

Malvern Hills Trust

Governance Committee

Thursday 30 January 2020 7.00pm

Malvern Victoria Bowling Club, Victoria Park, Malvern Link, WR14 2JY

Present: Mr R Bartholomew, Dr S Braim, Dr D Bryer, Mrs C Palmer, Mr C Penn (Chair), Ms S Rouse (non-voting), Prof J Raine.

In attendance: Chief Executive Officer (CEO), Secretary to the Board, Mr C Atkins, Dr G Crisp, Mr R Fowler, Dr T Parsons, Ms H Stace, Mr J Watts, 13 members of the public.

1. Election of Chair

There was one nomination and Prof Raine was appointed unopposed.
Prof Raine took the Chair and welcomed everyone to the meeting.

2. Election of Vice Chair

There was one nomination and Mr Bartholomew was appointed unopposed.

3. Apologies for absence

Mr M Davies, Mr D Core.

4. Chair's announcements

There were none.

5. Declarations of interest

Mr Bartholomew said he was a member of the Herefordshire Adult Safeguarding Board.

6. Public comments

See Schedule.

In response to Mrs Harris, the CEO said the Trust would respond in writing to the numerous points she made. The Charity Commission agreed that 6 weeks was an appropriate period of time for the consultation and he took exception to the suggestion that the full results were not available. They were on the MHT web site. Prof Raine said that all of the responses had been read, absorbed and counted. The Secretary to the Board added that a map of the Malvern area had been provided by Worcestershire County Council (WCC) showing the spatial distribution of the data. There was a very clear spike in the number of responses in the area Mrs Harris referred to. Those responses had not been discounted.

7. Time and dates of meetings and programme for the year

There were scheduled dates for Governance Committee meetings in April, July and October. The committee's terms of reference had been recirculated and it was suggested that one or two items should come up for review at each meeting.

The Secretary to the Board said there was now more emphasis on compliance with the Charity Governance Code. There was a tool available on line to assess levels of

compliance, and it was becoming good practice to report this in the trustee's Annual Report. She suggested a small group be set up to work through the exercise. Dr Braim, Mr Bartholomew and Dr Bryer agreed to assist.

8. **Matters arising from previous meetings**

There were none.

9. **Working Group report on Charity Commission Scheme**

Prof Raine asked the committee to consider the report of the Working Group on the results of the consultation. The Secretary to the Board read out comments sent in from Mr Core, who was unable to be at the meeting.

Dr Crisp said he would not endorse the report as the Trust had not demonstrated the integrity of the data on which it was based and he was challenging the design of the consultation. He wanted to see included in the report what precautions were taken to ensure that the reported data could be trusted. It had not been disclosed how multiple entries were handled nor how errors in transcription of paper submissions were prevented. Ms Rouse asked whether Dr Crisp was saying that the handling by Worcestershire County Council of the data was incorrect. Dr Crisp replied that he thought there were some mistakes in the way the data had been handled but that was not the crux of the matter.

Mr Fowler said that there had been no challenge or discussion about the content of the report. Ms Rouse said this was the opportunity to do that and Prof Raine pointed out that there had also been opportunities at the Board workshop.

In response to questions, the Secretary to the Board said that, if the Acts were consolidated, any sections which were to be retained would be included in the consolidated document. The CEO explained the rationale of adding a break period in relation to fencing on the grounds of animal health and the Secretary to the Board suggested taking veterinary advice to ascertain whether there were scenarios where the proposed break period of 6 months might be too long.

Dr Parsons asked about the reduction in the Board size. There was no information on what size the majority of people thought the Board should be. Prof Raine said a lot of thought had been put into this and 12 was the number of trustees which the Board had recommended. This had been endorsed by a majority of the respondents to the consultation. Ms Rouse said that a smaller Board would enable everyone to be involved in all decisions.

Dr Bryer suggested including some mention of how the consultation was set up and carried out and this was agreed. WCC would be asked to provide a statement.

On the proposal of Prof Raine, seconded by Dr Braim, it was **RESOLVED** unanimously to recommend to the Board the adoption of the Working Group's recommendations (subject to seeking further advice on the break period for fencing).

10. **Code of Conduct**

Six trustees had declined to sign the Code of Conduct and Prof Raine and Mr Penn had spoken to them. The paper contained Mr Penn and Prof Raine's reflections on what they had heard. Prof Raine thought the Code should be reviewed, but Standing Orders required that this did not take place within 6 months of the

original decision. Dr Bryer asked if the objection was one of principle or whether a reformed Code might be acceptable. Ms Rouse asked if it was just a question of rewording - she would be concerned about changing the essence of the Code. Ms Stace said that the original code was drafted very carefully, along Charity Commission and NCVO guidelines and she felt it was fit for purpose.

Mr Fowler said he could not accept that trustees did not represent their wards. He referred to this being confirmed in the 1995 Act. Ms Rouse said that a person was elected to use their judgement, and they could not “represent” the views of all their electorate.

The Secretary to the Board confirmed that the Trust must act in line with its governing documents, and various wards and parishes elected members to the Board. MHT had always had charitable purposes, and the trustees were obliged to register as a charity following the Charities Act 1960.

In response to Mr Fowler’s point, the word “represent” appeared once in the 1995 Act, in the Schedule. The Schedule contained amendments, for MHT purposes, to the Local Government 1972. The Schedule referred to s100g of the Local Government Act, which said–“the name and address of every member of the council for the time being together with, in the case of a councillor, the ward or division which he represents” and for the purpose of the Trust, the wording “or body by which he was appointed” was to be inserted after the word “represents”.

The Secretary to the Board said that the divisions would never be resolved until it was accepted that once an elected trustee was on the board he/she had to act in the best interests of the charity. She asked if Mr Fowler had anything to show that this analysis was wrong, and if so, he should provide it. Dr Crisp said an expert in public law should look at the words. Ms Rouse suggested that those who claimed they were representatives should define what they meant by the term. . The CEO said there might be merit in having more training or information from appropriate experts on the decision making processes.

11. Assessment of the success or otherwise of changing from public questions to public comments

The Board had changed arrangements, after September 2019, from having an agenda item for public questions to one for public comments. This gave the Trust the opportunity to respond to any points raised by a member of the public after the meeting. It was agreed that this change gave people the chance to say what they wanted, rather than having to frame it as a question. On the proposal of Prof Raine, seconded by Mrs Palmer, it was **RESOLVED** to continue with a public speaking agenda item.

12. Safeguarding

The CEO went through the paper and the proposed changes. The Charity Commission guidance was that a safeguarding policy should be reviewed annually or more frequently in response to incidents, changes in legislation or activities which the Trust carried out. The policy needed to be updated in line with current guideline. The CEO was asked whether the policy applied to events which others held on Trust land and he suggested the conditions for licences might need to be revised to require organisers to have their own safeguarding policy.

The CEO would review the operational guidelines – there was now an online reporting procedure. Ms Rouse was currently the trustee appointed as safeguarding champion. She confirmed she was happy to carry on and Mr Bartholomew offered to support her.

On the proposal of Prof Raine, seconded by Mr Bartholomew it was **RESOLVED** unanimously to recommend adoption of the revised safeguarding policy to the Board.

13. Chair's discretion to deal with issues raised by Board members (meeting November 2019)

This item related back to the matters raised at the November Board meeting in relation to the exercise of Chairs' discretion on how to deal with issues raised by trustees. Several trustees had made the point that it was not desirable to be too prescriptive and the Terms of Reference for the Chair broadly covered liaison between the Board and the staff, and with Board members. The committee agreed that nothing further needed to be included in the terms of reference.

14. Reputation management

The CEO said there had been quite a bit on publicity in relation to the consultation and also on issues such as sheep worrying. There were a number of opinions expressed, but the CEO was concerned to ensure that misstatements of fact were corrected.

15. Trustee training

Prof Raine invited trustees to comment on what training they thought would be helpful. The CEO said that training was required on GDPR and trustee responsibilities as employers. More guidance on decision making had been raised as a topic earlier in the meeting. Ms Rouse suggested it would be helpful to revisit the training requirement in 6 months' time, when new trustees had gained more experience. Mr Watts said that the training on easements had not touched on the law of easements. He said the latest case on easements introduced the idea of substance over form and he wanted to know if that had implications for the Trust. The CEO said that the training received had been specific to the powers to grant easements which were contained in the Acts, and the Secretary to the Board confirmed the training had covered what easements were. She asked Mr Watts to let her know the reference to the case he was referring to so that the Trust could check if it was relevant. Dr Crisp suggested a feedback mechanism for training.

16. Urgent business

There was none.

17. Date of next meetings

30 April 2020

The meeting closed at 8.40pm

Schedule

Katherine Harris

In the recent consultation, details should have been given at the outset as to how the data once collected was to be analysed. This wasn't done and according to the code of practice of consultations details should be provided at the outset as to how it will be run and what can be expected after it is closed. To date the raw results have not been published to ensure accountability and transparency. The timeframe too was short, only 6 weeks when according to the code of practice referred to it says under normal circumstances consultations should last a minimum of 12 weeks. Furthermore essentially the same group of trustees have analysed the data as those who drew up the consultation in the first place. That does not instil confidence in members of the public of an unbiased analysis. The questions were designed to try to elicit the answers wanted from the respondent which contravenes the code of practice which says that consultation documents should be easy to understand, concise, self-contained and free of jargon. The feeling of bias is further compounded by references to the responses of people in 22 postcode precept paying areas which are inaccurately portrayed as anomalous and a cluster. This is disingenuous. I object to the notion of where I live being relegated to the naughty step because we disagree with the Trust's ambitions. This is not what is expected of a public body accountable to the public who funds them. Anyone who completed the questionnaire has a reasonable expectation that their views are fully and fairly considered irrespective of their post code. Clear feedback should be provided according to the code of practice. That analysis also comments that MHT is different from most other charities as it has a power to raise a levy and then goes on to say payment of money to a charity should not allow a donor to influence how it is run. We are not donors but precept payers despite what MHT says elected trustees are representatives of the areas that voted for them. Compulsory taxation as in the precept requires accountability and representation. The right to this was first established 800 years ago by the Magna Carta in 1215 and it still stands today. With such fundamental flaws the only just course of action is to request that the consultation be declared null and void. If MHT push ahead with the significant changes they are proposing, they risk serious reputational damage and one final point, there needs to be some coordination in the locality to ensure that public consultations do not overlay, run concurrently or across election periods, yet last Autumn the public had the MHT consultation, MHT elections, SWDP consultation and the general election placing an intolerable burden on the stakeholders.

Angus McCulloch

I would like to touch on two points.

The first is about my proposal to Mick Davies suggesting standing orders could be amended to allow at least 7 trustees on the Governance Committee which would enable those new members who asked in November to be on the committee to participate.

Mick's reply of 12th December forwarded to me by the Secretary on 15th December 2019 was he would pass the idea on for the Governance Committee to consider; so perhaps a recommendation could be made tonight to be voted on at the next meeting of the Board.

My second point concerns the remaining work needed to complete the Scheme.

At my previous place of work we employed a lot of high priced management consultants to advise on the implementation of an ISO 9001 Quality Assurance scheme. Having spent a lot of money we were advised that we had to write the documents ourselves. Using that as a metaphor I am wondering whether the Governance Committee and officers can together complete much of the remaining work on the Charity Commission Scheme, essentially for free, keeping the involvement of BWB to a minimum.