this report the Scottish Governance Code for the Third Sector will be referred to in this report as 'the Code'.

This report recognises that there are many different terms that can be used when discussing the governing bodies of third sector organisations depending on their legal structure and culture including 'the board', 'the committee', 'the trustees', and 'the directors'. For the purposes of this report the term 'board' will be used to represent an organisation's governing body, which is ultimately accountable for the organisation.

Introduction

The Code was launched in 2018 by the Third Sector Governance Forum. Since then, the sector has faced unprecedented challenges brought about by the COVID-19 pandemic which will undoubtably have caused an impact on continuous use of the Code in differing ways. But these last two years have highlighted the importance and need for good governance all across the sector to ensure that communities and beneficiaries can continue to receive the support that the sector provides.

A Code refresh may not manage to address every detailed contribution that has been received during this consultation process. The fourteen recommendations detailed within this report are based on the volume of feedback received or due to identifying good practice in other areas.

Any changes to the Code could hinder work already taking place using the existing Code. Recommendations made seek only to make significant change where the volume of feedback merits this, all other recommendations seek to refine and enhance the current content enabling organisations to build on the good work that they have been embedding.

Structure of the review

The review comprised of the following components:

- o Public survey (55 respondents)
- o Thematic focus groups (15 unique participants)
    - Risk management
    - Accountability
    - Equality Diversity and Inclusion
    - Climate change
- o Comparison report of the Charity Governance Code for England & Wales and the Code of Good Governance for Northern Ireland
- o Individual meetings with governance advisors and specialists (32 participants)
- o 2 email submissions

The review engaged with 87 individuals during the process, and we would like to thank everyone who took part for their time, enthusiasm and contributions.

Purpose of the Code

The purpose of the Code is to act as a tool for continuous improvement and to ultimately drive high standards of governance within the third sector. The Code enables organisations to better understand the principles of good governance, how this can be demonstrated and can be used to support boards to reflect on current practice and identify areas for improvement.

The Code was designed to be universally applicable to all third sector organisations including charities, community groups and social enterprises (not for profit businesses that help people or communities). The Code document outlines to users that how an organisation follows each principle will depend on its size, income, activities and complexity.

It is important to note that in order for the Code to remain true to its purpose and relevant to its intended range of users, that the Code must remain at a reasonably 'high level'. There is a risk if the Code refresh brings in too much detail relating to how good practice is achieved, that it becomes more operational than aspirational, and it could become less relevant for some organisations within the sector or become lengthy and cumbersome to use.

Purpose of the SCVO Good Governance Check-up

The Code is supported by the SCVO Good Governance Check-up, a digital resource that assists boards to self-evaluate their performance by working through the Code principles against a detailed set of practices and actions. It also provides an action plan template that assists boards to record improvements could be made and by when.

This tool falls out-with the scope of the review however its purpose and detail are important due to the enhanced level of supporting information that it provides to Code users that cannot be found in the Code due to its granularity.

Due to this interconnectivity, the Good Governance Check-up has, where required, been looked at in response to some of the feedback received to identify if indeed the needs of Code users can be met through the use of the Good Governance Check-up as opposed to making changes to the Code itself.

The additional value that the SCVO Good Governance Check-Up provides is clear however this review did not seek to identify the awareness and use of this particular tool. Lack of use of this tool

may prevent Code users from accessing additional support assisting them to improve their practice. Feedback was received from many consultees regarding the barrier to engagement relating to this tool, that it was not in a downloadable format, that users had to register to gain access and cannot see ahead as to what questions or information will be provided. Although out with the scope of this review, this is linked to the successful implementation of Code practice and so it may prove beneficial for the Third Sector Governance Forum to consider how to remove these barriers and make the Check-up as easy as possible for organisations to access.

How these two resources connect, digitally and through for example their identify and branding will be critical to the success of both. The statement below was received as part of the consultation process.

'*We have used the SCVO's Governance Toolkit in the past – quite thoroughly – and found it most helpful. But I hadn't appreciated when completing the survey that it now has a different name and forms part of the Governance Code'*

Overview of findings

Supporting governance improvements

Through the survey, it was reported that the Code is supporting improved practice within the third sector in Scotland. Respondents indicated that improvements have been observed across all five Code principles with 'Board Behaviour' and 'Organisational Purpose' receiving the highest number of responses (75% and 71%) respectively.

A range of positive impacts were observed within the governance setting as a result of using the Code including:

- o Improved clarity surrounding roles and responsibilities of board members
- o Improved practices relating to board recruitment, training and reviewing Board member contributions
- o Improved board behaviours
- o Improved awareness of board member roles for staff
- o Improved practice relating to conflicts of interest

Awareness of the Code

Findings within the review led to a mixed view on the general awareness of the Code. The survey results indicated that 80% of respondents were aware of the Code with 60% of these respondents having actively used the Code either presently or in the past.

The Code is extremely familiar, well used and a regular reference point for those supporting the sector including legal advisors (charity law) and governance consultants operating across Scotland. Advisors to the third sector spoke very highly of the Code and felt it was a very useful and effective aid for Boards (and executive teams) making clear what good practice looks like for individuals and the Board as a collective.

However, feedback from advisors highlighted that in their opinion, the Code was not well known of within the third sector in Scotland. It was commonly reported that organisations became aware of the Code via an external advisor signposting to it as a result of an intervention or introducing it through externally facilitated Board training sessions.

The general lack of awareness could also be supported by the relatively low number of survey respondents (55) despite continuous promotion by major third sector stakeholders including OSCR, ACOSVO, SCVO, Social Enterprise Scotland and the TSI network. It is less likely for organisations to engage in a consultation when they have no prior knowledge or experience in the subject matter, despite the consultation being open for them to do so.

Timing of use

The review has evidenced that the Code has led to positive changes within the sector, and that it is being used in a variety of different ways for example, inclusion in Board recruitment packs, forming part of Board inductions and its use in Board development days.

However, the review has found that the Code is often being highlighted to organisations when they hit a bump in the road. In this case it is used as a tool to help the Board to self-evaluate practice and identify actions needed after an event that has placed the organisation at risk.

There is an opportunity for those involved in supporting improved governance in the sector to promote the Code at differing stages in an organisation's lifecycle. This could better support organisations to use the Code as a guide that could assist them to mitigate future risks.

The organisational infrastructure supporting governance in Scotland's third sector could, by working together at a national and local level, increase the awareness of the Code before they encounter difficulties. For example, the following situations could trigger the Code being highlighted to organisations:

- Registering a new charity with OSCR
- Making a change to a charity that requires OSCR consent
- Joining a membership organisation such as a Third Sector Interface, ACOSVO, Social Enterprise Scotland and SCVO
- Attendance on training or seeking advice relating to governance delivered by a publicly funded third sector body

By working more closely with organisations at a national and local level, the Third Sector Governance Forum would reduce the risk of duplication (new tools being funded or developed due to lack of awareness) across the sector, strengthen the thinking, marketing and communications across the sector putting the focus on a single tool that supports all forms of third sector organisation.

Recommendation 1:   Engage with national and local governance organisations to identify opportunities to work in partnership to promote or signpost to the Code at difference stages in the organisational lifecycle.

Connectivity and functionality

At present the Code exists as a PDF document that can be downloaded but it is not interactive. Similarly, the Good Governance Check-up cannot be downloaded and is not interactive. The result is that neither of the tools support Code and Check-up users to further explore a topic easily and more fully.

The survey, individual consultations and focus groups all raised the need to make the Code more interactive with many quoting that there was a need to 'bring the Code to life' with case studies, videos or illustrations on the website to help Board members understand how organisations have implemented aspects of the Code, ways that they use it and how it has helped them address common challenges.

Interviewees and focus groups highlighted that even if organisations intend to use the Code, people don't always know what is available and where to look to help them improve their practice but that there is a wealth of material, resources, templates and training available for the sector.

The landscape can appear cluttered and/or disconnected and the Code (and supporting Check-up) presents an opportunity to be a central place that enables knowledge and understanding on key areas of importance by improving its digital functionality.

Recommendation 2: Improve the digital functionality of the Code (and the Good Governance Check-up as appropriate) enabling Board members to access educational resources, templates and training relating to key topics contained within the Code.

Recommendation 3: Improve the interactivity of the Code principles using multimedia content to make topics more engaging and easier to understand.

Accessibility and inclusivity

The consultation highlighted the need for the Code to be made more accessible and therefore more inclusive. The survey results indicated that users would like to see the Code available in a variety of formats as shown below. The graph shows the distribution of 113 responses from 55 respondents.
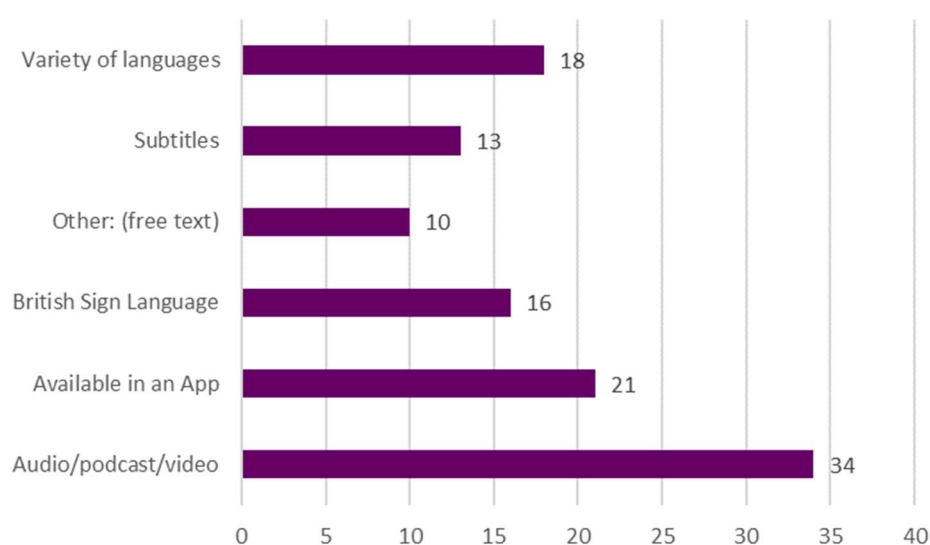
Recommendation 4: Improve the accessibility of the Code through adaptations and alternative formats.

Thematic areas for improvement – public survey

The following section details the top five areas for improvement within the Code as highlighted by the survey in ranked order:

1. Risk Management
2. Equality Diversity and Inclusion
3. Staff and board relations
4. Climate change
5. Accountability

Managing risk and identifying opportunities

'Risk management' was the top ranked area within the survey that respondents would like to see strengthened within the Code.

The Code currently makes a single reference to managing risk within the action statements under the Control principle. It is less obvious in comparison to how it is positioned in the Codes for England and Wales and in Northern Ireland and could potentially be missed due to it featuring in the action statements only. England and Wales and Northern Ireland position risk in the titles and supporting statements within their Code strengthening the importance of risk management.

Risk within the Code should be strengthened to make clearer the need to have mechanisms that enable the identification, management and reporting of risks that may prevent an organisation from delivering its purpose. In addition, they should analyse how changes in the operating environments may affect their sustainability and their beneficiaries. Aspects of this may be better suited under 'Organisational Purpose' and then further supported by mechanisms that can be detailed under 'Control' as this is ultimately why risks require to be controlled.

Importantly, the review highlighted that Code users should be encouraged to consider potential opportunities as a result of changes in their operating environment in order to innovate and improve organisational sustainability thus sustaining their impact.

Recommendation 5:   Strengthen the need to analyse the external environment in order to identify, manage and report on risks and consider future opportunities to better deliver the purpose of the organisation and sustain impact for beneficiaries.

Recommendation 6:   Include managing risk within the title and summary statement for Control and consider the inclusion of aspects of risk within Organisational Purpose.

Equality Diversity and Inclusion (EDI)

Presently, the Code talks about 'Equality and Diversity' and the Forum should consider changing this to 'Equality Diversity and Inclusion' to better reflect the aim of creating an environment on Boards where everyone feels welcome and valued.

During the consultation process with third sector advisors, the majority of interviewees felt that the approach to embed EDI throughout the Code should be maintained and not separated out into its own principle (as seen in England and Wales). Common concerns included the ability for organisations to view EDI related matters as separate and that EDI plays a critical role in all five of the principles.

The survey did not ask a question regarding this specific type of change and therefore it is recommended that further robust consultation with the sector would be needed prior to making a change of this nature.

The survey did however indicate that EDI required to be strengthened within the current Code which mirrored the discussions with advisors to the third sector. The Code currently contains an overarching Equality and Diversity statement setting out that diversity is essential for Boards to be effective and informed in order to make better decisions. This statement also reminds Boards that this extends to diversity of thinking and experience as well as the protected characteristics (as defined by the Equality Act 2010).

Action statements for equality and diversity appear within the Leadership principle '*promoting equality and diversity through our* organisation' and again under the Board Behaviour principle '*making sure our organisation promotes equality and diversity and incorporates ethical standards in the policies and practices and culture of our organisation*'.

The Good Governance Check-up further supports EDI practice outlining that Boards should:

- *Have an Equal Opportunities policy and action plan to promote equality and diversity on the Board and throughout the organisation*
- *Ensure the board, staff and volunteers take part in diversity training and understand their responsibilities in this area; and*
- *Ensure that services and information are accessible to all*

EDI was ranked second in terms of the areas that required to be strengthened within the Code. It is unclear from the consultation if the supporting guidance in the Good Governance Check-up is fully meeting the needs of the sector as this was out-with the scope of the review, but it was clear during the consultation that the Code requires EDI related statements to be strengthened throughout the introductory paragraph and throughout all five principles.

The Third Sector Human Rights and Equalities project (THRE), funded by the Scottish Government via Inspiring Scotland, were engaged in the consultation. THRE are currently developing training and guidance for third sector organisations in Scotland in relation to taking a human rights and equalities approach to their organisational development and delivery. There is a workstream relating specifically to organisational governance and so this presents an opportunity to explore partnership working to strengthen EDI in the governance setting across Scotland.

Examples of practice:

o A recent publication [Governance: a guide for international NGOs](1) outlines an example approach and helpful self-evaluation question set to assist Boards when considering their EDI practices.
o The [Charity Governance Code for England and Wales](1) displays a robust list of recommended practices which could be reviewed as part of any future Good Governance Check-up refresh.

Recommendation 7:   Retitle the overarching Equality and Diversity section as 'Equality, Diversity and Inclusion'

Recommendation 8:   Establish a short life working group to strengthen the language and detail surrounding EDI in the introductory paragraph and throughout the five principles of the Code.

Recommendation 9:   Review the Good Governance Check-up alongside any EDI updates made within the Code to better support Boards with action statements that demonstrate good practice.

Recommendation 10:   For the Third Sector Governance Forum to engage with THRE to stay abreast of opportunities to collaborate or work in partnership to promote the use the Code across the sector in relation to EDI related governance training and resources.

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[1] Buzzacott Bond, 2022

Staff and Board relations

Staff and board relations were highlighted by the public survey as an area that required strengthening within the Code. Clarity around roles and responsibilities and how these differ between Board and staff members was frequently raised.

Delegation, whilst retaining accountability, is referred to within the Leadership principle. In addition, the Control principle highlights again that there should be clarity around how and when delegations are made to staff, volunteers or committees and how these are overseen. The Good Governance Check-up then provides further, more detailed guidance that relates to feedback raised by respondents in this regard. It is unclear if the Good Governance Check-up would better support organisations in this area and so changes have not been reflected in the recommendations within this report.

Climate change

The Code is designed to be a framework for best practice and should be able to withstand a degree of change in the external environment. The Scottish Government declaring a climate emergency in May 2019, however, has heightened the need for all organisations to consider climate change and its potential impacts.

In terms of financial risk management, during the application process, some funders and investors are beginning to ask if applicants have considered how its operations will negatively affect the environment[2] and what they have done to mitigate this.

Climate change nor the environment is referenced in any way within the current Code. The Good Governance Check-up does ask organisations to recognise their environmental responsibilities however recommended practice is extremely limited in this regard.

The rationale for inclusion within the Code, as a tool for best practice, should be framed as a risk to the delivery of sustainable positive change and organisational purpose. Third sector organisations (environmental and non) should consider the risk of the impacts of climate change on their organisation, those they serve and therefore ultimately consider their ability to deliver their purpose in a sustainable way. Considering this intersection of the impact of climate change and their mission may allow organisations to better support those who face disadvantage as a result and innovate to create a fairer more sustainable future.

There is an opportunity to build in climate change to the Code and/or the Good Governance Check-up in order to raise the awareness of its importance in terms of organisational sustainability offering guidance on what good practice looks like. The Code should be considerate however of overly burdensome guidance in relation to practices relating to the environmental impact of organisations and consider highlight the importance of the intersection of climate change and risks to the delivery of sustainable change in line with their organisational purpose or mission.

Recommendation 11: The Third Sector Governance Forum consider the addition of climate change within the Code in and associated guidance within the Good Governance Check-up.

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[2] Foundation Scotland, William Grant Foundation, and Social Investment Scotland took part in the consultation and confirmed that they are interested in the environmental awareness of organisations that are seeking support.

Accountability

There was consistent feedback throughout the review of the need for Board members to be clear about their role and their responsibilities, including legal duties when they first join an organisation.

This features in the Code under the Leadership principle with further detail contained in the Good Governance Check-up highlighting varying legal responsibilities, singling out the Charities and Trustee Investment Act (Scotland) 2005 and the Companies Act 2006 where relevant.

'Legal duties' however is a broad area and if the document were more interactive (as detailed earlier in this report), it could assist Board members to educate themselves, if they are unaware or unsure, by linking them through to further information or resources of relevance from a relevant body e.g., OSCR.

It is unclear if those seeking improvements in 'Accountability' have accessed the Good Governance Check-up and if it would better support organisations in this area therefore changes have not been reflected in the recommendations within this report.

Additional recommendations

The following recommendations have been derived from the survey responses, consultation with third sector advisors and the Code comparison exercise. They are not listed in order of importance.

Safeguarding

Safeguarding is only referenced once in the Code as an example of policies and procedures that the Board should be maintaining and regularly reviewing. Although it did not come through strongly in the survey, the comparison report highlighted good practice within the refreshed Charity Governance Code for England and Wales within the Integrity principle.

Recommendation 12:   Consider the addition of a safeguarding statement to make this more explicit within the Code.

Organisational viability and sustainability

As detailed in the comparison report within the review, the current Code does not touch on sustaining the organisation's purpose and impact in different forms nor does it touch on what Boards should consider if their viability is at risk.

Recommendation 13:   Consider the inclusion of a statement relating to how partnerships, mergers or acquisitions may enable the organisation's purpose to be delivered more sustainably and that dissolution could be considered if other organisations were fulfilling similar purposes more effectively and/or if the organisation's viability is uncertain.

Managing conflicts

Although managing conflict is detailed in the Good Governance Check-up, the Code details 'recognising and acknowledging' conflicts but does not mention managing conflicts to ensure independent decision making. The need to address any power imbalance is noted in the comparison report and was raised by advisors but was not raised through the survey. This also could be worth considering if making changes to the Board Behaviour principle.

Recommendation 14:   Consider the inclusion of the need to have a mechanism to manage conflicts of interest to ensure independent decision making.

Recommendation 15: Consider the inclusion of a statement relating to addressing any power imbalance on the Board within the Board Behaviour principle.

Conclusion

The Scottish Governance Code for the Third Sector is already making a positive difference within the sector. This process has indicated that as a minimum, awareness of the Code must be raised with organisations of all sizes and types in order for it to continue to create positive and lasting change within the sector.

We would like to once again thank everyone who gave their time to contribute to this review to improve third sector governance in Scotland.

Appendix 1   Summary of recommendations

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