

Malvern Hills Trust
Governance Committee
United Reformed Church, Malvern Link WR14 1SS
Thursday 21 October 2021 7.00pm

Present: Mr C Atkins, Mr R Bartholomew (Chair), Mr D Core (arrived during agenda item 6), Mr M Davies (non-voting), Mr D Fellows, Mrs C Palmer. Prof J Raine.

In attendance: CEO, Secretary to the Board, Dr G Crisp, Mr R Fowler, Mr C Penn, Mr C Rouse, Mr D Watkins, 5 members of the public.

Mr Bartholomew welcomed everyone to the meeting.

1. **Apologies for absence**

Dr S Braim, Ms S Rouse.

2. **Chair's announcements**

- Workshop 28 October 2021 for all Board members to discuss the report from the Working Group (Paper A)
- Board meeting 11 November (MHDC Council Chamber).

3. **Declarations of interest**

There were none.

4. **Public comments**

Comments had been received from Mrs K Harris and were read by the Secretary to the Board (see Schedule for the comments and CEO's responses).

5. **Matters arising from previous meetings**

There were none which were not on the agenda.

Discussion of agenda item 6 was moved to the end of the agenda.

6. **Arrangements for approving Committee minutes** (agenda item 7)

The Secretary to the Board introduced the paper.

The following points were made:

- The current process was unwieldy. If it were permitted, it would have been preferable for the committee members to agree the minutes by E-mail before the Board meeting.
- Committee members should ensure they raise any issues on the minutes in advance of the meeting.

On the proposal of Mr Atkins, seconded by Prof Raine it was **RESOLVED** unanimously to recommend to the Board that Standing order 14.9.2 should be amended to read:

The Chair of the relevant committee invites officers to provide any updates since the meeting and invites questions and comments from trustees on the minutes or the recommendations.

7. Policy on public information (agenda item 8)

This would come to the next meeting. The Freedom of Information Act did not apply to the Trust but the Trust had policy dating back to 2011 stating that it would comply with the spirit of the Act. This now needed reviewing and the Officers had been unable to find any publication scheme. The Secretary to the Board wanted to give other staff the opportunity to consider the draft publication scheme prior to bringing it to the committee.

8. Responses to the Governance Toolkit questions 1 & 2 (agenda item 9)

Mr Atkins said there had been a significant level of response from trustees. Their comments had been compiled into a report but there was no space in the calendar for a workshop to discuss them until 25 November. He therefore suggested that the next set of questions was circulated to keep up the momentum. He encouraged everyone to attend the workshop and to respond to the questions.

9. Matters to be dealt with at future meetings (agenda item 10)

Workshop on pensions

Review of Code of Conduct and trustee disciplinary process

Training: Being a good trustee

10. Urgent business (agenda item 11)

There was none.

11. Report on the costs and benefits to be secured by amending the Trust's governing Acts by Private Bill (agenda item 6)

The CEO introduced the report from the Working Group. The report covered the financial costs and benefits, although there were other proposed changes which had benefits which could not be quantified and some of these were listed at the end of the report.

Mr Davies added that the Working Group had started by making a detailed analysis of all the potential benefits that could result from the changes but it was an unusual exercise as it was evaluating opportunities which would exist, but which might not be exploited by future trustees. Some of the opportunities, if they were to be exploited, would require capital investment but it was felt inappropriate to build large scale capital investment into the evaluation. He felt it was a balanced evaluation and a reasonable representation of the potential value of proceeding with a private bill.

Other points made were:

- Prof Raine said that the Working Group who lead on the development of the governance changes had talked through all of the impacts of the changes in qualitative terms. This was a valuable report and it provided a reassurance that the changes would provide a positive result. Opportunities provided had to be taken for the financial benefits to be realised. He thanked the members of the Working Group.
- The evaluation outcomes could be misleading because they did not take account of the capital cost of realising them.

- Mr Davies said that there was recognition in the report of the capital cost of undertaking some of the projects. This was done by including in the evaluation only one third of the financial benefits flowing from those projects as a recognition of the cost of the capital required.
- The CEO said that some of the projects had not been included in the report. These might attract grant funding and would realise a management gain – for example securing the common. In such cases there would be no quantifiable net financial gain.
- It was impossible, for example, to evaluate the value of having a general power of competence. It was there to permit the Trust to deal with situations which currently could not be contemplated. The potential value to future trustees and the work of the Trust was existential. It would be an injustice to future trustees not to proceed to modernise the Trust.
- An example of the use of the general power of competence would be the installation of electric car charging points in the car parks which the Trust could not currently do. This was indicative of the way society was changing and the Trust needed flexibility to respond.
- The changes would open up the possibility of small-scale non-fossil fuel electricity generation.
- Mr Rouse said a lot of the costings in the paper were way out, but he would E-mail his views on those details.

Dr Crisp drew the committee's attention to a statement attributed to the Charity Commission, contained in an ICO decision notice dated 9 September 2021 that "there had not been a decision by the charity trustees [of MHT] on how or when to pursue either a more restricted s73 Scheme ... or whether to pursue a s74 consent application". He took this to mean that the Charity Commission regarded a more restricted s 73 scheme comprising non- contentious proposals as a viable course of action. He said that this had not been considered and before proceeding with a s74 application this should be analysed and explored with the Charity Commission. Mr Davies said that he was disappointed that Dr Crisp had not shared this information prior to this meeting, whilst the Working Group were spending many hours producing the report. The CEO pointed out that the DCMS and Charity Commission had made it clear that the changes which the Trust wished to make would need to be done by a private bill. The Secretary to the Board said she would investigate the matter with the Charity Commission.

Mr Fowler said he thought sufficient changes could be made under a s73 Scheme and the precept payers should be taken into account. Mr Core pointed out that the overall response to the changes which were consulted on was positive.

On the proposal of Prof Raine, seconded by Mr Core it was **RESOLVED** (4 votes in favour, with 2 abstentions) to recommend to the Board:

1. On the basis of the Working Group's report, the Board agree that it is expedient in the interests of the charity to proceed with a Parliamentary Bill to make the proposed governance changes (subject to a review as set out in 2 below).

2. Working Group 2 proceed to:
 - a. Carry out further work identified in the Report of the CCS Working Group dated January 2020
 - b. Consider any further issues that arose during the process
3. The Officers in conjunction with Working Group 2 carry out any further work required to apply for s74 consent.

12. Date of next meetings

3 February 2022

The meeting closed at 8.06pm.

Schedule

From Mrs K Harris.

Responses on red from the CEO.

Page numbers refer to Paper A for this meeting.

Page 3

'Analysis of the responses showed that a clear majority of respondents agreed with all, but two of the proposals'

I would like to make two points with respect to that statement:

- 1) 22 postcodes were 'blacklisted' and the weighting of their responses was adversely changed
This was not true. There was no blacklisting. All the responses were included in the consultation and there was no weighting applied.
- 2) A number of aspects were not even addressed by the Consultation

Page 9

There is mention of a membership organisation.

I trust that all Levy Payers would have the same benefits that members of this organisation would have, without any further payment.

It was too early to talk about the details of any organisation and there was no point in formulating those details before the Trust knew it had the power to do it.

Page 2

Mention of a 'General Power of Competence'

I would like to draw your attention to a comment so eloquently made by Baroness Nicol in 1993(Hansard 1993) when a similar power was sought then. Such a power was deemed unnecessary and had to be removed before the 1995 Act came into being.

'I am quite sure that our heritage is safe in the hands of our present conservators: I have no reason at all to distrust them or their possible actions. But the conservators, even with the new clause if they succeed in getting it, will only be there for a maximum of four years. Who knows what future conservators may consider a reasonable action to take? We must act with that in mind'.

The comments by Baroness Nicol were made 28 years ago. Since then, a general power of competence was introduced by the Localism Act in 2011 for local authorities, who have adopted that wider ability to respond to changing times and as such it was a critical element for a statutory charity such as the Trust to include in any governance reforms.