



Alexandra Park & Palace Charitable Trust

Governance Review - Scope & Methodology

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1. Introduction

Since October 2015 when Alexandra Park and Palace Charitable Trust's (APPCT) new CEO was appointed, a number of significant governance challenges have been identified. The CEO has responded to the challenges by gaining approval from the Charitable Trust Board to employ a Company Secretary to carry out a governance review.

It has been recognised that roles and responsibilities are unclear and that the Act of Parliament may not be fit for purpose if APPCT is to successfully deliver its charitable objectives whilst progressing towards financial sustainability to reduce financial dependence on the Corporate Trustee, Haringey Borough Council (LBH).

The importance of good governance cannot be underestimated; it is not solely about compliance with the legislative and regulatory framework it is about providing oversight, strategic direction for the Executive and appropriate challenge. Poor governance is not only a financial risk to APPCT but a reputational one and as a consequence, a reputational risk for LBH and the Members of the Corporate Trustee Board.

The governance review is seen as a way in which APPCT can ensure that no breach of trust is taking place and that Statute, charity law, Charity Commission regulation and company law are being complied with and give "comfort" to the Corporate Trustee, APPCT Board and the CEO.

2. Purpose, Aims and Objectives

Purpose - To ensure that APPCT's governance is fit for purpose, efficient and effective, now and in the future.

Aim - to provide a governance framework for the organisation that is compliant with legislation and guidance, supports APPCT's need for efficiency, aids clarity and understanding of the relationships between, and the roles and responsibilities of, the Corporate Trustee, the APPCT Board and the Executive staff of the Trust and its trading subsidiary.

Objectives

- To codify existing governance arrangements
- To review APPCT's existing governance arrangements to identify areas of; compliance and noncompliance, risk and opportunity
- Assess APPCT's fitness for purpose for its changing scope of operation, organisational aspirations and increasing need for efficiency in its operations
- Identify areas of APPCT's existing governance that may facilitate, or act as barriers to, achieving those aspirations
- To develop appropriate and deliverable recommendations for improving governance at APPCT.

3. Scope of the Review

The governance review will cover;

- roles and responsibilities of the Corporate Trustee and the Board of Trustees (and executive)
- processes to ensure fitness for purpose and best use of resource
- the Act of Parliament; to identify barriers to achieving the aspirations of APPCT for the longer term
- delegation of authority from the Corporate Trustee to the Board of Trustees and from the Board to any sub committees of the Board and the Executive of the Trust, including the Board of the Trading subsidiary and the staff of the trading subsidiary
- skills, capabilities and effectiveness of the Board to undertake its duties including its committees and any other committees that advise the Board
- the long term direction of APPCT, including its objectives or purpose
- implementation of policies and activities to achieve objectives
- compliance with legal requirements
- accountability to those with an interest or 'stake' in APPCT
- clarity about who APPCT is accountable to and how it is held to account/or account for its actions
- alignment of the governance system with existing and any new strategic direction
- if the current governance system adds value or is a burden to the organisation

- risks in relation to unclear areas of responsibility and accountability
- specific issues of concern with the current governance structure such as the number or type of Board committees; lack of clarity over decision making or delegated powers
- if the Board, which is ultimately responsible for all the actions and decisions of APPCT, have in place specific charters, policies and similar governance documentation to guide organisational behaviour.

4. Methodology

Governance reviews are a systematic way of improving how an organisation is governed and the approach will be to work collaboratively with the APPCT Board and key staff. The principles enshrined in Good Governance: A Code for the Voluntary and Community Sector (Second edition: October 2010) - <http://www.governancecode.org/> will be used as a framework against which to evaluate the effectiveness of the APPCT's current governance arrangements.

An initial project scoping meeting took place on 9th May 2016 between the CEO, Company Secretary and a representative from the Corporate Trustee's office. The purpose of the meeting was to discuss the background, context and scope of the work that was being commissioned.

In order to provide the Board with a robust governance review findings report, the review will be conducted in three phases;

PHASE ONE

The Company Secretary working with the CEO (and APPCT Chair) will;

- undertake a review of key governance documents
 - Alexandra Park & Palace Acts 1900, 1913 & 1985
 - Alexandra Park & Palace Order 1966
 - The Charities (Alexandra Park & Palace) Order 2004
- compile a board self-assessment questionnaire to be completed by all Members of the Trustee Board and Senior Managers, based on Good Governance: A Code for the Voluntary and Community Sector (the Code)
- carry out individual interviews (all APPCT Board Members, the CEO, the Deputy CEO, the Finance Director Alexandra Park and Palace Trading Limited Directors) during June and July under the Chatham House Rules and will speak with the APPCT Auditors

- carry out an assessment of the relationship between APPCT and their Corporate Trustee, stakeholders and beneficiaries
- carry out an assessment of current governance practices
- carry out a compliance check on the workings and reporting of the subsidiary company.

Once the above tasks in Phase One are complete a Report of Recommendations will be produced and circulated for review by the APPCT Board and stakeholders for feedback and any relevant approval from the Corporate Trustee.

The Report will have two parts; Part One will detail the current Governance arrangements and Part Two will detail the diagnostic recommendations.

PHASE TWO

The Company Secretary working with the CEO (and APPCT Chair);

- design a new governance structure fully compliant with Regulation, Legislation and Statute creating a fit for purpose monitoring and reporting mechanism around long term strategy
- in the process assess; implications for relevant Statute, APPCT Board practices and procedures and the relationships and interactions with stakeholders.

Once the above tasks in Phase Two are complete a Report of Recommendations will be produced and circulated for review by the APPCT Board and stakeholders for feedback and any relevant approval from the Corporate Trustee.

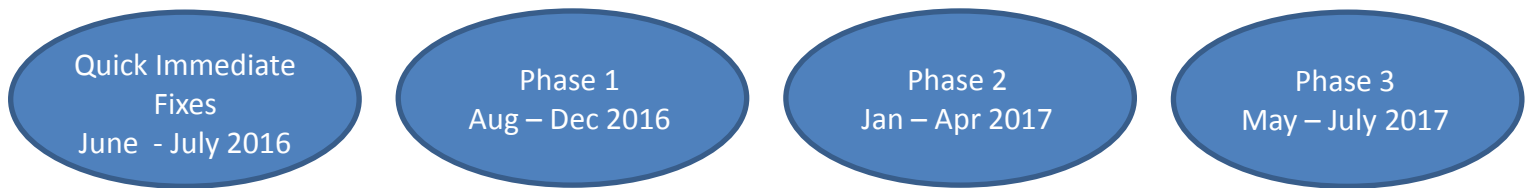
PHASE THREE

This phase will be the implementation of the recommendations.

Note that should any issues of non-compliance with legislation be identified that should and can be rectified during the review the Executive team will identify solutions and implement changes in consultation with the Chair of the APPCT Board, as required.

5. Review Schedule

The timeline for the review is:



Charity Commission Guidance application around Haringey Council (the “Authority”) as Sole Trustee of Alexandra Park and Palace Charitable Trust (the “Charity”)

This paper has been drawn up on the basis that the contents will be used as an induction document and basis for explaining the Trusts regulatory responsibilities

During the course of the Governance Review I will be applying the relevant Charity Commission guidance and regulation and the relevant legislation to establish which parts of the current governance provision work and which parts do not.

1. Introduction

The Authority as a corporate body both holds the property and oversees its application, as Charity Trustee.

In order to be a charity, a body must be established for exclusively charitable purposes. It cannot be established to further the purposes of a non-charitable body such as the Authority itself. The Authority and Charity often both have close interests in local topics. The Charity needs to be independent of the Authority in the sense that decisions about the administration and operation of the Charity need to be taken solely in the interests of the Charity, with a view to furthering its charitable purposes, and for no other purpose.

Please note that for the purposes of this document “Member” is defined as a member of the APPCT Board in its capacity as the Charity Trustee of the Alexandra Park and Palace Charitable Trust.

2. Background Guidance and Application

To ensure compliance with Charity regulation the Authority must ensure the following:

2.1. The need to distinguish between corporate and Charity property

2.1.1. The Authority must separate their own property from that of the Charity under their trusteeship. If this is not complied with at the very least, this will mean that the accounts of the Charity do not comply with statutory regulations: at worst this can lead to serious breaches of trust arising from the application of the Charity’s property for the benefit of the Authority.

2.1.2. If the Charity fails to comply with the statutory regulations they are just as much subject to Charity Commission monitoring procedures as any other charity which is in breach of the regulations.

2.1.3. Examples have included local authorities using the income of a charity to pay for services instead of raising the necessary funds through the rating system to pay for them.

2.1.4. If the Charity Commission become aware of a situation of this nature they will need to inform the Authority of its duties and responsibilities to the Charity. The charitable assets must be properly identified and accounts properly drawn up.

2.1.5. The Authority will also need to be aware of the Local Authorities (Companies) Order 1995 which sets out the additional responsibilities for charitable companies connected with local authorities:

2.1.5.1. The Local Authorities (Companies) Order 1995 imposes additional regulatory requirements on charitable companies which are closely connected with local authorities. Basically certain controls which apply to local authorities themselves are extended to the companies. The nature of these controls depends on the closeness of the connection between the company and the authority, but may include:

- expenditure controls
- a requirement that the Audit Commission should approve the company’s auditor;
- a right of public inspection of the minutes of meetings;

- additional information provision duties;
- a requirement to identify the Authority's connection in public documents; and
- governance restrictions reflecting those which apply to authorities themselves, for example: limits on director remuneration;
- non-participation of disqualified councillors; and
- no party political activity.

2.1.6. Members should always check for potential conflict of interest between the roles of the Authority and Charity and its role in its statutory capacity, which might arise, for example, from a contractual relationship between the two; and whether the Authority in its statutory capacity will receive any undue benefit.

2.2. Issues connected with the independence of Members particularly as the Authority is involved in nominating the Members.

2.2.1. Independence of purpose : In order to be a Charity, a body must be established for exclusively charitable purposes. It cannot be established wholly or in part to further the purposes of a non-charitable body such as the Authority itself.

2.2.2. The Members should be alert to this principle to ensure that the Charity will be properly independent having regard to the need to:

- avoid conflicts of interest;
- safeguard the Charity's property; and
- safeguard the beneficiaries' interests.

2.2.3. Misuse of powers

2.2.3.1. As the Charity is financially and practically dependent upon the Authority, the Authority must evidence that it intends not to exploit that dependence for its own purposes therefore the following should be in place:

- a business plan for the Charity body; and
 - draft funding agreements with the Authority,
- both of which should have been drawn up even before the appointment of the Members.

2.2.3.2. If those agreements contain provisions that commit the Charity:

- to carrying out various policies of the Authority; or
- to complying with decisions made from time to time by the Authority,

it may be difficult to avoid the conclusion that the Charity is, in part at least, enabling the Authority to pursue its own wishes and policies in the eyes of the Charity Commission which will be in breach of regulation.

2.2.3.3. Members must be aware of the requirement for the Charity to be independent and the Authority must be prepared to concede the necessary degree of independence.

2.2.3.4. If the Authority refuses to adjust its relationship with the Charity, even when the legal principles around the independent requirements are explained, the conclusion that the Charity is not being run in good faith is likely to be unavoidable.

2.2.4. Factors indicating genuine independence

The Charity Commission will wish to establish that there is no doubt that the Charity is sufficiently independent of the Authority if it:

- is set up with independent Members, who are not subject to a conflict of interest between the Charity and the Authority;
- is in a position to obtain its own independent professional advice;
- negotiates any funding or leasing arrangements with the Authority at arm's length;
- has arrangements in place which preserve the Members' fundamental discretions as to the selection of beneficiaries and the provision of services, and does not require the Members simply to give effect to the policies and wishes of the Authority; and
- has Members who are free to make their own decisions on matters outside any funding arrangement.

2.3. The Authority must ensure when appointing Members that they:

2.3.1. Appoint individuals best fitted to carry out the responsibilities of trusteeship of the Charity.

2.3.2. The Charity Commission has no objection in principle to the Authority appointing Members. The Authority may be well-placed to identify individuals who have much to offer as Members, however, the Authority must understand that it is bound to appoint the individual best fitted to carry out the responsibilities of trusteeship of the Charity.

2.3.3. It may be desirable for the Authority having a power of appointment to consult the Members of the Charity as to whether the Trustee body currently lacks any particular expertise. The Authority must not expect its appointee to represent its interests. He or she must act solely in the best interests of the Charity. Hence, for example, the Authority should not appoint a Member in order to protect its interests under a funding agreement.

2.4. Schemes which define powers of appointing Members

2.4.1. The Charity Commission prefer not to confer a power on local authorities to nominate all or a majority of Members. Local authorities who provide financial assistance for charities should not necessarily expect to receive, in return for that assistance, the right to appoint all or a majority of their Members. However, if the funding authority is in a position to nominate their Members the Members appointed, like any other Member, are bound to act solely in the interests of the Charity. A Member who is an officer of the Authority should consider the need to withdraw from Board discussions on matters in which the Authority has an interest which is distinct from that of the Charity.

2.4.2. Members should be clearly informed that:

- the interests of the Charity and its beneficiaries are separate from and so may not be the same as those of the Authority and its tax and rate payers; and
- its nominated Members must act in the best interests of the Charity.
- Members with a conflict of interest and duty must be precluded from taking any part in the relevant decisions which may involve such a conflict of interest.

2.4.3. Points to consider

- any financial gain to the Charity (for example, as a result of a financial agreement with the Authority) should not be at the expense of the Charity losing its separate identity from the Authority.
- the Authority should understand clearly these obligations on the Members and that having the right to appoint all or a majority of Members is not the best way to represent its interests. It should take other steps to monitor the use of its funding and to ensure that funding is used for the purposes for which it was given. This can, for example, be achieved through reporting arrangements between the Charity and the Authority.

2.5. Avoiding conflicts of interest

2.5.1. It is important to ensure that the Trustee body should be able to operate effectively. That requires the Authority avoiding appointing individuals who are likely to be subject to substantial and continuing conflicts of interest, (for example, as a result of a funding agreement with the Authority).

2.5.2. As it is the case that the Charity has intermittent contact with the Authority, a Member who is an officer or employee of the Authority will need to withdraw from discussions at which a conflict of interest arises. If there are several Members in that position, it may be sensible (depending upon the circumstances and, in particular, the likelihood of such conflicts arising) to constitute the Trustee body so as to ensure that there will be a quorum of individuals who will not be conflicted in that way.

2.5.3. The Authority can face difficulties in addressing the conflict of interest that might arise between its role and duty as the Authority and its role as a Charity trustee. Conflicts often arise, for example, between the interests of the local authorities and their council tax and ratepayers on the one hand and those of charities and their beneficiaries on the other hand.

2.5.4. Such conflicts of interest can also arise where the Charity under the Authority's trusteeship is to enter into a contract for the sale or purchase of property to or from the Authority with the result that the validity of such contracts might be set aside.

2.5.5. Conflicts of interest might also arise between the individuals who are responsible for reaching decisions on behalf of the Authority as Trustee. The council members might disagree on matters of policy concerning the Charity on party political or personal grounds unrelated to the interests of the Charity concerned.

2.5.6. What constitutes personal interest in this context?

Personal interests in this context extend beyond purely financial interests and can include interests arising from employment by, or membership of, the Authority. Where there is a contractual relationship between the Charity and the Authority, for example, an obvious conflict of interest arises for any Member who is also an employee or officer of the Authority whenever the Board discuss questions relating to that contractual relationship.

That would include:

- questions of negotiating and agreeing the terms of the contract;
- compliance with the terms of the contract;

- enforcement of the contract against the Authority;
- disputes arising under the contract;
- renegotiation or renewal of the contract;
- any question, in fact, in which the Authority has an interest that is potentially adverse to that of the Charity.

2.5.7. When a Member should consider withdrawing from a Board meeting

- 2.5.7.1. Where a Member has a conflict of interest and duty in relation to a particular matter, for example where the matter concerns a contract or proposed contract between the Charity and the Authority of which he or she is a employee or officer, he or she should consider withdrawing from any meeting at which the matter is discussed.
- 2.5.7.2. This will be sufficient to resolve the conflict of interest where the governing document specifically permits Members facing a conflict of interest to withdraw from appropriate meetings.
- 2.5.7.3. The governing document may either permit or require the Member with the conflict of interest to withdraw from the meeting. However, the transaction in question will, of course, only be secured if the Member with the conflict does withdraw.
- 2.5.7.4. Where the governing document is silent on this matter, the general law will apply. A strict application of the principles would mean that the mere existence of a conflict of interest might provide grounds for the transaction concerned to be set aside if it is not in the interests of the Charity. This would be so, even if the Member(s) concerned withdraw from relevant meetings. In practice, however, the risk of a transaction being set aside is likely to be reduced if the Member(s) concerned play no part in the discussions over the issues over which they face a potential conflict. Where individuals find it difficult to decide how to proceed, they should take their own legal advice on the matter.
- 2.5.7.5. Obviously if a Member regularly withdraws from decisions of the Board on this basis, there must be a question whether his or her usefulness as a Member is being reduced to the point where it might be preferable to appoint someone else in his or her place.

2.5.8. When would-be Members face a continual conflict of interest

- 2.5.8.1. Provided that they understand that, in acting as Member of the APPCT Board, their sole duty is to the Charity, there is no objection in principle to an officer of the Authority becoming a Member of a Charity. That said, an officer who would face a continuing or substantial conflict of interest if he or she became Member of the APPCT Board should not offer himself or herself for appointment as a Member of that Charity. The position depends on the extent to which the Charity concerned is connected with the Authority.

2.6. Distinguishing between corporate and charity property can be a particular problem in the event of local government reorganisation. A successor authority might not appreciate that property transferred to it from a predecessor authority is held on trust for charitable purposes, with the result that it mistakenly treats it as part of its corporate property. In addition, charitable property might be transferred to the wrong authority when such a re-organisation takes place.

3. Advantages and Disadvantages of the Authority Acting as Sole Trustee

Disadvantages of Appointing the Authority as Trustees

- 3.1. The need to distinguish between corporate and charity property (see paragraph 2.1 above)
- 3.2. Conflict of interest (see paragraph 2.5 above)
- 3.3. Administration

Local authorities sometimes give the administration of charities less attention than would bodies of individual Trustees constituted solely for the purpose of administering them.

3.3.1. Constitutional issues for local authorities when acting as Charity Trustees

- 3.3.1.1. In cases where the Authority is sole Trustee, it should be remembered that it is responsible in the same way as any other Charity Trustee for carrying out the normal duties and responsibilities of a Charity Trustee.
- 3.3.1.2. Who may make decisions : It is up to the Authority to decide, within the scope of local government law, what structures should be used to reach decisions in its name as Trustee. An alternative to requiring all the decisions to be reached by the full body of councillors, for example, is to set up a separate committee to discharge its responsibilities as Trustee (see section 101 of the Local Government Act 1972).
- 3.3.1.3. Position of individuals acting on behalf of the Authority : Whatever the structure employed, the individuals concerned are not themselves Charity Trustees. They must, however, act in a responsible way so as to ensure that the Authority acts properly as a Charity Trustee. If they fail to do this, they may be liable to the council under local government law for any losses it bears as Charity Trustee¹.
- 3.3.1.4. Remuneration issues : I appreciate that Charity staff are paid via the trading subsidiary however Members of the Charity Trustee Board will need to know if there are any issues arising from the following questions:
 - Are charity funds used to pay for services which the Authority is obliged to provide by law?
 - It is rare for charitable funds necessarily to be applied in discharging statutory functions. Unless the funds are held for charitable purposes that necessarily involve applying them for the statutory functions of the Authority, the Authority cannot, as Charity Trustee, use charity funds to pay for its staff, agents or contracts for services which it needs to acquire for the discharge of its statutory functions.
 - Does the Authority, as Charity Trustee, employ one of its own staff to provide services to the charity, from charitable funds?

Occasionally the Authority may wish to pay one of its own employees from the funds of the Charity of which it is Trustee. For example, the Authority may want to use the funds of the Charity under its trusteeship to pay for its own clerk to act as clerk to the Charity.

This is acceptable if:

- the service provided is necessary to the Charity;
- the payment covers no more than the reasonable cost of providing that service;
- the employee is suitably qualified to provide the service; and

¹ See Annex 1

- the service being provided is not one which would cause the employee's duty to the Authority to conflict with his or her duty to the Charity. Such a conflict is likely to arise, for example, if the Authority's solicitor is asked to provide legal advice to the Charity about a contract between it and the Authority.
- Payments in these circumstances form part of the necessary running costs of the Charity which the Trustee of any Charity are entitled to meet from the Charity's funds.
- Explicit authority (either in the governing document or from the Charity Commission) would be needed if the payments to the employee included an element of profit or gain to the Authority. This would be regarded as a Trustee benefit and we should treat any instances of this in line with the principles on Trustee remuneration. Similarly, where the employee receives payment over and above the going rate for the job but where there is not necessarily any element of profit for the authority, we should establish the grounds on which the Authority can justify such payments as being necessary and in the interests of the Charity.
- The question needs to be asked regarding employee benefits as my understanding is that the Council covers this at present which may be an issue; it could potentially form an issue if and when the Charity becomes fully independent as the current offer around employee benefits are potentially over and above that usual in the Charity field.

Advantages of appointing local authorities as Trustees

3.4. The administration of the Charity by the Authority can have advantages:

- 3.4.1.as a body corporate, the Authority enjoys perpetual succession, so that it is not necessary to make individual appointments of Charity Trustees or to vest the Charity's property in them;
- 3.4.2.the Authority may well have an informed view of the needs of the Charity's beneficiaries, especially if the Charity provides services similar to services provided by the Authority;
- 3.4.3.in the case of a recreation ground or open space, the local authority is able to make bye-laws for the land which are enforceable by the police and the criminal courts;
- 3.4.4.often the local authority will be willing to subsidise the operation of the Charity out of its own statutory funds: either directly, by way of grant aid; or
- 3.4.5.indirectly by, for example: meeting the cost of maintaining the Charity's property; or
- 3.4.6.providing professional services free of charge.

General Perspective Point from the Charity Commission

4. When it is not appropriate to appoint a local authority

In most circumstances, the interests of the Charity are likely to be better served by constituting a body of individual Trustees to administer it. This is particularly the case where there could be a conflict of interest between the Authority and the Charity (for example with regard to a particular land transaction or because the Authority is providing funding to the Charity). If a local authority provides funds the danger is that it might be tempted to lay down conditions which are in the Authority's interests and not the Charity's.

Annex 1

6. Liability of a local authority and its agents

6.1 The general position in law

The position is similar to that for any Corporate Trustee. In principle, a Corporate Trustee (the Authority) is liable for breach of trust in the same way as an individual Trustee. It can be sued for breach of trust, and if liable will have to compensate the trust out of its corporate assets.

Whether the individual officers who commit the local authority to an action which results in a breach of trust are in turn liable to compensate that body (in its corporate capacity) is a matter for local government law.

6.2 Breach of trust/duty

Where a body corporate is the sole Trustee of a charity, the individual persons who, from time to time, are responsible for the management of the corporate body are not themselves Trustees of the charity. The duties, responsibilities and liabilities of trusteeship lie with the corporate body. However, that body must act through individual persons in order to express its will.

If the body corporate commits a breach of its duty as a Trustee, it will have done so only as a result of a breach by its Board Members or other individual officers of their duties towards the body corporate. While they, therefore, cannot be held liable directly by the charity, they may be held liable to the corporate body for any liability it has incurred in respect of the charity. Therefore, the Members of the Charity Trustee Board should familiarise themselves with:

- the terms of the charity's governing document; and
- the procedures which have been prescribed in legislation (such as the Companies Acts and Regulations made under them).

6.2 Indemnity insurance

With regard to the purchase of indemnity insurance for the Authority as sole Trustee out of the charity's funds, a public body with the capacity to act as Charity Trustee should be prepared to accept the ordinary measure of legal responsibility for its actions as such, without seeking any indemnity.

Additionally, because any personal liability incurred by the Members of the Charity Trustee Board will be to the council rather than directly to the charity, the taking out of Trustee indemnity insurance will not be appropriate, because they are not Charity Trustees. It would not therefore be expedient in the interests of the charity to provide cover for possible liabilities incurred by the Charity Trustee Board.