

London Funders

Light Touch Governance Review

Final Report: London Funders Board 26 January 2017

From Gerald Oppenheim

Background

1. I was engaged to carry out a light touch governance review of the role and function of the London Funders Board but with a specific remit to consider conflicts of interest, accountability, transparency, independence and whether the right voices are in the room, in relation to the role of the Chair. I provided an interim progress report in October 2016 and the feedback on the emerging findings has been key in preparing the final report with recommendations for consideration.
2. To carry out the review I interviewed six Board members around a set of standard questions that would also allow the conversation to develop. I also carried out a desk review of key documents including the Articles of Association, sample sets of minutes from recent board meetings, the strategic, business and work plans and the audited accounts and the annual report for the 15 months ending 31 March 2015. London Funders is a charity registered with the Charity Commission for England and Wales (no 1116201) and a company limited by guarantee without a share capital (no 5596299). The organisation has standard Articles of Association for a charitable company under the Companies Act 2006.
3. I carried out six interviews by telephone with Bharat Mehta, Monica Needs, Mathew Patten, Erik Mesel, Caroline Forster and David Farnsworth. The questions we discussed are set out at Annex A to this report. I do not attribute opinions and views to any of the interviewees in this report. Following the interim report, the offer of a similar discussion was opened to other Board members though there was no further take-up.

Summary of main concerns

4. Arising from the briefing I received at the start of the work and coming out strongly through the interviews I carried out, there is a general consensus that day to day London Funders functions effectively as an organisation and that its governance at Board level works well. The main matters arising during the interviews are set out in paragraphs 5 – 9 following.
5. Board members have a shared interest as funders in making London Funders function effectively as an umbrella organisation that reflects their shared policy interests and concerns. They know each other and the organisations they work for or represent. People are there for the right reasons and are trusted about their

intentions for London Funders and its work. The organisation manages its conflicts of interest policy well and has an open and informative website and monthly newsletter where it is easily possible to see what the major issues are, what is being pursued and published.

6. There is also clear agreement that the arrangement to have the Chair from an independent funder and the Vice Chair from a local authority is a sound model that works well. There is little need to change that basic arrangement though some improvements to strengthen the model could be considered.
7. If there are issues for the organisation to handle sensitively and where it must be aware of the possible perceptions of conflicts of loyalty, it is in the management of conflicts of interest, the provision of funds that resource key projects and the potential for whoever is in the Chair to overly influence priorities as a consequence. That the situation is well-managed is because of the integrity of those involved, whether they are Board or staff members. The culture of London Funders is what should be expected in that regard.
8. The danger lies in what could be termed the “newspaper test” or what would be said if, for example, the Chair was held to account in a public arena and questioned as to why organisations that fund London Funders through membership fees are also those deciding on and providing additional project funding for projects that their own organisation has a direct interest in. This requires a clear explanation of what London Funders is as an organisation, how it makes decisions and then decides on and allocates resources for its work. Without a transparent approach, there is a reputational risk that could undermine the effectiveness of what is a unique organisation doing effective work and playing an increasingly influential role.
9. There is an acceptance that a possible answer to the question might be to have an independent chair. However, there is also some scepticism as to whether that would work or is actually necessary. An independent chair would need to be someone who understood funding and had experience of making grants and other investments in charities and similar voluntary organisations and would have to be co-opted to the Board. Although workable, it would not be an ideal solution. The Chair of course is responsible for the whole organisation, not just chairing board meetings, and is the person who a small staff team need to be able to call on for support and guidance, so must have the time to become involved in that way.

Points made during the review

10. Arising from the interviews, I identified a number of points which I described as preliminary conclusions in the October 2016 progress report which would influence the final recommendations for the Board to consider. These still stand and in summary they are that:
 - The governance of London Funders is sound and the attention paid to it is right and appropriate for a representative grouping.

- If the Board is clear about its direction, key policies and the work programme and these are articulated in the strategy and annual business plan and budget and there is openness about how the work is funded (over and above the membership fees), then the issue of one funder or another exercising what may be seen as undue influence becomes of less consequence.
- This can also be spelled out in the London Funders communications plan and covered in some frequently asked questions and lines to take if asked. This will aid openness and transparency.
- If a rigorous approach to managing conflicts of interest is taken through a register held by the staff team and kept regularly up to date by Board members, declarations for the formal minutes are made at the start of meetings before detailed discussion starts and the Director and Chair identify any potential or actual conflicts in advance, then it should be possible to manage conflicts properly and transparently.
- If the Chair feels the relationship between their organisation, the funding priorities it has and those of London Funders is too difficult to manage then they can stand aside from the discussion in question, leave the room and the Vice-Chair will take over for that item.
- Some of those I spoke to feel that the Board can get tied up in too much detail and takes too long to discuss and agree issues. One way to deal with this and in particular if there are close relationships between funding sources and London Funders strategic policy and work programmes, may be to set up a standing or ad hoc 'Task and Finish' sub-group of the Board chaired by a trustee and not involving those foundations or other funders with what may be seen to be a direct interest. The Sub- committee could look at the detail and report its conclusions and recommendations to the Board for consideration and agreement. The downside of course is more meetings and additional tasks for the staff team, but it may offer a way forward.
- If there is one area of membership that could be developed it would be to bring in more corporate/private sector interests because this would broaden the base of the organisation.

Consideration

11. I understand the Board was content with the preliminary conclusions and has already started to make changes in the way London Funders operates to build greater transparency into consideration and decision-making. This is welcome and contributes to improving the way the organisation operates. I develop the main issues in the following paragraphs.

Governance and chairing

12. The governance of London Funders is sound and appropriate for an umbrella organisation representing the views, interests and policies of organisations that fund charities, social enterprises, voluntary and community based organisations in London. The Articles of Association provide the organisation with the powers it needs and the ability to regulate its business in a way that means it can operate

effectively. The chairing model is also a good one, with the Chair drawn from independent funders and the Vice-Chair from statutory funders. Although there is no need or desire to move to appointing a Chair independent of the members of the organisation, given the changing nature of grant-making and investment in charities and voluntary organisations as well as the presence of different types of funder, there is a case of making sure that these interests are represented in the Officers of the organisation, so far as practicable.

13. Therefore, the Board should consider appointing a second Vice-Chair to join the Officers of the charity and company to represent the interests of those funders which are not either charitable foundations or public sector organisations, perhaps drawn from those set up to make social investments. This would then give the organisation a group of 4 post holders (Chair, 2 Vice-Chairs and Treasurer) and strengthen the governance at the top of the organisation, particularly where actual or perceived conflicts of interest have to be managed.

Managing conflicts of interest: scrutiny 'Task and Finish' sub-group

14. Because of the sometimes close alignment between the strategy and policies of London Funders and its membership, particularly amongst the larger funding bodies, and the need to ensure that the policies and funding approaches London Funders takes are properly managed, the Board should consider setting up a sub-group to carry out pre-Board scrutiny to help manage questions of reputation and conflict in these circumstances. A sub-group could also deal with much of the detail involved as well and save the Board time at its meetings. The sub-group would not take decisions but make recommendations to the Board for decision. The Board has powers to set up Committees with one or more Trustees on it. The Committee must conform to any rules the Board imposes on it and the Board can co-opt any person or people to serve on it (Article 49 refers). The Board can appoint someone to chair the Committee or the Committee can do this from amongst its members (Article 50 refers).
15. Where a case is identified, an ad hoc sub-group of members with no conflict of interest to scrutinise the matter in question should be brought together to consider the issues involved. The Board will need to decide this (under Article 49). The Director will need to provide a paper setting out the issues and questions for the sub-group to consider and be satisfied about the answers. If they are, the matter can go to the Board with a recommendation for action and the outcome of the sub-groups consideration can be reported to the Board through a paper and the minutes of the meeting as soon as practicable. It will be the responsibility of the Director to agree with the Chair & Vice-Chair(s) when a sub-group needs to be established. The expectation being that all new initiatives will be subject to this pre-Board meeting scrutiny process.
16. This will help with clarity of decision-making and transparency to the outside world and take the pressure off the Chair, other office holder or member of the Board whose organisation may have a key interest in the matter under consideration,

particularly if London Funders is to provide funds or to take up a position on an initiative. The Chair or other Board members may still have conflicts of interest to declare and may need to leave the discussion and decision-making as provided for already in the Board's Articles of Association (Article 11 refers).

The London's Giving example

17. The organisation has already acted to put such a mechanism into place in relation to the extension of the London's Giving project. In this case the Board had identified the possible tension between London Funders as a membership organisation enabling collaborative action and potentially becoming a delivery body because London's Giving would become one of the organisation's core activities. It had also identified that several Board members had been and are connected to London's Giving in some capacity potentially creating a perception of conflict of interest. The sub-committee was asked to consider three issues and make recommendations to the Board to consider. These were:

- Potential conflicts of interest for the Board and how they could best be managed.
- Whether London's Giving should sit within London Funders as a core project.
- The risks for London Funders of this project and how these could be mitigated.

The scrutiny process

18. The Board should consider establishing this sort of pre-Board scrutiny process for all those matters that are significant to the work of London Funders, where potential conflicts of interest are identified and reviewed in advance by a number of non-conflicted Board members meeting as an ad hoc sub-committee for the purpose. To be sure there are no historic issues as well as for the future, and to help determine when a pre-Board scrutiny discussion is needed and triggered in future, the Director should review Board papers for the previous three years to analyse where matters for discussion may have required this process and prepare a checklist against which future Board agenda items can be assessed by the staff team. This will pick up any other historic issues where the Board may want to satisfy itself as to the actions it took (even if it is impractical to re-take decisions) as well as providing a template for the future.

19. Further, and based on the experience of using the sub-group for an assessment of the London's Giving proposal, the screening that takes place has three parts to it. The screening should be carried out by the Director or one of the staff team and then put to the sub-group for consideration. Core questions with yes/no answers are posed at the initial stage and if the answer is positive, further more detailed screening takes place at a second stage and the third stage of screening then becomes a financial assessment of the costs and benefits to London Funders.

Strategic Screening: stage 1

20. The initial screening at stage 1 would put these questions with yes/no answers:

- Does this project opportunity fit with/deliver London Funders core mission?
- Does this project opportunity fit with/deliver London Funders strategic objectives?
- Does London Funders bring a unique perspective to this opportunity?

21. The yes/no answer should be backed with a straightforward and short statement (one or two sentences only) to explain how the answer was reached. The third question should also consider whether there are other organisations that might equally well deliver the work, whether or not they are members of London Funders, and also if London Funders might be in competition with them.

Reputational Risk Screening: stage 2

22. The secondary screening at stage 2 would then consider the following issues with short supporting statements to say how the point is answered.

- Does this opportunity raise conflicts of interest at the London Funders Board or amongst its members and can these be appropriately managed?
- Does this opportunity enhance or cause damage to London Funders reputation, and how can this be effectively communicated and managed?
- Does this opportunity generate risks and liabilities for London Funders and can these be mitigated?

Financial screening: stage 3

23. If the second stage is also positive, the financial screening at stage 3 would consider if the opportunity generates financial benefit for London Funders. This stage of the screening should set out the financial value of the project opportunity; the total expenditure required to include the internal costs for London Funders, the external costs of delivery and any management fee (which may already be covered through the internal costs calculation). This will show the financial benefit (or not) of the project to London Funders. The consideration for the Board will cover:

- What is done internally by London Funders staff to deliver the project.
- What is commissioned from consultants or experts and how is this managed and reviewed.
- What support is sought from members, either paid or unpaid.
- What the management fee is for hosting the project.

Criteria for external commissioning

24. To support this process, the Board should assure itself that it has criteria in place for external commissioning in its financial procedures, including financial limits at Board level or where authority is delegated to the Director. These limits could reflect good

practice amongst members, particularly local authorities which have well defined financial limits and procurement rules in place. The process can be kept simple so that, for example, the following could apply for procurement (the Board can determine the limits that work best for London Funders):

- For expenditure of up to £5,000, no competition required (unless desired) and appointment of the person or organisation thought best qualified for the task (but with a file note to explain the choice).
- From £5,001 to £50,000, seek three competitive bids against a specification.
- From £50,001 to £100,000 seek five competitive bids against a specification.
- Above £100,001 open competition against a specification.

Other essential processes

25. London Funders will need to have professional indemnity insurance in place for any advice it gives or require external suppliers to show that they have cover in place to an appropriate level. Using external suppliers will of course give London Funders the flexibility to manage projects without taking on additional employment responsibilities. However, the organisation will need to be clear about the ownership of any intellectual property in each project as well as how learning and outcomes are shared.

Transparency of decision-making about this review

26. In order to be transparent about the decisions the Board takes on the recommendations in this review summarised in paragraph 27 following, whether or not it agrees in whole or in part with them, the Board should consider publishing the review and its decisions on the London Funders website and in the monthly newsletter sent to all members and others on the mailing list. This would strengthen its accountability and openness with members as well as all the other organisations that take an interest in the organisation's work, particularly if London Funders needs to engage with them in pursuit of its strategy and policy agenda. This would also be a good way to communicate the organisation's ethos and help strengthen its influence with others.

Summary of recommendations

27. The recommendations of this review to the Board of London Funders are that:

- 1. There is no need for an independent Chair to be brought into the structure (paragraph 12 refers).
- 2. A second Vice-Chair should be added to the Officers of the charity and company possibly from amongst those members of London Funders that are not charitable foundations or public sector funders (paragraph 13).
- 3. A pre-Board scrutiny process should be introduced to manage areas significant to the work of London Funders where there are potential conflicts

of interest through an ad hoc sub-group appointed as required from Board members with no conflict of interest (paragraphs 14-16).

- 4. To be sure that there are no historic issues and to determine when a pre-Board scrutiny discussion is needed, the Director should review Board papers for the previous three years to analyse where the process may have been required and to prepare a checklist against which future Board items can be assessed (paragraph 18).
- 5. The scrutiny process should have three stages: initial strategic fit screening (paragraphs 20-21), secondary reputational risk screening (paragraph 22), and thirdly financial screening (paragraph 23).
- 6. The Board should assure itself that it has criteria in place for external commissioning and financial limits for procurement (paragraph 24).
- 7. The Board should decide on the financial limits for procurement appropriate for London Funders (paragraph 24).
- 8. The Board should assure itself that professional indemnity is covered to the appropriate levels either for work it carries out in-house or commissions from external suppliers (paragraph 25).
- 9. The Board will need to be clear how intellectual property issues are dealt with in each project to ensure how outcomes and learning are shared (paragraph 25).
- 10. The Board should publish this review and its decisions about the recommendations on the London Funders website and its monthly newsletter (paragraph 26).

Thanks

28. My thanks go to the Board members who gave their time for the telephone interviews and for contributing their thinking with complete openness and honesty, as well as to David Warner and Geraldine Tovey for their advice and support as the review progressed.

Gerald Oppenheim
30 December 2016

ANNEX A

London Funders

Light Touch Governance Review

Interview questions

1. Do you think that London Funders' governance arrangements work well at the moment in terms of transparency and accountability to members?
2. Do you think that there are areas that could be improved? If so, what are they and do you have any suggestions for changes to be made?
3. Are there accountability and transparency issues that go beyond London Funders itself? How has the organisation involved others who may have an interest in the projects undertaken?
4. How does London Funders handle conflicts of interest now? Do you think this could be improved and, if so, how? Are there any occasions when conflicts have arisen? If so, how were they handled?
5. Do you see any inherent issues in the current Chair and Vice-Chair arrangements? If so, please describe them.
6. Some larger members of London Funders also resource some of the projects that are undertaken (aside from payment of subscriptions to resource the operating costs of the organisation). In your experience have there been any issues where some of the larger members provide funding but are also arguably in a position to influence where priorities lie, which projects are taken forward and how funding is used?
7. If the Chair and/or Vice-Chair come from one of the funders likely to provide project funding, do you think this has skewed priorities or has the potential to do this?
8. Even if this is not an issue in your view, would a possible answer be to appoint an independent chair for a fixed term of up to 3 years, renewable for a second term of up to 3 years?
9. If so, what particular skills or background might they have? Is knowledge of funding and/or charities essential?
10. Are there any other issues you would like to raise?

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15 July 2016