

**THE BLUEBELL RAILWAY TRUST**  
**GOVERNANCE AND MANAGEMENT REGULATIONS**  
**MARCH 2018**

**BACKGROUND**

The Bluebell Railway Trust (“The Trust”) was created by a deed dated 20 May 1985, over 32 years ago. It was only moderately active until c 2001 when the rules for Gift Aid tax relief were significantly relaxed. It was then used to raise funds for the carriage shed at Sheffield Park and later the northern extension to East Grinstead. In 2017 the Trust had a total income of £900,000 of which £682,000 was for specific projects, although in 2015 the total income was 50% higher at £1,470,000. The Trust is now a very important part of the Bluebell Railway and a major source of income for projects that the PLC is unable to finance from its own resources.

Both the Trust and donors benefit from significant tax advantages due to the Trust’s charitable status. In 2017 it was entitled to Gift Aid tax relief of £84,000 and major donors probably benefited by a similar amount. In addition, whilst difficult to quantify accurately, the Trust benefits from exemption from Inheritance Tax on legacies.

Until 2013 most of the Trust’s unrestricted income was allocated to the Northern Extension and comparatively little to other projects. Between 2014 and 2017 the Trust became entitled to nearly £1.7m in unrestricted legacies and it fell to the Trustees to decide how it should be allocated to projects.

The trustees have wide discretionary powers over the allocation of funds for “***such charitable purposes connected with railways as the Trustees shall...determine..and shall bear specially in mind charitable purposes connected with Bluebell Railway Limited...and pay special regard to the following objects:-***

- a) *The encouragement of research in connection with the improvement of railway equipment, railway safety devices and methods of railway working....*
- b) *The maintenance and support of museums ...partly or wholly devoted to the preservation and public display of railway equipment and relics.....*
- c) *The assistance of...persons...in need*
  - i. *railway apprentices*
  - ii. *Retired railway employees*
  - iii. *Widows and infant children of deceased railway employees*
- d) *The provision for facilities for recreation or other leisure-time occupation....by the organisation of activities connected with railways and in particular...voluntary work on the restoration and maintenance of railways of historic interest and organising other facilities in connection therewith.”*

It should be noted that the objects of the Trust are not limited to the four mentioned above but are very much wider.

The Trustees have a *“power to make such regulations for the management and government of the Charity....as they shall in their discretion think fit...”* No regulations have previously been in place.

Following widespread criticism, the Charity Commission has in recent years updated and strengthened its guidance to charity trustees on all aspects of their work. The result is that Trustees' responsibilities and duties are far more prescriptive and have become more onerous. Trustees must operate independently in the best interest of the charity and the wider public, but this can be perceived as being at odds with the wishes of the Bluebell Railway Preservation Society (“BRPS”).

Within the Bluebell Railway there are misconceptions about the operation of the Trust and also anomalies in current procedures. The following regulations for the future management and governance of the Trust reflect current Charity Commission best practice and clarify the Trust's role and method of operation within the railway.

Following a review of the Trust's Governance and Management and having taken expert legal advice the Trustees requested the Charity Commission to appoint BRT Trustee Ltd as the sole corporate Trustee in place of the existing five individual Trustees, which it did on 12 March 2018. The previous Trustees with others including the Chairman of BRPS, became directors of BRT Trustee Ltd. However, to avoid confusion with Directors of PLC and Trustees of BRPS, they are known as Governors. It is intended that these regulations should apply to the Governors of the Trustee Company as if they were individual Trustees. In the commentary that follows the term Trustees is used as it applies to charities generally but in specific regulations designed for the Trust the term Governors is used.

## **CHARITY COMMISSION GUIDANCE**

The Charity Commission has updated its guidance to Trustees on a wide variety of issues. It now clearly states that:-

- ‘must’ means something is a legal or regulatory requirement or duty that trustees must comply with
- ‘should’ means something is good practice that the commission expects trustees to follow and apply to their charity

In summary a charity Trustee MUST :-

- Act in the charity's best interest and deal with any conflicts of interest
- Manage the charity's assets responsibly by implementing appropriate financial controls and managing risks
- Act with reasonable care and skill and take advice when needed

Trustees must also understand their responsibilities and ensure that they comply with Charity Commission guidance as regularly updated.

## **OBJECTS and PUBLIC BENEFIT**

Trustees must act in accordance with the charity's objects and ensure that it is carrying out its purposes for the public benefit. All trustees must understand, plan and review the charity's work.

There has been considerable discussion about what the Trust can provide funding for and concern that the objects are not limited to the Bluebell Railway.

### **REGULATION**

*The Governors will publish a comprehensive summary of the Trust's aims and activities, how they meet its objects and provide public benefit and guidance on what funding can be provided for. It will incorporate a statement that, other than in extreme circumstances, funding will not be provided other than for projects, activities and beneficiaries of or associated with the Bluebell Railway.*

### **COMPLYING WITH CHARITY LAW, REGULATIONS, ETC**

Trustees MUST keep themselves informed of current charity law and regulations and comply with Charity Commission guidance. They should ensure that the charity is acting in accordance with them. Where necessary independent advice should be sought from a suitable qualified person.

### **REGULATION**

*Governors will undertake to keep themselves up to date with charity law, regulations and Charity Commission guidance by reading and attending training courses as necessary. Where necessary independent advice will be sought from a suitably qualified person.*

### **ACTING IN CHARITY'S BEST INTERESTS**

Charity Trustees MUST :-

- do what they (and no one else) decide...
- make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid positions where duty to charity conflicts with personal interests or loyalty to another body

In making decisions Trustees MUST:-

- act within their powers
- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed, taking advice as needed
- take account of all relevant factors and ignore those that are irrelevant
- deal with conflicts of interest and loyalty

Significant decisions should be recorded in case they need reviewing or explaining in the future. Trustees MUST act collectively. Part of their role is to critically and objectively review proposals and challenge assumptions in making decisions. No one should be able to direct the trustees.

Conflicts of interest MUST be avoided. This applies not just to personal financial interests but also to conflicts of loyalty to another body. Conflicts MUST be identified, declared and prevented from affecting a decision and recorded. Trustees who have a conflict might be excluded from making a decision or, if serious, asked to withdraw from any discussion.

Charities cannot usually pay their Trustees but can reimburse reasonable pre-agreed expenses. The charity should not generally enter into any financial transaction with a trustee's partner, family or business associate.

## **REGULATION**

*Governors must act in the best interests of the Trust, its objects and the general public. They cannot be directed by others. They will undertake to keep themselves informed of activity on the Bluebell Railway. In accordance with Charity Commission guidelines, they will review all proposals for grants critically and objectively and challenge assumptions in making decisions.*

*Governors will declare any conflict of interest or loyalty which will be recorded. This includes proposals for funding of projects with which a Governor is closely involved. In such cases Governors may be barred from voting on a decision and, in the case of major potential conflicts, may be instructed to withdraw from both discussion and voting.*

*Governors will not be paid for their services, but reasonable expenses incurred directly on Trust business may be reimbursed. This does not include travel to and from Trustee meetings.*

## **MANAGING RESOURCES RESPONSIBLY**

Trustees **MUST** act responsibly, reasonably and honestly and exercise sound judgement. They **MUST**:-

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- comply with any restrictions on spending funds

Appropriate safeguards should be put in place to manage risk responsibly and ensure that they are followed. Trustees should establish a risk policy, identify and assess risks (what could go wrong), evaluate what action to take and review their policy periodically. Risk includes relying too much on individuals.

Trustees **MUST** manage a charity's money and other resources properly. They should plan and monitor its income and outgoings so that it can meet its short, medium and long-term goals. They should manage their funds and keep them safe by having robust and effective controls and keeping accurate records of income and expenditure. They should protect the charity from financial crimes such as theft or fraud.

Trustees **MUST** ensure that volunteers are not required to work set hours and are not paid more than expenses they actually incur. There should be appropriate procedures and policies in place to provide role descriptions and appropriate training.

## **REGULATION**

*The Governors will formulate and keep under review a policy that identifies, assesses and evaluates the risks that the Trust faces in managing its resources and assets. They will take appropriate action*

*to minimise risks, including financial crimes. The Governors will, so far as is possible, not rely too much on individuals.*

*The Governors will maintain effective controls over their assets, such as through rolling-stock operating agreements, keep accurate records of income and expenditure and produce regular financial information so that the Governors can manage the Trust properly.*

*The Governors will ensure that Trust volunteers (ie museum and administration) have clear guidance on their roles and responsibilities and are provided with appropriate training, including on safety. This may be delegated through agreements with partner organisations.*

## **TRUSTEES' DUTY OF CARE**

Trustees MUST use reasonable care and skill and should give enough time, thought and energy to their roles by preparing for, attending and actively participating in all trustees' meetings.

## **REGULATION**

*Governors will give enough time, thought and energy to their roles and regularly attend and participate in Trustees' meetings. They should also agree to take on additional specific management responsibilities from time to time.*

*Any Governor who becomes unable to act effectively or carry out his or her role will tender his or her resignation. This will include situations where the person is:-*

- *appointed as a director of PLC or trustee of BRPS*
- *no longer able to act in the best interests of the Trust due to a continuing conflict of interest or loyalty*
- *no longer sufficiently associated with and informed about the Bluebell Railway*
- *unable to give enough time thought or energy to his / her role as a trustee*
- *unable to actively participate in trustees' meetings*
- *unable to regularly attend trustees' meetings*

## **CHARITY OFFICERS – THE CHAIR AND TREASURER**

The Charity Commission has listed the roles that, depending upon the size and circumstances of a charity, the Chair and Treasurer usually perform. However, all Trustees share responsibility for the management of the charity.

The role of the Chair usually includes:-

- helping to plan and run Trustees' meetings
- taking the lead to ensure that meetings are properly run and recorded
- taking the lead on ensuring that trustees comply with their duties and the charity is well governed
- acting as a spokesperson for the charity
- acting as a link between trustees and staff (including volunteers)

The role of the Treasurer usually includes :-

- making sure the charity keeps proper accounts
- reviewing the charity's financial performance
- drawing up or reviewing policies for finance and investment
- ensuring that the charity has robust and effective financial controls in place
- liaising with finance staff (and volunteers) and with the charity's auditor

In the case of the Trust the Administrative Governor takes on the role of Treasurer and also deals with Administrative matters as well as some of the responsibilities of the Chairman. This leaves the Trust exposed in the event of the unavailability of the Administrative Governor and is not good practice, particularly at the current level of income and activity and the Trust's importance to the Bluebell Railway as a whole.

### **REGULATION**

*The Governors will ensure that there are an adequate number of Governors with the appropriate skills commensurate with the size and activity of the Trust so that it can effectively carry out its objects. Risks should be minimised by ensuring that reliance is not placed on a single individual.*

### **BLUEBELL RAILWAY MUSEUM**

A ten-year Tri-Partite management agreement between Bluebell Railway Plc ("PLC"), BRPS and The Trust of 8 March 2006, extended for a further ten years in 2015 appoints the Trust as the governing body of the Bluebell Railway Museum. A Museum Building Agreement dated 6 June 2007 anticipated the granting of a licence to the Trust for the occupation of the, then yet to be built, building, although the formal licence has never been granted. The appointment of the BRT Trustee Ltd as the sole Trustee has overcome the technical difficulties of individual trustees holding an interest in land.

The management agreement provides that the Trust may delegate to the Museum Management Committee the day to day responsibility for the operation of the museum. The committee shall comprise not less than five and not more than twelve members who shall be appointed by the Trustees with the approval of (and subject to the right of veto of) BRPS. The committee shall include at least one Trustee of each of the Trust and BRPS. The chairman of the committee shall be elected by the members on an annual basis.

The Trust has acquired, mainly by donation but also by purchase, a large collection of heritage artefacts. These include operational locomotives and carriages which are subject to an operating agreement with PLC. It has also been lent a significant number of items. Insurance of the Trust assets is covered by the PLC's insurance policy without charge to the Trust.

### **REGULATION**

*As governing body of the Bluebell Railway Museum, the Governors will receive regular reports from the Management Committee and review its operation and performance. One Governor will be appointed to the management committee. In conjunction with BRPS the Trust's Governors will approve all nominations for membership of the management committee.*

*The Trustees will liaise with PLC and ensure that there is adequate insurance cover for its heritage assets.*

## **CAPITAL PROJECTS PLANNING GROUP**

The Capital Projects Planning Group consists of two representatives from each of BRPS, PLC and the Trust. Its objective is to produce an annual prioritised list of projects with estimates of costs so that all three entities can agree on which projects should be carried out within the available funds, although the review is not currently up to date. The Governors cannot be instructed on how its funds should be allocated. However, as their representatives will have been involved in the process, it is expected that the information obtained will provide the Governors with sufficient information to be able to support applications for funding for the projects that have previously been approved by the planning group. The statement describing the types of projects that can be funded by the Trust within its charitable objectives (see page 3 above) will be taken into account in the Capital Projects Planning Groups conclusions.

## **REGULATION**

*The Trust will nominate two of its Governors to participate in the Bluebell Railway's Capital Projects Planning Group so that, when applications for funding for projects are received, the Governors will have the comfort of knowing that their overall priority for the railway has been properly assessed and agreed and alternative sources of funding has been considered in consultation with the Funding Director. However, in accordance with Charity Commission guidance, the final decision on providing funds for projects will rest solely with the Governors. Provision will be made for applications direct to the Trust for funding of small projects costing less than £5,000 (subject to periodic review) which have no impact on other projects or the operation of the railway. BRPS will be asked to comment on such applications other than for very small projects for the welfare and benefit of staff and volunteers.*

## **GRANTS TO ORGANISATIONS THAT ARE NOT CHARITIES**

Apart from meeting the running costs of the Trust and the Museum and paying for the restoration of its own rolling stock (eg LCDR carriage 3188) almost all payments made by the Trust are technically grants. This includes payments made from restricted funds. The Charity Commission has recently published draft guidance on the requirements for funding an organisation that is not a charity. Importantly PLC is in this category.

Where grants are made to organisations that are not charities Trustees have additional restrictions and responsibilities as there are limits on what can be funded. Trustees should *inter alia*:-

- make sure they understand the Trust's own purpose
- make sure that the organisation receiving the grant understands the Trust's purpose and boundaries; a charity can only make grants for activities that in principle it could carry out by itself
- set appropriate grant conditions and ensure that the organisation understands and accepts them
- put appropriate monitoring provisions in place

The limits on funding include:-

- The Trust cannot give an unrestricted grant to a non-charity
- Grants can only cover costs directly related to the activity it has agreed to fund
- The Trust cannot fund the “core” costs (or overheads) of a non-charity

Terms and conditions of grants should be set to ensure that:-

- The grant is spent in accordance with the Trust’s objects and powers
- The receiving organisation reports to the Trust how the funds have been spent and how the work has progressed, with interim reports for grants for timescales over one year
- Suitable monitoring arrangements should be agreed

Monitoring arrangement should be put in place that are proportionate to the value of the funding and the Trustees’ assessment of the risks. For anything more than small one-off grants, regular written updates and financial reports should be obtained. A report should always be obtained when the grant activity is completed.

## **REGULATION**

*In order to comply with Charity Commission guidance on making grants to organisations that are not charities, the Governors will:-*

- *issue and keep updated general guidance of their requirements for the making of grants to organisations that are not charities which include PLC, and the Maunsell Locomotive Society.*
- *In order to consider any grant full information on the project, activity or beneficiary will be required*
- *Terms and conditions will be set appropriate for the size of a grant*
- *For major projects undertaken by contractors, copies of contracts will be required*
- *Other than for small “one-off” grants, regular written updates on and financial reports of projects will be required*
- *For major projects run by a steering group the Trust will appoint either a Governor or an independent suitably qualified representative as a permanent member*
- *In the case of other projects, a designated Governor or an independent suitably qualified representative will be assigned to monitor them as appropriate*
- *Apart from some projects already in progress (eg Brighton Atlantic and Stowe) payments of grants will only be made following provision of approved invoices.*