



Case Report

Garden Bridge Trust (1155246)

About the charity

The charity was established for the purpose of constructing and maintaining the Garden Bridge, a substantial project which proposes a new 366 metre long pedestrian bridge across the Thames.

Transport for London (TfL) ran a tender for a river crossing in early 2013. A garden bridge design won the competition and work started to bring the idea to fruition. The promoters decided to create a charity to raise the necessary funds, oversee the building of the bridge and continue to maintain it after construction. The project is particularly complex and high risk, and of a sort not commonly undertaken by a charity. A company was incorporated in October 2013 and was registered as a charity on 8 January 2014.

Why the Charity Commission got involved

Following a number of complaints about the charity, and a wider public discussion regarding the risks involved with such a project, a number of concerns were presented to the Commission including:

- the awarding of contracts by the charity, including whether conflicts of interest had been declared and properly managed
- the due diligence carried out by the charity and the charity's ability to carry out a project of this size
- the funding, structure and governance of the charity

Our role is to look at the extent trustees are meeting their legal duties and whether charities are complying with charity law. We do not examine other issues such as the merits of a project or how it is funded. These are issues that are outside our regulatory remit and which we will not consider.

We opened an operational compliance case to undertake a review of the charity and its governance.

The action we took

Our review encompassed interviews with trustees and senior staff, attendance at a trustee and executive meeting, scrutiny of publicly available information and relevant project documentation. As well as reports and governance records made available to us by the charity at their offices, the Commission also undertook a full scrutiny of the charity's accounting documents.

Our review set out to:

- ensure the charity is complying with the legal framework that it operates in
- ensure the charity's governance, including its financial governance is fit for purpose
- identify evidence of good practice already in place and advise on areas for improvement

What we found

The Commission, based on the evidence provided and its own analysis, found that the trustees were meeting their duties and were acting in compliance with charity law. The trustees provide strategic leadership and direction to the charity, understand their duties and responsibilities as trustees, and have evidenced robust and informed decision making. The Commission has summarised its findings in 3 areas:

1. The awarding of contracts by the charity, including whether conflicts of interest had been declared and properly managed

The charity explained the procurement process for the award of the construction contract under the direct supervision of the charity's project delivery board. The arrangements to award contracts since the charity was formed appear to have been robust. There was evidence of significant trustee engagement and some benchmarking of hourly rates and materials. However, trustees did not fully explore the opportunities to compare the critical paths of other comparable infrastructure projects and thus better enable themselves to assess project risk. The charity did not reveal publicly the identities of all its benefactors, some of which have specifically asked to remain anonymous. These were shown to the Commission during a visit. The charity has a conflicts of interest policy and interests are declared. We have no cause for concern as regard to the management of conflicts of interests - the benefactors are not party to the contracts awarded or recipients of the contracts' income. If conditions were attached to any donation they would need to be disclosed in the audited accounts in accordance with the Statement of Recommended Practice (SORP).

2. The due diligence carried out by the charity and the charity's ability to carry out a project of this size

The trustees have overall responsibility for risk management, which includes assessing and managing the risks about whether the charity has the ability to carry out the project and the nature and size of the project. We found that risks are regularly reviewed and assessed and the trustees have plans in place to mitigate those risks - particularly the risk of the project not proceeding. The Commission was satisfied with the systems and procedures for the management of the project.

The charity's financial management met the required standards, with a clear strategy and active budget management. The charity provided evidence to demonstrate that the expected financial controls are in operation and policies and procedures adhered to. The complex nature of the project has meant an unusually high forward spend. The trustees were able to explain why, in their opinion, this was necessary. The charity could account for spend to date and we saw evidence to confirm that it is actively managed. The trustees provided evidence that they pay particular attention to cash-flows to avoid committing wrongful trading under company law by entering into commitments that the trustees know that they cannot meet.

The charity has been criticised for how it has engaged with the public. The Commission explored this area with the charity. The charity was able to provide the Commission with detailed information about the consultation and other engagement it has undertaken with stakeholders and the public, which has taken a number of forms. The trustees are aware of the public's interest in the project, including from those opposed to the bridge.

3. The funding, structure and governance of the charity

There are 12 trustees and the minutes verified that attendance at meetings is good, despite their other commitments. The trustee body appears to have the necessary skills and expertise for the efficient and effective administration of the charity. We observed from the charity's meetings and records that the trustees provide strategic leadership and direction to the charity and its staff to help it deliver its purpose. They are active, provide constructive challenge, are committed to the project's success and champion the charity. It is likely that the trustees will have a key impact on whether the project succeeds.

The trustees demonstrated that they understand their roles and their duties and responsibilities as trustees. They meet monthly, the core management group meets about every 2 weeks, there are 5 sub-committees and trustees also receive weekly briefings. There is a trustee handbook and we saw evidence that it is reviewed and referred to.

The trustees have proper arrangements in place for the appointment of staff, their supervision and their remuneration. When observing the charity's core-management group meeting, we saw evidence that the relationship between the trustees and the senior management team balances support, scrutiny and challenge.

The charity has the policies and procedures in place that we would expect to find in a charity of this size, which inform how it operates. We saw evidence to suggest that they are adhered to, reviewed and updated.

We saw evidence of robust and informed decision-making, which is essential when delivering a complex and large project.

Concerns were raised publicly when the charity changed its accounting year from October 2015 to March 2016 to align the charity with the public sector accounting year-end (31 March). The charity explained to the Commission that when the accounts were due for preparation, the charity was not able to confirm it was a going concern given the existing uncertainties about the continuation of the government's underwriting. They explained that the delay was necessary to gain greater certainty about its standing as a going concern.

The charity's accounts have now been filed and identify ongoing uncertainty over whether the charity is a going concern and clearly set out the risks to the project that might give rise to its premature closure. We consider, given the public interest, the trustees could have provided more detail in their annual report about the progress made given the expenditure incurred and the challenges addressed by the charity in the last year. Although the charity explained its reserves position, our understanding is that the charity holds no reserves but expects to meet any obligations from the use of its restricted funds. Given the reliance on using restricted funds we would have expected a fuller description of how these funds, including the guarantee, could be used with greater detail on how the charity would meet its liabilities in the event of closure.

Impact of our involvement

We have presented the trustees with our findings, detailing the good practice we found and highlighting other good practice issues for them to consider.

Our case report provides a public record of our involvement and allows the public to consider the issues raised regarding the charity's governance. It does not and cannot address all the concerns that have been raised regarding the project but does provide public assurance that the charity is operating in compliance with charity law.

Lessons for other charities

The trustees in this case were able to show the Commission that they understood their role and responsibilities as trustees and cooperated fully with the regulator.

High profile charities can attract considerable public scrutiny. The public expect that charities and trustees should be as open and transparent as possible regarding the decisions they make.

The key to making the right decisions (and being able to defend them) as a trustee is knowing your role and responsibilities. Our guidance 'The essential trustee' breaks these down into 6 areas:

- ensure your charity is carrying out its purposes for the public benefit
- comply with your charity's governing document and the law
- act in your charity's best interests
- manage your charity's resources responsibly
- act with reasonable care and skill
- ensure your charity is accountable

More information is available in our guidance: **The essential trustee: what you need to know, what you need to do (CC3)**.