

## Governing Bodies and the Removal of Members

The **governing body** are the people who are responsible in law for managing the organisation and can go by many names. Regardless of what it is called:

- in any company, including a community interest company, the members of the governing body are the **company directors**;
- in a trust or charitable association and in some other charities they are **trustees** for the purposes of the **Trustee Act 2000** and most other trust law;
- in any charity, regardless of its legal form and regardless of whether it is registered with the Charity Commission, the members of the governing body are **charity trustees** for the purposes of charity law.

### Leaving the governing body

A person may leave a governing body by retiring, resigning or being replaced. They can also become disqualified from serving as a director and/or a trustee or be removed for a reason set out in the organisation's governing document. It is also possible for a person to be removed from a governing body by the Charity Commission or the high court.

### Removal by members of the organisation

In certain circumstances the members of an organisation can remove someone from that organisation's governing body.

### *Companies*

Under company law, members of a company always have a right to remove a director and to appoint a replacement by passing an ordinary resolution on special notice. This right to remove a director cannot be taken away or amended by anything in the company's governing documents or by any agreement with directors. Any such decision must be made at a general meeting of the members and it cannot be made by written resolution.

The member or members putting forward a resolution to remove a director and/or appoint a replacement must deliver a notice setting out their intention to do this. The notice must be delivered to the company's office at least 28 days before the meeting. As soon as the company receives this notice of intention, it must send a copy to the director whose removal is proposed.

This director has a right to be heard at the meeting, and to make written representations of a reasonable length to the company and request that these be sent to the company members. The company must send the representations to every member to whom is sent notice of the meeting. If these are received too late to be sent out or the company fails to send them, the director can require them to be read out at the meeting. However, the company or anyone else affected can apply to the high court for a ruling that the right to make representations is being abused. If this is granted, the representations do not need to be circulated or read out.

### ***Other membership organisations***

Provision for removal of governing body members must be included in the rules of an industrial and provident society. IPSs and associations often have provisions similar to those for companies. At the time of writing it is not clear whether members of a charitable incorporated organisation (CIO) will have a statutory right to remove trustees, or would have this right only if it is included in its constitution.

### **Vote of no confidence**

Members of the organisation or governing body may call for a vote of no confidence, in the hope of putting a person or persons in a position where they will resign from the governing body. Unless it meets the requirements of any statutory removal provisions or provisions in the governing document, such a vote has no meaning legally and there is no obligation on the person to resign, even if 100% of those voting say they have no confidence.

*This article is based on an extract from the recently published third edition of the Russell-Cooke Voluntary Sector Legal Handbook.*

*The Russell-Cooke Voluntary Sector Legal Handbook is written by James Sinclair Taylor and other partners at Russell-Cooke, edited by Sandy Adirondack and published by DSC.*

For more information please contact:

### **James Sinclair Taylor**

Partner

020 8394 6480

James.Taylor@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.  
© Russell-Cooke LLP  
October 2009