



## London Cultural Improvement Programme

### Heritage Change Programme

#### 1. New Ways of Working

##### 1.4 A Model Project Plan for Transfer of Heritage Services to a New Trust

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#### Introduction

Following an options appraisal and Council decision to externalise some or all of its Heritage Services to a trust or, more specifically, a Non Profit Distributing Organisation (NPDO) it is vitally important to develop a detailed project plan to support the externalisation process.

From consultation and research undertaken by The London Cultural Improvement Programme as part of the Heritage Change Programme, the sector has expressed a need for simple and clear guidance on how to approach an externalisation.

This guide has been designed and adapted specifically for Heritage Services based on current practice being used to establish a number of Cultural and Heritage Trusts across the UK. It has been developed by legal consultants Winckworth Sherwood who are currently supporting a number of local authorities in externalising their Cultural Services.

#### How to use this guide

This guidance document has been designed to provide initial guidance for managers undertaking an externalisation of some or all of their Heritage Services including museums, archives and historic assets. Many of the principles contained within this guidance are equally applicable for other Culture and Sport services.

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#### Health warning

This model is a guide only and separate legal advice should be sought as required to assist with any externalisation / outsourcing of services.

## Example Project Plan for Transfer of Heritage Services to a New NDPO (Trust)

Key tasks	Lead	Target date
Prepare a project plan and timetable		
Confirm roles and responsibilities		
Establish staff consultation protocol		
Inform district auditor of project and timetable		
Legal review meeting		
Prepare “advert” in accordance with EU procurement/ EU Treaty requirements if required		
Agree Trustee recruitment process		
Prepare advert for Board members		
Draft Memorandum and Articles of Association		
Prepare Heads of Terms for project documents for discussion		
Review management structure		
Review support service requirements		
Review property portfolio to be included in the trust		
Legal review meeting		
Place advert for Trustees; prepare Trustee induction pack; fix date for open evening		
Agree Memorandum and Articles of Association		
Agree Heads of Terms for project documents		
Legal review meeting		
Review responses to advert for Trustees; confirm open evening; establish selection panel		
Confirm management structure/identify new posts if required		
Confirm support service requirements		
Conduct building surveys		
Programme of meetings for shadow Board including briefing on duties and responsibilities		
Prepare schedules for project documents		

Key tasks	Lead	Target date
Provision of information to pension team to calculate employer's contribution for pension scheme		
Consider any "special funds", "restricted funds", permanent endowment fund issues		
Incorporate company/company secretarial requirements		
Prepare project documents		
Prepare business plans and services delivery plan		
Consider performance monitoring regime/KPIs		
Legal review meeting		
Approve project documents		
Approve business plan and service delivery plan		
Prepare application to Charity Commission		
Approve admissions agreement		
Set up financial management systems		
Appoint new staff (if required)		
Appoint auditors		
Registration for VAT/Data Protection		
Appointment of bankers/opening bank account		
Set up support services		
Prepare financial procedures/adopt relevant operational policies		
Confirm member final approval to project documentation and resolution of all outstanding issues		
Legal review meeting		
Formal approval of transfer by Council		
Formal appointment of shadow Board		
Formal approval of transfer by Board		
Legal review meeting		
Execution of documents by both parties		
Business transfer		

Key tasks	Lead	Target date
Application for rate relief by Trust		
Secure Charitable Status for Trust		

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## Schedule of Legal Documents

We set out below a summary of the likely key documentation which will be required for a transfer.

Document	Parties	Key provisions
Memorandum & Articles of Association		The Trust's governing document setting out the objects, powers, liability, and dissolution provisions, and the provision for the calling and conduct of board and member meetings, the appointment, removal and disqualification of directors.
Transfer Agreement	(1) Council (2) Trust	<p>This agreement will identify the components of the service to be transferred from the Council to the Trust and then, in relation to each aspect of the service, the agreement will set out the terms of the transfer arrangements. The components of the service likely to be transferred are:</p> <ul style="list-style-type: none"> <li>• Employees</li> <li>• Stock</li> <li>• Supply contracts</li> </ul> <p>The agreement will also set out which aspects of the service which will not transfer to the new Trust e.g. debts and liabilities.</p> <p>The agreement will also set out mutual indemnities – protecting each party from liabilities arising from an act or omission of the other party.</p>
Funding and Management Agreement	(1) Council (2) Trust	<p>This agreement will set out the terms and conditions of the funding arrangements between the parties. It will identify the key performance outputs required by the Council (by reference to an output specification to be scheduled to the agreement) and the funding to be provided by the Council to assist the Trust to deliver the required outputs.</p> <p>The agreement will set out in detail the monitoring and review arrangements, an escalation procedure for managing poor performance, termination and, importantly, exit and handover arrangements.</p>
Equipment Agreement	(1) Council (2) Trust	It is proposed that the loose equipment associated with the facilities to be 'loaned' to Trust for the duration of the service period. This means that the Council will not transfer the legal title to the equipment to Trust. This means that the Council can recover these assets in the event of Trust's insolvency.

Document	Parties	Key provisions
Support Services Agreement	(1) Council (2) Trust	It is anticipated that the Trust may contract back certain support services from the Council. This agreement will formalise these arrangements. It will set out the terms on which the services will be provided and the payment arrangements. It will also set out the termination arrangements. The services to be provided will be set out in detail in the schedules with a service specification for each service.
Leases	(1) Council (2) Trust	The parties will enter into a lease in relation to each of the museum facilities. The lease will set out the lease term, the user clause, repair and maintenance and any early termination provisions e.g. a break clause for redevelopment.
Admission Agreement	(1) Pension Fund Trustees (2) Council (3) Trust	The Trust will be eligible to be admitted to the Superannuation Scheme. Thus all existing employees' pension position will be protected. New employees will be eligible to join subject to the terms of the Scheme.
Collections Agreement	(1) Council (2) Trust	The museum collections themselves will be loaned to the Trust (not transferred) and the terms of such loan will be set out in this Agreement. The collections would be managed in accordance with an agreed Acquisition and Disposal Policy.

## Trustee Recruitment

### Example Summary of key steps

- Agree Trustee recruitment campaign
- Prepare Trustee recruitment pack
- Prepare draft advert to be placed in local, national and specialist press
- Contact local press to get some editorial alongside advert
- Place advert and send advert direct to known potential candidates
- Fix deadline for expressions of interest
- Fix date for an open evening
- Hold open evening
- Fix deadline for submissions of CVs and formal application to be a Trustee
- Confirm make up of Trustee selection panel
- Fix date for Trustee interviews (ideally on one day)
- Prepare interview questions
- Selection panel to conduct interviews and shortlist shadow board members
- Inform short-listed candidates
- Fix date for first Trustee meeting
- Second phase recruitment campaign/interviews if required



## Person Specification for Trustees

When establishing a new Trust, one of the most important things will be selecting Trustees of the highest calibre. The Trust will need the correct skills and experience at board level to ensure that the Trust is successful and competently run. Consideration will also need to be given to ensuring that the trustees have representation from and reflect the local community and that there is a balance of skills and experience as well as diversity. This may require investment in training and development of potential trustees.

The Charity Commission issues best practice guidance on recruiting Trustees which is recommended be followed. Amongst other things, the Commission recommends a “person specification” is prepared setting out the skills and experience sought in a Trustee and also that the recruitment process follows an open advert procedure.

Category	Criteria
<b>Experience</b>	<ul style="list-style-type: none"> <li>• Proven track record in business or a relevant profession</li> <li>• Involvement in community service (paid or voluntary)</li> </ul>
<b>Skills and abilities</b>	<ul style="list-style-type: none"> <li>• Specialist skill, e.g. financial, legal, corporate, or Trust management</li> <li>• Commitment to objectives of new organisation and a particular interest in the service – e.g. museums and culture</li> <li>• Ability to involve other board members in discussion/debate</li> <li>• Communication skills – ability to express balanced opinions and listen to the opinions of others; ability to challenge and debate</li> <li>• Analytical skills – ability to read and understand complex subject matter and comment</li> </ul>
<b>Other requirements</b>	<ul style="list-style-type: none"> <li>• Must be prepared to give up time to attend evening meetings and possibly some daytime meetings</li> <li>• Awareness of local issues and/or awareness and interest in the principal cause of the organisation</li> <li>• Appreciation of status and functioning of charitable organisation</li> <li>• Not disqualified from acting as a board member/Trustee</li> </ul>
<b>Additional skills for chair</b>	<ul style="list-style-type: none"> <li>• Ambassador for the initiative</li> <li>• Leadership skills</li> <li>• Experience of board meetings</li> <li>• Planning and conducting board meetings effectively</li> <li>• Ability to involve other board members in discussions/working</li> </ul>

Category	Criteria
	<p>groups</p> <ul style="list-style-type: none"> <li>• Providing focus</li> <li>• Keeping an overview of organisation’s performance</li> <li>• Establishing a constructive working relation with and providing support for Chief executive</li> <li>• Ensuring the Board monitors use of delegated powers</li> <li>• Impartiality, fairness and ability to respect confidences</li> </ul>

## Draft Advert for Prospective Trustees

**Future Development of Council's Art Gallery(ies), Museum(s) and Archive (s) (Amend as required)**

### Trustees Required!

[Name of Council] is currently considering options for future management of [list facilities]. Information about all these facilities and the Council can be found at [www.\[ \]](#).

The Council has a preference for promoting the establishment of a charitable Trust to manage the facilities and is currently seeking Trustees to form the board of this exciting new organisation.

This will be an opportunity for individuals who live or work in [area] and have an interest in arts and culture to become involved at a strategic level in the continued development of these first class facilities and the Council's fantastic [arts and museum collections].

This is a voluntary position although reasonable expenses will be paid. Meetings will take place in [area].

**[We are proposing to hold an open evening for all those interesting in learning more about this initiative on [ ]. For details of the open evening and any other information, please contact:**

[ ]].

Please note you must be over 18 to be considered for this role.

## Example Object Clause

One of the key clauses in the new NPDO's governing document will be its objects clause.

The objects clauses should be drafted to ensure that the proposed activities of the NPDO are covered by the scope of the objects and, indeed, cover any activities which may be planned in the short to medium term.

Whilst it is possible to amend objects clause, this does take considerable time and effort (particularly for a charitable organisation where the consent of the Charity Commission will be required). As such, it is recommended building in sufficient flexibility at the outset so as to ensure that the objects are wide enough to allow the organisation to do what it is likely to want to do.

If the NPDO is a charity, it will be imperative that the objects are drafted in such a way as to be eligible for charitable status.

Objects must be drafted to meet a charitable purpose. In the case of museums, this tends to be either or both "the advancement of education" and/or "promotion of museums" specifically.

Example wording is as follows:

1. *The objects of the Charity shall be:*
  - 1.1 *to advance the education of the public and/or to promote arts and culture through, amongst other means, the operation of museum(s) and art galleries; and/or*
  - 1.2 *such other charitable purposes beneficial to the public consistent with the object above as the Trustees shall in their absolute discretion, determine.*

## Where to go for more support

### New Ways of Working Signposting

The Heritage Change Programme has reviewed the available information for London Boroughs considering transforming their services and new management models.

The range of information can be quite overwhelming and as a response to requests by London Boroughs, the key publicly available documents have been highlighted here with weblinks.

The key areas covered are as follows

- [Guidance on options appraisals](#)
- [Guidance on business cases](#)
- [Guidance on Trust Vehicles](#)
- [Routes to Further Information](#)

Please note these documents should only be used as a guide and specialist advice should be sought as appropriate.