



The Royal British Legion Review of Governing Documents Summary of Advice

January 2019

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The Royal British Legion – Review of governing documents

We have been advising The Royal British Legion (the '**Legion**') on a review of its governing documents – the Royal Charter, the Rules and the Governing Regulations – for the past two years. This includes an initial note of advice prepared in November 2016, as well as several meetings, calls and emails to discuss specific drafting. This note seeks to capture our advice which underpins the changes which have been made in the latest draft of the Legion's governing documents as at January 2019.

Section 1 - Principal objectives of the review

The Charity Governance Code is a well-respected piece of guidance for Trustees which has been endorsed by the Charity Commission. Our review of the Legion's current governing documents was informed by the principles of the recently updated Charity Governance Code to ensure that the Legion is looking to follow best governance practice. A charity's governing document underpins the Trustees' ability to provide good governance and therefore Trustees should ensure that their governing document remains fit for purpose, the Trustees have the powers that they need to achieve the charity's purposes and manage the charity's resources.

In light of this, we understand that the Legion's objectives in this exercise are as follows:

- to make sure that the Legion's governing documents are fit for purpose and enable the Legion to achieve its charitable objectives effectively;
- to streamline the Legion's governing documents to make them more user-friendly and in line with Charity Commission guidance and best practice;
- to ensure that the Legion's governing documents are flexible and allow the Legion to adapt to changing circumstances in the interests of its beneficiaries; and
- to correct any anomalies, inconsistencies or instances of uncertainty in the current drafting of the governing documents.

The Legion last carried out a substantial rewrite of its governing documents in 2003; there have been substantial changes to charity law and governance practice in the intervening 15 years and it is appropriate and right for the Legion to carry out a full review in consultation with the membership.

Section 2 – Areas for change

We highlighted a number of areas where the Legion could consider amending or revising the Legion's governing documents:

Streamline the governing documents

The Legion streamlines its governing documents so that it has just two core constitutional documents: the Royal Charter (which the Legion calls the Articles) and which can be amended if the Trustees, members and Privy Council agree and the Rules which can be amended by the Trustees (currently amended by the Trustees and the members) – bearing in mind that, as a matter of charity law, the Royal Charter takes precedence and the Rules can never be inconsistent with the Royal Charter. These would sit alongside

existing documents, such as the Membership Handbook, which can be updated and revised to reflect provisions of the Governing Regulations which have not been included in the Royal Charter or Rules.

Currently, the Legion's governance rules are spread across a number of documents. This makes it difficult to easily and quickly identify all rules dealing with a single topic. Redistributing provisions across the Royal Charter and the Rules will make the documents more user-friendly.

The Legion's core values and principles are enshrined in the Royal Charter. The members, as key stakeholders in the Legion, should have control over the fundamental issues that go to the heart of what the organisation does, whilst it is the Trustees who are responsible for the management and control of the charity and therefore the administration of the charity. Where members only meet once a year, there is a risk that any proposals to amend the governing documents to introduce much needed changes will take too long to the detriment of the charity and its beneficiaries. Additional safeguards are in place as the Rules (and any other documents) cannot conflict with the Royal Charter.

The members would also continue to have considerable influence in other aspects of the Legion's governance by continuing to elect a majority of the Trustees. Through this they are able to exercise indirect control over the amendment of other provisions of the Rules, such as eligibility of members, composition of Annual Conferences and determination of members' fees.

Election of National Chairman and Vice-Chairman

The Charity Governance Code emphasises the important role of the Chair and, at present, the National Chairman and Vice-Chairman are elected directly by the members. Our initial note of advice noted that there can be disadvantages with the current situation as, depending on the procedures in place, there is no guarantee that the individual appointed will have the requisite skills and experience for such an important role and we made a number of suggestions as to how this risk could be mitigated. Recognising the importance of the issue and that any change would be significant, we understand that the Legion's Board of Trustees will consult further with members.

The Legion's objects

Charities should regularly consider whether their objects are fit for purpose. We recommended reviewing the Legion's objects and updating the wording where appropriate, in particular, the definitions of Beneficiaries and Dependents which are fundamental to the Legion's activities.

Use of income and capital

A founding principle of charity law is that a charity's assets must be used **exclusively** to further the charitable purposes. This means that a charity's members have no rights to the charity's assets and Trustees cannot benefit personally (ie financially) from the charity. All charities set out these restrictions on how the charity's assets can be used. The wording in the current Royal Charter is very out of date and inadequate in giving a clear statement on allowable Trustee benefits. We recommended that it is updated to reflect modern standard wording.

Composition of the Trustee Board

As part of any governance review, we recommend that the Trustees consider the composition and size of the Trustee Board. The Charity Governance Code notes that good governance is evidenced by a board which *"has, and regularly considers, the mix of skills, knowledge and experience it needs to govern, lead and deliver the charity's purposes effectively"* and suggests that *"a board of at least five but no more than twelve Trustees is typically considered good practice."*

The Legion currently has 16 Trustees, the majority of whom are elected. Having board members elected from and by the members, allows the Trustees to take direct account of members' views. However, there is a need to balance the tension between having a Board which represents the members' interests and one which has the right skills and experience. We made some suggestions about how the Legion could ensure that Trustees elected by members brought skills to the Board without changing the principle that the majority of the Board are elected, such as pre-screening of candidates before election by members. Any such changes would be significant and the Legion needs a clear mandate from, and support of, the Membership. We understand that the Trustees will consult further with members on this.

Additional provisions

As well as a number of consequential amendments, we suggested that the Legion make the following amendments and these are included in the draft governing documents:

- Include a modern restatement of the current powers which the charity can exercise through its Trustees to achieve its charitable purposes.
- Include modern provisions dealing with the management of Trustee conflicts of interest which reflect Charity Commission recommended practice.
- Specify in more detail how the charity's assets can be used in the extremely unlikely situation where the Legion is dissolved.
- Streamline the finance provisions in the Royal Charter and Rules.

We had additionally suggested that the Legion considered the following points, but the Trustee Board were happy with the current provision:

- Consider any amendments to Annual Conference, such as the ordinary business at meetings, process of identifying eligible branches, quorum and the possibility for proxy voting or virtual meetings.
- Consider any amendments to the composition of the Conference Committee.