

Museums Governance and Structural Issues, the UK experience

1 Background

The Tate Gallery was founded in 1897 as the National Gallery of British Art, under the umbrella of the National Gallery. In 1917 it assumed responsibility for the display of modern foreign art. In 1954 it became independent from the National Gallery and in 1992 received its current constitution as described further below.

Tate holds the national collections of British Art from 1500 to the present day, of international art from 1900 to the present day and a related collection of library and archival material. The collections are administered centrally, and are exhibited in rotating displays in each of the four Tate Galleries – Tate Modern, Tate Britain, Tate Liverpool and Tate St Ives – and are made available through an extensive loan programme to other museums and galleries.

2 Constitution

Tate is a statutory corporation, regulated by the 1992 Museums and Galleries Act which sets out the remit and function of the Tate Board. The Act covers the National Gallery, National Portrait Gallery, and the Wallace Collection in addition to Tate. Section 1 of the Act provides details of the establishment, constitution and function of the Board of Trustees, setting out the central remit of the Board of Trustees at Tate to 'promote the public's enjoyment and understanding of British art, and of Twentieth Century and contemporary art..'. Further sections state the general functions of the Board, powers to form companies, and acquisition details.

3 Relationship with Government

Tate is classified by Government as an executive non-departmental public body (NDPB). An NDPB (or a "Quango") is defined as "a body which has a role in the process of national government but is not a government department or part of one, and accordingly operates... at arm's length from Ministers".

Tate's assets are held and managed independent of Government, and its staff are employees of the Board of Trustees, not civil servants. Schedule 2 of the Charities Act 1993 provides that the Board of Trustees of the Tate Gallery is an exempt charity. As a charity, Tate is obliged to ensure that its activities support its core charitable purpose under statute. This obligation reinforces the arms length nature of the relationship with Government.

Under the 1992 Act Tate has the power to raise funds from a range of sources in pursuit of its charitable objectives, such as catering, retail, sponsorship, donations, fees and charges. Government funding represents c. 35% of total Tate income.

The framework outlining Tate's links with DCMS in ensuring the Gallery's compliance with a range of statutory requirements is laid out in two documents: the Funding Agreement, and the Management Statement and Financial Memorandum.

3.1 Funding Agreement

In effect a contract between the DCMS and Tate, the funding agreement (FA) states what the Department can expect by way of a contribution towards its objectives in return for the payment of grant-in-aid. The FA, valid for a period of three years, is drawn up between the DCMS and the Board of Trustees and is signed by the Minister for the Arts and the Chairman of Tate on behalf of the Trustees. Ministers remain accountable to Parliament for public money spent by Tate and are ultimately responsible to Parliament for Tate's independence. The agreement sets out DCMS's aims and objectives, key priorities and targets established in its Public Service Agreement (PSA) and Service Delivery Agreement (SDA) with Treasury and shows how Tate's own objectives and activities will contribute to their achievement. It also identifies further key objectives to which Tate is working and lays out the targets against which achievement of the objectives is to be measured. The FA demonstrates the connections between Tate's core business and DCMS's own objectives and four principal strategic priorities. It describes the headlines of what public investment is achieving and the statutory obligations of Tate. The 2005-08 Funding Agreement between DCMS and Tate was signed in April 2005:

<http://www.tate.org.uk/about/governancefunding/funding/fundingagreement060001.pdf>.

3.2 The Management Statement and Financial Memorandum

The Management Statement will normally cover the roles of the key players and the relationship with the sponsor department and Minister; aims and objectives set out in the Departmental Public Service Agreement; key targets; business planning; and reporting. It is a key document which defines the nature of the relationship between the Department and Tate at a strategic level. It should provide a clear framework for accountability and explain how DCMS is to exercise its supervision of Tate. Management statements are usually drafted by DCMS and should be agreed by Tate.

The Financial Memorandum (FM) is a key document which sets out the financial framework within which Tate receives grant-in-aid or incurs public expenditure and should complement the management statement. The FM explains the responsibilities and financial duties of the Board members and the Director, its funding agreements (including funding of receipts from charges and other sources of revenue), the financial delegations within which it can spend, the controls of pay and staffing, internal and external audit arrangements, the treatment of write-offs, losses and special payments, and the conditions attached to the receipt of grant-in-aid. The FM is drafted by DCMS in consultation and with advice from the Finance Division. The FM is subject to Treasury approval. The most recent management statement and financial memorandum can be found at <http://www.tate.org.uk/about/governancefunding/funding/tatemsfm.pdf>

4 Composition and Appointments to the Tate Board

The Tate Board of Trustees has twelve members. The size and composition of Tate's Board is specified in the Museums and Galleries Act 1992. Three of Tate's Trustees must be practising artists (Jeremy Deller, Fiona Rae and Anish Kapoor) and one of the twelve is a trustee of the National Gallery (Jon Snow), appointed to the Tate Board to act as a liaison between the two museums. In return Tate provides a Trustee to sit on the National Gallery Board.

The other Trustees bring a wide range of skills and experience to the table including finance, academia, art world, business, public affairs and regional representation.

All Trustees, except the National Gallery Liaison Trustee, are appointed by the Prime Minister, on the basis of a recommendation by the Minister for Culture through an open and apolitical process overseen by the Commissioner for Public Appointments. Tate's appointment process is run under the delegated scheme for Museums, Galleries and the British Library, which allows institutions to run their own appointments process, under OCPA guidelines. Tate therefore forms specifications for potential Trustees, and advertises, interviews and submits recommendations to the Minister, supported by an Independent Assessor, who validates the process to the Department for Culture Media and Sport.

Since November 2001, the term of appointment has been four years, with the possibility, but without the expectation, of renewal for one further four year term. The current convention is for artist trustees only to serve for one term. The Board selects a Chair from one of its own number.

If a trustee wishes to resign before the end of their term they do so by notice in writing to the Prime Minister (except for the National Gallery Liaison trustee who resigns by notice in writing to that Board) and the Chair can resign as Chair by notice in writing to the Board.

4.1 Role of the Board

The role of the Board of Trustees is to:

- determine policy
- supervise the Gallery, acting as guardians for the public interest
- use its joint experience to advise the Director
- decide on major acquisitions and major resource issues
- represent the Gallery externally
- assist in the fundraising of resources from the private sector
- establish the overall strategic direction of the Gallery within the policy and resources framework available and ensure there is a distinction between these and day-to-day management decisions, delegated to the Director
- oversee the delivery of planned results by monitoring performance against agreed strategic objectives and targets

Most importantly, the Board of Trustees is responsible for appointing the Director of Tate, who in turn is responsible under statute for the general exercise of the Board's functions, subject to the approval of the Board as noted below.

The specific issues reserved for decision by the Board of Trustees are:

- Approval of Forward Plan
- Approval of Annual Accounts and Annual Report
- Determination of acquisition, disposal and loan policies for the Collection
- Approval of major Collection purchases (above £250,000)
- Acquisition and disposal of land and buildings

- Acceptance of contracts for capital expenditure over £2m (including service contracts)
- Formation of subsidiary companies and appointment of their directors
- Variation of admission charge policies
- Use of various Trust Funds
- Authorisation of signatories on behalf of the Board
- Creation / deletion of established posts at Divisional Director level and above
- Health and Safety Policy
- Equal Opportunities Policy

4.2 Role of the Director

The Director has responsibility under the Board for the overall organisation, management and staffing of Tate, including conduct and discipline. The Director, as Accounting Officer is responsible for seeing that appropriate guidance is tendered to the Board.

The Director is also the Accounting Officer, and as such carries personal responsibility for the propriety and regularity of the public finances for which he or she is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the resources in their charge.

Accounting Officers may be called to give evidence before the Public Accounts Committee of Parliament (PAC) on the basis of reports by the Comptroller and Auditor General.

4.3 Role of the Chairman

The Chairman has particular responsibilities for providing effective leadership to the Board, including:

- signing, on behalf of the Trustees, the annual accounts and, with the Accounting Officer, the Statement of Internal Control, the Funding Agreement, the Management Statement and the Financial Memorandum.
- formulating the Board's approach to its duties
- representing the views of the Board to the general public
- ensuring that the Board, in reaching decisions, takes proper account of guidance by the Government
- encouraging high standards of propriety
- ensuring that the Board meetings take place as scheduled and that minutes of meetings accurately record decisions taken and, where appropriate, the views of the individual Board members
- ensuring that the full proper procedures are carried through for consultation and approval of appointments to the Board and sub-committees and for discussion of other appointments in which the Board has an interest
- ensuring that Board members may speak when they need to;
- ensuring that, if necessary, a vote is taken and the result recorded;
- providing an annual assessment of performance of individual Board members which contributes to consideration of their re-appointment to the Board.

- advising the DCMS over the selection of new Trustees as part of the delegated appointments process
- providing liaison with the Director, and guiding his or her work

Communications between the Board and the Government are through the Chair and Director.

5 Advantages and disadvantages of the UK approach

Overall, the constitution of Tate works relatively well. Tate's operational independence from Government ensures artistic freedom of expression and creates the incentive to complement Government funding through self-generated income, promoting greater self-reliance and independence of action. In general there is a clear relationship between Government, the Board of Trustees and the Director with clarity between the respective roles of funder/ regulator, non-executive governing body and executive management.

The principal issue under consideration in the UK at present is whether in a mixed funding economy it is still appropriate to classify national museums and galleries as Non Departmental Public Bodies, and thus require the organisation to follow standard public sector regulation including its affairs being consolidated within the overall public sector accounts.

5.1 Advantages of the NDPB status:

The principal advantage is the unwritten "parent company" guarantee which covers Tate's activities as a public sector body, incorporated within the Government accounts. Included within this is that the state provides an indemnity to cover, in lieu of insurance, works of art on loan to Tate and Tate works of art on loan overseas. There is also the principle of non-insurance for Tate other than where there are specific legal obligations to do so (e.g. motor insurance, or the insurance at Tate Modern required as part of the leasing arrangements on that building).

Tate currently has a direct link to DCMS, and is therefore able to argue its case with Government on its own behalf as opposed to going through a second tier organisation (such as an Arts Council). Tate through the Accounting Officer is also directly accountable to Parliament.

5.2 Drawbacks of NDPB status:

Over time, several areas of concern have arisen, mainly due to the fact that as public sector bodies, the national museums as NDPBs fall under the sorts of governmental controls that apply to much larger bodies or other government departments.

There are no powers to raise funds through borrowing – such options would be useful in the context of capital and investment programmes. Staff pay has to be negotiated annually with the DCMS and HMT in addition to the staff side. This is a lengthy and expensive process. Staff terms and conditions of employment have to be agreed centrally with DCMS and HMT.

As a result of the NDPB status, Tate is caught by a raft of other requirements (such as Freedom of Information, detailed requirements of DCMS, etc) that other major bodies within the arts sector, such as the Royal Opera House, are not required to undertake – some of these, especially Fol, can lead to significant cost and potential impairment of earnings.

5.3 Options for reforming status

DCMS is currently exploring options for the future through the creation of a working group. It is unlikely that any proposal to move the national museums out of the public sector entirely would succeed or indeed be sensible, given that we are the guardians of national collections, in effect on behalf of the nation as whole, both current and future generations.

A possible solution would be to classify museums as Not-for-Profit Institutions Serving Households (“NPISH”). The South Bank Centre in London is currently deemed a NPISH, and as such is immune from most of the public sector finance rules, but is deemed to still retain a link with government through the Arts Council retaining the leasehold in the estate, and by DCMS having to approve key appointments and financial transactions. Its funding comes through the Arts Council, i.e. a second tier organisation, but the government does provide indemnity to the South Bank Centre (unlike other direct Arts Council funded bodies such as the Royal Opera House who have to purchase their own insurance).

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