

# WIMBLEDON AND PUTNEY COMMONS CONSERVATORS

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*Governance  
Review 2014*

*Recommendations*

# **Wimbledon and Putney Commons Conservators Governance Review Recommendations October 2014**

## **Contents**

### **Governance review findings and recommendations**

- 1.1 Understanding the role of the board**
- 1.2 Ensuring delivery of organisational purpose**
- 1.3 Working effectively as individuals and as a team**
- 1.4 Exercising effective control**
- 1.5 Behaving with integrity**
- 1.6 Being open and accountable**

## Wimbledon & Putney Commons Conservators' Governance Review 2014

The way an organisation is governed often depends on its history and how its very purpose is seen by those who govern and manage it. This can also influence how things are done both from a governance and management perspective.

*“The first recognised formation of Wimbledon and Putney Commons arose when Earl Spencer came to terms with residents in drawing up the Wimbledon and Putney Commons Act which received Royal Assent in 1871. The Act conveyed interest in the Commons to a body of Conservators (five elected and three appointed) who were charged with keeping the Commons open to the public with natural aspects preserved.”<sup>1</sup>* Wimbledon and Putney Commons Conservators (WPCC) became a registered charity on 14 April 1972.

Conservators are acutely aware of the historical context within which they are operating and are routinely praised for the way in which they seek to adhere to the provisions of their governing documents (Wimbledon and Putney Commons Act 1871 (“the Act”), Election Bye-laws 1990 etc). There is however a counterview which sees the Act being interpreted far too narrowly, without contemporary relevance and being used as a barrier to change.

For some Board Members there appears to be an irresolvable tension between what they see as their role as a “Conservator” and the role they must fulfil as a “Trustee” of a charity. For these Board Members ensuring that their duties as Conservators under the Act are complied with is of paramount importance, with very little attention being paid to their duties (legal and otherwise) as Trustees of a charity.

While the Act is important because it is the rule book/governing document for WPCC, it cannot provide the charity with its strategic direction or its vision, mission and values. The Act for some Conservators appears to have almost mystical qualities but in common with other governing documents it purely sets out the organisation’s charitable objects and provides the boundaries within which WPCC must operate. It is the duty of Conservators, as Trustees, to ensure they provide leadership by - setting the strategy; being clear about what the organisation is seeking to achieve and how it is going to do it; and establishing how progress towards its strategic goals will be measured.

Ultimately, WPCC must have a governing document which enables rather than hinders its ability to further its charitable objects. This could be achieved by agreeing an up to date interpretation of the Act etc or by finding a more radical solution to the problem.

### Over-arching Findings

- WPCC has benefitted from the broad range of the skills, knowledge and experience that Conservators bring to the Board. There was also recognition and respect expressed by questionnaire respondents and interviewees for the dedication and passion for the Commons that the Conservators demonstrate on a daily basis.
- The new Chief Executive immediately recognised the need for a much greater emphasis to be placed on governance and has already made huge improvements to the way in which the organisation functions at a Board and operational level. Running in tandem with this Governance Review, the Chief Executive has begun to work with the Conservators on the much needed strategic, policy and risk

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<sup>1</sup> Candidate Brief, Chief Executive, Wimbledon & Putney Commons, 2013

frameworks that are required.

- Some Conservators interpret their duties as abiding by the Act and being conservationists. They do not fully understand their obligations under Charity Law. As a result the Board of Conservators is not discharging their obligations under current Charity Law.
- The Charity Commission places a great deal of emphasis on the need for trustees to make 'sound' decisions and have recently produced guidance on the principles that should guide trustees. One of the most important ways in which trustees can demonstrate that they have adhered to the guidance and acted prudently is through the minutes of their board and committee meetings. WPCC's minutes however are not currently recorded in a way that would provide Conservators with any protection in this respect as they do not provide an audit trail as to how their decisions were reached and what factors etc they took into account or disregarded.
- Given the apparent constraints placed on WPCC by the Act and the need to seek legal advice on a regular basis in order to interpret its provisions, Conservators working with the Chief Executive need to seriously consider the following - seeking appropriate legal advice from a firm of lawyers that specialise in charity law:
  - an appropriate modern day interpretation of The Wimbledon and Putney Commons Act 1871 (including the Commissioners Clauses);
  - the options available for updating or amending the Act and/or moving to a company structure, if possible.
- The current Board of Conservators working with the Chief Executive need to consider all of the options available to them for shaping the election process that is to be held in early 2015. As part of this process Conservators, as a minimum, need to ensure that - all prospective Conservators are eligible to act; that the skills, knowledge and experience required by the Board helps to inform the Electors/Levy-payers as to the best candidates for the posts. Longer term, Conservators need to ensure that the Election Bye-laws assist them to recruit people with the skills, knowledge and experience required by WPCC and sets limits on the number of terms that Conservators can serve without having a break.

Conservators should be appointed to Board Committees on the basis of the skills etc that they can bring to the work of that group. Where skills are lacking or non-existent, Conservators should use co-option, for which there is a precedent, as a mechanism to boost the effectiveness of their Committees.

- Conservators have got used to spending almost all of their time on project/operational matters which nine out of eleven questionnaire respondents recognised was inappropriate. Working with the Chief Executive, Conservators need to come to a shared understanding of what matters are strategic and what matters are operational in relation to Board oversight of the organisation.
- As a matter of urgency, the Conservators need to consider the frequency of meetings and embrace board committees as a 'governance tool' for improving the effectiveness of the Board. The Board also needs to stop holding the 'open' parts of Board Meetings as they do not appear to fulfil any particular function and find more constructive ways in which to communicate with the public/Levy-payers and to be

held to account by them.

Conservators, working with the Chief Executive, need to significantly change the way in which WPCC is currently governed if they are to comply with their charity law duties and responsibilities let alone embrace best practice.

## **1.1 Principle 1: Understanding the role of the board**

### **Recommendations**

#### **1.1.1 WPCC's governing documents**

1. Conservators, working with the Chief Executive, need to seek appropriate legal advice from a firm of lawyers that specialise in charity law to:

- agree a modern day interpretation of WPCC's governing documents (Wimbledon and Putney Commons Act 1871 ("the Act"), Commissioners Clauses Act 1847 and The Wimbledon and Putney Commons Act 1871 Election Bye-Laws (1990) Wimbledon and Putney Commons Act Bye-Laws 1971);
- explore the options available for updating or amending the Act and/or moving to a different legal structure (e.g. company limited by guarantee).

2. Conservators must embrace their roles as Trustees of a charity - and not just interpreting their duties as abiding by "the Act" and being conservationists - or stand down from their positions. Conservators should also seriously consider being known as Trustees instead of Conservators as this might serve to reinforce the position of trust they hold and the duties that are placed on them individually and collectively.

#### **1.1.2 Governance v management**

1. Conservators must stop performing 'operational' tasks which should rightly be delegated to the Chief Executive (CE) and spending a disproportionate amount of Board time on project/operational matters. In order to do this, the Board working with the Chief Executive, in the short term, need to:

- carry out a role analysis exercise in order to generate a discussion and clarify what the respective roles of the Chief Executive, Chair and Board should be;
- draw up a detailed scheme of delegation (being mindful of the CE's job description) which clearly sets out the parameters within which the CE is empowered to act and when Board approval will be required;
- draw up a list of 'matters reserved for the Board' but ensuring everyone understands that no list can be completely comprehensive and the Chief Executive will need to use his discretion as to whether a matter needs to go to the Board even if it does not appear on the list that has been drawn up;
- agree on the information needs of trustees in terms of reporting by the Chief Executive and other members of the Senior Management Team, set appropriate standards for the quality of Board (and Board Committee) proposals, reports and minutes; and ensure these standards are maintained;
- use the strategic objectives that were agreed by Conservators at their Board Meeting in September 2014, to draw up a business plan with performance indicators for the organisation as a whole and objectives for the Chief Executive in particular – **see also 1.1.3 below.**

In the longer term, the Board working with the Chief Executive needs to ensure that WPCC has appropriate strategic, policy, risk and accountability frameworks in place. In this way, the Board will be developing further and defining the boundaries on their delegation to the Chief Executive and Senior Management Team.

2. The Board, working with the Chief Executive, to develop a policy (or build into a Code of Conduct) as to when it is appropriate, within the context of WPCC, for Conservators to perform 'non-Board' roles and what that means in terms of how they fulfil those 'non-Board' roles including behaviours.

### **1.1.3 Chief Executive's appointment, supervision, support, appraisal and remuneration**

1. The Chief Executive should have clear annual objectives set in order to ensure the delivery of any annual plans, the business plan and WPCC's strategic priorities.

2. It is particularly important that the Board has a Performance Management Policy (and supporting procedures) to help develop and support staff and volunteers who carry out the WPCC's work and for dealing with any under-performance and capability issues. This policy should include the Conservators, Chief Executive, Staff and Volunteers.

3. The Board needs to determine the most appropriate Board Member to supervise and support the Chief Executive by way of regular meetings throughout the year. This support is usually provided by the Chair but it could also be deemed more appropriate that another Conservator (or small committee) take on this role because they have greater experience of managing and supporting senior staff and the time required for the task.

4. As it would appear that WPCC does not have a system in place for appraising the Chief Executive, a Working Group should be established to decide on the approach/model that is most suitable for WPCC and make recommendations to the Board. When deciding on the model for the formal appraisal of the Chief Executive, the Chief Executive should play a significant part in the discussions and decision-making process.

### **1.1.4 Staff remuneration**

1. The Conservators must make sure that when they are making decisions in relation to staff remuneration, they are acting independently and that their decisions are reached solely on the basis of the best interests of WPCC's charitable objects.

2. The Board needs to establish a remuneration working party which includes the Chief Executive and someone with the relevant expertise to develop a remuneration policy. Obviously, the Chief Executive's input will be important but the inherent conflicts of interest must be managed and he must not be involved, in any way, in setting his own remuneration.

In developing and agreeing the remuneration policy, which should be based on principles agreed by the Board collectively, the Board/working party should take into account the findings from NCVO's enquiry into Executive Pay, 2014 and ensure it takes into account the following (not an exhaustive list):

- the purposes, aims and values of the charity and its beneficiaries' needs;
- how this impacts on overall pay policy for all employees, and for the senior staff in particular, including whether a 'discount' compared with pay for similar roles in other sectors is appropriate;

- the types of skills, experiences and competencies that the charity needs from its senior staff, the specific scope of these roles and the link to pay;
- the charity's current business plan and how the implementation of this plan may affect the number of senior staff it needs to employ or recruit and the nature of these roles;
- the charity's ability to pay – this includes the cost to the charity of raising pay, and whether it is sustainable, and how appropriate the level of pay, and any pay increase, is in the context of the charity, as measured against the needs of its charitable purposes and beneficiaries;
- their assessment of the charity's performance and the senior staffs' performance against expectations, in both the short and long term;
- appropriate available information on pay policies and practices in other organisations that can help make the decision on whether a level of pay is fair and reasonable.

3. The Board/remuneration working party should seek relevant professional advice on the different elements of its current remuneration package - especially in relation to tied accommodation and the final pension salary scheme that it currently operates – to ensure that all Staff and Board Members

- understand how they should be operated including in respect of HMRC;
- understand how they relate to each other (tied accommodation and salary and tied accommodation and final pension salary scheme etc);
- understand whether the whole package remains appropriate and in line with any pay policy and principles that are developed.

4. The Board must make sure that it is fulfilling all of its duties and responsibilities in respect of staff, which includes making sure that the organisation has in place all of the employment policies and procedures that are required and that they are adhered to.

### **1.1.5 Stewardship of assets**

Trustees have a duty to use charitable funds wisely and to maximise any returns (without putting the investment at undue risk) and in particular special rules apply to the sale, letting and mortgaging of land by charities.

Apart from the land which comprises Wimbledon and Putney Commons, the Charity has a number of other assets which include a windmill, tea rooms, golf club and tennis courts. Without any overarching strategy in place, it would appear that the Conservators have granted leases or licenses to a number of other people or organisations on terms that may not be particularly beneficial to WPCC. As a minimum the Conservators working with the Chief Executive should ensure:

- they have a register of all of its assets and the terms on which they have been granted to others – leases or licenses etc and for what length of tenure (+ copies of all leases and licenses held centrally);
- that it is known when any 'break clauses' or 'rent review clauses' etc come into play and on what terms/conditions they can be implemented;
- that Charity Commission rules were complied with when granting the leases or licenses;
- that leases/licenses are only granted if they are demonstrably in the best interests of WPCC and not because they would be helpful to the lessee or licensee;
- in granting leases or licenses any conflicts of interest or loyalty are rigorously managed;
- the leaseholder or license holder complies with the terms of the lease or license;

- that a cost benefit analysis is carried out to ascertain whether it could be cost effective to breach the lease or licence in order to secure a better deal for the charity in the long term – having sought appropriate specialist, external advice;
- that a long term strategy for these assets is drawn up as part of the overarching financial strategy that is being created.

## **1.2 Ensuring delivery of the organisational purpose**

### **Recommendations**

#### **1.2.1 Developing and agreeing a long term strategy**

1. WPCC must prioritise the creation of its strategic plan/framework which should be developed in close consultation with key stakeholders. The framework should be articulated clearly and should drive the work, and ways of working, of the charity.

The characteristics of top-quality plans include<sup>2</sup>:

- they establish a compelling vision and mission;
- they contain a limited number of achievable strategic objectives (SMART<sup>3</sup>), which can be used to track progress and measure performance;
- they articulate the key strategies for achieving each of the objectives;
- they embody realistic judgements about what can be achieved within the resources and timescale of the plan;
- they are specific but adaptable, not set in concrete but not so generalised that they can mean anything to anyone;
- strategies for raising money are tightly integrated with service and campaign strategies;
- they set a clear financial framework;
- the allocation of resources to particular objectives is clear;
- they assess risks and establish mitigating actions;
- they contain a summary implementation timetable;
- the allocation of responsibilities is clear and ideally aligned with the organisation's structure.

#### **1.2.2 What difference does the WPCC make?**

1. Having agreed the strategic objectives, more detailed aims and supporting coherent activities need to be identified by the Senior Management Team working with their staff. These should be developed into an over-arching business plan (which includes a financial plan) and used to develop annual plans.

2. Once the business and annual plans have been agreed, a proportionate system to measure performance against aims (Key Performance Indicators – KPIs) needs to be developed by the Senior Management Team in order that WPCC and the Board can measure progress, learn from experience and deliver greater impact.

3. The Conservators must ensure that their annual Audited Financial Statements include the mandatory 'public benefit statement' and that it fully complies with the Charity SORP<sup>4</sup>. In order to do this properly, Conservators and Senior Staff need to make sure that they are

<sup>2</sup> Managing without Profit, 3<sup>rd</sup> edition, Mike Hudson 2009

<sup>3</sup> SMART = specific, measurable, agreed/achievable, realistic & timed

<sup>4</sup> The statement of Recommended Practice – Accounting and Reporting by Charities (SORP) 2005 or SORP 2015 for accounting periods beginning on or after 1 January 2015

clear as to how the WPCC's aims/objectives are carried out through its activities for the benefit of the public. The development of a strategic framework for the organisation should seek to ensure that all Conservators, Staff and other key stakeholders are clear how WPCC meets the public benefit requirement.

### **1.2.3 Considering the need for different ways of working**

1. The Board, working with the Chief Executive, needs to ensure it has mechanisms – perhaps as part of its risk management processes and procedures – in place that will alert them to external and environmental factors that could result in the board having to consider whether:

- the Charity's purposes could be better achieved through collaboration, or where appropriate, merging with one or more other organisation(s) with similar objectives;
- different ways of working may be required to meet the opportunities and challenges presented by developments within the field of operation, including the risk of missing opportunities.

2. As part of its strategic objective *“To build upon the work of the Communications Review 2013, to improve on the outward facing methods by which we communicate...”*, WPCC needs to consider how it can become less *“insular”* and more willing to learn from others and/or work in partnership or collaborate.

**See also 1.6.2 below**

## **1.3 Working effectively both as individuals and as a team**

### **Recommendations**

#### **1.3.1 Skills, knowledge and experience**

1. The appointment process for two of the three appointed Conservators appears to fully comply with best practice and seems to work extremely well (external advertisement seeking Conservators with particular skills, knowledge or experience; shortlisting and interview process; followed by rigorous vetting procedures including taking up references, verification of qualifications etc).

Conservators therefore need to consider how they can replicate, as far as possible, the process used to fill vacancies amongst the appointed trustees when elections are held. The Code requires trustees to use *“provisions in the governing document for appointing board members effectively and intelligently, so that elections by members and nominations by external bodies are informed by the board, and any power of co-option is used to fill key gaps in board skills”*.

Conservators should consider the options available to them which include:

- seeking advice and/or redrafting the Election Bye-Laws to ensure the nominations process and therefore the candidates that are put forward for election are selected on the basis of the skills, knowledge or experience that they can bring to the Board;
- as part of raising awareness of the elections in 2015 particularly seek nominations from people with the skills, knowledge or experience that have been identified as missing;

- where possible seek to amend “the Act” to allow for co-options to the Board for additional expertise that may be required and/or co-opt Committee Members for skills, knowledge or experience they can bring to the work of the Committee for which there is already a precedent.

**(See also 1.3.2 below)**

### **1.3.2 Eligibility to serve**

1. WPCC needs to ensure that it gets all current and prospective Trustees/Conservators to sign an ‘eligibility to serve’ form which can be downloaded from the Charity Commission website - <https://www.gov.uk/government/publications/confirmation-of-charity-trustee-eligibility>.

2. WPCC needs to ensure it puts a procedure in place to ensure that Trustees/Conservators continue to be ‘eligible to serve’ throughout their time as a Trustee.

2. All election literature should inform prospective candidates of the ‘eligibility criteria’ for election as a Trustee/Conservator and the checks that will need to be carried out.

The Chief Executive working with the Returning Officer need to make recommendations to the Board as to when the ‘eligibility checks’ should be carried out. As a minimum the checks need to include:

- the register of bankruptcies and individual voluntary arrangements on the insolvency service website;
- the register of disqualified directors on Companies House website;
- the register of trustees removed by the Charity Commission or courts, which is kept at the Commission Offices;
- identity checks;
- checks on key qualifications;
- Disclosure and Barring Service checks, if appropriate.

It is also seen as best practice for references to be taken up.

### **1.3.3. Code of Conduct and other policies to support the work of the Board**

1. A Code of Conduct for Conservators/Trustees should be drawn up and implemented before the elections are held in 2015. A trustee code of conduct is an agreement between the charity and individual trustees that spells out the standards of behaviour expected from trustees. Trustees should be asked to sign up to the code when they join the board. When they do so they are pledging to uphold its standards.

2. A Governance Working Party/Committee, with the assistance of the Chief Executive, needs to develop a number of policies that will govern the way in which the Board will operate going forward. The policies need to be developed and agreed by the Board as soon as possible but definitely before new Conservators/Trustees are elected in 2015. Policies include – a conflicts of interest policy and register, role descriptions for honorary officers, terms of reference for all board committees, confidentiality, trustee expenses, receipt of gifts and hospitality, whistleblowing etc.

### 1.3.4 Conservator training and development

1. As soon as the elections have been held and the new Board is in place, a skills, knowledge and experience audit should be carried out, having previously determined the skills, knowledge and experience that are required by the Conservators collectively.

- Assessing the skills, knowledge and experience of current trustees can be difficult because the normal practice is to ask trustees to complete a questionnaire which could give a very subjective view. It is therefore recommended that any self-assessment questionnaire asks trustees to rate themselves on a scale of 1 – 3 (1 = outside my competence, 2 = can keep up, 3 = I could lead on this/I have professional expertise) and to provide examples of how they have gained their skill, knowledge or experience.
- A Governance Working Party/Committee (**see 1.4.4 below**) should then assess all of the responses and produce an analysis of the gaps that exist and makes recommendations as to what actions need to be taken e.g. training required or co-options needed, if possible.
- The Chair of the Governance Working Party/Committee should then meet with individual Conservators to discuss the skills audit and any training or development that might be required. In this way a training and development plan could be created for each Conservator/Trustee.
- Training needs identified can be met in various ways including – formal training sessions, mentoring or peer support, self-directed learning including reading Charity Commission publications and guidance and attending conferences or workshops etc.

2. A structured induction process needs to be designed and implemented for all new Conservators. This should include:

- an induction pack of written material:
  - Trustee Handbook (where it exists) and log-in details for any portal where all information required by Conservators can be accessed
  - copy of the charity's governing document;
  - copy of the charity's mission statement;
  - brief history of the charity;
  - copy of the charity's strategic plan and current business plan;
  - copy of the latest report and accounts, current budget and most recent management accounts;
  - role description for Conservators;
  - copy of the Board's role and terms of reference for any committees;
  - list of matters reserved for the Board of Conservators
  - copies of policies relating to Conservators – conflicts of interest and loyalty, expenses, code of conduct, confidentiality, anti-bribery etc;
  - copies of other board policies – risk, reserves, investments, health and safety, whistleblowing etc;
  - details and dates of Conservators and Committee meetings;
  - an organisation chart;
  - contact details for other Conservators and key employees; and
  - minutes and papers of recent board meetings.
- an assessment of any training required by the new trustee;

- attendance at induction training sessions – introduction to the organisation and key staff, meeting other trustees including the Chairman and Treasurer etc;
- introductions to professional advisers;
- visits to see services provided by the charity or projects being delivered;
- meetings with key stakeholders of the charity.

3. The induction pack for new Conservators could be developed into a Trustee/Conservator Handbook or Manual which would be useful for all Conservators, no matter how long they had been in post. Handbooks could be provided in hard copies and/or the information could be stored on a secure governance/trustee section of WPCC's website or elsewhere.

4. The Governance Working Party/Committee should consider the options available to the Board for appraising its own performance on a regular basis. As a minimum, the effectiveness of WPCC's Board, the Chair and individual Conservators should be assessed every two years. This process should recognise achievements, identify areas that need strengthening and agree an action plan with target dates to make governance more effective.

5. On the basis of the skills audits that will be carried out and the Board and individual Conservator appraisals, all Conservators/Trustees should be offered relevant, on-going training and development opportunities.

### **1.3.5 Board meetings, agendas and minutes**

#### **Board meetings**

1. Conservators should ultimately aim to meet on a quarterly basis with two away days per year where they spend quality time on the big, strategic issues that need a serious airing. However, because this Governance Review is going to create a lot of additional work in the short/medium term, we would recommend that the Board move to meeting every two months, as soon as possible, with the stated aim of meeting on a quarterly basis when practicable.

2. In readiness for the elections in 2015 and in order to encourage more people - with the skills, knowledge and experience required - to stand for election, Conservators should change not only the frequency of meetings but also the time of day/evening when meetings are held. The time of day/evening when meetings are held is crucially important and if held during the working day could rule out anyone of working age/in employment.

3. On the basis of the findings of this review of governance and the Communication's Review in 2013, we would recommend that the 'open/public' parts of WPCC's Board Meetings are stopped on the basis that they serve no meaningful purpose. They should be replaced by quarterly or half-yearly sessions, led by the Chief Executive, in which public participation and involvement are actively encouraged. The main purpose of the new sessions would be for the public to be informed about the work that is being carried out on the Commons and to be given plenty of opportunity for questions and answers. A particular emphasis might be to showcase the work of the Natural History Sub Committee.

4. Conservators working with the Chief Executive will need to carefully consider the sensitivities and risks around changes to the way in which they currently operate (ceasing to meet monthly and no longer inviting the public to attend the 'open/public' part of the Board Meeting) and draw up a communications strategy (including key messages) for proactively promoting positive messages about the changes and for dealing with any negative publicity.

## Agendas

1. The Chief Executive working with the Chair should create an annual plan/chart for the agendas of Conservators' Meetings. The plan needs to be able to demonstrate that all of the Conservators' duties can be fulfilled within the number of meetings planned and that each agenda has room for any unexpected items that might crop up.

Using a chart showing the six board meetings and the two board away-days, the following should be slotted in:

- routine items of planning, monitoring, and reviewing (e.g. budget, Annual report & Accounts, annual review of risk);
- items from the previously agreed timetable for review of high-level Board policies;
- a work plan for the Board - any strategic work that the Board needs to do in a timely manner in order to help the Chief Executive and the charity achieve what is being asked of them in the coming twelve months;
- the two or three 'spotlights' or 'trustee audits'; and
- the strategic big issues and strategic challenges to be addressed during the year that require either a decision or formal guidance to the Chief Executive (again the number of strategic issues/challenges needs to be small to ensure there is sufficient time to do them justice either in a Board meeting or as part of the Board away-day).

In order to ensure agendas are not overfull, the Chair and Chief Executive need to ensure rigorously that Board time is not wasted by including topics that might be of interest but are not of significant strategic importance.

(This forward planning will also help the Chief Executive to factor work required by the Board into his annual plans.)

2. When Conservators are meeting quarterly then each agenda would normally include the following standard agenda items:

- apologies for absence;
- minutes for previous meeting for approval;
- matters arising;
- declarations of any conflicts of interest or loyalty;
- Chief Executive's report;
- report on the performance of the charity against its strategic objectives/business/corporate annual plans;
- financial matters including management accounts;
- high-level board policies for review/approval;
- planned strategic challenge or 'big issue' to be considered;

other items

- delegated authority reports e.g. reports from board committees;
- compliance issues;
- other key issues requiring the board's attention;

to finish

- any other business;
- short review of the meeting;
- dates of meetings for the next twelve months.

## Minutes

The standard of Board papers must be improved. Papers should be succinct and to the point, concentrate on governance issues and received by Conservators in plenty of time before the meeting.

1. We would recommend that whoever is responsible for WPCC's minutes of Board meetings, if they have not already done so, read the Charity Commission guidance entitled "It's your decision: charity trustees and decision making" - <https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making>. The guidance is helpful because it explains the information that needs to be considered or disregarded by trustees when making decisions and this is therefore the information that needs to be captured by the minutes of meetings.

2. All Board and Committee minutes should include and record succinctly:

- a brief account of key points of discussion and debate on each item of business;
- reports and documents introduced, accepted or noted etc;
- the precise wording of any proposal or resolution;
- information upon which the decision was based (including advice received from the executive and from professional advisers);
- the stages of the decision-making process including the consideration of risk and how the risks attached to the chosen option or course of action will be managed;
- decisions made; and
- any action required by whom and by when;

3. Minutes of each meeting should be supported by a rolling Action Chart which should be presented in support of the agenda item at the next meeting 'Matters arising not covered elsewhere on the agenda'.

## 1.4 Exercising effective control

### Recommendations

#### 1.4.1 Financial Management

1. The current Finance Committee should be rebranded as a Finance and Investment Committee (**see 1.4.4 below**) and detailed terms of reference should be drawn up.

2. The Finance and Investment Committee should meet regularly and ideally two or three weeks prior to four (if not six) of the planned Board Meetings. The Finance and Investment Committee's meeting schedule should be agreed for twelve months in advance and the dates should be published so that Conservators/Trustees are aware of when the Committee will meet.

3. The Finance and Investments Committee's terms of reference should include the following responsibilities:

- ensuring the trustees' fulfil their financial responsibilities and the charity is operating within the financial requirements and guidelines set out in law, regulation and the charity's governing documents;
- ensuring there are appropriate and written financial delegations, appropriate and sufficiently robust financial controls (including assets) which are regularly reviewed, monitored and tested;

- drafting the financial strategy for the Conservators to approve;
- ensuring that Conservators' deliberations and decisions are made taking into consideration financial implications and risks (including operational risks);
- ensuring there is an appropriate budgetary process;
- scrutinising and evaluating draft annual budgets for recommendation to the Board;
- working with the Chief Executive to ensure that financial reporting is both accurate and useful for monitoring and decision making;
- ensuring management accounts are reviewed regularly, and performance measured against the approved budget. All significant variances should be explained and reported to the Board.
- formulating for the approval of the Board's investment strategy (including objectives, risk appetite and policy) for approval by the Board, and then to regularly review and to monitor the performance of the portfolio and the investment managers;
- ensuring that the charity has anti-fraud and whistle-blowing policies and procedures that are regularly reviewed and known throughout the charity.

The terms of reference should also include:

- membership – maximum and minimum number of members, how many trustees, relevant expertise required (at least one shall be a qualified accountant, one with investment experience etc);
- attendance – every committee member is expected to attend every committee meeting, what staff will be invited to attend;
- voting – which committee members will have the right to vote (trustees only or any co-opted members) and what constitutes a quorum;
- frequency of meetings;
- what delegated authority it has been given;
- what is expected of the committee in terms of reporting back and being held to account;
- the need for the Committee to annually review its effectiveness.

4. Conservators, working with the Chief Executive must make sure that WPCC has appropriate and robust financial and other internal controls - <https://www.gov.uk/government/publications/internal-financial-controls-for-charities-cc8> in place. The Board must also ensure that the financial and other internal controls are reviewed on an annual basis.

5. The Conservators, working with the Chief Executive, must ensure that they regularly re-tender for the professional services that are provided to the Charity by auditors, lawyers, investment managers etc. As this has not been the practice to date, WPCC needs to set up a programme for ensuring that all professional services are re-tendered to ensure that they still represent good value for money and that the advisers have the relevant expertise particularly in relation to charities.

6. The Conservators must ensure that WPCC's auditors have the relevant expertise in relation to charities and that, on an annual basis, they provide an 'audit findings letter/management letter' which communicates audit matters of governance interest to them as Trustees.

7. Conservators, working with the Chief Executive, must ensure that any land and buildings the charity owns are well maintained and insured. *(It is understood that this work has already been prioritised and is being implemented.)*

8. It is understood that the Chief Executive, working with the Conservators, is currently drawing up a financial strategy for the organisation. We would therefore recommend, as part of this work, that WPCC's reserve's policy - <https://www.gov.uk/government/publications/charities-and-reserves-cc19> - is overhauled in line with Charity Commission guidance and an investment policy - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/302278/cc14t\\_ext.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302278/cc14t_ext.pdf) is developed and agreed by the Board.

#### **1.4.2 WPCC's high level Board policies and procedures**

1. The Conservators should ensure an audit of all policies is carried out which includes their fitness for purpose, gaps identified and a timetable for the development of missing policies to be produced.

Policies that have been identified as missing as part of this Governance Review include the following – Anti-Bribery Policy, Code of Conduct, Confidentiality Policy, Eligibility to Serve, Internal financial controls, Investment Policy, Performance Management Policy, Receipt of Gifts and Hospitality, Reserves Policy, Risk Policy, Schemes of delegated authority, Trustee Expenses Policy, Whistleblowing Policy.

2. Conservators should put time aside to consider which high-level policies are so important that they have, in their view, to be Board policies. Having identified these high-level policies (some will be required by law, some by regulation and some through Board choice), Conservators should agree the mechanism for the regular review of these Board policies (i.e. by which committee or by the Board) and how frequently, and set up a schedule for their review.

3. Once the Conservators have determined which policies need to be Board policies, all other policies should be delegated to the Chief Executive.

#### **1.4.3 Risk Management**

1. Conservators should establish an Audit and Risk Committee (**see also 1.4.4**).

2. The Audit and Risk Committee, working with the Chief Executive, must ensure that WPCC has a risk policy that is approved by the Board. The risk policy needs to clearly articulate the Board's appetite for risk in difficult business areas and how it will manage and limit the impact of identified risks. A risk policy should also define the respective roles of the Board, Audit and Risk Committee and the Senior Management Team in relation to risk management.

2. The Risk Policy should include the following, as responsibilities of the Conservators:

- use the Conservators' and Chief Executive's diverse professional expertise and experience for 'horizon scanning' to help identify and 'brain storm' potential 'new' risks and possible impact on WPCC of major changes occurring elsewhere;
- introduce the discipline of considering consequences<sup>5</sup> (both intended and unintended) and various related scenarios (e.g. reputational risks attached to a proposal and reputational risk of rejecting a proposal);
- annually consider the Risk Report from the Audit and Risk Committee and ensure that sufficient time is allocated to the discussions ;

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<sup>5</sup> As a result of X, there is a risk that Y may happen which will lead to Z (consequence). It also helps to consider the cumulative effect of several relatively low-impact risks occurring together.

- consider insurance cover at the same meeting at which the Board carries out its annual oversight of risk;
- require all major proposals to the Board to carry a risk assessment (this includes the annual budget);
- require the Chief Executive to report at each and every Board meeting on his current top risks (approximately two to three) and how these risks are being managed on behalf of the Board;
- an annual programme of 'spotlights' (about two or three each year) should be planned in advance to check that selected policies and procedures or financial controls etc are robust and being followed.
- as recommended before - the Board identifies which policies are so important (by law, regulation or choice) that they have to be Board policies and ensures that these policies are regularly reviewed and complied with.
- reports from Board committees to the Board (usually copy of their minutes) should carry a cover sheet, which highlights:
  - key issues about which Conservators need to be aware (including major risks);
  - decisions that Conservators are being asked to make, albeit with recommendations from the committee; and
  - decisions made by the committee under delegated authority.

#### **1.4.4 Board Committees**

1. WPCC should adopt the following Board Committee structure:

- Audit and Risk Committee
- Finance and Investment Committee (to include Remuneration)
- Governance Working Party/Committee (if ongoing could include Appointment of Conservators and Elections)

The Natural History Sub Committee should be recognised as an operational committee that reports to the Chief Executive. It would also appear that the following permanent/ad-hoc Committees - Communications, New Buildings and Putney Hospital – also cover areas that should be considered as operational matters which are the responsibility of the Chief Executive.

2. Approximately three Conservators, one Senior Staff Member and one external person should serve on each committee with the Board (having sought advice from the Governance Working Party/Committee) appointing a Conservator as Chair. Conservators should be appointed to Committees on the basis of the skills, knowledge and experience that can provide to the work of a particular Committee and external members serving on Board Committees should have relevant and demonstrable professional expertise.

3. All Committees will need new Terms of Reference to be drawn up but especially the Governance Committee/Working Party. The Governance Committee's primary focus will be on how WPCC implements the recommendations from the 2014 Governance Review and ensures that the Board and Board Committees have the skills, knowledge and experience that are required by the organisation.

4. All terms of reference for Board Committees must clearly set out what authority has been delegated to it e.g. decision making powers or merely implementation of decisions taken by the Board. Before delegating decision making powers to a Committee the Board needs to ensure that this is allowed by the governing document/s.

5. No Committee should exist if it doesn't add value to the governance process. Therefore it is essential that each Committee's effectiveness is regularly reviewed by itself and by the Conservators, and in light of these reviews appropriate changes should be made – this can range from modifying terms of reference, to bringing on additional expertise, to abolishing the Committee if it cannot illustrate the extra value it brings to governance, to rethinking the committee structure.

## **1.5 Behaving with integrity**

1. WPCC must make sure that it develops and all Conservators adhere to the following policies:

- a code of conduct;
- confidentiality;
- expenses policy;
- identification of fraud and corruption;
- receipt of gifts and hospitality;
- whistleblowing.

### **1.5.1 Conflicts of interest and loyalty**

1. Along with other policies and procedures, WPCC's Board must urgently develop and agree a conflicts of interest and loyalty policy and procedures including a register of trustee and senior staff interests which are in line with Charity Commission guidance – 'Conflicts of Interest: a guide for charity trustees'.

A conflicts of interest and loyalty policy should include as a minimum:

- explain that trustees have a personal responsibility to declare conflicts of interest and loyalty if they are to fulfil their legal duty to act only in the best interest of the charity;
- define trustee benefits and highlight the requirement to obtain legal authority before any transaction involving trustee benefit is undertaken (and the possible repercussions if the authority is not received prior to any transaction taking place);
- set out how and by whom the policy will be monitored and enforced;
- be part of a wider policy framework for example a trustee handbook. It should also signpost and advocate the values contained in all relevant codes of conduct and other policies that the Conservators are obliged to follow; and
- provide more information on what interests Conservators should declare especially ones which could arise within the context of the WPCC.

2. The Chief Executive, working with Conservators, needs to ensure that the register of Conservators and Senior Staff interests is up to date and complete.

3. At the start of every Board meeting and every Board Committee meeting, the Chair of the meeting should ask if those present have any conflict of interest or loyalty with anything on the agenda. If a trustee fails to declare a conflict of interest or loyalty which is known to anyone present at the meeting, he/she is obliged to speak up – this is a particular obligation of the Chair.

4. Conservators and Senior Staff must recognise that conflicts of loyalty (where a trustee is also a trustee of another charity where the interests of the two charities may create a conflict) need to be managed as rigorously as any conflict of interest (where the financial

interests of a trustee or a connected person or business may be in conflict with the charity). This means that conflicts of loyalty need to be as rigorously managed as conflicts of interest.

5. Conservators need to be particularly mindful of the conflicts that are rife when they are discussing and agreeing issues in relation to Levy-payers.

## **1.6 Being open and accountable**

### **Recommendations**

1. The Conservators should ensure that the trustees annual report, 'Report of the Conservators and Audited Financial Statements', which is written in their name is accurate (note auditors will only check financial claims made in the Trustees' Annual Report) and any claims can be evidenced. In particular, the Conservators must make sure that the trustees' annual report:

- includes the required public benefit statement; and
- that they have sufficient involvement in the management and control of risks that they can make the required statement on risk management, with reasonable confidence.

2. The Conservators must collectively agree the content of the annual 'Report of the Conservators and Audited Financial Statements' and not delegate this responsibility to an individual or Committee.

#### **1.6.1 Complaints handling**

1. The Conservators, working with the Chief Executive, should ensure that the WPCC adopts a "clear and effective complaints procedures, implementing them constructively and using the process as a valuable source of management information"<sup>6</sup>.

2. The Conservators, perhaps as the subject of an away day, must find a way in which to learn the lessons from the various crises/court cases that have engulfed them in the recent past and use this learning to feed into the development of their new strategic framework going forward.

3. The Conservators, working with the Chief Executive and perhaps external professional assistance, need to agree a strategy to resolve the conflict that has arisen over the Putney Hospital site which does not appear to be diminishing even though the immediate legal battles have been won.

#### **1.6.2 Communications**

1. Conservators have agreed, as one of their strategic objectives, to take forward the recommendations from the Communications Review 2013 and we would endorse this course of action.

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<sup>6</sup> Good Governance: A Code for the Voluntary and Community Sector, 2010