

Charity AGMs and Members' Meetings during Coronavirus

Amongst the huge range of issues that charities are dealing with during the coronavirus crisis, the one that has led to the most queries under the *Kubernesis Charity Advice Service* has been: "What do we do about our charity AGM given the current restrictions?"

This Bulletin seeks to offer some answers to that question – but we have found that there are several different issues people are asking within this – such as:

- Q1: Do we need to hold an AGM? Or can the decisions just be taken at a normal trustees meeting?
- Q2: If an AGM is needed, what's the timescale – can we go beyond the time limits in our Constitution?
- Q3: If we delay the AGM what's the impact on filing our accounts with our charity regulator (Charity Commission, OSCR or CCNI) or with Companies House?
- Q4: If we go ahead and hold an AGM during the current restrictions, what do we do in practice? Is an online meeting allowed? What about members who may not have the technology?
- Q5: If the meeting is held online, what do we do about decisions that need a vote?

It's also worth saying that the recent **Corporate Insolvency and Governance Act 2020** has altered some of the rules on these issues – with the aim of making things easier. It became law on 25 June 2020 and most of the provisions apply UK-wide. However, it doesn't by any means solve all the issues and some of the provisions are relatively short term: for an overview from the UK Government's BEIS Department see: www.gov.uk/government/publications/corporate-insolvency-and-governance-bill-2020-factsheets

First Principles: Trustees' Meetings versus AGMs and EGMs

The first step in getting on top of these issues is to make sure what sort of meeting you are considering. Most charities with any type of *membership* allow for two types of meetings:

- **Meetings of the charity trustees.** These may be called **Trustees' Meetings** or **Board Meetings**. (Some charities use other terms such as 'Committee Meeting' or 'Directors' Meeting' or 'Church Council Meeting' – but if you use other terms make sure all those taking part realise they are acting as charity trustees.
The charity trustees are responsible for the day to day governance of the charity: setting strategy, approving expenditure, agreeing work that can be delegated to staff, approval of the annual accounts.
- **Meetings open to all members of the charity.** These are generally called: **General Meetings**, or **Members' Meetings**. Most charities require at least one members' meeting per year – an *Annual General Meeting* (AGM) and when other members' meetings are held the meeting may be called an *Extraordinary General Meeting* (EGM) or a *Special General Meeting* (SGM).
- In most charities a meeting of the wider members is only needed on major issues such as the election of trustees and agreeing constitutional changes. The charity's annual report and accounts should be *presented* to the wider membership – but it is a report of the trustees so *it's not for the members to approve*. There's generally no need for the members to vote on the trustees' report and accounts at a general meeting, but if they wish to do so they should simply vote to *receive* the report and accounts.

So here is the answer to Q3: the Annual Report and Accounts (AR&A) are *approved by the trustees*: so in the vast majority of charities there is *no need to wait for an AGM* before filing the accounts with the charity regulators or with Companies House. We are concerned that some recent advice from official bodies has caused confusion on this – even if your AGM is delayed due to the crisis, that's not a reason to delay filing the AR&A. The AR&A can be filed as soon as the report and accounts have been signed by the trustees and by the auditor/independent examiner (where needed).

Not all charities have a wider membership: check your governing document. In some cases the members and trustees are the same people – for example in a foundation CIO or in a charitable company where the members

and directors of the company are the same. In a charitable trust there is usually no formal membership beyond the trustees, although some trust deeds require a meeting open to all local inhabitants to elect trustees, so the effect is similar to a charity with a wide membership.

Meeting Practicalities: A Few Trustees or a Wide Membership?

Trustees meetings, with typically no more than six to twelve people, are not too difficult. We find most charities have found ways to hold board meetings at this time: many are meeting online (e.g. by Zoom or MS Teams or other online tools) or by telephone conference, or (as the lockdown has eased) holding socially distanced meetings in gardens where the numbers and geography permit that.

Even if your governing document doesn't explicitly allow for online meetings, we feel no one is going to complain if the alternative would be not to meet at all – though take care to avoid holding meetings using technology that is available to some trustees but not all (bear in mind any disability issues). It's also worth noting that in many cases the Corporate Insolvency and Governance Act 2020 gives an automatic right to hold meetings electronically (see below) even in the absence of a power in the governing document.

But, as many people have found during the lockdown period, online meetings need good agendas, good chairing, and good minutes as for conventional meetings. Think about papers for the meeting: not many people have enough devices to look at complex documents such as draft accounts online at the same time as looking at their fellow trustees on Zoom! So there may be a greater need for trustees to have meeting papers in printed form (using the postal service can make electronic meetings more effective!)

If it really isn't possible to hold a trustees meeting, even online, most charity governing documents allow the trustees to take written decisions (e.g. by email) if they are unanimous – so *all* trustees must agree before a decision by email is valid. But don't try to use email for delicate issues that need debate: in some cases it is vital for trustees to hear each others' views before reaching a decision. And if you do take decisions by email, make sure they are recorded in the trustees' minutes in the same way as other decisions.

Must the members decide? Do we need a General Meeting? Look at the Constitution!

Many of the answers to the questions above will be clear in your charity's governing document – articles, trust deed, constitution, rules (for convenience we use the term 'Constitution' in this Bulletin to refer to all types of governing documents). At all times the Constitution is an essential document in seeing what is required for meetings: even more so at a time of crisis.

For bodies with corporate status – companies, and charitable incorporated organisations (CIOs and SCIOs) and community benefits societies (CBSs) the distinctions are specific in law between what can be decided by the trustees and what is for members, and these issues will almost always be reflected in the Constitution. So, this is the answer to Q1 – just look at the Constitution!

But where the governing document clearly states that certain decisions are to be taken by a general meeting – an AGM or EGM – there is no alternative to holding a members meeting, unless there are provisions allowing members to take decisions by a written resolution or postal vote. However, if you have a wide membership this may not help, especially as members' resolutions often have to be unanimous – if you have 207 members you will never get all 207 to respond to say they are in favour. (Some companies allow 75% of members to agree to a special resolution such as a constitutional change – though this does not apply to CIOs and SCIOs – but even so in this example you would need 156 positive responses which is not easily achieved!)

The advantage of holding a meeting (rather than a written vote) is that even constitutional decisions generally only need a *75% majority of the members present and voting* – so long as a quorum is present. So, even if you have 207 members, if the quorum is only 20, you could get the resolution passed if 20 take part in the meeting and 15 vote in favour – and in most cases an electronic meeting will be sufficient (see below). (In Scotland a two thirds majority of members present at a quorate meeting is sufficient to amend the Constitution of a SCIO.)

So – how do you hold an AGM or EGM for a charity with 207 (or more) members? Even with 30 members it may be a challenge. That's the focus of the rest of this Bulletin.

Holding General Meetings During the Crisis – Timescales and Venues

If you are clear that a general meeting of members is needed – an AGM or EGM – when must it be held?

There is usually no time pressure for EGMs – except in rare cases such as members using their rights to insist an EGM is called, most EGMs are only convened when a specific decision is needed that requires approval by the membership as a whole – often a constitutional change.

But most charity governing documents have time limits for AGMs – for example:

- *An AGM must be held in the month of May each year OR*
- *The first AGM must be held not later than and subsequent AGMs must be held at intervals of not more than 15 months OR*
- *An AGM must be held at least once in each calendar year.*

So – in the first place, work out the limits – that's the answer to Q2. Just because you normally hold an AGM in October, you may have more flexibility than you think. In the case of a charity with a 15 month limit between AGMs, if the last AGM was on 15 October 2019, the next AGM could take place on any date up to 15 January 2021. Unless there is a second wave of lockdown measures, it seems likely that meetings of 20+ people will be permitted by then in all parts of the UK, provided social distancing is observed.

The Corporate Insolvency and Governance Act 2020 will also help in some cases by allowing more time. The Act states (section 37, schedule 14, para 5) that if a company, a CIO, a SCIO or a CBS was due to have a meeting on or after 26 March 2020 but before 30 September 2020 the deadline is automatically extended to 30 September 2020. So, for example, if the timescale under your Constitution would have required an AGM not later than 31 July 2020 there is an automatic extension up to 30 September 2020. (This may not help that much, but the Act says that the 30 Sept 2020 deadline could be extended further, by regulations, up to 5 April 2021 – although no regulations of that kind have been made so far.)

If an AGM is extended under these rules, trustees who were due to step down at the original AGM date will remain in office until the AGM is finally held.

Nevertheless if a physical meeting is to be held at some point, most charities will need larger venues than in the past – if you anticipate that 40 people will want to attend your AGM, you probably need a venue that could accommodate 120 under normal circumstances. In such cases we would recommend a pre-booking arrangement so that people do not travel to an AGM and find that the capacity of the venue has been reached and hence to some being excluded. (Your AGM venue doesn't have to be large enough to accommodate the entire membership just in case they all come. If you have 5000 members but based on past experience only 30 ever come to the AGM, a venue that can accommodate 30-40 people – with distancing – is probably sufficient. But of course you may need more space if votes are to be held on controversial changes!)

Holding General Meetings Electronically

For many charities the most practical way forward will *not* be to seek to postpone AGMs for months but rather to hold them electronically.

During the crisis, many charities which had never held a video conference have become used to holding meetings on Zoom or other online conferencing platforms (see below for some specific tips with Zoom). Such meetings can potentially be more inclusive than holding a physical meeting, as they may make it possible for those who are shielding to take part, and even those not shielding may be reluctant to make journeys on public transport to a large venue to attend a charity meeting. However, it is also important to consider whether significant numbers would be excluded due to the IT requirements – there is no perfect solution. For a local charity with use of a reasonable sized well-ventilated venue (e.g. a church) and where most members live nearby, a physical meeting with participants well spaced may be the most inclusive approach. But for a national charity with members widely separated, the advantages of meeting online are self-evident.

This brings us to Q4 – is an online meeting allowed? In almost all cases the answer is YES, for the following reasons.

- Some charity governing documents already include provisions for electronic meetings (although check the Constitution carefully – often such provisions only apply to trustees meetings rather than general meetings).
- In the case of companies, CIOs, SCIOs and CBSs, where an AGM was due to be held by 30 September 2020, the Corporate Insolvency and Governance Act 2020 (section 37, schedule 14, para 3) introduces huge flexibility in the normal rules for meetings. In particular, regardless of what is said in the charity's governing document, the Act says:
 - ▶ The meeting does not have to be held in a particular place (and the participants do not have to be physically together)
 - ▶ The meeting can be held by electronic means (including electronic voting)
 - ▶ Members do not have a right to attend in person or to participate in any way other than voting (so in the worst case, so long as members can vote, a general meeting is still legal even if there is no means at all for them to take part in discussions).

The deadline of 30 September 2020 can be extended by regulations, but due to the Parliamentary recess, we may not know until well into September whether or not the timescale will be extended. So, charities that want to be *certain* of using these provisions may want to schedule 2020 AGMs no later than 30 Sept. (In the case of SCIOs, any extension of the deadline would be through regulations made by Scottish Ministers.)

- In the case of other types of charities – for example unincorporated associations – there is no *statutory* provision to switch to holding an AGM online if there is no specific provision in the charity's Constitution. But in law, the Constitution of an unincorporated association is a contract between the members, and it seems highly unlikely that any member of a charity would want to take formal action against the trustees or other members on the basis that they had lost out because a meeting was held electronically in the current circumstances. Making such an argument would be extremely difficult (i) if a physical meeting would be illegal and/or (ii) if it is clear that an electronic meeting would be more inclusive than a physical meeting.

General Meetings on Zoom – Some Practical Notes

Many charities have found the Zoom online platform (www.zoom.us) is very effective for charity meetings online. Here are some suggestions based on our own experience and discussions with other sector specialists.

Principles. Zoom isn't just convenient for small meetings of trustees: anyone with a paid Zoom account can host meetings of up to 100 people. So, for many charities, it is also suitable for holding general meetings of members. Larger meetings are also possible with more sophisticated Zoom accounts – but this note focuses on meetings of up to 100. (Even if you have 500 members not all will login in, and if some of your members may be couples using a single Zoom connection, 100 logins may actually allow 120+ members to take part.)

To use Zoom fully each participant needs an internet-enabled device with a screen, webcam and microphone, but most laptops and tablets have those. For those with desktop PCs, webcam with microphone can be bought at relatively low cost to plug into a USB port. Even for those whose internet connection is poor, it is still normally possible to take part in a Zoom conference and hear them speak (though images of that person may be jumpy). It is also possible to connect from a smartphone through a Zoom app (although watch the costs of data used if no wifi is available). Even for those with no internet and no smartphone it is possible to *dial in* from a normal landline phone and take part in a Zoom conference on an audio-basis (make sure the dial in details are clearly explained when sending out details of a meeting). So, very few people are completely excluded.

Zoom conference etiquette. Most organisations using Zoom find that there are certain issues of behaviour – as in conventional meetings – which make a massive difference. For large meetings with more than around 10 participants it is generally best to mute all participants on entry, and only unmute each person when they are speaking (you can either allow people to unmute themselves when they wish to speak, or leave it under the control of the Zoom host. However, you need a means for people to signal if they wish to speak – with up to 25 participants the chair can usually see everyone if you select 'Gallery View' – but for larger meetings it may be better to allow people to use the 'Reactions' or the 'Chat' feature if they wish to speak. (But the Chat feature can be disabled if it would be distracting – we suggest that anyone wishing to make a point on the business of the meeting should be invited to speak rather than just contributing comments through Chat.) Try to select someone to be the Zoom Host who is *not* also acting as Chair or taking the minutes!

Voting. A key reason for holding AGMs and EGMs is to allow members of the charity to vote on specific resolutions. The voting mechanism needs planning carefully in advance.

If there are no more than 25 participants and no votes being taken where anyone would want to ask for a secret ballot (sometimes called a poll) then taking votes by a show of hands may be OK – if *all* participants will have video enabled (but this does not work if some are just dialling on for an audio call).

If everyone has a full Zoom connection, the Polling feature in Zoom can be an effective means of taking votes, but the host needs to set up the questions in advance. Zoom allows you to put several questions in a single Poll but this is best avoided for formal meetings or they all come up at once. Make each question a separate poll.

Once the poll appears on screen, most people will vote quite quickly, but you obviously cannot wait for ever for those who are slow to respond (some may even have gone away from their screens). So in a poll where the votes need to be counted it needs the Chair to give a time limit such as "please vote in the next 60 seconds" - then at that point the Zoom host should click "Show results" – and the poll is then closed.

Take care to save the results of each poll – otherwise you have no record of the voting figures unless the meeting is recorded. It's probably simplest to ensure the person taking the minutes makes a note of the voting figures while they are on screen but Zoom has a feature to allowing polling results to be downloaded (this will show how each person voted unless the poll was set up to be anonymous).

Who can vote through Zoom. Bear in mind that anyone who is purely on a telephone connection won't be able to vote this way, so you may need to make other arrangements for them to vote. Also if two or more members use a single Zoom connection they will only get one vote in a Zoom poll. And the Zoom host cannot actually vote (nor can anyone who is appointed as a co-host) – so it may be best to arrange that the Zoom host is someone who is *not* a voting member of the charity. If that's not possible, the person who is hosting might need a second device in order to make a second connection to Zoom as a normal participant.

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