

Item No. 7.1	Classification: Open	Date: 31.03.04	Meeting Name: Council Assembly
Report title:		Appointment of Trustees to the Borough Market, Southwark	
Ward(s) or groups affected:		Wards within the North Southwark and Bermondsey Parliamentary Constituency.	
From:		Chief Executive (Borough Solicitor and Secretary)	

RECOMMENDATION(S)

1. That the following persons be appointed as Wardens of the Corporation of Wardens for terms from *Easter Tuesday 13 April 2004 until Easter Monday 28 March 2005*.

Mrs Georgina (Dena) Domminney - Warden of Great Account (and chair of the Corporation) (reappointment)

Lady (Shireen) Chantler - Renter Warden (reappointment)

Mr Philip Riches - Newcomen Warden (new appointment)

Mr Philip Peart - Bell Warden (new appointment)

Mr Stephen Kerbel - College Warden (reappointment)

Reserves

In the event that any of the above persons do not take up the appointment, or if a vacancy arises during the year (subject to the requirements of the scheme)

Reserve number 1 **Mr Derek Joseph**

Reserve number 2 **Ms Louise Dixon**

Reserve number 3 **Ms Jo Dagustun**

2. That the following persons be appointed as Appointed Trustees of the Borough Market, Southwark for the periods indicated:

Mr David Lancaster to the casual vacancy expiring on 31 March 2006

Ms Renate Reichenbach to the casual vacancy expiring on 31 March 2006

Mr Alexander Stevenson to terms from 1 April 2004 - 31 March 2008

Ms Celia Palmer to terms from 1 April 2004 - 31 March 2008

Mr Stephen Barclay to terms from 1 April 2004 - 31 March 2008

Mr Alex Tweedie to terms from 1 April 2004 - 31 March 2008.

Reserves:

In the event that any of the nominated trustees do not take up the appointment, or if a casual vacancy arises during the year (subject to the requirements of the scheme)

Reserve number 1 **Mr John Godwin**

Reserve number 2 **Ms Louise Dixon**

Reserve number 3 **Ms Jo Dagustun**

3. That Members thank outgoing trustees for their services.

4. That Members note the comments of the Nominating Members in relation to the changes to the Corporation of Wardens scheme of arrangement.

BACKGROUND INFORMATION

5. 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).
6. In order to encourage applications from local residents, a letter was sent to all households within the 1930's St Saviour's Parish on 12 November 2003 inviting residents to attend a presentation at the Borough and Bankside Community Council on 18 November 2003, and providing information about the appointments process. The deadline for appointments was 6th January 2004. Only around 9 or 10 applications had been received by deadline so it was extended, in the hope of extra applications. An e-mail was sent to all those who had contacted the council the previous year by e-mail asking them if they wished to be considered. 16 applications were received in total.
7. A meeting of nominating Ward Councillors was summoned in accordance with the schemes and held on 24 February 2004. Comments of existing trustees were circulated to nominating members and were taken into account in the nomination process. Nominating Members present agreed unanimously to nominate the above candidates.

KEY ISSUES FOR CONSIDERATION

8. 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. Charity Commission Guidance
 - E. Map of the Parish, showing the boundaries.
9. In addition the full copy of the report received by Nominating Trustees, its appendices and application forms of successful nominees and reserve nominations have been placed in the Group Rooms. Additional copies are available to any Member on request. This has been done to avoid copying an additional 50 pages to each Member.

Changes to the Corporation of Wardens Scheme of Arrangement

10. The Corporation of Wardens act as Trustees of the United St Saviour's Charities. They operate under a Charity Commission scheme, which provides for the management of the properties comprising the permanent endowment of the Charities, and for the income derived from those properties (after the expense of management of the properties and certain minor expenses and pensions) to be used for the continuing provision for persons resident in its almshouse and thereafter for the general benefit of the poor of the Area of Benefit¹. The Wardens use the money to make small grants to Charities.

¹ The Area of Benefit is currently the area comprising the North Southwark and Bermondsey Parliamentary Constituency, plus Newington and Faraday Wards.

11. The Scheme of Arrangement that is the Charities governing document was last updated in 1960. The appointment of Wardens of the Corporation of Wardens is covered by the St. Saviour Southwark scheme 1901 and the London Government Order, 1970 which provides that they are appointed by Council Assembly on the nomination of the Councillors for Abbey, Cathedral, Chaucer and Riverside wards.² These Wards cover St Saviour's parish as it existed in 1930.
12. Warden's are appointed annually, a process which is both resource-intensive for the council and that does not guarantee continuity of the trustees.
13. Under the Borough Market (Southwark) Acts 1754 –1930, trustees automatically become ex officio Trustees of the Borough Market on appointment to the Corporation of Wardens.
14. In order to bring the Scheme of Arrangement that the Charities operate under up to date, the trustees (Wardens) propose to revise it. For Southwark Council's purposes, the principal change to the Scheme of Arrangement is to allow the Trustees to appoint its own Trustees, and to appoint its own chairman and other non-executive roles. Wardens would be appointed for a three-year term, with the possibility of the appointment of a further three-year term.
15. Other amendments that are proposed by the Wardens are to:
 - a) define the area of benefit as the Parliamentary constituency of North Southwark and Bermondsey, as defined from time to time, and areas adjacent to that Constituency; and
 - b) increase the number of trustees from 5 to 8.
16. There is some indication that the Wardens want to abolish the automatic connection between being appointed as a Warden and becoming a Trustee of the Borough Market but this will require amendments to the statutes that govern the Borough Market.
17. The Trustees have expressed their intention to incorporate the Charities at the same time as updating the Scheme. This would avoid personal liability for the Wardens for decisions they have made on behalf of the trust. The Trustees have consulted the Charity Commission on this point and the Commission was supportive of this suggestion.
18. At their meeting on 28th February 2004, the Nominating Members welcomed the Corporation of Warden's moves to modernise their governance structures and widening their area of benefit. They were supportive of the move towards the Corporation of Wardens choosing their own Wardens, provided that the process was open, transparent and complies with any relevant provisions in legislation governing equal opportunities and the appointment of trustees. Members noted that despite the changes to the appointments process they hoped that the Corporation of Wardens and Southwark Council would continue to work closely together in the future.

² Except where the Councillors entitled to make such nomination fail to nominate within one month from the time for which a meeting of the Councillors was first summoned for the purpose, in which case the council may make the appointment without any such nomination.

19. Nominating Members resolved that:

- a) The proposals from Wardens that the Council no longer be the appointing body were considered acceptable, provided that appointments are made in a transparent, open and accountable way, in line with Charity Commission Guidance. For example, vacancies should be advertised. To maintain the link to the Council and to provide some openness and accountability the rules should provide that one Member of the Council (normally from Cathedrals Ward) must be invited to attend Corporation of Wardens meetings as a non-voting observer when appointments are being considered.
- b) That the Corporation of Wardens be asked to extend the Area of Benefit into the whole of Southwark and the distribution of proceeds to remain within the London Borough of Southwark.
- c) Members welcomed the move to a modern governing structure.

The Trustee Appointments Process : Charity Commission guidance on Appointing Trustees

20. 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.
21. 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. See also Appendix D.

Residential Qualifications

22. Traditionally, though with a few exceptions, Wardens have been residents of St Saviour's Parish, as it existed at 1541. In 1999 three of the Wardens questioned the eligibility for appointment of two new Wardens who lived outside the parish boundary. One of the matters raised was whether there is a residential qualification for trustees. The Borough Solicitor's view has always been that there is no residential qualification for Wardens, but has recommended that Members appoint trustees who reside within the parish boundary as at 1541 to avoid similar problems. The new scheme of arrangement for the Wardens does not include a residential qualification.
23. Two of the nominations to the Corporation of Wardens, Mr Philip Riches (Newcomen Warden) and Mr Philip Peart (Bell Warden), both of whom are new appointments, live outside of St. Saviour's Parish Boundary. Mr Peart lives in Bermondsey Street not far from the 1541 boundary. His skills will be particularly useful for the Wardens as they manage the rebuilding project. Mr Riches (who was last year's reserve nomination) contacted officers after the nominations were made to advise that, having resided within the parish for the past four years, he has now moved to Lambeth. He advised he still spends significant periods of time within the Parish Boundary and remains committed to the area and to being a Warden. The Borough Solicitor's advice is that these two nominations are valid nominations, notwithstanding the fact that they do not live within the 1541 parish boundary. The overriding duty is to appoint the individual best fitted to carry out the responsibilities of trusteeship of the charity in question.

Legal Implications

24. The Borough Market Trust's scheme of arrangement provides that Appointment of Wardens and Trustees shall not be made except on the nomination of the nominating ward Councillors. There is a proviso that the 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 nominations have been made by the Councillors, Council Assembly may choose to appoint the above nominations or choose not to appoint them, but cannot of its own initiative appoint alternative candidates. This situation also applies to the Corporation of Wardens, though it is likely that it is the final time that it will do so.

Declaration of Interests

25. 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.

26. 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.

27. Other legal matters are dealt with in the attached report and its appendices.

Advice from the Strategic Director of Regeneration

28. The Borough Market is continuing a major refurbishment and development plan for the market. This ambitious programme, which includes the further development of the retail market and construction of a new building incorporating the Floral Hall frontage (currently underway), will present a considerable management task for the trustees. Notwithstanding the availability of advice from professional advisors, it would be valuable if amongst the body of trustees there existed skills or knowledge in fields such as financial management, project management or marketing.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
CVs of successful applicants and reserves	Borough Solicitor's Office Town Hall Peckham Road SE5 8 UB	Rebecca Vink 020 7525 7678
Report to Meeting of Nominating Ward Councillors on the Corporation of Wardens – Changes to scheme of arrangement	Borough Solicitor's Office Town Hall Peckham Road SE5 8 UB	Rebecca Vink 020 7525 7678
Report to and Minutes of Meeting of Nominating Ward Councillors on 24	Borough Solicitor's Office Town Hall	Rebecca Vink 020 7525 7678

February 2004	Peckham Road SE5 8 UB	
Minutes of Meeting of Nominating Ward Councillors on 24 February 2004	Borough Solicitor's Office Town Hall Peckham Road SE5 8 UB	Rebecca Vink 020 7525 7678

APPENDIX A

Audit Trail

Lead Officer	Deborah Holmes, Borough Solicitor and Secretary	
Report Author	Rebecca Vink, Legal Officer	
Version	Final	
Dated	15 March 2004	
Key Decision?	No – decision for Council Assembly not the Executive	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes/No	Yes/No
Chief Finance Officer	No	No
Strategic Director of Regeneration	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services		

Appendices:

- A. Full list of Current Trustees
- B. Borough Market: Background Information
- C. Trustee Qualifications and Disqualifications
- D. Charity Commission Guidance

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

Corporation of Wardens (Expiry Date – Easter Monday 2003)

<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 (not reapplied)</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 (not reapplied)
Mr Alexander Stevenson (appointed November 2003)
Dr David McGibbon (not reapplied)
Mr John Godwin

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 Horsley

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
Borough Market – Simon Tucker (subject to disqualification as became director of an organisation which became a tenant of the Market.)

Appendix B

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 eight 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 31st March 1930.

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.

Principles for Appointment of Charitable Trustees

The Following Principles for appointment were agreed by the Voluntary Bodies Appointment Panel, and endorsed by the Standards Committee. They reflect Charity Commission guidance and recommendations on public appointments from the Office of the Commissioner of Public Appointments and the Women's National Commission

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, and not based on when the applications were first received.
- 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.

Charities appointed by the Voluntary Bodies Appointments Panel

- Camberwell Consolidated Charities
- Christchurch United Charities
- Rotherhithe Consolidated Charities
- St George the Martyr United Charities
- St Mary Newington United Charities
- St Olaves and Bermondsey United Charities
- Court of Governors of St Saviour's and St Olave's Grammar School Foundation
- Surrey Docks Farm Trust

Appointments to these charities are made by the Council's Voluntary Bodies Appointments Panel as and when vacancies arise.

Trustees appointed by Council Assembly (following nominations by Ward Councillors)

- The Corporation of Wardens (Trustees of the United St Saviour's Charities)
- The Trustees of the Borough Market Southwark

Ward Councillors from Cathedral, Chaucer, Riverside and Grange Wards meet annually in February to nominate trustees to these two charities. The formal appointment is then made by Council Assembly in March.

Process of Appointment

- The Council will periodically publicise and seek applications for appointments as appropriate: e.g.- by advertising either annually or by article in Southwark Life, by posting details on the web-site, and via Community Councils when vacancies arise.
- Where practicable, existing charity trustees' views will be sought as to the particular skills, experience and knowledge that trustees require.
- Applicants will be asked to name a referee, and references will be sought using a standard form. The reference will be confidential and will not be disclosed to the applicant without the consent of the person making it.
- Appointments will be made in closed session.

The same application form and the same basic process will be used for all charity appointments (including Borough Market and Corporation of Wardens) and a similar process will be followed (subject to the appointments being made in different forums)