

Dear Mr Muir, Re: Bembridge Harbour ( sent 19.10.2018 )

We write pursuant to our letter of 16<sup>th</sup> August which expressed concerns. You responded on the 6<sup>th</sup> September when you advised you would be making enquiries of the Harbour Company. Are you able to advise that you have received a response and can you advise on the next steps you will be taking ?

We have found the Department of Transport's Guidelines for private Statutory Harbour Authorities "Ports Good Governance Guidance" of March 2018 extremely helpful in providing a government led benchmark as to how this harbour should be managed.

This guidance aligns with the Bembridge Harbour Trust's expectations of an SHA and adds weight to our concerns. We have undertaken the exercise of assessing the performance of the Harbour Company against specific relevant sections of the Guidance, by providing a commentary from BHT beneath each section. We have produced this for our own members and stakeholders, and we are copying this to you in the hope you will find this useful.

**Summary:**

Measured against the three "**key principles of openness, accountability and fitness for purpose**" of good management in the Guidance, some examples of non-compliance;

**1.Openness;** No published board minutes or full accounts to identify how income is made and spent, including Harbour Dues, (with requests rejected), no strategy or annual plan is published (with requests rejected). The Public are left ill-informed with no or ability to measure performance against any plan or long term strategy.

**2.Accountability;** No non -executive directors or wider committee, no annual evaluation, no information on remuneration of directors. A group expressing dissent has been banned from the advisory group.

**3.Fitness for Purpose:** The directors do not appear to have the necessary independence, there is no clear demarcation between other companies owned by the same two directors and shareholders. The board have failed to procure essential repairs and maintenance, including dredging (despite requests and minuted undertakings)

We would be pleased to provide direct evidence in support our concerns when timely.

The Trustees

Bembridge Harbour Trust

Extracts form:

**Ministry for Transport Ports Good Governance Guidance March 2018  
Section 2 all Statutory Harbour Authorities [SHA's]**

**Introduction:**

SHAs have been given powers and duties in relation to a harbour in local Acts of Parliament, Harbour Revision or Empowerment Orders and other legislation. It is therefore appropriate for the Department for Transport (DfT) to set out good governance guidance for SHAs that helps deliver their **key aim of managing, maintaining and improving their harbour in the broad public interest.**

*BHT say: the broad public interest is not held to the fore, see below.*

**The guidance covers all SHAs regardless of the port ownership model, that is whether this is private, a trust port, a LA owned port.** This is a new approach. It does not signify that DfT has general concerns about the governance of SHAs but builds on previous governance guidance to trust ports and to local authority owned ports **to set out key principles of openness, accountability and fitness for purpose that are applicable to all SHAs given the similarity of their key objectives in managing harbours in the broad public interest.**

*BHT say :Despite assurances in a 2012 public meeting that the owners would be “open book” no openness has been shown. This is particularly important in connection with the relationships with a holding company Hawk Property Developments Ltd [Hawk], a property company Bembridge Investments Ltd [BIL] and Bembridge Boat Storage [BBS] with which the SHA trades and are under the same ownership and control.*

**Notwithstanding the different ownership models of port,** SHAs have much in common in terms of their broad aims and objectives, the legal framework they operate under, their responsibilities for safety, **the importance of engaging effectively and fully with stakeholders and carrying out their business in an accountable way.**

*BHT say that there is not effective engagement with stakeholders, nor real accountability. For example the BHT representative was sacked from the advisory group in 2012 when it made considered and rational criticism on a planning application concerning the harbour.*

## **Compliance**

While the guidance is advisory, **DfT expects all SHAs to carefully consider it and to implement its principles** if these are not already in place, where practical and appropriate to the circumstances of the SHA.

*BHT say there has been no apparent acknowledgement or action in relation to these guidelines since publication.*

## **Corporate Governance**

The UKCGC applies only to companies with a Premium listing of equity shares and so is directly relevant to the boards of SHAs that are part of such companies. While the UKCGC does not apply to other types of businesses, **the Department believes that its principles are relevant to many SHAs when applied on a proportionate basis and taking account of the ownership model of the SHA.**

*BHT say there has been no apparent acknowledgement or action in relation to these guidelines since publication.*

## **Leadership:**

It is important to have a clear division of responsibilities at the head of a SHA between the running of the board and the executive responsibility for the running of the business. **It is best practice that no one individual has unfettered powers of decision over the business.**

*BHT say it is apparent that the SHA is controlled, by two shareholder/directors ( who are also the only two shareholders / directors of the other companies referred to above). Publicly it appears in effect to be controlled by one man.*

**Part of the role of Non-Executive Directors (NEDs) on a board is to challenge constructively and help develop proposals on the company's strategy. A further part of a NED's role is to scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.**

*BHT say there are no NEDs or any other mechanism for checks and balances which we feel are particularly important when associated Companies in the same ownership present the potential for conflict of interest ( e.g. as a property landlord [BIL] and as a lender and provider of management services [Hawk] and BBS as recipient and provider of services and beneficiary of promotion by the SHA.*

## **Guidance:**

It is important to have a clear division of responsibilities at the head of a **SHA between the running of the board and the executive responsibility for the running of the business. It is best practice that no one individual has unfettered powers of decision over the business. .**

*BHT say it is apparent that the SHA is controlled, by two shareholder/directors. Publicly it appears in effect to be controlled by one man ).*

The chair is responsible for the leadership of the board and ensuring its effectiveness. Part of the chair's role is to set the board agenda, allowing adequate time for discussion of items, in particular strategic issues. **Promoting a culture of openness and debate in board discussions is also important.**

*BHT say: The owners say there are no published board meeting minutes, in any event board meetings appear to involve a husband and wife team of directors only.*

**Part of the role of Non-Executive Directors (NEDs) on a board is to challenge constructively and help develop proposals on the company's strategy. A further part of a NED's role is to scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.**

*BHT say : there are no Non-executive directors as far as we are aware , management decisions are made by a board of two executive directors only. This includes decisions on business with BIL, Hawk and BBS where there is potential for conflict of interest.*

## **Board effectiveness:**

### **Principles**

**The board and its committees need to have the appropriate balance of skills, experience, independence and knowledge to enable them to discharge their respective duties and responsibilities effectively.**

*BHT say that is highly debatable that these skills are available within the board of two).*

The board needs to be of a sufficient size so that the requirements of the business can be met. It should include an appropriate combination of executive directors and NEDs such that no individual or small group of individuals can dominate the board's decision taking.

*BHT say : there are no NEDs and the board is dominated by a small family group of two.*

New directors should be appointed by a formal, thorough and transparent procedure. The search for, and appointment of, board candidates should be made on merit, against objective criteria and with regard for the benefits of diversity on the board, including gender.

*BHT say: there is no such process visible.*

It is important that all directors can allocate sufficient time to the company to discharge their responsibilities effectively. All directors should receive induction on joining the board and should regularly update and refresh skills and knowledge.

*BHT: any such processes as exist are not visible.*

It is important that a board is supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.

*BHT: such processes as exist are not visible.*

It is good practice for boards to undertake a formal and rigorous annual evaluation of its own performance and that of its committees as well as of individual directors. The chair may decide to act on the results of a performance evaluation by recognising the strengths and addressing weaknesses of a board.

*BHT: any such processes as exist are not visible.*

All directors should be considered for re-election or re-appointment as appropriate at regular intervals, subject to their continued satisfactory performance.

*BHT: any such processes as exist are not visible.*

### **Accountability :**

Further, a board should establish formal transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors. An audit committee, including three NEDs or two in smaller organisations, should be established to help achieve this.

*BHT such arrangements as exist, if any , are not visible . There no NEDs and no Audit Committee.*

### **Remuneration:**

#### **Principles**

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. **No director should be involved in deciding his or her own remuneration.**

*BHT say: There is no mechanism visible and difficult to imagine one being in place with two related directors. Directors advise they take their management charges by way of varying annual payments to Hawk. Such remuneration is not identifiable from published accounts*

**The board should establish a remuneration committee, including at least three NEDs (or for smaller organisations two).** The committee should have delegated responsibility for setting remuneration for all directors and the chair including, where relevant, pension rights and any compensation payments.

*BHT: as above.*

### **Stakeholder engagement**

#### **Introduction**

2.6 Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder's views about the harbour and key issues from their perspective. **All SHAs should therefore seek to engage effectively with a wide range of stakeholders.** (*BHT say that whilst there is an Advisory Group that meets regularly they are dominated by the two directors and employees, minutes are edited by the Chair and decent or constructive criticism is not readily tolerated e.g. BHT barred from attending*).

#### **Provision of information:**

SHAs should present a fair, balanced and understandable assessment of the port's position and prospects through their annual accounts.

*BHT say: "Small company" and recently "Micro Company" accounts are the only published information. It is not possible to understand the port's position and prospects through these, eg. turnover , or amounts of harbour dues collected. The directors on request have refused to provide*

*further information or details of accounts. The directors have recently declined to meet with representatives of this Trust and at least one other organisation to discuss.*

**SHAs should generally operate in an open, transparent and accountable way**, making a range of information available to stakeholders about their organisation and activities, subject to commercial and data confidentiality considerations. Annual reports and regularly updated websites are likely to be important ways of doing this.

*BHT say: there are no meaningful reports, strategic plans or reports on performance towards those plans/objectives despite requests from stakeholders, and against a background of strong criticism for lack of essential maintenance.*

**SHAs should consider, if they have not already, establishing a formal complaints handling procedure to deal with complaints made by stakeholders. Information about how to access any complaints system should be readily available.**

*BHT say: we are not aware of any such system being in place.*

Supporting discussion:

Providing information about the performance and activities of SHAs to shareholders, stakeholders and other interested parties is an essential element of good governance.

SHA's annual report should:

include a Directors' report, setting out the SHA's responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, are fair, balanced and understandable **and provides the information necessary for stakeholders to assess the port's position and performance, business model and strategy**. Where one exists, there should be a statement **by the auditor** about their reporting responsibilities;

*BHT say the report within the published accounts does not fulfil this objective.*

**as appropriate, clearly identify the chair, the deputy chair, other NEDs and the chief executive, as well as the chairs and members of the board committees. It may also contain the number of meetings of the board and those committees and individual attendance by directors; and**

*BHT say the report within the published accounts does not fulfil this objective.*

**contain a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.**

*BHT say the report within the published accounts does not fulfil this objective.*

As well as providing accounts and reports to the Secretary of State, **SHAs should also make them available more widely to stakeholders as a key way of providing transparency about their activities. Posting accounts and reports, including Strategic Reports, on websites is likely to be an important way of achieving this.**

*BHT say the published information does not fulfil this objective nor are there substantial Strategic Reports published nor any overall management plan published against which performance can be assessed. We also understand that no reports of this description are submitted annually with the*

*account summaries to the Secretary of State, the reader will be able to check and reach their own conclusions on this.*