

**THE CAXTON FOUNDATION**

**Minutes of the Meeting of the Board of Trustees held on  
Thursday 2<sup>nd</sup> February 2012 at the New Cavendish Club, 44 Great Cumberland  
Place, London W1H 7BS at 12.10 pm.**

- PRESENT:** Mr P Stevens (Chairman)  
Mr R Evans (Chairman – NWC)  
Mr R Finlay  
Mr P Harvey  
Mrs M Leadbeater (Chairman – Audit Committee)  
Mr C Lister  
Professor H Thomas  
Miss M Winram (Chairman – EAC)
- APOLOGIES:** Mr C Gore
- IN ATTENDANCE:** Mr M Harvey (Chief Executive)  
Ms R Riley (Support Services Manager)  
Mrs L Haigh (Finance Manager)  
Miss G Brown (Administration Secretary)
- BY INVITATION:** Mr David Brooks (Fullagar Brooks Millikin)

		<b>ACTION</b>	<b>COMPLETE BY</b>
<b>50.12</b>	<b>Apologies for Absence</b> Apologies for absence were received from Mr Charles Gore.		
<b>51.12</b>	<b>Welcome</b> The Chairman apologised for the late start to the meeting due to a pre-Board meeting, and welcomed Mr David Brooks (property lawyer) of Fullagar Brooks Millikin to the meeting. As a result of the delayed start to the meeting the Chairman re-ordered the Agenda to deal with the property matters first and proceeded to Agenda Item 54.12.		
<b>52.12</b>	<b>54.12 Property</b> The Chairman explained that the Agenda Item on property would be split into two sections: (1) Procedures for the various elements; and (2) Review of the documents.  (1) Mr Brooks briefly summarised the current situation: that there was one year left on the 2003 lease which ends at Christmas 2012; the assignment of the lease from Teletch; that the Caxton Foundation (“CF”) would be taking over responsibility for alterations; and that there would then be a 10 year reversionary lease with the option for review at 5 years.		

(2) Mr Brooks then talked the Board through the main set of documents as follows:

1. Agreement with Teletch to take assignment of the lease from them
2. Rent Deposit Deed (with CF paying 6 months' rent to the Landlord)
3. Licence to assign – Teletch to CF
4. Landlord seeking CF assurance that CF will apply all income from the Government intended for payment of the rent be used for the actual payment of the rent.
5. Draft lease from 25.12.12
6. Rent Deposit Deed relating to the new lease.
7. Application of Funds Deed guaranteeing CF use the funds from the Government to pay the rent on the new lease.

Mr Brooks advised the Committee that:

- the documents with Teletch were almost ready but he was currently negotiating a limit on the liability of Trustees
- the reversionary lease included everything except the rent which would be agreed on or around September 2012
- current rent remains until the new rent is agreed
- the rent will only go up or remain the same

Mr Brooks highlighted the changes he had implemented or was trying to implement for improvement to the Schedule of Dilapidations and Repairs document, and other points:

1. the limitation on liability of Trustees was not in the original document. It is now limited to the value of the Foundation's funds.
2. the Landlord to keep the premises in a good, steady management condition.
3. provision towards the whole building, i.e. no cap on service charges.
4. the new lease was a 10 year contract.
5. it was the responsibility of the Trustees to ensure that visitors can access the office and to be sure not to discriminate against anyone.

The Chairman explained the reason for not undertaking a full structural survey.

It was reported that there was a potential exposure regarding disabled access to the building. Any remedial costs in this regard would be passed on by the Landlord through service charges. It was noted that if the building was not able to be converted for disabled access, then it would be exempt from regulations governing this.

<p>In a wide ranging discussion on access to the office, the Board were acutely aware of their responsibilities to ensure that as a health related charity that also serviced other organisations where, as with elements of its beneficiary constituency one particular charity had a beneficiary constituency where individuals may well be severely disabled, access to the office was a major concern. The Board were also aware that although the building may be exempted from regulations that insisted provision for the disabled be made, this had never been tested and to accommodate such provision could prove expensive, in particular if there were structural alterations such as disabled lift provision that could accommodate wheelchairs. The Board were of the view that accommodating the needs of the disabled should be embedded in the day to day office operating environment. The Board were also attuned to the impacts, financial and otherwise, that may arise where an individual might be employed who had severe mobility or other difficulties. It was agreed that “accessibility” would be accorded sufficient importance in negotiations concerning any future lease arrangements.</p> <p>It was requested that a copy of the Letter of Comfort from the DH be circulated to the Board.</p> <p>The Chairman asked the Trustees to confirm that they were content with the documentation. In answer to a question Mr Evans explained that the costs would be probably higher if the Foundation moved the office to more modern premises.</p> <p>The Chairman advised that 6 months’ notice to vacate would be required before a 5-year break.</p> <p>The Board accepted the documents as presented and the move to the 5<sup>th</sup> floor was confirmed. Instructions for the execution of the documents would now be put in place.</p> <p>The Chairman advised that there had been considerable concern about personal liability if the property transaction documents were signed by individual trustees. He reported that Wilsons had advised that the best solution was to incorporate the Trust Body. The following extract from Mrs M Protani’s (Wilson’s) advisory e-mail was drawn to the attention of the Board:</p> <p><i>“The Caxton Foundation is an unincorporated charity. The trustees are individuals. When entering into contracts, leases, etc., on behalf of the charity, the trustees do so in their individual capacities. They are entitled to an indemnity out of charitable funds to meet any liabilities which are</i></p>	<p>AS</p> <p>CHMN/ CE</p>	
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	<p><i>properly incurred on behalf of the charity. Therefore, and as long as there are adequate funds available, the trustees need not be concerned about personal liability.</i></p> <p><i>It is possible for the trustees to incorporate. Is there is a real concern that the DH may not provide the trustees with sufficient funds to meet all of the liabilities which they are incurring? If it is the case then whether or not you incorporate, the trustees should not agree to enter into any arrangements which could give rise to liabilities that they do not have the wherewithal to meet. The act of incorporating is not a panacea or a means of avoiding liability to creditors. Insolvency legislation would "look through" a company and if directors of a company were found to be operating in the knowledge that they could not meet their debts as they fell due they would be guilty of wrongful trading. If this is a risk, the trustees should make strong representations to the DH that they must be permitted to have sufficient funds to create a reserve fund for such eventualities. That is the case whether or not you are incorporated.</i></p> <p><i>Your prospective landlord (5th floor) is prepared to limit the liability of the trustees to the value of the trust fund from time to time providing that this is not wrongfully depleted. Given that you exist to make grants it is difficult to see how you could ever be liable for "wrongfully depleting" the funds. Accordingly you should consider the extent of any possible liabilities. These would be to meet rental payments over the 10 year term of the lease and, if you assign it before the end of that period, there is a residual liability for any failure by the assignee to satisfy the obligations under the lease for the remainder of the term. If you have not wrongfully depleted the fund you should not have any liability.</i></p> <p><i>The Caxton Foundation was established at the behest of the Government in response to the Archer recommendations. It would be unconscionable for the Government to put the individual trustees at personal risk of financial loss. I would be happy to assist you in making strong representations to the government."</i></p> <p>The Chairman asked that the Board agreed to incorporate the Trustee Body and the Board gave their consent for this. He advised the Board that the solicitors would be instructed to go ahead with this and that they would henceforth become Directors. The Chairman advised that Mr David Brooks would inform the other side's solicitors of this intention, the Chief Executive would inform the Landlord and the Chairman would contact the DH to notify them of this change and then Wilsons. The effective date would be two weeks after</p>	<p>CE</p> <p>CHMN</p>	
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	<p>incorporation which would be on or around 5 April 2012.</p> <p>Mr Brooks was asked about the possibility of early access and he advised that CF would need a licence from Teletech to get early access. The Board agreed that a summary of work to be done should be sent to Mr Brooks.</p> <p>The Board then formally approved two trustees, Mr Charles Lister and Mr Peter Stevens, to sign documents on behalf of the Trustee Body once incorporation had been established.</p> <p>The Chairman thanked Mr Brooks for his input and advice to the Board.</p> <p>The Board agreed that the Foundation's status as an unincorporated charity could usefully be reviewed later in the year.</p> <p><b>The Board adjourned for Lunch at 1.10 pm and resumed at 1.30 pm.</b></p>	CE	
	The Chairman further re-ordered the Agenda to accommodate the early departure of Ms Winram		
<b>53.12</b>	<p><b>The Employment Affairs Committee (EAC)</b></p> <p>The Minutes of the meeting of the EAC held on 16<sup>th</sup> December 2011 were acknowledged. The action points arising from that meeting were to be considered under Agenda Item 53.12(42.11)(31.11).</p> <p>The application from the EAC for a schedule of devolved functions (as set out in Minute 2.11) under Clause 6(xv) of the Trust Deed was fully debated. This was agreed. The Committee asked that the Board consider devolving the list of delegated authorities and responsibilities to the EAC and approve a spending limit change from £500 to £1,000 for advisory matters. The Board gave their approval.</p>		
<b>54.12</b>	<p><b>Minutes of the Previous Meeting</b></p> <p>The minutes of the meeting of the Board of Trustees held on 17 November 2011 were approved.</p>		
<b>55.12</b>	<p><b>Matters Arising</b></p> <p><i>53.12(42.11)(30.11)</i> The report on the proposal to create an individual Trustee domain was noted and the Board were informed that work to complete this would be done as soon as possible. The SSM advised the Board that the IT Manager would be writing to them with an update on progress.</p>	IT	ASAP

	<p>53.12(42.11)(31.11) The draft Schedule of Reserved and Delegated Authorities/Functions and Statement of Subsidiary Rules and Financial Instructions were received. The following observations were made:</p> <ol style="list-style-type: none"> <li>1. That the DH should be a respondent organisation to be advised of proposed changes made by the Board of Trustees to the governing documents.</li> <li>2. To amend the appeal process under the NWC's Terms of Reference that primary appeals upheld by the NWC should be referred to the Board of Trustees whose decision will be final.</li> <li>3. To amend the discretion available to the NWC in that it can consider authorising expenditure on individual cases up to a level of £10,000. That in respect of any recommendation between £10,000 and £50,000, NWC refer to Chair for agreement, anything above £50,000 needs go to the Board of Trustees for approval. Anything above £50,000 would be subject to review regarding the impact this may have on immediate cash flow.</li> <li>4. To amend the discretion available to the EAC in that they may agree a level of expenditure of £1,000, up from £500, when asking advice on employment law or similarly related matters.</li> <li>5. It was agreed that an additional authority should be included that gives the Chairman authority to agree a level of expenditure up to £50,000 with immediate notification to the Board of Trustees.</li> <li>6. The Chief Executive advised that there would be a final schedule detailing authorities given to him and the senior staff.</li> </ol> <p>Subject to the above, the document was agreed.</p> <p>53.12(42.11)(32.11)(B)(28.11) The Chief Executive informed the Board of Trustees that the Audit Committee had received the risk management matrix. The Committee were of the view that the schedule of risks should be re-ordered into categories that defined if they were strategic or operational. The Board noted the summary approach to Risk Management and the Chief Executive gave an oral report on the genesis of this revised approach to embedding Risk Management into the Foundation's management culture and that it should feature on the quarterly agenda for Board meetings.</p>	<p>CE</p> <p>SSM</p> <p>CE</p> <p>CE/IT</p>	
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	<p>The Board agreed that there should be additional columns in the matrix noting a specific code to each risk and the date the risk was registered.</p> <p><i>53.12(42.11)(34.11) Code of Conduct</i>  Subject to the deletion of paragraph 8, and the deletion of the word “engage” in paragraph 11, the Code of Conduct was approved by the Board. A revised copy of The Code of Conduct is to be e-mailed to each Trustee for signing.</p>	CL/CE	
<b>56.12</b>	<p><b>National Welfare Committee</b></p> <p>(1) The minutes of the meeting held on 17<sup>th</sup> November 2011 were noted. The Chairman of the Committee drew the Board’s attention to the section headed Any Other Business.</p> <p>The minutes of the meeting held on 15<sup>th</sup> December and the grant schedules were noted. The Committee Chair drew the Board’s attention to minute 5 which highlighted agreement to use Neil Bateman by referral from the office. It was pointed out that the grants for Beneficiary accounts were not listed under management costs. The Committee Chair referred the Board to Minute 5.3 for particular note. The Board were asked to note that the payment of funds direct to a beneficiary, as reported under Any Other Business, was a one-off case.</p> <p>(2) The Committee Chair gave an oral report on welfare policy development and the range of disbursement activity as follows: November 13 cases, December 49 cases, and January 33/34 cases with total disbursement expenditure of about £240,000.</p> <p>The NWC Committee Chairman reported that there was a need to investigate the fuel poverty issue and regarding the debt issue there was a need to exercise extreme care in the management of grants for repayment of loans, and to try as much as possible to negotiate lower settlement figures. It was noted that this would affect the beneficiary’s credit rating.</p> <p>Regarding welfare policy, it was agreed to circulate the next draft of the FAQ document to the Board.</p>	RE/RR	
<b>57.12</b>	<p><b>Audit Committee</b></p> <p>The Chairman of the Audit Committee gave an oral report on the business of the Committee that had been held earlier in the day. The Chairman advised the Committee that much of the Committee’s business was a matter for the Board at this meeting but she was of the view that it would be of material</p>		

	<p>advantage to review what had taken place earlier. The Chairman advised the Board that there had been a minor amendment to the minutes of the previous meeting. This was to state the level of financial activity taking place within the Alliance House entities.</p> <p>The Audit Chairman reported that the minutes of the meeting held on 15<sup>th</sup> November were approved subject to one amendment.</p> <p>The Audit Chairman also advised that the papers relating to the engagement of Ward Williams as auditors were missing from the Board pack and it was requested that they be e-mailed to the Board, after which approval would be sought from the Board to approve Ward Williams as Auditors and to approve their continuance for the rest of their term as Auditors for the Alliance House entities for a period of 2-3 years.</p>	AS	ASAP
<b>58.12</b>	<p><b>CF/MFT Liaison Committee</b></p> <p>As minuted in the minutes of the meeting held on 29 November 2011, the views of the LC were that an internal audit for all entities was not necessary, although the Board had felt it was necessary. In answer to the question of where the balance of responsibility lay, the Audit Committee Chairman opined that the Board should take a view as to how far responsibilities stretch and what actions need to be taken. It was agreed that this item should be on the agenda for the next meeting of the Board and Liaison Committee.</p> <p>Martin Harvey and Richard Findlay then left the meeting.</p> <p>The point was raised about the recruitment of a new contract member of staff into the Support Services Team and the Board approved the appointment of a Support Services Assistant for a period of one year. It was felt that after the one year period an offer of a full time position would be made if required.</p>		
<b>59.12</b>	<p><b>Department of Health Liaison Committee Meeting</b></p> <p>The Chairman gave an oral report on the 5<sup>th</sup> December meeting with officials.</p>		
<b>60.12</b>	<p><b>Pay-round Proposal from 2012/13 from the Chief Executive</b></p> <p>The Board of Trustees noted the recommendations, previously circulated by email, from the Chief Executive and these were approved. The Chairman advised the Board of Trustees that he had consulted with the various committee chairmen on the Chief Executive's salary and it was agreed</p>		

