

<b>Item No.</b> 6.2	<b>Classification:</b> Open	<b>Date:</b> 26 November 2003	<b>MEETING NAME</b> <b>Council Assembly</b>
<b>Report title:</b>		<i>Appointment to Casual Vacancy of Trustee to the Borough Market, Southwark</i>	
<b>Ward(s) or groups affected:</b>		Wards within the North Southwark and Bermondsey Parliamentary Constituency.	
<b>From:</b>		Chief Executive (Borough Solicitor and Secretary)	

### **RECOMMENDATION(S)**

1. That Mr Alexander Stevenson be appointed as Trustee of Borough Market Southwark, to the term expiring 31 March 2004.

### **BACKGROUND INFORMATION**

2. Council Assembly appoints Wardens of the Corporation of Wardens and Appointed Trustees of the Borough Market. Under the Schemes governing the trusts appointments are made on the nomination of the Ward Councillors for Wards covering St Saviour's parish as it existed in 1930 (Currently, Cathedrals, Chaucer, Grange and Riverside Wards).
3. The annual nomination meeting takes place in February. At this year's nomination meeting, members agreed two reserve nominations in the event that a casual vacancy arose. A casual vacancy to a term expiring on 31 March 2004 has arisen through the resignation of Mr James Todd, due to his work commitments with Unilever which now require him to spend most of his time in South Africa. Mr Todd has been Vice-Chair of the Market during a time of considerable change and improvement for the market. Under the Trust's Standing Orders the Trustees will elect a new vice-chair.

### **KEY ISSUES FOR CONSIDERATION**

4. Background Information is attached in the Appendices as follows:
  - A. Full list of Current Trustees
  - B. Borough Market: Background Information
  - C. Trustee Qualifications and Disqualifications
  - D. Principles for Appointments to Charities agreed by the Voluntary Bodies Appointments Panel and endorsed by the Standards Committee.

### **Statutory Scheme**

5. A meeting of nominating Ward Councillors was summoned in accordance with the scheme and held on 22 October 2003, at which members agreed to nominate one of the two reserves, Mr Simon Tucker to the vacant post. Their reserve nomination, in the event that Mr Tucker was unable to take up the post, was Mr Alexander Stevenson. A copy of the report to nominating Ward Members, the application forms of the two reserves and references received are available on request to any Member via e-mail, or in hard copy.

6. After the date of the meeting Mr Tucker notified the Borough Solicitor of a potential conflict of interest, in that he role as a director of a charity, which was about to become a short-term tenant of the market. As director Mr Tucker had played a part in negotiating the lease with the Trustees. The historic Borough Market statutes disqualify from being a trustee any person who is “concerned in any bargain or contract entered into with the Trustees, or participates in the profit of any such bargain or contract or of any work done under the authority of the Trustees”.
7. The Borough Solicitor’s advice has been sought as to the interpretation of the disqualification clause. While, in the particular circumstances it is not thought that Mr Tucker will participate in the profit of the lease, it is the Borough Solicitor’s view that “being concerned in a bargain” goes beyond being a legal party to a contract, and can extend to employees or agents of a lessee. Accordingly, as Mr Tucker now falls within the statutory disqualification nominating Members reserve nomination, Mr Alexander Stevenson, becomes the nominee.
8. The statutory scheme provides that Trustee appointments shall not be made except on the nomination of the nominating ward Councillors, provided that nominating ward councillors make a nomination within one calendar month from the time for which a meeting of the councillors was first summoned for the purpose. As a nomination has been made by the Councillors in accordance with the scheme, with a reserve nomination, Council Assembly may choose to appoint Mr Stevenson or choose not to appoint him, but cannot of its own initiative appoint an alternative candidate.

### ***Charity Commission guidance on Appointing Trustees***

9. The Charity Commissioners advise local authorities appointing charity trustees to be aware that they are bound to appoint the individual best fitted to carry out the responsibilities of trusteeship of the charity in question.
10. Trustees, when appointed, owe a duty to the beneficiaries of the charity to act solely in the best interests of the charity, and must not act for their personal benefit. Trustees must act independently of the Council, and do not “represent” the Council. Charity Commission staff have stressed that appointments to charities should not be made on a political basis.

### **Legal Implications**

11. Legal Implications are set out in the body of the report and its appendices.

### **Declaration of Interests**

12. Members are reminded that the Council’s Code of Conduct requires them to declare a personal interest if the well-being or financial position of the member (or relative or friend of the member) would be affected by this decision to a greater extent than other council-tax payers, ratepayers or inhabitants of the borough. In this context, Members should note that the profits of the market are applied to reduce the Council Tax bills of each of the approx 1139 dwellings within the old St Saviour’s parish area.
13. Members are also reminded that they should not take part in the discussion or vote on this report if their interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant as to

prejudice the member's judgment of the public interest.

### Reasons for lateness

14. A meeting of nominating Ward Councillors was held subsequent to the date of the Agenda dispatch.

### Reasons for urgency

15. The Council has a statutory duty to appoint Trustees within one month of a nominating meeting.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Report to and Minutes of Meeting of Nominating Ward Councillors on 27 February 2003	Borough Solicitor's Office Town Hall Peckham Road SE5 8 UB	Rachel Prosser 020 7525 7678
Report to Meeting of Nominating Ward Councillors on 22 October 2003	Borough Solicitor's Office Town Hall Peckham Road SE5 8 UB	Rachel Prosser 020 7525 7678
CVs of successful applicants and reserves	Borough Solicitor's Office Town Hall Peckham Road SE5 8 UB	Rachel Prosser 020 7525 7678

## APPENDIX A

### Audit Trail

<b>Lead Officer</b>	Deborah Holmes, Borough Solicitor and Secretary	
<b>Report Author</b>	Rachel Prosser, Senior Legal Officer	
<b>Version</b>	Final	
<b>Dated</b>	20 November 2003	
<b>Key Decision?</b>	No – decision for Council Assembly not the Executive	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Borough Solicitor & Secretary	Yes/No	Yes/No
Chief Finance Officer	No	No
Strategic Director of Regeneration	No	No
<b>Executive Member</b>	No	No
<b>Date final report sent to Constitutional Support Services</b>	20 November 2003	

### Appendices:

A. Full list of Current Trustees

- B. Borough Market: Background Information
- C. Trustee Qualifications and Disqualifications
- D. Principles for appointing charity trustees

**CURRENT MEMBERSHIP OF BOROUGH MARKET, SOUTHWARK TRUSTEES & CORPORATION OF WARDENS**

**Corporation of Wardens** (Expiry Date – Easter Monday 2002)

<i>Mrs Georgina Domminey</i>	<i>Warden of Great Account</i>
<i>Mr Eric Tucker</i>	<i>Renter Warden</i>
<i>Ms Katharine Willis</i>	<i>Newcomen Warden</i>
<i>Dr Shireen Chantler</i>	<i>Bell Warden</i>
<i>Mr Steven Kerbel</i>	<i>College Warden</i>

Members of the Corporation of Wardens serve both as Trustees of the United St Saviour's Charities, and as Trustees *ex officio* of Borough Market

**Appointed Trustees of Borough Market (Southwark)**

**Expiry Date – 31 March 2004**

Mr Anthony Tooth

**Vacancy following the resignation of Mr James Todd (Vice Chairman)**

Dr David McGibbon

Mr John Godwin - appointed October 2002)

**Expiry Date – 31 March 2005**

Very Rev Colin Slee – Appointed March 2003

Ms Dorothy Bates

Mr Ptolemy Dean - Appointed April 2002

Ms Alison Thomas – Appointed Oct 2002

**Expiry Date – 31 March 2006**

Mr George Nicholson

Mr Tom Clatworthy

Ms Annie Coleman – Appointed March 2003

Mr Kevin O'Sullivan

**Expiry Date – 31 March 2007**

Ms Sharon Yeoh

Mr Raymond Davern

Mr Stephen Dermody

Ms Karen Hosrley

Reserve nominations in the event a trustee opts not to take up appointment, or subject to the scheme provisions, if a casual vacancy arises during the year.

Corporation of Wardens – Mr Philip Riches

Appointed Trustees of Borough Market – Mr Simon Tucker and Mr Alexander Stevenson

**Updated 14 October 2003**

### **The Borough Market, Southwark**

The Borough Market consists of a wholesale food market and other retail outlets and property run on an area of land owned by the trustees of the Borough Market, located at the southern end of London Bridge. A market of some kind has been operating on or near the site for over a thousand years. The market has been on its current site since 1756, and is governed under documents dating from 1754. The Market is a charity, and has been registered with the Charity Commissioners since August 1999.

The trustees of the Borough Market are responsible for running the Market. There are 21 trustees, of whom 16 are “appointed trustees”, and 5 are “ex-officio trustees” who are the members of the Corporation of Wardens. The Council appoints four of the sixteen trustees each year, on a rolling basis.

The appointment process for the 16 appointed trustees is contained in the Southwark (Borough Market) Scheme 1907. It provides that a nomination meeting of the ward councillors of Abbey, Cathedral and Chaucer Wards must be held to nominate the trustees each February, or within one month of the Council receiving notification of a casual vacancy. The Council is then required to appoint the trustee(s) within one month from the date of the nomination meeting.

In the past, the standing orders adopted by the trustees provided that the Warden of Great Account should be the chair of the trustees. However, the trustees, at their meeting on 15 March 2001, agreed new standing orders which provide for the Chairman of the trustees to be elected by the trustees at their first meeting of the financial year, normally held after Easter. The current chair is Mr George Nicholson.

The standing orders provide for the full Board of Trustees to meet quarterly, and for the Board of Trustees to appoint an Executive Committee charged with the financial control of the Trust’s assets and the control of the Market. The Executive Committee meets monthly.

### **Changes to Borough Market Governance Acts**

The Market is governed under a series of Statutes which date from 1754. Problems have occurred in the past as the statutes can offer conflicting interpretations, e.g. of the power to lease land. The Trustees have produced proposals to go to the Charity Commission to modernise the market’s documents, to give the Market a modern framework to operate under. Officers will report to members separately on this matter.

### **Arrangements for Rates**

Under the London Government Scheme (Southwark Borough Market) Confirmation Act 1907, the Trustees are required to pay all revenue derived from the market is paid, (after covering the costs and expenses, interest and sinking fund payments) to the Council. The money is then applied to reduce the Council Tax payable by residents within the 1930 St. Saviour’s parish. In the last Council Tax year, there were 935 dwellings for which council tax is payable within the area. For each £1000 of profit, a resident in a Band D property received approximately £1.37 rebate.

Over at least the past six years, or perhaps even as much as 25 years, a practice has evolved whereby the Borough Market paid the council a flat sum of £1,000 every six

months under this provision. However, no record has been found to evidence such an agreement, and in any case such an agreement would have been outside the power of the Council to make.

The 1907 Act provided that the Council must also make good the losses of the trust. The Act gave the Council a discretion, to fund the losses by levying a rate of “six pence (6d) in the pound” as an addition to the general rate. This would convert to 2 ½ (new) pence in the pound in today’s terms. However the general rate has been abolished and replaced by Council Tax, and it is not clear whether a tax of that nature can now, in practice, be collected.

The Borough Market is unusual for a charity, in that the beneficiaries of the trust must also make good the Trust’s losses. It is thus vitally important that the trustees appointed by the Council have the right balance of skills, experience and knowledge to be able to run the Trust effectively.

## Appendix C - Trustee Qualifications and Disqualifications

### Qualification requirements for Trustees

The Charities Act 1993 disqualifies from acting as a trustee any person:

- who is under the age of 18 years, or
- who has been convicted of any offence involving dishonesty or deception,
- who is an undischarged bankrupt, or has made a composition with his creditors and has not been discharged in respect of it,
- who has previously been removed from the office of charity trustee on the grounds of misconduct or mismanagement,
- who is disqualified from being a company director.

Appointed Trustees, but not Wardens, are also subject to the disqualifications which applied to District Councillors under section 46 of the Local Government Act 1894.

### Specific Qualification for trustees of Borough Market

#### ***Council Tax/NNDR payers within 1930 St Saviour's Parish***

Clause 2(3) of the Scheme provides that the Borough Market Trustees must be "ratepayers" in the "specified area". "Specified area" means the area of the Parish of St Saviour, Southwark, as existing in the Metropolitan Borough of Southwark until 31<sup>st</sup> March 1930. A map showing the boundaries is attached as Appendix L.

The scheme refers to "ratepayers". However, the general rate was abolished by the legislation introducing the Poll Tax. The Charity Commission's guidance was sought on the interpretation of the term "ratepayer" in a modern context. Their guidance (which is not binding) is that:

- a) Individuals (including partners in a business) who pay the National Non Domestic Rate (i.e. the business rate), would be eligible to be appointed as trustees, but this would not extend to companies.
- b) Individuals who are on the Council Tax roll and pay Council Tax for a dwelling in the area would be eligible whether or not they are actually resident.
- c) A resident who is not personally liable to pay Council Tax would not be eligible.

The primary liability to pay Council Tax (and hence eligibility to be a Borough Market Trustee) falls on the person who has his or her "sole or main residence" in the property. As between residents, the primary liability falls on the owner, or the person who is the lease-holder or tenant. A non-resident can be liable to pay the tax (and eligible to be an Appointed Trustee) only if no-other adult has the property as his or her "sole or main residence".



### **Disqualifications for Appointed Trustees of Borough Market**

Appointed Trustees (but not Wardens) are subject to the disqualifications which applied to Parish Councillors under the Local Government Act 1894.

Some of the disqualifications are similar to those which apply to charity trustees. The additional disqualifications are:

- a) Are an infant or an alien (i.e. not a British Subject, or Citizen of the Commonwealth or the Republic of Ireland). There is a strong argument that that citizens of the European Union, should no longer be regarded as "aliens".
- b) Have within the twelve months before his appointment or since received union or parochial relief.
- c) Have in the five years before or since appointment been convicted of any crime and sentenced to imprisonment with hard labour and without the option of a fine. (This is a different requirement from the Charities Act 1993 requirement which permanently disqualifies those with convictions for dishonesty or deception).
- d) Are employed by the Trust.
- e) Are "concerned in any bargain or contract entered into with the Trustees, or participates in the profit of any such bargain or contract or of any work done under the authority of the Trustees."
- f) This is subject to some exceptions, notably that a trustee whose interest stems from holdings in a joint stock company is not disqualified from being a trustee, but is disqualified in voting on any matter in which the company is interested. This section prevents a market trader or a tenant of a market property from being a trustee.
- g) Trustees who are absent from meetings of the Trustees for more than six months consecutively, except in case of illness or for some reason approved by the Trustees.

In the past Trustees have been unaware of the disqualifications in the 1894 Act. At least one trustee has been granted a licence by the market to occupy premises owned by the market. Other trustees may be affected due to the business interests of themselves or their partners.

A Councillor is not disqualified from being an Appointed Trustee. However, a Councillor may not vote for the nomination of himself or herself. If a Councillor were to be appointed, that member would need to be alert to possible conflicts of interest. No councillor currently resides within the area.

## Appendix D – Principles for charity appointments

(Agreed by the Voluntary Bodies Appointments Panel and endorsed by the Standards Committee)

The Council makes appointments to a number of Charity Trustees, under the trust deeds of the respective trusts.

Appointments are made in accordance with the following principles:

### Trustee independence from the Council

- Trustees, when appointed, must act solely in the best interests of the charity, and must act independently of the Council.
- They do not “represent” the Council.
- The provisions of the Local Government and Housing Act 1989 concerning political balance do not apply to appointments to charities and, in line with Charity Commission guidance, appointments to charities are not made on a political basis.
- The Council's overriding objective is to ensure that competent people are appointed who are able to complement and contribute to the successful operation of the charities.

### Appointments Made on Merit

- Local authorities appointing charity trustees are bound to appoint the individual best fitted to carry out the responsibilities of trusteeship of the charity in question.
- Appointments will be based on merit.
- The appointment process offer members the opportunity to review the balance of skills held by trustees, and to appoint a trustee with the necessary skills to complement those of existing trustees.
- Trustees can come from all walks of life and varied backgrounds. The Council encourages applications from a wide range of people with varying types of experiences. The Council promotes equality of opportunity, and hopes to be able to appoint trustees who reflect the diverse communities served by the charities.

### Criteria for appointment:

*The Council will look to appoint Trustees with the following qualities:*

1. *Commitment:* Taking time to understand the workings of the body, and the need for regular attendance at meetings.
2. *Conscientiousness:* Reading briefing papers thoroughly, and playing a full part in the process.
3. *Confidence:* Speaking up at meetings and expressing a point of view.
4. *Common Sense:* Assessing the impact of proposals on individuals and bring an independent view to discussions.
5. *Courage:* Asking the question that no-one has asked, and querying why a certain approach is being recommended.
6. *Clarity:* Making sure that you understand what is happening and what is proposed.
7. *Committee Experience.* Ideally, you should have experience of taking decisions as part of a committee.
8. *Community Involvement* - The Council wishes to appoint Trustees who are committed to and connected with the local community.