

Appendix B – Trustee Duties

1. As Trustee of BHE, the City Corporation, acting by the Court of Common Council, has a number of core legal duties in relation to BHE which include duties:
 - (a) to (only) promote the charitable purposes of BHE;
 - (b) to comply with BHE's governing documents and the law;
 - (c) to only take decisions which are consistent with BHE's charitable purposes and within the powers contained in BHE's governing documents and conferred by law;
 - (d) to act in good faith and only the best interests of BHE (which includes managing any potential conflicts of interest or loyalty that may arise in relation to the City Corporation's other business);
 - (e) to safeguard and protect the assets of BHE; and
 - (f) to act with reasonable care and skill when making decisions that affect BHE (also known as the 'duty of care').
2. The City Corporation, as Trustee, also has specific legal duties which arise in the context of particular activities, for example, when investing the assets of BHE. In the exercise of its Trustee functions, the City Corporation, acting by the Court of Common Council, must comply with the relevant law and BHE's governing documents, (which are complex having regard to the ancient nature of the charity and its historic relationship to its Trustee, the City Corporation). The powers applicable in relation to BHE are more limited than the full raft of powers which are available to the City Corporation acting in its own corporate capacity. It is therefore crucial that those who serve on committees and sub-committees of the Court charged with responsibilities in relation to BHE, operating within the City Corporation's own internal governance structure, understand the governing documents of BHE, the relevant charity law requirements and expected standards of charity good governance, and the extent and limits of the City Corporation's powers in relation to BHE and the particular duties which apply.
3. As noted above, a charity Trustee is legally required to act only in the best interests of the charity and must not put themselves in any position where their duties as trustee may conflict with the Trustee's own interests. It is essential that a charity trustee identifies and manages any conflicts (which includes any situation where the Trustee's own interests or loyalties could or could be seen to prevent the Trustee from making a decision only in the best interests of the charity) in accordance with the charity's governing document and the law. One particular area of conflict is where there is a potential benefit to the Trustee (or, here, to the Members of the Court as members of the Trustee's responsible executive body). The Trustee (or Member) cannot benefit from their charity or that relationship, i.e. any "self-benefit" is prohibited, unless **authorised** by the charity's governing document or the law, even if it can be objectively demonstrated that any transaction or arrangement was beneficial to the charity. This is a strict prohibition in law.
4. The draft Supplemental Charter incorporates more comprehensive express provisions authorising trustee benefits. It reflects standard provisions which one might find in a modern governing document for a charity, supports greater collaboration for the City Corporation acting as Trustee of BHE and in its separate legal capacities, and removes any doubt over current arrangements which exist by custom and practice. Express provision is also made in the draft Charter for companies connected to elected Members and their families to receive limited remuneration relating to their provision of goods and services to the charity consistent with the provisions in the Charities Act 2011, as the Members are considered by virtue of the role they undertake collectively in acting for the Trustee to also require authorisation of these benefits, subject to conflicts being managed and subject to the City Corporation's own internal benefits policy (i.e. the Members' Code

of Conduct). Otherwise, the draft Charter is consistent with standard charity practice and the legal framework for charity trustees in not providing for elected Members to be remunerated, or directly or indirectly benefit from the charity's funds (except as a beneficiary of the charity where that benefit is shared with the public such as use of the bridges).