

# East Birmingham Coalition for Impact Programme –Community Asset Support

**Workshop 2: Governance models and trading  
arms - 22<sup>nd</sup> January 2025**

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Funded by  
UK Government



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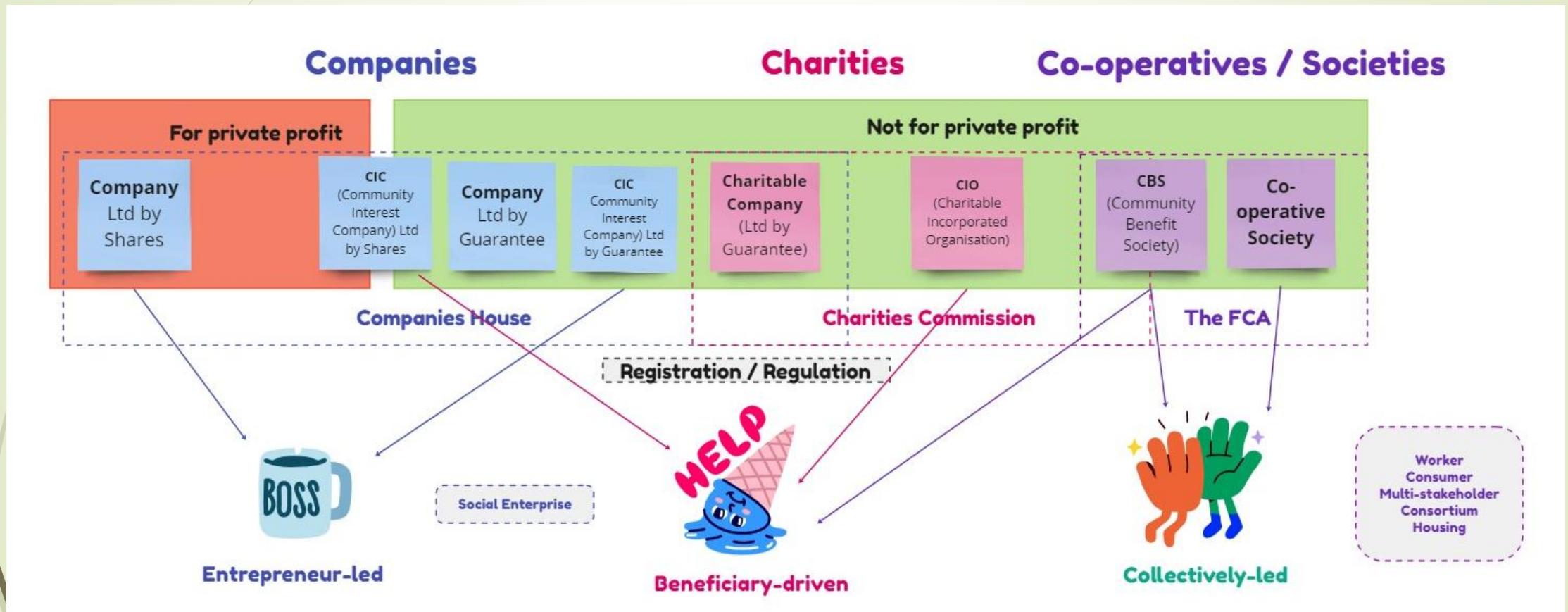


# What is Governance?

*“The systems and processes concerned with ensuring the overall direction, supervision and accountability of an organisation.”*

The key distinction to be made is between the governance of an organisation and the day-to-day running of it. For example, governance is not about paying wages or bills, but rather ensuring that there are effective systems in place to ensure that wages and bills are paid in a timely manner.

# Different types of legal structures



# Community Interest Companies (CIC)

## PROS

- ▶ Clear Social Purpose
- ▶ Asset Lock
- ▶ Flexibility
- ▶ Attracting Investment
- ▶ Brand Recognition
- ▶ No restrictions on trading or activities

## CONS

- ▶ Regulation
- ▶ Distribution and Dividend Caps
- ▶ Limited Privacy
- ▶ Conversion Challenges
- ▶ Less Recognition Than Charities
- ▶ No Tax Benefits

# Charities

## PROS

- ▶ Clear Social Purpose
- ▶ Brand Recognition
- ▶ Tax Exemptions
- ▶ Grant Funding

## CONS

- ▶ Regulation
- ▶ Payments to Trustees
- ▶ Restrictions on Trading
- ▶ Limited in Campaigning

# Charities and Trading

Charities may engage in certain types of trading. Any amount of trading is allowed in the following circumstances:

- ▶ **Trade is carried out directly to achieve a charity's objects** – For example, charging for admissions to galleries and museums, selling educational publications and so on. This is known as 'primary purpose trading'.
- ▶ **Trade is carried out mainly by the people who benefit from the charity** – For example, a restaurant run by students on a catering course.
- ▶ **Trade, while not primary purpose trading, is carried out to meet the main purpose of the charity** – For example, running a bar at a theatre only for people who watch a performance. This is known as 'ancillary trading'.



# Trading Subsidiary

A charity may wish to set up a trading subsidiary when it:

- ▶ Wants to carry out new activity that is non-charitable.
- ▶ Intends to undertake a new activity that may hold some risks to the charity.
- ▶ Regularly engages in non-primary purpose trade, meaning it would be advised to set up a non-charitable trading subsidiary company for this purpose.

Trading subsidiaries are either:

- ▶ Wholly-owned – Which means that the charity is the single member of the company and holds all of the voting rights.
- ▶ Partially-owned – Which means that the charity must hold at least 51% but less than 100% of the voting rights.



# What is a governing document?

A record of the governance arrangements of an organisation, typically detailing the purpose of the organisation and its relationship both to its members and to the outside world. The governing document will generally define why an organisation exists, what it intends to do and how it will do it.

- ▶ It is a public document available to funders and regulators
- ▶ It should also provide a resource to members of the organisation, facilitating smooth internal governance.



# What is in a governing document?

- ▶ The name of the organisation;
- ▶ The objects of the organisation;
- ▶ The powers of the organisation;
- ▶ The personal liability of the members;
- ▶ Membership of the organisation;
- ▶ The governing body;
- ▶ Meetings;
- ▶ Application of surplus;
- ▶ How the governing document can be amended or replaced; and
- ▶ Dissolution and the distribution of assets of the organisation.



# Restricted Objects

## **Charitable Organisation,**

All of its objects must be charitable in nature (i.e. relate directly to one or more of the 13 charitable purposes).

## **Community Interest Company,**

Define the community benefit that a community interest company must demonstrate. The community benefit of a community interest company is also detailed in its Community Interest Statement.



# The Governing Body

- ▶ The governing body is a group of people who are delegated by the membership of an organisation to undertake the strategic management of that organisation.
- ▶ The members of the governing body, by virtue of the fact that they act for the members, have additional duties in law over and above those of a member.
- ▶ Company – Directors
- ▶ Charity - Trustees

# Duties of Company Directors

The Companies Act 2006 codified the duties for company directors.

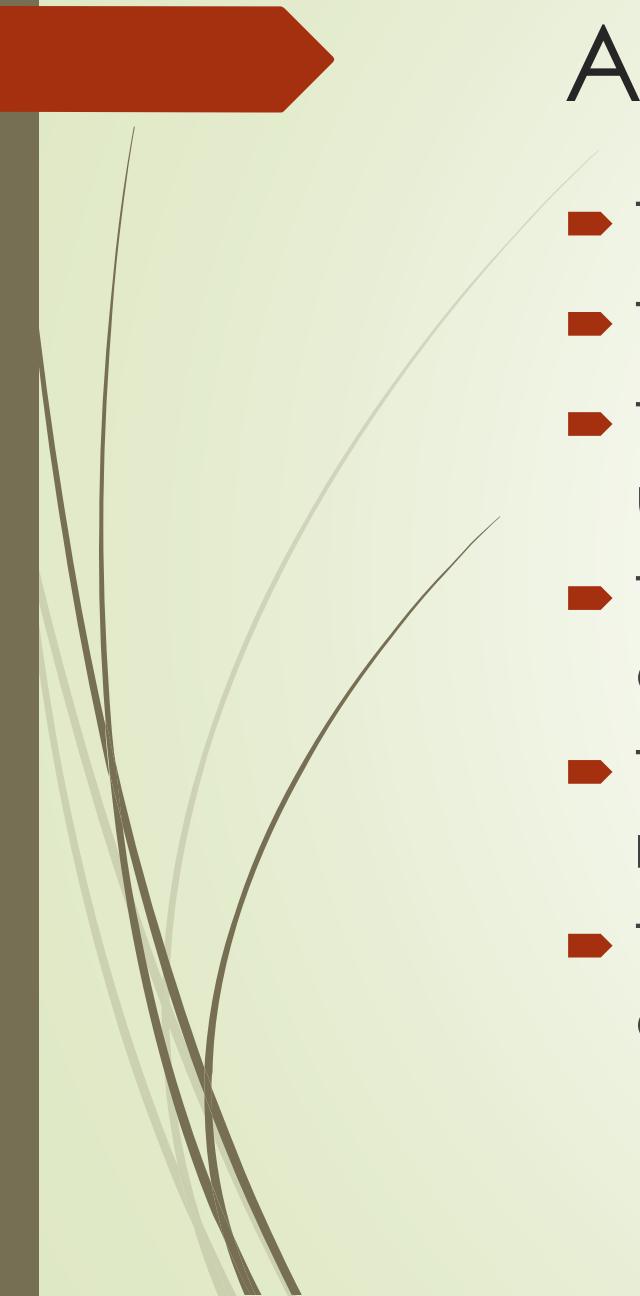
- ▶ Duty to act within powers;
- ▶ Duty to promote the success of the company;
- ▶ Duty to exercise independent judgement;
- ▶ Duty to exercise reasonable care, skill and diligence;
- ▶ Duty to avoid conflicts of interest;
- ▶ Duty not to accept benefits from third parties;
- ▶ Duty to declare interest in a proposed transaction or arrangement; and
- ▶ Duty to declare an interest in an existing transaction or arrangement.



# Duties of Trustees

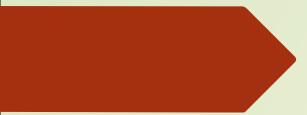
From Charity Commission website

- ▶ Comply with your charity's governing document and the law
- ▶ Act in your charity's best interests
- ▶ Manage your charity's resources responsibly
- ▶ Act with reasonable care and skill
- ▶ Ensure your charity is accountable



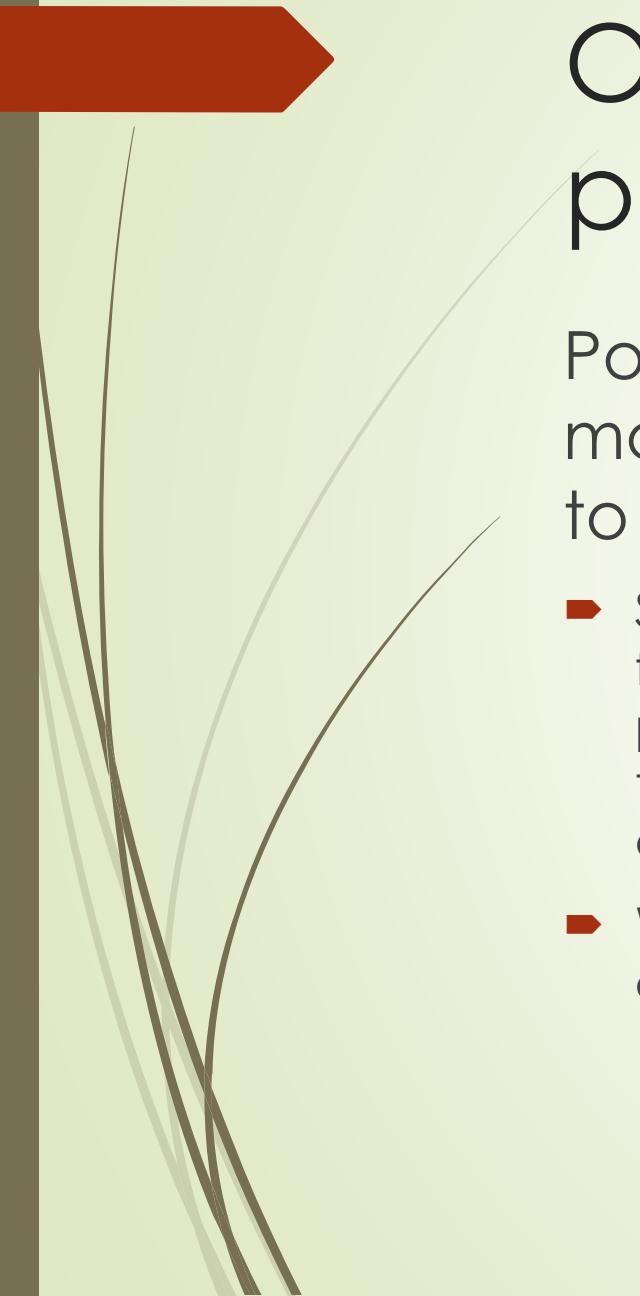
# Act in Good Faith/Best Interests

- ▶ The likely consequences of any decision in the long term;
- ▶ The interests of the organisation's employees;
- ▶ The need to foster the organisation's relationships with users, funders, suppliers, customers and others;
- ▶ The impact of the organisation's operations on the community and the environment;
- ▶ The desirability of the organisation maintaining a reputation for high standards of conduct; and
- ▶ The need to act fairly between members of the organisation.



# Legislation

- ▶ Companies Act 2006
- ▶ Charities Act 2022
- ▶ Financial Services and Markets Act 2000;
- ▶ The Health and Safety at Work Act 1974;
- ▶ Environment Protection Act 1999;
- ▶ Insolvency Act 1986;
- ▶ Company Directors Disqualification Act 1986;
- ▶ Corporate Manslaughter and Corporate Homicide Act 2007;
- ▶ Enterprise Act 2002
- ▶ And more .....



# Other documents, policies and procedures

Policies are a set of principles which guide decision-making, whereas procedures are a set of steps in order to accomplish something.

- ▶ Some procedures are a legal requirement, such as a grievance procedure for organisations which employ people. Some policies, such as a child protection policy, are required by some grant funders or regulators such as the Charity Commission, and some just facilitate the internal governance of an organisation.
- ▶ Whatever policies an organisation has, they should be clear, up-to-date and readily accessible. Policies should also be reviewed on a regular basis.



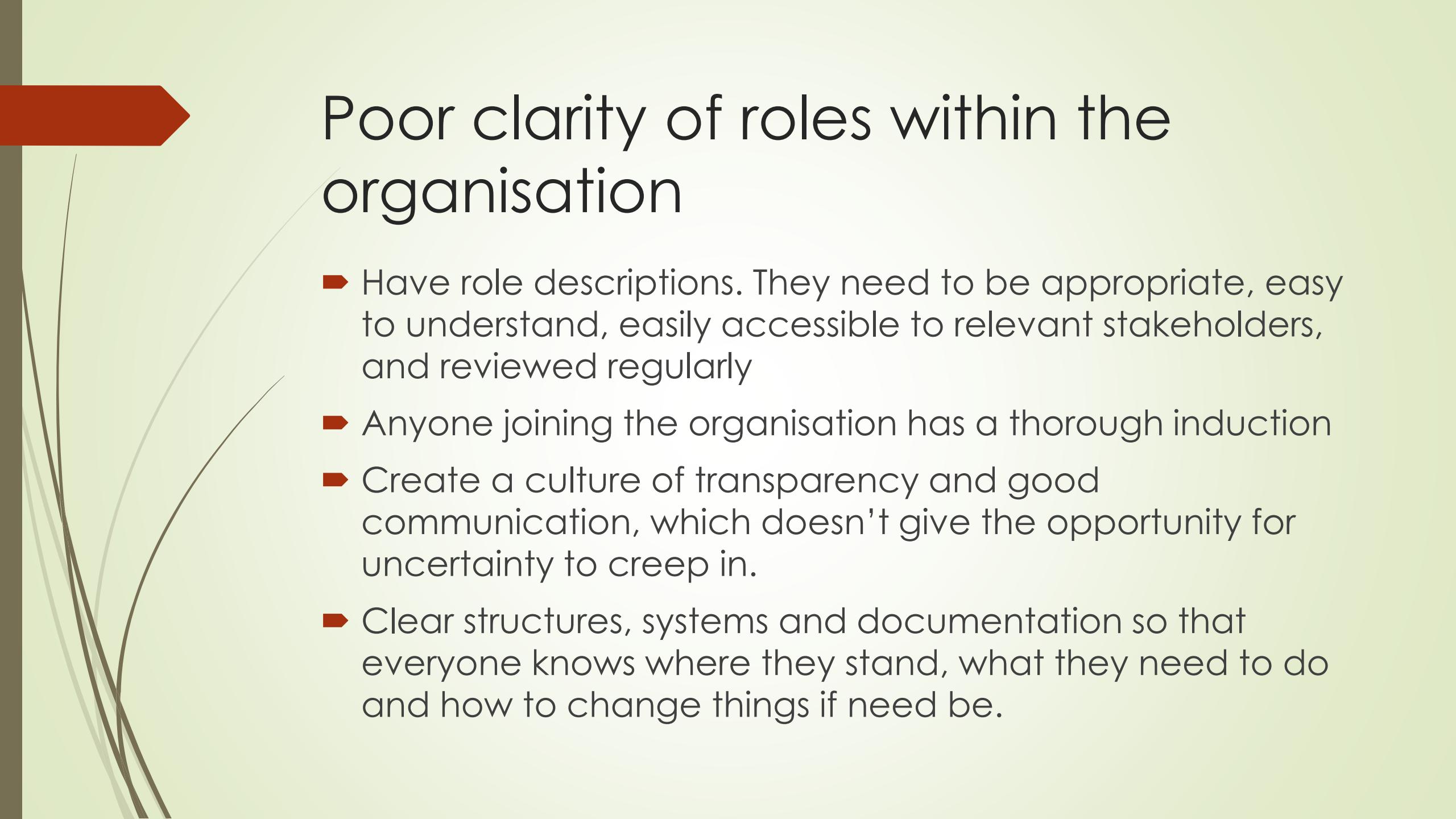
# Typical Governance Problems

- ▶ Mistakes at start-up;
- ▶ Inflexible structures and systems;
- ▶ Poor clarity of roles;
- ▶ Difficulty recruiting to governing body;
- ▶ Poor accountability to stakeholders;
- ▶ Poorly performing governing body;
- ▶ Poor membership participation;
- ▶ Ineffective meetings;
- ▶ Mission drift;
- ▶ Founder syndrome; and
- ▶ Poorly handled conflict



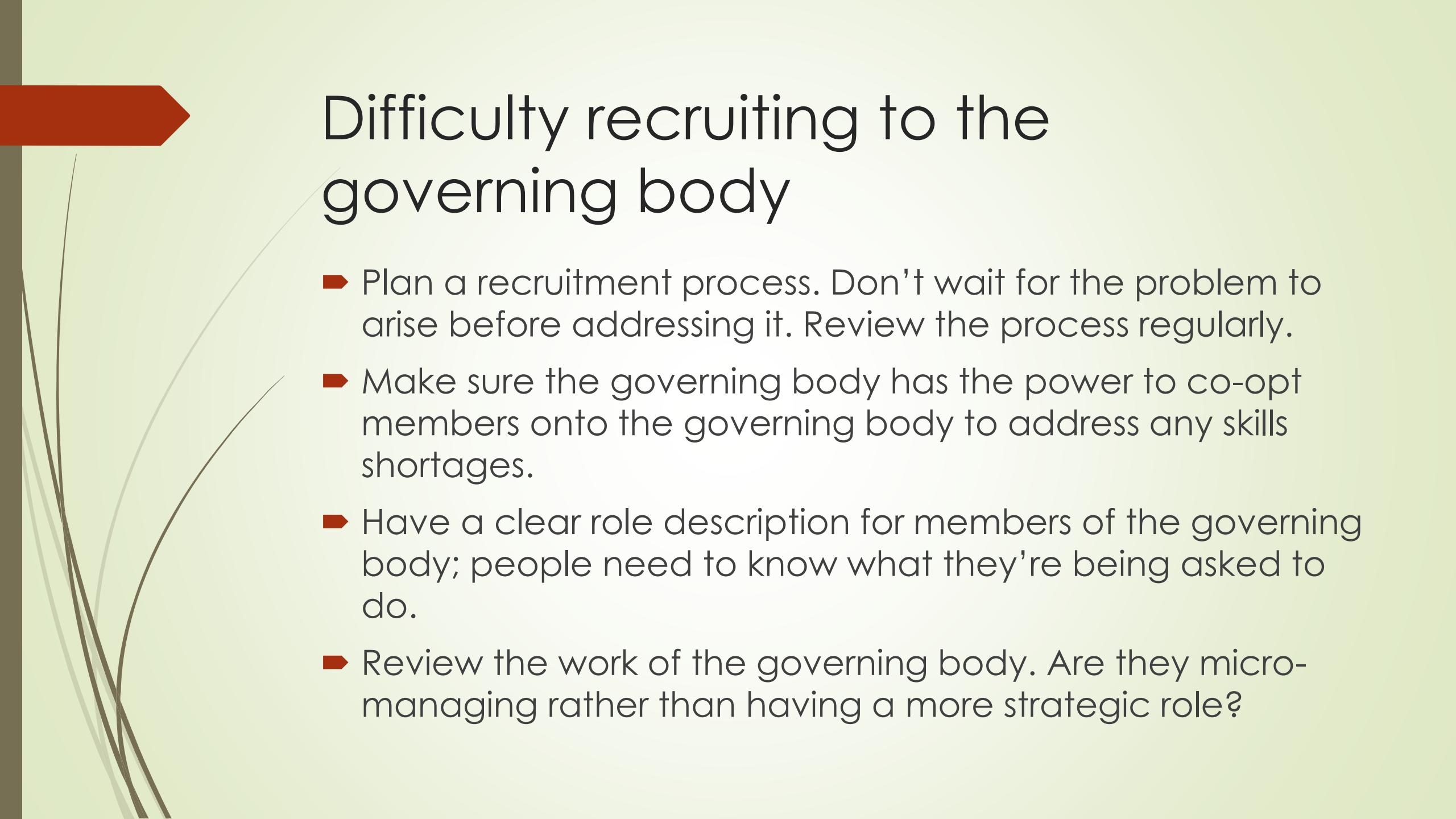
# Inflexible structures and systems

- ▶ Ensure that the governing documents and associated policies are accessible and regularly reviewed.
- ▶ Have a system for the thorough induction of new members (staff/trustees/volunteers) to ensure that the organisation is “self-aware” with regard to its governance. The members know what they’re part of, how to affect the running of the organisation and how to change things if need be.



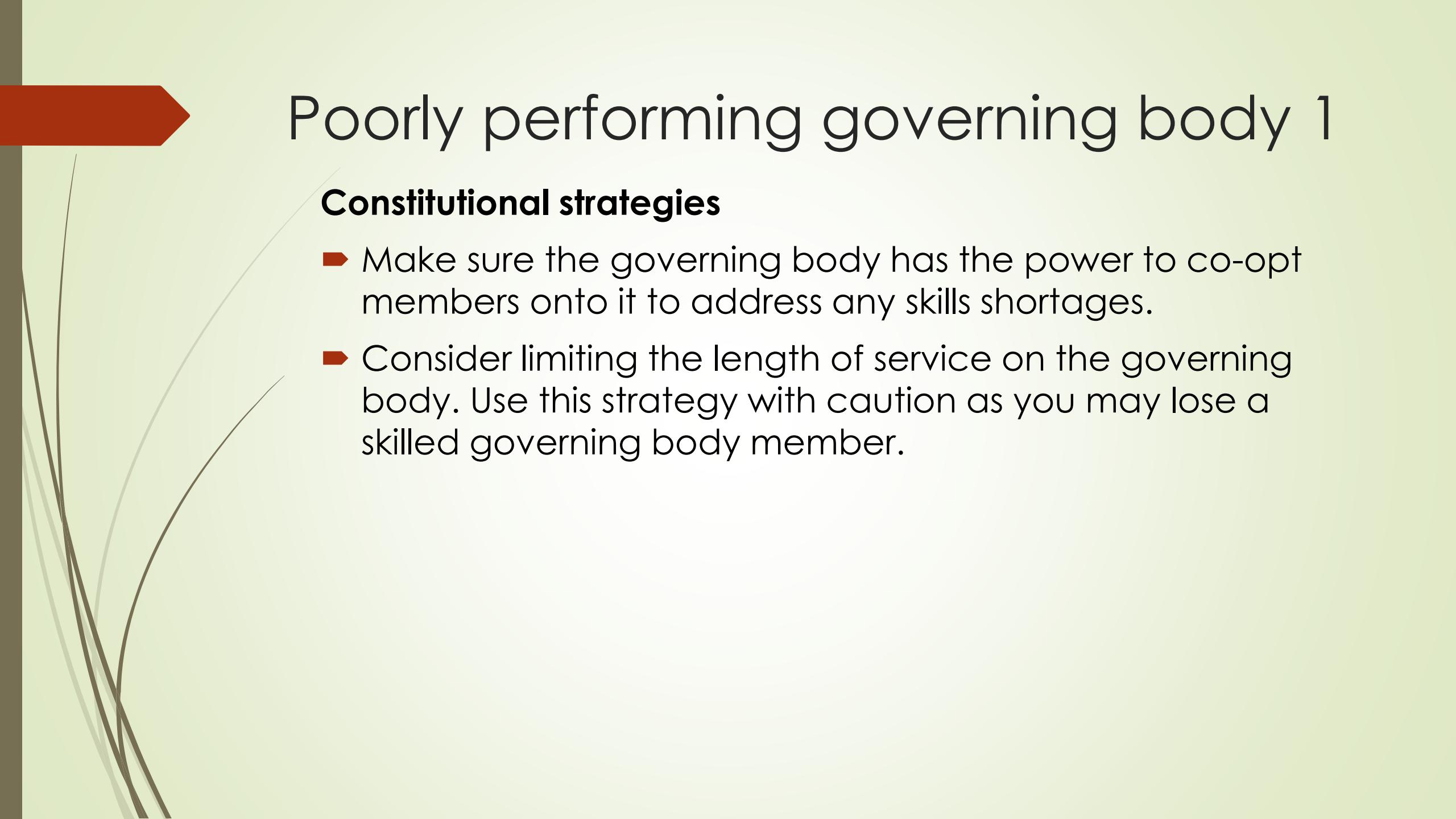
# Poor clarity of roles within the organisation

- ▶ Have role descriptions. They need to be appropriate, easy to understand, easily accessible to relevant stakeholders, and reviewed regularly
- ▶ Anyone joining the organisation has a thorough induction
- ▶ Create a culture of transparency and good communication, which doesn't give the opportunity for uncertainty to creep in.
- ▶ Clear structures, systems and documentation so that everyone knows where they stand, what they need to do and how to change things if need be.



# Difficulty recruiting to the governing body

- ▶ Plan a recruitment process. Don't wait for the problem to arise before addressing it. Review the process regularly.
- ▶ Make sure the governing body has the power to co-opt members onto the governing body to address any skills shortages.
- ▶ Have a clear role description for members of the governing body; people need to know what they're being asked to do.
- ▶ Review the work of the governing body. Are they micro-managing rather than having a more strategic role?



# Poorly performing governing body 1

## **Constitutional strategies**

- ▶ Make sure the governing body has the power to co-opt members onto it to address any skills shortages.
- ▶ Consider limiting the length of service on the governing body. Use this strategy with caution as you may lose a skilled governing body member.



# Poorly performing governing body 2

## Planning

- ▶ Conduct a regular skills audit of the governing body to determine what skills are required and whether the governing body has those skills.
- ▶ Have a regular review of relevant legislation – are any changes a threat to the organisation and will it be compliant?
- ▶ Have strategic away-days for the governing body. The governing body can focus on strategic planning without distraction.
- ▶ Plan for capacity development of the governing body.
- ▶ Review the governing body performance as part of a governance review of the whole organisation.

# Poorly performing governing body 3

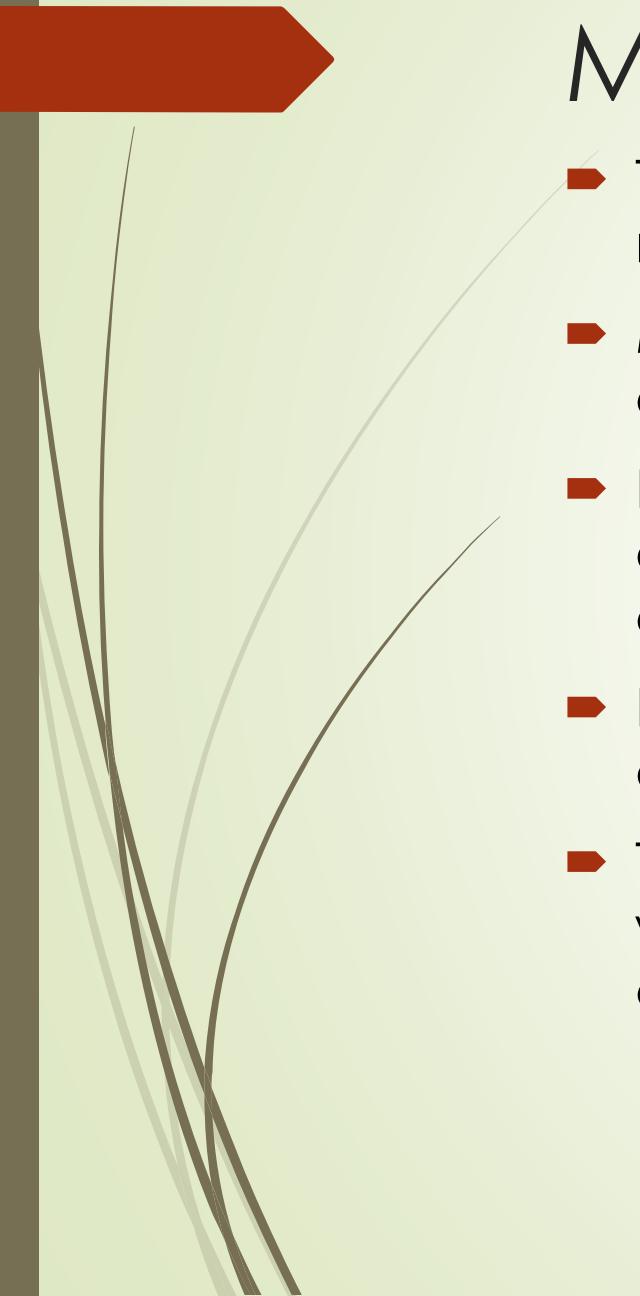
## **General**

- ▶ Have a system for thorough induction and training of new members of the governing body.
- ▶ Consider the involvement of outside specialists or consultants in training and review.
- ▶ Set targets for governing body performance – attendance etc. – and report against board objectives at the annual general meeting.
- ▶ Have clear job descriptions for governing body members.



# Ineffective meetings

- ▶ Good facilitation is vital, particularly around timekeeping;
- ▶ The agenda should be pre-circulated in plenty of time before the meeting;
- ▶ Any associated documents or reports should be pre-circulated with sufficient time for attendees to read beforehand;
- ▶ Minutes should be circulated afterwards and reviewed at the next meeting;
- ▶ Assess meeting effectiveness as part of any governance review;
- ▶ Use an external facilitator for critical meetings;
- ▶ Give consideration to the venue and timing of meetings
- ▶ Good record keeping.



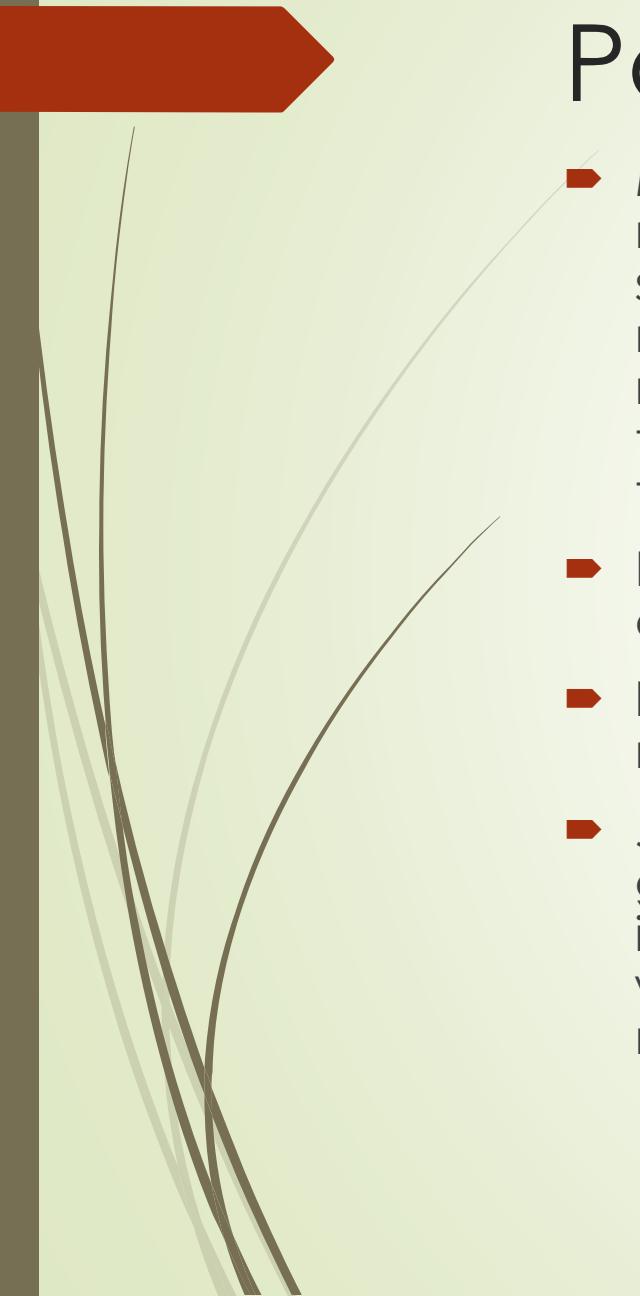
# Mission drift

- ▶ The whole organisation should be involved in regular reviews of the mission of the organisation.
- ▶ Make the business plan a living document and the focus of the organisation and review it regularly.
- ▶ Review the progress of the organisation against its mission and objects and business plan. If progress isn't being made, then either change the organisation to fit the mission or change the mission.
- ▶ Review the mission and ethos of the organisation against the aspirations of the members.
- ▶ The governing body should have regular strategic away-days, where there is a governance audit including a review of the compliance of the organisation with its own governing document.

# Founder syndrome

The negative or undesirable behaviour of a member of an organisation who, by virtue of their long involvement in, or importance to, the organisation has, or expects to have, undue power or influence within the organisation.

- ▶ Have a system for the induction of new members to empower them to engage with the governance of the organisation.
- ▶ Use the “founders” to mentor possible successors to their role.
- ▶ Limit the time served on the governing body and consider having a proportion of the governing body retire annually.
- ▶ Consider alternative meeting styles which are more participative and less subject to domination by individuals.



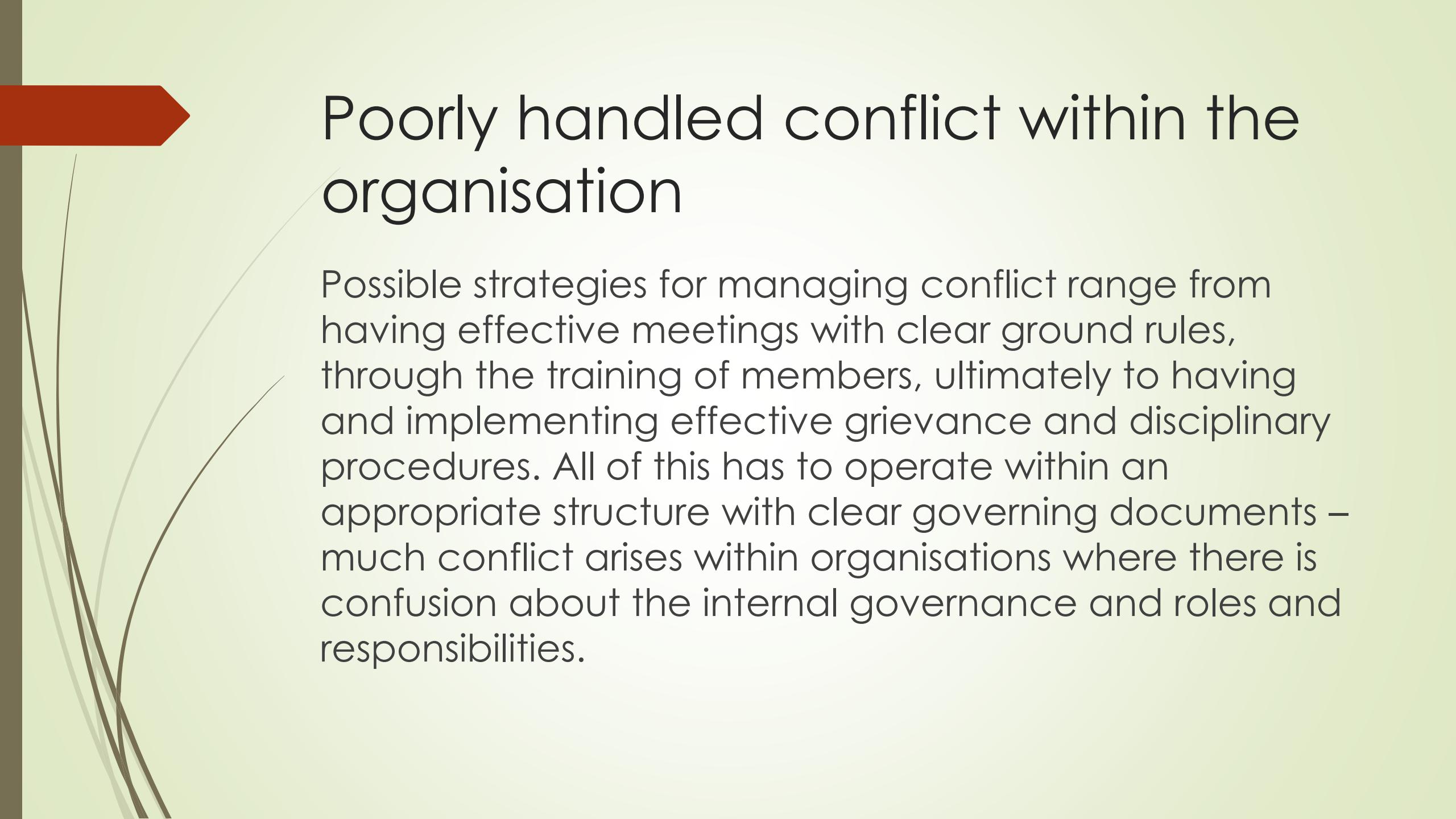
# Poor membership participation

- ▶ Make attendance less important. If meetings are poorly attended and the members are not engaging with the governance of the organisation, a strategy of last resort would be to reduce the quorum required at general meetings to allow a smaller percentage of the membership to be able to make legitimate decisions. This has the disadvantage that it will reinforce the tendency for members not to engage and it may be that a change in the structure of the organisation is required.
- ▶ Find out why participation is poor using a member questionnaire and then address any barriers to participation, both real and perceived.
- ▶ Improve communication between the governing body and the membership.
- ▶ Joining an existing organisation and then getting involved in the governance can be daunting. Empower new members using a thorough induction so that they engage with the governance early on rather than waiting for them to find their feet. Some organisations assign an existing member to a new member in a mentor role.



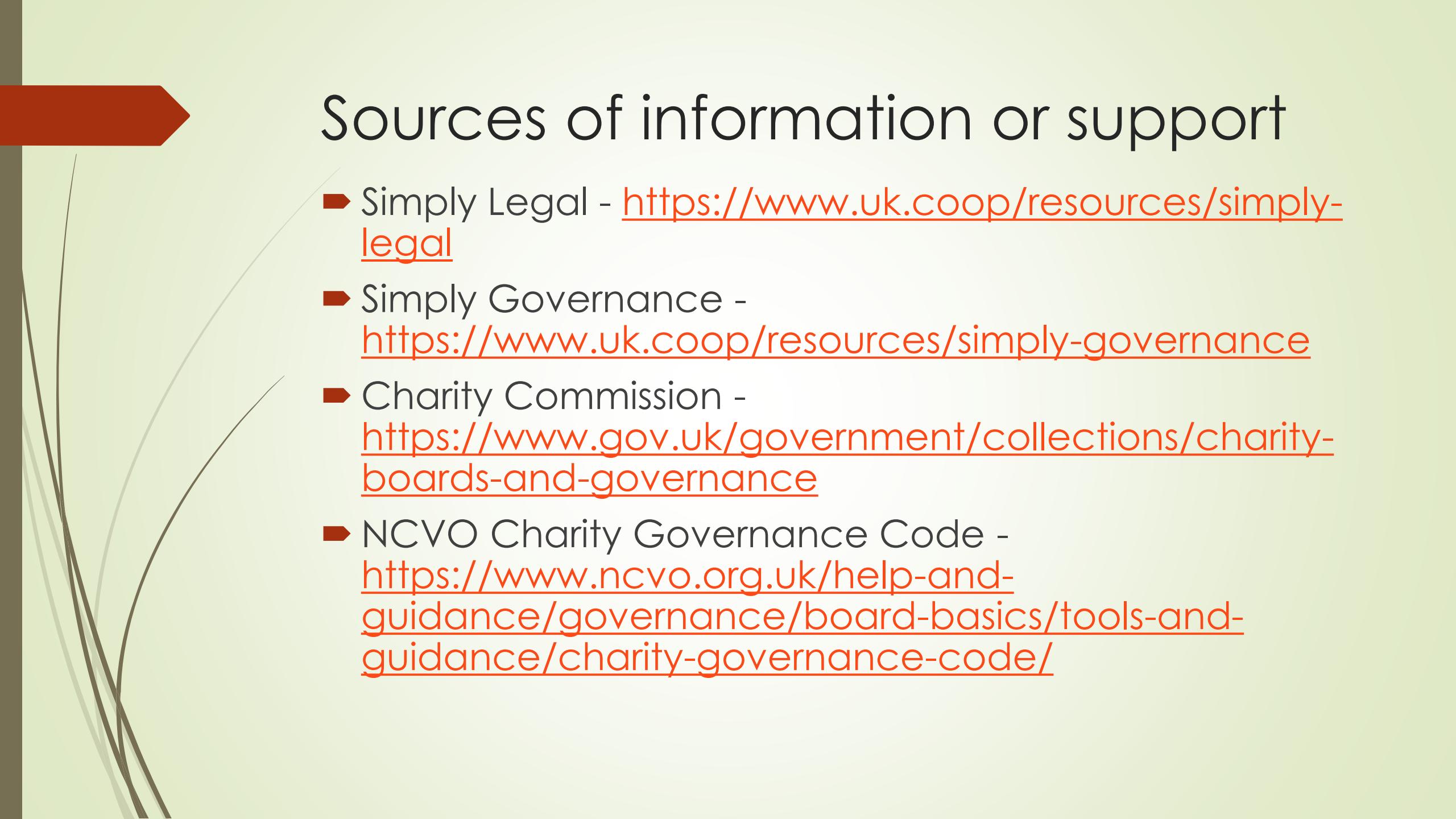
# Poor accountability to stakeholders

- ▶ Ensure that the governance of the organisation, and the documents relating to it, are easy to understand;
- ▶ Ensure that there is regular and high quality communication between governing body and membership and staff;
- ▶ Regularly review the governance of the organisation and involve the members and staff;
- ▶ Have well run, effective general meetings; and
- ▶ Carry out efficient record-keeping with documentation easily available to all members.



# Poorly handled conflict within the organisation

Possible strategies for managing conflict range from having effective meetings with clear ground rules, through the training of members, ultimately to having and implementing effective grievance and disciplinary procedures. All of this has to operate within an appropriate structure with clear governing documents – much conflict arises within organisations where there is confusion about the internal governance and roles and responsibilities.



# Sources of information or support

- ▶ Simply Legal - <https://www.uk.coop/resources/simply-legal>
- ▶ Simply Governance -  
<https://www.uk.coop/resources/simply-governance>
- ▶ Charity Commission -  
<https://www.gov.uk/government/collections/charity-boards-and-governance>
- ▶ NCVO Charity Governance Code -  
<https://www.ncvo.org.uk/help-and-guidance/governance/board-basics/tools-and-guidance/charity-governance-code/>