

Item No.	Classification: Open	Date: 25 th March 2003	MEETING NAME EXECUTIVE, meeting as TRUSTEES OF THE SOUTH LONDON GALLERY TRUST
Report title:		South London Gallery Transfer of Trusteeship - To Approve the Draft Charity Commission Order for removal and appointment of new Corporate Trustee	
Ward(s) or groups affected:		All	
From:		Director of Education & Culture/Culture & Heritage Manager	

IMPORTANT NOTE: The Executive, in considering this report are acting in the capacity as Trustees of the South London Gallery Trust. The decisions must be taken solely based on what is in the best interest of the trust and the furtherance of its objects.

RECOMMENDATION(S)

That the Executive acting as Trustee:

1. *Notes that when acting as Trustee the Executive (on behalf of the Council) owes duty to the Trust and to its beneficiaries which is separate and distinct from the general duty owed by the Council to the inhabitants of the borough.*
2. *Notes and approves the draft Order prepared by the Charity Commissioners (Appendix 1),*
3. *Authorises Officers to take all necessary steps to effect the transfer of trusteeship,*
4. *Notes the Charity Commission advice (Appendix 2) that in future a fully regulating Scheme would be desirable to replace the current governing documents in their entirety and notes that it would be appropriate for this to be considered by the new trustee company after its establishment,*

BACKGROUND INFORMATION

5. On 25 February 2003 the Executive, acting in its capacity as sole corporate trustee of the South London Fine Art Gallery and Library Trust, resolved that it:
 - (1) Notes that in receiving this report and agreeing the following recommendations it is acting as Trustee of the South London Gallery Trust, a distinct entity which is separate from the Council,
 - (2) Notes that when acting as Trustee the Executive (on behalf of the Council) owes duty to the Trust and to its beneficiaries which is separate and distinct from the general duty owed by the Council to the inhabitants of the borough.
 - (3) Notes that a report elsewhere on the agenda asks the Executive to take decisions on behalf of the Council from a corporate perspective.
 - (4) Notes that the South London Gallery Steering Group was established to

provide independent advice on what is in the Trust's best interests, and the Steering Group has taken legal and financial advice independent of the Council in coming to its recommendations.

- (5) Notes the previous decisions made by Ratification Committee on Tuesday 9 April 2002 to proceed with the Strategy for Change (set out in Appendix 1 of the report).
- (6) Accepts the advice of the South London Gallery Steering Group, contained at Appendix 2 of the report, and accordingly notes:
 - (a) that the freehold gallery building and land are permanent assets of the gallery and will transfer to the newly-constituted trustee company.
 - (b) the progress which has been made on the interim building works to bring about immediate improvements to access and provide improved education facilities at SLG, as set out at paragraph 2.20 of the Steering Group's report.
 - (c) Notes the advice of the steering group that in the long term the best prospect of expansion of the gallery to improve access and services to visitors is for the South London Gallery Trust to receive from the council the building at 67 Peckham Road, which was acquired by the Council for the purpose of the Gallery.
 - (d) Agrees in principle that it would be in the interests of the South London Gallery Trust to accept 67 Peckham Road from the Council
 - (e) Notes that that the Endowment Fund is the property of the Trust and will need to transfer to the new Trustees.
 - (f) Notes that an application has been made on behalf of the trust for mandatory 80% rate relief, and that a further application has been made for 20% discretionary rate relief.
 - (g) Notes the information about the collection set out in Appendix 5 of the report, and agrees that ownership of individual works should be left for negotiation between the new trustee, once established, and the Council, because of the conflict of interest.
 - (h) Notes that the part of the collection beneficially owned by the Trust is part of the Trust's permanent endowment.
 - (i) Agrees in principle, that that part of the collection owned by the gallery should be loaned to the Council and that it is in the best interests of the Trust for which the collection is held for the entire collection to be kept together.
 - (j) Agrees in principle (subject to confirmation by the new trustee body) that the terms of the proposed Service Level Agreement between the Trust and the Council (set out at Appendix 4 of the report) are acceptable from the perspective of the trust.
 - (k) Agrees to accept the advice of the Steering Group that the transfer of staff to the new trustee company should continue to proceed on the basis that

TUPE applies to the transfer.

- (l) Agrees that an application be made on behalf of the trust for admitted body status to the Southwark Pension Scheme for the South London Gallery Staff being transferred from the Council to the Trust.
7. Agrees that, subject to the Charity Commission responding in time, a further report will come to the Executive as Trustee in March 2003, to formally agree to transfer trusteeship of the South London Gallery Trust to a new trustee body.
 8. In response, the Executive acting in its capacity as local authority resolved:
 - (1) That it be noted that the Council has 2 separate roles in relation to the operation of the South London Gallery (SLG) as follows:
 - a) normally when the Council is considering matters concerning the administration of the charity and making decisions on behalf of the charity the Council is acting as a trustee and not in any other capacity. Under Charity law the Trustees must act in the best interests of the trust and avoid potential conflicts of interest with their role as Councillors. Wherever necessary independent advice should be sought.
 - b) in its corporate role as a local authority providing support for SLG under a range of statutory powers and duties in relation to libraries, museums and the arts. These include the Public Libraries and Museums Act 1964 and the power under section 2 of the Local Government Act 2000 to do anything which it considers likely to achieve the promotion or improvement of the economic, social or environmental well-being of the area. The power of well-being must be exercised having regard to advice issued by the Secretary of State and the provisions of the Council's community strategy. This report concerns decisions that the Council needs to make in its corporate capacity as a local authority.
 - (2) That the decisions of the Ratification Committee taken on 9 April 2002 set out in Appendix 1 of the report be noted and endorsed.
 - (3) That the advice of the SLG Steering Group to the Council as Corporate Trustee (Appendix 2 of the report) and the decisions made in response to these (see previous item 215) be noted i.e. that:
 - The freehold gallery building and land are permanent assets of the Charity, and that the new trustee will need to amend the land registry entry when the trusteeship is transferred to a new company.
 - The Trust notes the progress made on the interim building works to bring about immediate improvements to access and provide improved education facilities.
 - The Trust agrees that it would be in the best interest of the Trust to receive No 67 Peckham Rd from the Council.
 - The trust notes that the endowment fund is the property of the Trust and will need to transfer to the new Trustee.
 - The trust notes that an application has been made on behalf of the trust for mandatory 80% rate relief and a further application for 20% discretionary rate relief.

- The trust agrees that ownership of individual works in the SLG collection should be left for negotiation between the new trustee, once established, and the Council because of the conflict of interest.
 - The trust notes that the part of the collection beneficially owned by the Trust is part of the Trust's permanent endowment.
 - The trust agrees in principle that the part of the collection owned by the Gallery should be loaned to the Council and that it is in the best interests of the trust for which the collection is held for the entire collection to be kept together.
 - The trust agrees in principle (subject to confirmation by the new Trustee body) that the terms of the proposed Service Level Agreement are acceptable from the perspective of the Trust.
 - The trust agrees to accept the advice of the Steering group that the transfer of staff to the new trustee company should continue to proceed on the basis that TUPE applies to the transfer.
 - The trust agrees that an application be made on behalf of the Trust for admitted body status to the Southwark pension Scheme for SLG staff being transferred from Southwark Council.
- (4) That the draft Service Level Agreement (set out in Appendix 4 of the report) be agreed and officers be authorised to sign the agreement to take effect from 1 April 2003.
- (5) That the position with regard to the ownership of the property occupied by South London Gallery be noted and the Executive also notes that the new trustee will need to seek changes to the Land Registry entries once the new Company takes over as Trustee.
- (6) That in principle, No 67 Peckham Road be transferred on terms which secure the redevelopment of the property for use in connection with the gallery within a 5 year time-scale, and officers be authorised to develop an appropriate legal mechanism to support this transfer.
- (7) That the position on the transfer of Staff and the Council's intention to transfer the existing permanent staff employed at the SLG to the Trust under TUPE be noted.
- (8) The Executive notes the advice on the SLG Collection and agrees to accept the Collection subject to ongoing negotiations on the terms of the draft loan agreement (Appendix 6 of the report) and the final agreement of the Trust. The Executive authorises Officers to conclude these negotiations once the independent company has been established and in the interim the Council retains management of the Collection.
- (9) That the advice on the transfer of the SLG Endowment Fund be noted.
- (10) That it be noted that the trust will be applying for the discretionary 20% relief from NNDR as a charity in addition to the mandatory 80% relief for charities.

KEY ISSUES FOR CONSIDERATION

7. The critical task awaiting completion for the transfer of the Trust to a new corporate trustee was advice from the Charity Commission as to the appropriate mechanism by which the Council would cease to be sole

corporate trustee and a new company established for the purpose be appointed as trustee.

8. The Charity Commission advice is set out in a letter attached as Appendix 2. This advises that:

- it has been decided that it will not be necessary for the Commission to make a Scheme (in effect a new constitutional document to consolidate the existing documents) to appoint the new trustee but instead this can be achieved through an Order made by the Charity Commission.
- an Order is a legal document that authorises the charity trustee to carry out an act which otherwise it would not have the power to do.
- the Commission has drafted an Order (Appendix 1) which removes Southwark Council as the trustee, appoints the SLG Trustee Ltd (the new Company established for the purpose of taking on the trusteeship) in its place, and transfers the charity's land and buildings to the corporate trustee.

9. The Charity Commission has asked that the Council, acting as trustee, consider and approve the draft order (Appendix 1) and send a minute of the meeting at which the order is approved to the Commission. The Charity Commission will then issue notices for wider publication of the Order. This will be followed by a period of one month to allow any representations to be made. The Charity Commission will advise, after the Draft Order has been approved, of the precise means for publication of the Order. If no objections are received in this one-month period the Order will come into effect (once sealed by the Council) and the transfer take place. The process and indicative timescale for this is as follows:

Timescale	Action
25 March 2003	Southwark Council acting as Trustee approves the draft Order.
By 28 March 2003	Southwark Council sends minute confirming approval to the Charity Commission.
By 18 April 2003	Charity Commission issues notices for publication by the Trustee (could include placing notices on noticeboards and in the local press).
By 19 May 2003	One month period for representations to be made by the public.
By 30 May 2003	Charity Commission issues declaration for signature confirming that the publication of the Order is complete.
By 13 June	Charity Commission issues the completed Order for sealing.
1 July 2003	Once sealed the Order takes effect.

10. This decision completes the formal process of transfer detailed in the 25th February report to the Executive and allows detailed work on establishment of new company and transfer of assets to continue as previously agreed. Allowing sufficient time for Charity Commission

responses, the process of transfer should be completed for 1 July 2003 and at that point the Service Level Agreement between Council and Trust will take effect.

Policy implications

11. Members should note that in this report, they are making decisions from the perspective as Trustees. The Councils internal policies and strategies cannot be the primary driver of this decision, except insofar as the policies of a funding organisation are relevant to the organisation it funds.

Resource implications

12. Resource implications of transfer of trusteeship were noted in the report of 25 February – the only additional resource requirement arising from this report is the cost of publicising the order that will be met from existing Resources. The precise cost of this is likely to be low (the cost of placing a notice in a local newspaper) and will be known once the Charity Commission has confirmed the method of publication that it requires.

Legal/Financial Implications:

13. Legal advice is contained in the body of the report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
<i>SLG Transfer of Trusteeship Officer Files</i>	<i>15 Spa Rd & South London Gallery</i>	<i>Stephen Douglass 020 752(51579)</i>

AUDIT TRAIL

Lead Officer	<i>Dr Roger Smith – Director of Education & Culture</i>	
Report Author	<i>Stephen Douglass – Culture & Heritage Manager</i>	
Version	<i>Final</i>	
Dated	<i>14th March 2003</i>	
Key Decision?	<i>Yes</i>	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
<i>List other Officers here</i>	None	None
Executive Member	Yes	No
Date final report sent to Constitutional Support Services	14 March 2003	