Making decisions: Part One

Rationale: Trustees must only make decisions that are consistent with their charity’s objects and powers. These powers come from the law and the charity’s governing document. Some powers may have conditions or restrictions attached, or specify procedures that the charity must follow. Trustees must be careful to abide by any conditions or procedures that apply to a power. Trustees must not use powers for purposes for which they weren’t intended, for example, to get around another rule in their governing document. To deliberately misuse a power would be a breach of their duty to act in good faith. In some circumstances, the trustees may want to take advice on their responsibilities.

Trustees must take decisions in a way that meets the requirements of charity law and their governing document. This includes:

- Following any specific requirements in the governing document about making decisions and conducting meetings taking decisions jointly (collectively)
- Making sure all trustees have the opportunity to participate if using a power to take decisions outside of a meeting
- Strictly following the provisions of this power if delegating to staff or sub-committees having clear and robust reporting procedures and lines of accountability in place recording decisions properly, so there is no doubt about what was decided and why

Depending on the circumstances, relevant factors could include, for example: Is the proposed decision in the best interests of the charity? (This is always likely to be a key consideration).

- If the proposed decision affects the charity's activities, is it consistent with the charity's objects?
- Have the trustees had regard to the Commission’s public benefit guidance?
- Do the trustees have all the powers they need to make and then carry out the decision? Are there any alternatives to consider?
- Do the trustees have sufficient professional or specialist advice to enable them to make an informed decision?
- If they propose not to follow it in any regard, why is it in the best interests of the charity not to do so?
- What are the risks/benefits of the proposed decision?
- How could this affect the charity's reputation?
- Are there any steps the charity should take to manage or mitigate reputational risks?
- Will the decision affect the future ability of the charity to further its purpose effectively?
- If it will have a negative impact, can it still be clearly justified as being in the charity's interests?
- Does the charity have sufficient funds to carry through the decision and continue past implementation?
- If the trustees have consulted the charity's stakeholders, what have they learned from that consultation?

How much weight should they give to stakeholders' views? If the trustees commit to the proposed decision, will there be any opportunity to withdraw at a later stage without incurring costs or penalties which may be unaffordable?