



Report – The role of the City of London Corporation as Trustee of the Bridge House Estates

To be presented on Thursday, 16th January 2014

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

SUMMARY

1. At the meeting of the City Bridge Trust Committee on 30th October 2013, Members requested clarification regarding the position in respect of the Bridge House Estates and City Bridge Trust being 'independent of the Corporation'. The Committee also sought clarification regarding Members' responsibilities when acting as Bridge House Estates Trustees.
2. This report therefore explains the role of the City of London Corporation as Trustee of the Charity, Bridge House Estates. The report further clarifies the distinct functions and responsibilities of the Committees of the Court of Common Council of the City Corporation that conduct business relating to the Charity.
3. In seeking to clarify further the role of Trustees and the distinct functions and responsibilities of those bodies that set out business relating to the Charity, it should be noted that:
 - Bridge House Estates assets do not belong to the Corporation - they are held by it on trust for charitable purposes;
 - the City of London Corporation, acting through the Court of Common Council, is the sole Trustee of Bridge House Estates;
 - City Bridge Trust is not a separate legal entity in its own right - it is the name given to the grant-giving arm or activities of Bridge House Estates;
 - some of the Bridge House Estates Trustee functions are delegated to City Corporation Committees of which the City Bridge Trust committee is one (the Court of Common Council may alter these delegation arrangements);
 - Charity Trustees must always act in the best interests of the Charity of which they are Trustee;
 - when Members of the Court undertake business associated with Bridge House Estates (in whichever Committee) they act for the City Corporation as Trustee. In meeting those Trustee obligations, Members must therefore

ensure that the best interests of the Charity are paramount in taking decisions which impact both upon Bridge House Estates business and that of other functions of the City Corporation;

- all conflicts of interest and loyalty should be managed in line with Charity Commission guidance.

RECOMMENDATIONS

4. This report is submitted to the Court of Common Council for information to aid you in your role as Trustee of the Bridge House Estates Charity.

MAIN REPORT

BACKGROUND TO BRIDGE HOUSE ESTATES

5. Bridge House Estates ('Bridge House Estates') is a registered charity which has been in existence for more than 700 years, the primary purpose of which is the maintenance and replacement of five bridges that cross the River Thames which allow access to the City of London. The Charity is governed by various Royal Charters, Acts of Parliament, statutory instruments, and Scheme and Orders of the Charity Commission.
6. In the period up to 1995, the underlying assets of Bridge House Estates had been producing an income which was more than enough to carry out its primary purpose and this surplus had been accumulating.
7. To enable the objects of the Charity to be widened so that the Charity's income could be applied for charitable purposes rather than continue to accumulate, the trusts of the Charity were altered by way of a Cy-près scheme ('the Scheme'). The Scheme was settled by the Charity Commission and brought into effect through a statutory instrument, an Order made by the Home Secretary. The Scheme was made in 1995 (and amended in 2005 by the Charity Commission).
8. The Scheme provides for Bridge House Estates income surplus to that required to maintain and replace the five bridges (the primary purposes of the Charity) to be applied in one or both of the following ways:
 - (a) in or towards the provision of transport and access to it for elderly or disabled people in the Greater London area; and
 - (b) for other charitable purposes for the general benefit of the inhabitants of Greater London in such ways as the Trustee thinks fit.
9. It is important to note that the funds can be applied for charitable purposes to benefit the public within the geographic area of Greater London, not simply the *City of London*. A charitable purpose is defined under the Charities Act 2011 as one which falls within the list of 13 descriptions of purposes (or 'heads of charity') which must be advanced for the benefit of the public ('the public benefit requirement'), these being:
 - (a) the prevention or relief of poverty
 - (b) the advancement of education

- (c) the advancement of religion
- (d) the advancement of health or the saving of lives
- (e) the advancement of citizenship or community development
- (f) the advancement of the arts, culture, heritage or science
- (g) the advancement of amateur sport
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- (i) the advancement of environmental protection or improvement
- (j) the relief of those in need, by reason of youth, age ill-health, disability, financial hardship or other disadvantage
- (k) the advancement of animal welfare
- (l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
- (m) any other purposes recognised as charitable.

10. For a charity to meet the public benefit requirement the charity's purpose/s must, in summary, be beneficial (supported by evidence if necessary) and benefit the public in general or a sufficient section of the public (and not give rise to more than incidental personal benefit). The Charity Commission's guidance (*'Public benefit: running a charity'*) states that:

'When making decisions about how to carry out your charity's purpose for the public benefit you should:

- *know who can potentially benefit from your charity's purpose*
- *give proper consideration to the full range of ways in which you could carry out your charity's purpose*

When making decisions that affect who can benefit, you may choose to focus on certain beneficiaries. You can do this provided that:

- *you have proper reasons for doing so*
- *you do not exclude the poor from benefit*
- *the smaller group of people you wish to focus on is a sufficient section of the public for your charity's purpose*
- *you make decisions in accordance with the framework for Trustee decision-making.'*

11. The Charity Commission's framework for Trustee decision-making states:

'When you make decisions about your charity, you must:

- *act within your powers*
- *act in good faith, and only in the interests of your charity*
- *make sure you are sufficiently informed, taking any advice you need*
- *take account of all relevant factors*
- *ignore any irrelevant factors*

- *manage conflicts of interest*
- *make decisions that are within the range of decisions that a reasonable Trustee body could make in the circumstances'*

THE CITY OF LONDON CORPORATION AS THE CORPORATE TRUSTEE OF BRIDGE HOUSE ESTATES

12. The City of London Corporation, acting through the Court of Common Council, is the sole Trustee of Bridge House Estates ('the Trustee'). Therefore all Members of the Court of Common Council, collectively, perform that role. The functions associated with the Trustee role are managed through existing corporate arrangements such as delegation to committees of specified functions and associated standing orders and financial regulations. This is an entirely proper mechanism for the discharge of the Charity's functions. Individual Members are not Trustees.
13. The City Bridge Trust Committee fulfils one of the functions of the Trustee role. It is important to note 'City Bridge Trust' is not a separate legal entity in its own right: it is the name given to the grant-giving "arm" or activities of Bridge House Estates.
14. All Charity Trustees must always act in the best interests of the Charity of which they are Trustee, and manage any conflicts of interest or loyalty accordingly. When Members of the Court (at the Court itself or across all Committees) are dealing with business associated with Bridge House Estates, they must ensure that the best interests of the Charity are paramount.
15. It is not unusual for a corporate Trustee to administer a charity by delegating management of charity business to a number of committees; nor is it unusual for a local authority to be the Trustee of a charity.
16. Helpful guidance has been produced by the Charity Commission for Local Authorities acting as a charitable Trustee. This is included in the Charity Commission's Local Authorities Charities Guidance <http://www.charitycommission.gov.uk/detailed-guidance/specialist-guidance/local-authorities-as-Trustees>. Guidance regarding the role of Members as charity Trustees is also available: <http://www.charitycommission.gov.uk/detailed-guidance/specialist-guidance/local-authorities-as-Trustees/councillors-guide-to-a-councils-role-as-charity-Trustee/#contents4>.
17. A key section of the guidance is:

'There are similarities between the rules and regulations that apply in discharging the functions of a local authority and those of a charity. While many of those underlying principles of prudence and transparency will apply equally to managing charitable trusts, there are also differences. An understanding of these differences is essential if local authority Trustees are to perform this role effectively and with the minimum of risk. A number of councils have encountered problems in this area, most notably because:

 - *councils, used to exercising wide discretion in the way they manage their assets, may not have fully recognised and complied with the restrictions on the use of charitable assets;*

- *conflicts can arise between things that would be popular with the electorate and the obligations of the Trustee, imposed by the terms of the charity;*
- *where assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.’ ...*

‘Councils and council members should be aware of the following principles:

- *For a body to be a charity, it must be independent, i.e. it must exist and operate solely for charitable purposes, not as a means of carrying out the policies or directions of the local authority.*
- *Where a local authority is a Trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is the ‘the Trustee’. ...*
- *The management of the charity should be kept separate, as far as possible, from the business of the local authority. ...’*

18. The Charity Commission’s draft guidance document “Managing Conflicts of Interest; a guide for Trustees” states:-

‘Trustees have a legal duty to make decisions on behalf of the charities they serve objectively and free from bias. This is so that decision making is focused on the best interests of the charity. The law says that Trustees must avoid putting themselves in a position where their personal interests or loyalties could conflict with their duty to act only in the best interests of the charity. In practice this means that Trustees must eliminate conflict of interest or manage it. This is so that the existence of conflict does not undermine their ability to make decisions only in the best interests of the charity Even the appearance of conflict of interest can be damaging. If challenged about apparent conflict, Trustees must be ready and able to demonstrate that they have acted properly’

19. This description reflects a Member’s duty when acting as Bridge House Estate Trustee, as opposed to acting in the best interests of the City Corporation which is essential to the proper management of conflict referred to above. It also reflects the fact that Bridge House Estates’ assets do not belong to the City Corporation - they are held by it on trust for charitable purposes.
20. Bridge House Estates is independent of the City Corporation in so far as the assets and other resources of the Charity must be governed by its various governing documents, including the Cy-Près Scheme. Given the current strategy of the Corporation with its aims to provide benefits to London as a whole, there are likely to be areas when work in pursuit of the charitable objectives of Bridge House Estates converges with the City Corporation’s work in pursuit of its corporate strategy.
21. The following demonstrates the City Corporation undertakings as corporate Trustee of Bridge House Estates is set out below:
- (a) The City Corporation, acting through the Court of Common Council, is required under the Scheme (and a subsequent Order of the Charity Commission dated 10 July 1997) to settle a policy for the application of Bridge House Estates surplus

income (the charity's income surplus to that required to maintain and replace the five bridges referred to above).

- (b) There can only be one policy to determine the expenditure of the Bridge House Estates surplus income to achieve the charitable purposes set out in the Scheme for the benefit of the inhabitants of Greater London.
- (c) Since the making of the Scheme, each such policy has been consulted on. With regards to considering the needs of London, commissioned research and consultation with external stakeholders has taken place. The findings have subsequently informed the policy, having a focus on specific programmes and charitable activities. The policy has then been agreed by the City Corporation, acting through the Court of Common Council, as Trustee of Bridge House Estates. A regular pattern of 5 yearly review and consultation has more recently been established and the policy was recently agreed by the Court on the 18 July 2013.
- (d) The consultation and research demonstrates to the Charity Commission that the City Corporation, acting through the Court of Common Council, has been fulfilling its obligations as Trustee of Bridge House Estates in a proper and appropriate manner, ensuring that due consideration is given to the needs of Londoners in accordance with the Scheme.
- (e) To date, each successive policy has determined that Bridge House Estates' surplus income be distributed for the benefit of the inhabitants of Greater London by way of grants. The application of Bridge House Estates surplus for charitable purpose by way of grants alone may be varied by decision of the Court.

In recent years there have been some exceptional grants from Bridge House Estates which have been awarded to replace or supplement discretionary expenditure previously met by the City Corporation acting in a different capacity. The City Bridge Trust grants budget was supplemented by additional funds to be applied by way of exceptional grants for purposes consistent with the grants policy in place at the time. Details of the decisions taken, both to release further funds for these purposes and to award the grants, were all, bar one, referred to the Court of Common Council. The one exception was in respect of a grant of £280,000, which was approved by the City Bridge Trust Committee on 18th April 2013 regarding the expansion of the City Careers Open House programme, subject to a satisfactory financial assessment of the grant recipient by the Chamberlain. The grant was conditional on the Policy and Resources Committee approving this approach and agreeing an uplift of £280,000 to the City Bridge Trust grants budget for 2013/14, met from the revenue surplus in Bridge House Estates¹. This was approved by the Policy and Resources Committee on 2nd May 2013.

¹ The uplift was under £500k. All other increases to the grants budget were for amounts of more than £500k and must go to the Court.

- (f) With the financial down-turn in 2008 it was agreed that exceptional grants that replaced or supplemented discretionary expenditure by the City Corporation acting in a different capacity, were permitted under the grants policy at that time on the basis that:
- (i) there were unforeseen issues and circumstances which had arisen since the policy was settled;
 - (ii) the grants were in furtherance of the Bridge House Estates' charitable objects;
 - (iii) the grants were being funded from surplus income additional to that allocated to the existing grants programme and as such the existing grants policy would not be prejudiced;
 - (iv) the grants would fund discretionary activities, would not relieve the City Corporation of any of its legal obligations and were not contrary to the prohibition on Trustees' self-benefit; and
 - (v) the Charity Commission's guidance on managing conflicts of interest should be followed.

THE COMMITTEE FUNCTIONS AND RESPONSIBILITIES

22. The Corporation, acting through the Court of Common Council, as the Trustee of Bridge House Estates, has delegated some of the functions for the management and administration of the charity to different Committees, in accordance with their terms of reference. For example:
- (a) responsibility for grant decisions has been delegated to a dedicated committee, the City Bridge Trust Committee, with grants over £500,000 considered by the Court (in practice, applications for such grants are routed through the City Bridge Trust Committee); and
 - (b) responsibility for recommending the allocation of resources to support the activities of the Charity lies with Policy and Resources Committee which, with the Finance Committee, makes recommendations to the Court of Common Council as to resource allocation and budget setting. In the case of resource allocation to support the City Bridge Trust grants programme, this includes both the budget to be applied under the grants policy and the funds for administration and management of the City Bridge Trust's work.
23. Details of the committees relevant to Bridge House Estates are set out below. Their terms of reference and delegated functions may only be varied by decision of the Court.

Audit & Risk Management Committee

24. The Audit and Risk Management Committee has responsibility for audit and risk management functions relating to the Bridge House Estates Charity. Specifically regarding audit of the charity functions and accounts, it is responsible for: considering and approving the annual audit plans; receiving reports from the Chief Internal Auditor on internal controls; appointing an Independent Audit Panel to make

recommendations to the Court of Common Council on the appointment of external auditors; meeting with external auditors prior to the presentation of the Accounts to the Court; receiving and considering the external auditor's reports and recommendations; considering the audited annual accounts; and making recommendations relating to the approval of the accounts to the Finance Committee.

25. The Committee is also responsible for monitoring and overseeing risk management strategies and the assurance framework for the Charity including, where relevant, consideration of inspection reports relating to those departments responsible for Bridge House Estates functions and assets and ensuring appropriate action has been taken on those reports; and reporting back to the Court of any risks relating to all governance issues.

Culture, Heritage & Libraries Committee

26. The Culture, Heritage and Libraries Committee is responsible for the management of all Bridge House Estates archives; for all activities, services, strategies and policies in the fields of culture, heritage and tourism as they relate to Bridge House Estates, reporting to the Court of Common Council as appropriate; making recommendations to the Court, following consultation with the Policy and Resources Committee, regarding the Cultural Strategy, the Visitor Strategy and other relevant strategies (which will encompass the history and functions of the Charity); and has responsibility for the management and maintenance of the tourist and events elements of Tower Bridge.

Establishment Committee

27. The Establishment Committee has responsibility for all relevant employment matters relating to City Corporation employees who are tasked with the Charity's work as officers of the City.

Finance Committee

28. The Finance Committee is responsible for ensuring effective arrangements are made for the proper administration of the City Corporation's financial affairs including budget setting; monitoring performance against departmental business plans; making recommendations to the Court regarding audited accounts and the annual budget; and determining annually, with the Policy and Resources Resource Allocation Sub-Committee, the appropriate performance return benchmarks for Bridge House Estates.

Investment Committee

29. The Investment Committee has responsibility for the strategic oversight of Bridge House Estates investments and monitoring of the performance of those investments, in accordance with the investment strategy determined by the Policy and Resources Committee. This business is achieved through the appointment of various sub-committees, including the Social Investment Board which has responsibility for the investment of a £20m allocation from Bridge House Estates capital which is invested in the social investment market as part of a balanced portfolio of investments to

achieve a suitable financial return. The Investment Committee is also responsible for providing the Resource Allocation Sub (Policy and Resources) Committee with the recommended proportions between property and non-property assets as part of the resource allocation process, with the final decision remaining with the Resource Allocation Sub-Committee.

Planning & Transportation Committee

30. The Planning and Transportation Committee is responsible for all functions relating to the control, maintenance and repair of the five Bridge House Estates river bridges, where such matters are not within the purview of another Committee.

Policy & Resources Committee

31. The Policy and Resources Committee is responsible *inter alia* for:
- (a) considering matters of policy and strategic importance to the City Corporation, including matters referred to it by other committees and/or Chief Officers;
 - (b) the review and co-ordination of governance of the City Corporation including its Committees, reporting as necessary to the Court of Common Council, together with the City Corporation's overall organisation and administration;
 - (c) general matters not otherwise expressly provided for within the terms of reference of any other Committee;
 - (d) making recommendations to the Court of Common Council in respect of the Corporate Plan, Community Strategy, and other corporate strategies, statements or resolutions;
 - (e) determining resource allocation in accordance with the City Corporation's strategic policies;
 - (f) approving overall strategy and policy in respect of City Corporation's assets;
 - (g) scrutiny and oversight of major projects and work programmes, including considering all proposals for capital and supplementary revenue projects, and determining whether projects should be included in the capital and supplementary revenue programme as well as the phasing of any expenditure;
 - (h) arrangements for the provision of hospitality for the City Corporation;
 - (i) members' development;
 - (j) strategies and initiatives in relation to sustainability; and
 - (k) appointing various sub-committees including - Resource Allocation and Projects.

Standards Committee

32. The Standards Committee is responsible for keeping under review the City Corporation's Members' Code of Conduct, promoting high standards of conduct and investigating complaints made against Members under the Code which will include their conduct when acting on behalf of the City of London Corporation as Trustee of the Bridge House Estates Charity.

The City Bridge Trust Committee

33. The City Bridge Trust Committee is responsible for consulting with interested parties in the course of settling the policy for the application of Bridge House Estates income surplus to that required to maintain and replace the five bridges, the primary object of the Charity. Pursuant to the Cy-Près Scheme approved by the Charity Commission, this "surplus income" is permitted to be applied towards the provision of transport and access to it for elderly or disabled people in Greater London, and for other charitable purposes for the general benefit of the inhabitants of Greater London.
34. The Committee also has responsibility for determining all applications for grant funding in accordance with the Cy-Près Scheme and the agreed policy; for making recommendations to the Court of Common Council for changes to the criteria as to the eligibility and treatment of applications for funding (the policy); for determining conditions and other requirements to be imposed in connection with grants that are approved; and for reviewing the amounts, nature and spread of grants approved or refused and the operation of administrative arrangements for the Cy-Près Scheme.

Changes to the Policy for Application of Surplus Income

35. Charity Trustees should keep any policy relating to their charity under review to ensure that it best enables the charity to meet the charity's purposes. As the 5-year policy for application of surplus Bridge House Estates income was recently agreed, there must be legitimate reasons for that policy to be amended or enlarged so quickly thereafter. A review of the policy would need to be taken openly and transparently and would, consistent with the Charity's governing documents, also require further consultation with stakeholders relevant to the proposed policy changes and liaison with the Charity Commission, before referral to the Court of Common Council for determination.

CONCLUSION

36. Following the Quinquennial Review in July 2013 and having now considered the role of the City of London Corporation as Trustee of the Bridge House Estates Charity, this report clarifies the role of the Charity's Trustees and the distinct functions and responsibilities of all those Committees of the Court of Common Council that conduct business related to the Charity. This information is submitted for clarification in order to aid Members in their role as Trustee of the Bridge House Estates Charity.

All which we submit to the judgement of this Honourable Court

DATED this 28th day of November 2013

SIGNED on behalf of the Committee

Deputy Billy Dove MBE JP
Chairman of the City Bridge Trust Committee