

## COMPLAINT TO THE NATIONAL PORTRAIT GALLERY

Submitted by Culture Unstained Ltd. on Tuesday 20<sup>th</sup> June 2017

### **A. INTRODUCTION**

1. This is a complaint to the National Portrait Gallery (“**the Gallery**”) about its decision to renew its sponsorship agreement with British Petroleum plc (“**BP**”). That decision amounted to a breach of not only the Gallery’s own internal procedures and policies, but also external policies and its legal obligations. The breaches at issue are set out in detail in Section D of this complaint.
2. As outlined in Section E below, the action that the Gallery should take to rectify the breaches referred to above is as follows:
  - a. conduct a thorough and well-documented process of due diligence, proportionate to the scale of the proposed relationship with BP, as specified in the Fundraising Regulator’s ‘Code of Fundraising Practice’ and make its outcome available to the public; and
  - b. take full account of the evidence raised in this complaint and identify a strategy for evaluating that evidence free of any pre-existing bias or any potential conflicts of interest.
3. Having done so, the Gallery should either: (a) terminate its existing relationship with BP; or (b) if that is not contractually possible, commit to terminating that relationship at the expiry of the agreement currently in force.
4. In order to restore public trust and protect its reputation, the National Portrait Gallery should also:
  - a. Convene a dedicated ethics committee, whose membership represents all levels of the gallery’s workforce, with the dedicated role of scrutinising decisions and instances where significant ethical questions are raised
  - b. Revise its Ethical Fundraising Policy and Research Guidance in order that its implementation rests on objective assessment of specific evidence over and above the perception of, or opinion on, any controversy related to a sponsor
5. The Gallery is asked to respond to this complaint by no later than 20 days. We have considered your published complaints procedure and we consider that it is appropriate for this complaint, in the light of its subject matter and seriousness, to be escalated directly to the Board of Trustees of the National Portrait Gallery. At the very least, this complaint should be referred to the Director.
6. If no response is received by the date specified above and/or the response provided is inadequate as it fails to address the concerns raised herein, we will be submitting complaints to the Parliamentary and Health Service Ombudsman

and the Museums Association. We hope that it will not be necessary for us to take this step.

## **B. BACKGROUND**

### **(1) BP's relationship with the Gallery**

7. BP first became a sponsor of the National Portrait Gallery in 1990 as the title sponsor of the gallery's annual portrait award. BP replaced the tobacco company John Player as the award's sponsor, with it subsequently becoming known as the 'BP Portrait Award'. BP is now in its 28<sup>th</sup> year of sponsoring the award. BP currently sponsors the British Museum, the Royal Opera House and the Royal Shakespeare Company also.
8. BP's sponsorship of the Gallery is directed towards the gallery's annual portrait award, which includes naming rights, and is therefore known as the 'BP Portrait Award'.

### **(2) BP's purpose/effect of the relationship: a social license to operate**

9. BP's purpose in sponsoring high-profile cultural institutions is not, as might be the case with other donors, philanthropic, but undertaken in order to enhance both its public perception and its perception among strategically valuable groups and audiences. Through its cultural sponsorship programme, BP has been able to engage with key groups, such as UK policy makers, members of foreign governments and opinion formers in the media, and often at strategically valuable moments when BP is seeking new contracts or drilling licenses. It should be noted that while in 2015 BP paid £2 million for its sponsorship of four cultural institutions, it received around £210 million in a subsidy from the UK government. The government provided around £110 million of taxpayers' money to the same four cultural institutions that year.
10. By associating its brand with iconic cultural institutions such as the National Portrait Gallery and the British Museum, BP is able to sustain its so-called 'social license to operate'. This is an industry term for the perception of the company as ethical, responsible and integral to society. With that social license to operate, BP is better able to acquire the political and social consent required in order to pursue high-risk business practices, such as ultra-deepwater drilling in the Gulf of Mexico or the continuation of fossil fuel extraction in an era of accelerating climate change. Cultural sponsorship represents an essential part of BP's broader lobbying and engagement strategy, underpinning its wider business interests.
11. This dimension of BP's cultural sponsorship is something that has been publicly acknowledged by BP. At a previous AGM, BP highlighted to its shareholders that it approached its sponsorship programme, in this case for London 2012, like any other part of its business, 'going through exactly the same process as we would for any investment'.<sup>1</sup> In an interview with The Times in 2016, BP's Regional Vice President Peter Mather also conceded that, 'When

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<sup>1</sup> See: <https://www.no-tar-sands.org/2012/04/uk-tar-sands-networks-questions-to-the-2012-bp-agm/>

there is an option, naturally we are going to try to match a particular exhibition with somewhere we have an interest'.<sup>2</sup> The campaign group Art Not Oil also published an extensive report in May 2016, drawing upon Freedom of Information disclosures.<sup>3</sup> It documented multiple instances where BP had sought to use its cultural sponsorship as a tool for meeting, entertaining and lobbying strategically valuable policy makers, as well as exerting influence over institutional event programmes and exhibitions, thereby maximising the return on its sponsorship.

### **(3) The Gallery's understanding of the relationship**

12. The Gallery, like other cultural institutions, is fully aware that entering into a relationship with a corporate sponsor is transactional in nature and, implicit in accepting a sponsorship deal, is a tacit support of and endorsement for the sponsor's business activity. On its website, the Gallery highlights the key benefits that a corporate sponsor can expect to benefit from through a relationship with the gallery. They include:

- *“Association with a proven, international brand;*
- *Invitations to exhibition openings and VIP events;*
- *Education, outreach and audience development initiatives to engage your stakeholders;*
- *The opportunity to activate your Corporate Social Responsibility agenda*

And of particular value to BP and its strategic business interests:

- *Access to opinion formers and influential networks;*
- *Prominent branding on extensive marketing and press campaigns;*
- *Brand awareness (more than 2 million visitors and 18 million web visitors per year);*
- *Partnership with the Gallery's Marketing & Press Teams...*

### **(4) BP's role in driving climate change**

13. The Paris Climate Accord, which was agreed in 2016 with 195 signatories from national governments, identified steps to limit global temperature rise to within 2 degrees Celsius – what has been agreed internationally as an achievable 'safe limit' for global warming. However, the Accord also included a target to attempt to limit warming to 1.5 degrees Celsius, acknowledging that even at 2 degrees Celsius many severe climate impacts and potential feedback effects will be unavoidable.

14. In its report, 'The Sky's the Limit', the research organisation Oil Change International identified that in order to meet the 2 degree Celsius aspiration set out in the Paris Climate Accord:

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<sup>2</sup> See: <https://www.thetimes.co.uk/article/bp-v-the-luvvies-the-battle-over-britains-biggest-corporate-sponsor-bmj797gxq>

<sup>3</sup> See: <http://www.artnotoil.org.uk/sites/default/files/BPs%20Corrupting%20Influence.pdf.pdf>

*“No new fossil fuel extraction or transportation infrastructure should be built, and governments should grant no new permits for them.*

*Some fields and mines – primarily in rich countries – should be closed before fully exploiting their resources, and financial support should be provided for non-carbon development in poorer countries.’*

And crucially, that:

*‘The oil, gas, and coal in already-producing fields and mines are more than we can afford to burn while keeping likely warming below 2°C.*

*The oil and gas alone are more than we can afford for a medium chance of keeping to 1.5°C.’<sup>4</sup>*

15. Across the globe – but notably in countries such as Mexico, the US and Azerbaijan – BP is involved in the exploration and exploitation of new sources of fossil fuels, as well as scaling up production and infrastructure within existing fields. For example, BP is currently playing a leading role in the construction of the Euro-Caspian Mega Pipeline, which is likely to be only profitable if Europe exceeds current projections of its gas demand in the coming decades.<sup>5</sup>

**(5) BP as an obstacle to effective climate action**

16. BP has repeatedly been involved in opposing legislation intended to curb greenhouse gas emissions and address climate change. In 2015, the company was identified as ‘Europe’s fiercest corporate opponent of action on climate change’ in a list of the world’s 100 top global companies and their action on climate change.<sup>6</sup> In 2009, the year before its Deepwater Horizon disaster in the Gulf of Mexico, BP spent \$16 million on lobbying the US Federal government.<sup>7</sup> In the past, BP has been part of business groups and alliances promoting climate denial and scepticism. As recently as 2015, BP’s Political Action Committee was shown to be supporting prominent climate sceptics such as Republican Senator, Jim Inhofe, with BP CEO Bob Dudley making financial contributions himself.<sup>8</sup>
17. BP’s association with prominent cultural institutions such as the Gallery contributes to the normalisation of its brand and deflects attention from the company’s obstruction of, and opposition to, effective climate action. Furthermore, the Gallery like many prominent cultural institutions makes a virtue of its efforts to reduce its operational impact on the environment. This is evidenced in the Gallery’s Sustainability Statement and other efforts within the Gallery to reduce its operational impact. Through the sponsorship, a perception is developed that an ethical consistency between the two parties must exist, i.e. that BP’s business activity is therefore consistent with the National Portrait Gallery’s aspiration to ‘promote sustainable working practices’.

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<sup>4</sup> See: [http://priceofoil.org/content/uploads/2016/09/OCI\\_the\\_skys\\_limit\\_2016\\_FINAL\\_2.pdf](http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf)

<sup>5</sup> See: <https://bankwatch.org/our-work/projects/southern-gas-corridor-euro-caspian-mega-pipeline>

<sup>6</sup> See: <https://www.theguardian.com/environment/2015/sep/21/bp-tops-the-list-of-firms-obstructing-climate-action-in-europe>

<sup>7</sup> See: <https://www.theguardian.com/business/2010/may/02/bp-deepwater-horizon-oil-spills>

<sup>8</sup> See: <https://www.theguardian.com/us-news/2015/mar/22/climate-sceptic-us-politician-jim-inhofe-bp-political-action-committee>

(6) **Achieving effective climate action: calls for divestment in/breaking ties with fossil fuel companies**

18. In recent years, it has been recognised that effective action to reduce greenhouse gas emissions and limit the impacts of climate change requires a broad societal shift away from the use of fossil fuels. Essential to that is a shift in the perception of fossil fuel companies. Archbishop Desmond Tutu has emphasised the need for major public and private institutions to ‘break ties with corporations financing the injustice of climate change’.<sup>9</sup>

19. At the end of 2016, the global divestment movement which calls for the removal of assets and investments from fossil fuel companies, revealed that:

*“...The value of assets represented by institutions and individuals committing to some sort of divestment from fossil fuel companies has reached \$5 trillion. To date, 688 institutions and 58,399 individuals across 76 countries have committed to divest from fossil fuel companies”<sup>10</sup>*

20. In 2015, the Carbon Tracker Initiative research group also identified that up to \$2 trillion of planned capital expenditure by fossil fuel companies should not be approved in order to avoid becoming so-called ‘stranded assets’, as governments take steps to keep greenhouse gas emissions within safe limits.

21. The growing movement for ‘fossil free culture’, which calls upon museums and galleries to cut their ties to the fossil fuel industry, is recognised as being an integral and essential part of the wider global divestment movement. Active campaigns exist in the UK, US, France, Norway, the Netherlands and Canada. In just the past few years, its successes have included:

- a. The announcement in 2016 that BP’s sponsorship of both the Tate galleries and Edinburgh International Festival would come to an end.<sup>11</sup>
- b. The resignation of oil billionaire, David H Koch, from the board of the American Museum of Natural History.<sup>12</sup>
- c. The end of prominent sponsorship deals at the Southbank Centre and Science Museum in London by Royal Dutch Shell.<sup>13</sup>
- d. Four hundred artists and arts organisations pledging to be ‘Oil Sponsorship Free’, with many revising or updating internal ethics policies to recognise this shift in ethical standards.<sup>14</sup>

<sup>9</sup> See: <https://www.theguardian.com/commentisfree/2014/apr/10/divest-fossil-fuels-climate-change-keystone-xl>

<sup>10</sup> See: <https://www.theguardian.com/environment/2016/dec/12/fossil-fuel-divestment-funds-double-5tn-in-a-year>

<sup>11</sup> See both: <https://www.theguardian.com/artanddesign/2016/mar/11/bp-to-end-tate-sponsorship-climate-protests> and also <http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-35977127>

<sup>12</sup> See: [https://artsbeat.blogs.nytimes.com/2016/01/20/david-h-koch-leaves-natural-history-museum-board/?\\_r=0](https://artsbeat.blogs.nytimes.com/2016/01/20/david-h-koch-leaves-natural-history-museum-board/?_r=0)

<sup>13</sup> See: <https://www.theguardian.com/business/2015/nov/12/science-museum-ends-sponsorship-deal-with-shell>

<sup>14</sup> See: <http://oilponsorshipfree.org/>

**(7) The Deepwater Horizon disaster**

22. In April 2010, the Macondo well in the Gulf of Mexico experienced a blowout leading to an explosion on board BP's Deepwater Horizon platform, when a blowout preventer failed to operate. The explosion killed 11 rig workers and caused the largest maritime oil spill in history which lasted for 87 days.
23. In 2013, a Federal Judge accepted an agreement for BP to plead guilty to 14 criminal charges in relation to the Deepwater Horizon disaster: eleven counts of seaman's manslaughter, one felony count of obstruction of congress and two environmental misdemeanours.<sup>15</sup> During litigation, BP admitted to lying to the US House of Representatives over the flow rate of the spill during litigation taking place in 2013. In 2014, Judge Carl Barbier ruled that BP's "gross negligence" and "wilful misconduct" had led to the spill.<sup>16</sup> Final settlements were agreed in 2016. Emails also revealed that the company had attempted to influence independent research into the extent and impacts of the spill.<sup>17</sup>
24. Following high profile and protracted litigation against the company, BP agreed to a record settlement of \$18.7 billion over the Deepwater Horizon disaster, a figure that subsequently rose to \$20.8 billion following further adjustments.<sup>18</sup> This was "*the largest [settlement] ever reached by the [US] Department of Justice with a single entity*". As part of that settlement, BP agreed to pay a record \$5.5 billion for violations of the US Clean Water Act.

**(8) Widespread public opposition to sponsorship of the arts**

25. Oil sponsorship of arts and cultural institutions, as has already been highlighted, is not an isolated or niche concern – opposition to sponsorship deals with fossil fuel companies has gained widespread support in recent years. While the first reported creative protest against oil sponsorship took place in 2003 in response to the BP Portrait Award, multiple groups, campaigns and tactics have proliferated since. Crucially, the activity of arts activists and other campaigners has prompted a broader debate about funding and ethics across the cultural sector, with many high-profile figures now backing the calls of campaigners.
26. Following a sustained and high profile campaign by performance art collective Liberate Tate, campaigns and research organisation Platform and other groups, it was announced in 2016 that BP's sponsorship of Tate galleries would come to an end after 26 years. As part of that campaign, Tate was forced to reveal the true scale of BP's sponsorship payments to the gallery following an Information Tribunal. BP's payments were significantly smaller than many had previously been thought – just £350,000 per year in 2007-2011. BP attributed its decision to end its sponsorship of Tate to the low oil price and a 'challenging business environment'. The company planned to increase its

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<sup>15</sup> See: <http://articles.latimes.com/2013/jan/29/nation/la-na-nn-bp-pleads-guilty-to-manslaughter-in-2010-gulf-oil-spill-20130129>

<sup>16</sup> See: <https://www.desmogblog.com/2014/09/05/federal-judge-bp-s-wilful-misconduct-gross-negligence-led-deepwater-horizon-disaster>

<sup>17</sup> See: <https://www.theguardian.com/environment/2011/apr/15/bp-control-science-gulf-oil-spill>

<sup>18</sup> See: <https://www.nytimes.com/2015/07/03/us/bp-to-pay-gulf-coast-states-18-7-billion-for-deepwater-horizon-oil-spill.html> and also <https://www.theguardian.com/environment/2016/apr/04/bp-oil-spill-judge-grants-final-approval-20-billion-dollar-settlement>

CEO's remuneration in 2016 by significantly more than the value of the Tate sponsorship deal before the plan was opposed by shareholders.

27. In April 2016 around one hundred high-profile cultural figures called on the British Museum's new director to abandon its relationship with BP in a letter to The Guardian. In October 2016, over fifty scientists and policy makers called on the Science Museum to rethink its sponsorship deal with the Norwegian oil giant, Statoil, in their own letter to The Guardian.
28. The Gallery has faced regular opposition to its relationship with BP, with youth campaigners 'Children Against Global Warming' holding a protest performance in the gallery, as well as interventions from Liberate Tate and members of the wider Art Not Oil coalition. The national tour of the BP Portrait Award has also encountered creative protests during its display at the Scottish National Portrait Gallery in Edinburgh and at the Ulster Museum in Belfast. Criticism of BP sponsorship of the Gallery and other cultural institutions is regularly voiced by visitors and others via social media.
29. In its Ethical Fundraising Policy, the Gallery notes that it reserves the right to refuse a donation, "*where support would impinge on the artistic or academic freedom of the Gallery or would otherwise compromise its status as an independent institution.*" Despite this, BP's Head of Art & Culture Des Violaris retains a position on the award's judging panel. Writing in 2010, the late art critic and once judge of the BP Portrait Award, Brian Sewell, noted that, "*The National Portrait Gallery's director begged us to let [BP's] Miss Violaris have her way, arguing that as the sponsor supplies the cash, the sponsor must be allowed the whip hand.*"

**(9) BP's relationship with regimes that violate human rights**

30. The following section outlines specific instances of BP's close relationships and associations with regimes known or suspected to be in violation of human rights. In some cases, there is also evidence to suggest that the advancement of BP's own business activity and its strategic business interests have directly benefitted from specific rights violations or that its business activity is taking place within an environment where the government or regime in question is enacting human rights violations. In some cases, BP's own actions as a company could violate human rights standards for enterprises.
31. At the same time as submitting this complaint, the campaigns and research organisation Culture Unstained is publishing 'Bad Company: BP, human rights and corporate crimes', an in-depth report itemising those specific instances of BP's close relationships and associations with regimes known or suspected to be in violation of human rights. Its content is drawn from a broad selection of articles, reports and statements that are in the public domain, with references to relevant sources provided within that report. This information should have been readily identified, investigated and accounted for within the gallery's own research process.

32. While the National Portrait Gallery should take account of all instances where BP is known or suspected to have a close relationship with regimes that violate human rights, specific attention should be paid to the following:

a. *Egypt*. BP has secured lucrative deals under successive administrations in Egypt regardless of their human rights record, from renowned dictator Hosni Mubarak to Abdel Fattah el-Sisi, elected following a military coup. Amnesty International has noted that under Sisi, the authorities have used 'mass arbitrary arrests to suppress demonstrations and dissent, detaining journalists, human rights defenders and protesters, and restricted the activities of human rights organizations'. Enforced disappearances are widely reported and there are reports of the National Security Agency subjecting detainees to torture.

BP was initially forced to put a flagship project on hold when in 2011, residents of the town of Idku mobilised against the plan to build a mega-gas plant next to their homes. After long delays, the local resistance forced BP to concede. Since then, a repressive anti-protest law was introduced in 2013 and counter-terrorism law in 2015. BP signed the final agreement for the project to go ahead in 2015 at a time when public opposition had become all but impossible.

b. *Azerbaijan*. BP is the largest foreign investor in Azerbaijan underpinned by a close relationship with the repressive Aliyev regime. In March 2017, Azerbaijan was suspended from the Extractive Industries Transparency Initiative (EITI) over its failure to address concerns regarding civil society space in the country, with independent and civil society groups having accounts frozen and grants impeded. Azerbaijan announced its decision to leave the EITI the following day. When asked at its AGM this year, BP declined to take any action in relation to these developments. There are around 100 political prisoners in Azerbaijan and international human rights monitors have been denied access to the country.

c. *Mexico*. The Inter-American Commission on Human Rights (IACHR) has referred to the situation in Mexico as 'a serious human rights crisis', which is 'characterised by an extreme situation of violence and insecurity; critical rates of impunity; and inadequate and insufficient care for victims and their relatives'. Enforced disappearances – many with the involvement of the state – and extrajudicial killings are widespread. Violence against women and girls is prevalent and mass graves are regularly discovered across the country. BP has been in Mexico for 50 years and works in close cooperation with the Mexican government in order to advance both its upstream and downstream operations. It is involved in three projects in Mexican waters of the Gulf of Mexico as well as planning to open 1,500 fuel stations in the next five years.

d. *West Papua*. West Papua is a region with hundreds of Indigenous tribes and cultures but has been under Indonesian occupation since



1963, with its people experiencing decades of human rights abuses, widespread violence and the suppression of their right to self-determination. According to the Free West Papua campaign, 'over 500,000 civilians have been killed, and thousands more have been raped, tortured and imprisoned' in West Papua under Indonesia's occupation. NGOs, UN special rapporteurs and international media are almost completely barred from the province

BP's concessions in Tangguh, Bintuni Bay, West Papua – but granted by the Indonesian government – contain around 14.4 trillion cubic feet of liquefied natural gas (LNG). BP's investments and operations in West Papua help to legitimise the Indonesian occupation of West Papua, and with revenues flowing from BP to the Indonesian government, it becomes entangled in the workings of the occupation and the rights violations related to it. In 2012, BP gave US \$69,000 in security-related payments to the Indonesian government.

**(10) 2011 decision to renew in the aftermath of the Deepwater Horizon disaster**

33. In 2011, the Gallery – alongside Tate, the British Museum and Royal Opera House – announced that it had signed up to a 5-year sponsorship deal with BP. BP would pay £10 million, which would be shared between the four institutions over that period.
34. Prior to the renewal of the gallery's sponsorship deal with BP in 2011, the trustees of the Gallery discussed the appropriateness of doing so given negative publicity around the company. Minutes from trustee meetings noted that they had discussed, "*the differences between wider public opinion and that of environmentalists,*" and also, "*the need to keep in unison with other arts organisations [sponsored by BP]*".<sup>19</sup> Beyond these very limited points, there was no record of the trustees having a more substantive discussion applying the Gallery's policies, external policies and/or their legal obligations. No reference was made to, for example, the serious potential legal claims against the company or the prospect of high-profile litigation against BP over the coming years.
35. In October 2010, the gallery's trustees merely noted that there had been "*adverse publicity around BP*" and four months later – less than a year after the explosion that caused the spill – the trustees decided that they "*were not adverse [sic.] to continuing the partnership since BP had been a very good sponsor.*" As noted above, this decision would provide the company with much-needed social legitimacy at a time when it was subject to extensive legal and public scrutiny. The basis for the decision – the trustees were not averse to continuing the relationship due to BP being a "*very good sponsor*" - do not reflect the criteria the Trustees should have been applying in deciding whether to continue the relationship. That being said, this decision to continue the relationship was taken **before BP's guilty pleas to criminal charges in relation to the Deepwater Horizon disaster and the full extent of its legal**

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<sup>19</sup> See: <http://www.npg.org.uk/assets/files/pdf/trustees-meetings/tmNPG-741.pdf>

**settlement over the spill, as outlined in section (7).** It was also taken before events disclosed an increasing momentum towards divestment and disassociation with fossil fuel companies, see above.

**(11) The decision to renew (the challenged decision)**

36. On 28th July 2016, it was announced that BP had renewed its sponsorship of the National Portrait Gallery for a further five years from 2018, taking effect at the conclusion of its existing sponsorship deal with the gallery. This new sponsorship deal was negotiated and agreed with the National Portrait Gallery, and announced alongside BP's renewed sponsorship deals with the Royal Opera House, British Museum and, signing a five-year deal for the first time, the Royal Shakespeare Company.

**(12) Reaction to the 2016 decision to renew**

37. The decision of the Gallery in 2016 alongside three other cultural institutions to renew their sponsorship deals with BP for a further five years was met by widespread criticism.

38. For example, over two hundred respected actors, artists, scientists, frontline campaigners and policymakers signed a letter in The Times calling for the deal to be dropped.<sup>20</sup> The signatories to the letter included Oscar-winning actor Sir Mark Rylance, highly respected climate science historian Professor Naomi Oreskes, and the artist Conrad Atkinson, who has been shortlisted for the BP Portrait Award three times. In addition, the announcement was widely reported across mainstream and arts press as a controversial decision, with almost all articles highlighting the key arguments against oil sponsorship and the campaign against it.<sup>21</sup>

39. Influential figures such as the arts writer and journalist Andrew Dickson, and theatre critic Lyn Gardner have raised strong questions about the appropriateness of accepting sponsorship from oil companies, and Sir Mark Rylance, an Associate Artist of the Royal Shakespeare Company, BP, during an interview with BBC Radio 4 last year.

40. In contrast, the Director of the Gallery, Nicholas Cullinan, said of the renewal that,

*“we are extremely grateful for and proud of this ongoing partnership [with BP], for such longevity and loyalty is unique in corporate sponsorship.”*

**(13) Response of the Museums Association to the Art Not Oil Report in 2016**

41. In response to a report produced by *Art Not Oil* in 2016 which considered ethical question related to BP's sponsorship of the Gallery and other cultural institutions, the Museums Association stated that:

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<sup>20</sup> See: <https://www.thetimes.co.uk/article/actors-accuse-bp-of-exploiting-the-arts-0j2dj7b5t>

<sup>21</sup> See the following list: <https://cultureunstained.org/media/#newbpdeal>

*“The Committee understands that the museums involved in this case have made a commitment to upholding the principle [of due diligence] through their internal ethics committees or similar means of ethical oversight, and encourages them to carefully scrutinize all sponsorship deals in light of the recently revised Code of Ethics for Museums to ensure that the values of the museum and the sponsor are aligned and that public trust is maintained.”<sup>22</sup>*

42. To date, despite Freedom of Information requests having been made to the National Portrait Gallery, no material constituting ‘*thorough and well documented research*’ into BP’s ethical standards has been disclosed. This key failure is returned to below.

## **C. RELEVANT POLICIES AND LEGAL FRAMEWORK**

### **(1) The Gallery’s Policies**

43. Following a request under the Freedom of Information Act 2000, the National Portrait Gallery disclosed a copy of its Ethical Fundraising Policy and the accompanying Research Guidance document. This policy is exhibited as Appendices 1 and 2 to this complaint. Following a separate request, the gallery also disclosed a copy of its Statement on the Gallery’s ethical approach to sponsorship and external partnerships (2012), exhibited as Appendix 3 to this complaint.

44. Under the heading ‘*Unacceptable Sources of Funding*’, the Gallery’s Ethical Fundraising Policy states that:

*‘The Gallery considers each gift and sponsorship carefully, and recognises that there may be occasions when it would not be in the Gallery’s best interests to accept funding.’*

45. The Ethical Fundraising Policy then notes seven criteria, which outline those situations where accepting funding would not be considered appropriate. The gallery states that it, “reserves the right to reject offers of support” that meet any of those criteria.

- a. Where the supporting source is known or suspected to be closely associated with a regime known or suspected to be in violation of human rights;
- b. Where support would impinge on the artistic or academic freedom of the Gallery or would otherwise compromise its status as an independent institution; and
- c. Where support is deemed to be in any other way in conflict with the objectives and values of the Gallery.

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<sup>22</sup> ‘Museums Association Ethics Committee Response to Art Not Oil Allegations,’ August 2016. See: <https://www.museumsassociation.org/download?id=1195252>

46. The Gallery's Ethical Fundraising Policy also notes the following (emphasis added):

*"Gifts of more than £500,000 and any gift where the Gallery offers to name a building, room, post or other aspect of its activity, will be subject to review by the Deputy Director, Director, Chairman and Board of Trustees. Should concerns be raised under the guidelines above about a gift that has already been accepted, the Director, Deputy Director and, where appropriate, the Chairman and Trustees, will review whether it is appropriate to retain the gift."*

47. The Gallery's Ethical Fundraising Policy states that:

*"Unsubstantiated rumours or allegations will not necessarily prevent acceptance of support. However, the Gallery is mindful of the risk involved in accepting support or continuing negotiations which may cause significant potential damage to the Gallery's reputation."*

48. The Ethical Fundraising Policy notes that when assessing a prospective donor:

*"An initial screening will be undertaken by the relevant member of the Gallery's Development Team in accordance with an agreed checklist as devised and agreed by the Development Team, Deputy Director and Director. Publicly available information will be reviewed with a particular focus on any activities which may be the source of ethical risk for the Gallery as outlined above."*

49. The effective application of the gallery's Ethical Fundraising Policy rests on a thorough and well-documented process being undertaken in an in-depth and thoroughgoing way to ensure that only appropriate sponsorship is accepted. This is made clear in the Gallery's Research Guidance which states that:

*"All members of the Development Team should be mindful of [the Ethical Fundraising Policy's] criteria and have a responsibility to notify the Head of Development and/or the Head of Major Gifts & Appeals of any concerns they may have about existing and prospective supporters."*

50. The Research Guidance document lays out the Risk Assessment process for investigation of prospective donors in the following way:

*"In line with our Ethical Fundraising policy, an initial risk assessment should be undertaken on any prospective sponsor, partner, trust, foundation, Portrait Circle member or other individual proposing to make a donation of £10,000 and above."*

*This initial assessment should be undertaken by the member of the team who is proposing or in touch with the prospect, referred to henceforward as the 'Canvasser'. The canvasser will be supported in their research by the Individual Giving Manager, Catalyst & Appeals (the team's current lead for research) as well as the Head of Corporate Development and the Head of Major Gifts & Appeals."*

51. The Statement on the Gallery's ethical approach to sponsorship and external partnerships (2012) also notes that:

*"The Development team assesses funders on a case-by-case basis, and for major funders (£10,000+) undertakes research (desk-based including internet searches and talking to peers within the arts and charitable field) into their reputation and status."*

52. The Gallery's Research Guidance outlines separate sets of questions that should be investigated by the 'canvasser' as part of their research into individuals, trusts and companies under consideration. Those questions expand upon and scrutinise the criteria laid out in the Ethical Fundraising Policy. Several questions relevant to a potential sponsorship deal with BP include:

- *"Has there been any adverse publicity about the company in the press or media recently or in the less recent past (in the UK and/ or overseas)?"*
- *Has any individual known to be connected to the company, including senior staff members or Board members been subject to adverse publicity recently or in the less recent past?"*
- *Is there any past, recent, current or planned litigation against the company?"*

53. Most pertinent to this complaint is the following question:

- *"Does the company, its Executive or non-Executive Directors have any associations with regimes known or suspected to be in violation of human rights?"*

54. The Research Guidance then notes that:

*"Canvassers should err on the side of caution and refer any concerns to the Head of Corporate Development and/or the Head of Major Gifts & Appeals who will then decide whether to proceed with the prospect or undertake further investigation."*

55. Within the Ethical Fundraising Policy, further details of the Risk Assessment process are laid out:

*"Should a prospective supporter be deemed to pose a possible risk, they will be referred to the Head of Development and/or the Head of Major Gifts & Appeals for further review. The Head of Development and/or the Head of Major Gifts & Appeals will make a recommendation to the Deputy Director and Director about how to proceed. Where necessary, further information and advice will be sought from third parties, such as professional search firms, international due diligence providers, and individual contacts who may have further knowledge of prospective supporters." [Underline added]*

56. The Gallery goes on to specify that:

*“All prospective donations from new or existing supporters of more than £100,000 will be referred to the Deputy Director and Director for review along with a full research profile. They will seek the further advice and agreement of the Chairman and Trustees as appropriate.” [Underline added]*

57. If, after conducting a thorough and well-documented process of due diligence, the gallery identifies significant or multiple breaches of its Ethical Fundraising Policy, the Director, Deputy Director, Chairman and Trustees must review whether it is appropriate to retain a sponsorship relationship with BP. The failure to terminate that relationship if such a breach is identified would undermine the gallery’s reputation as well as the public’s trust in the gallery and the wider sector. The Director, Deputy Director, Chairman and Trustees must be prepared to take this action.

## **(2) External Legal Obligations and Policies**

58. Before accepting new or renewed sponsorship deals, the Gallery has an obligation to undertake a thorough and well-documented process of due diligence when assessing potential corporate partners, a requirement specified by the Museums Association’s ‘Code of Ethics’, the Institute of Fundraising’s ‘Code of Fundraising Practice’ and a standard of scrutiny expected by the Charities Commission.

### ***The Code of Fundraising Practice***

59. The Gallery’s trustees not only have powers according to the gallery’s own policies but legal duties also. The Gallery is an exempt charity and the trustees therefore have a duty to ensure the gallery is run in accordance with its own constitution and all relevant laws.
60. The Charities Commission “expects all charities that fundraise to fully comply with the Code [of Fundraising Practice]”.<sup>23</sup> L11.2 (a) from the Code of Fundraising Practice notes the following legal requirement:

*“Trustees **MUST\*** ensure that the charity’s assets and resources are used only for the purposes of the charity and that the charity is run in accordance with its constitution, charity law and all other applicable laws and regulations.”<sup>24</sup>*

61. Article 12.3 (a) of the ‘Code of Fundraising Practice’ states that:

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<sup>23</sup> P6, Section 3 from ‘Guidance – Charity Fundraising: A Guide to Trustee Duties (CC20)’, Charities Commission. See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/566105/CC20.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566105/CC20.pdf)

<sup>24</sup> L11.2 (a) from ‘Key Requirements – Trustee Duties’, Code of Fundraising Practice, Fundraising Regulator’s website. [Asterisk denotes a legal requirement, as identified by the Fundraising Regulator.] See: <https://www.fundraisingregulator.org.uk/l11-0-trustee-duties/>

*“Organisations MUST carry out a process of due diligence, proportionate to the scale of the relationship, before engaging in a partnership.”*  
[Emphasis added]<sup>25</sup>

62. Article L11.2 (b) in the Code of Fundraising Practice makes clear that:

*“Trustees have ultimate responsibility for everything the charity does. The trustees are responsible for the vision, mission and management of the charity. While they may delegate in some circumstances, it is the trustees who are accountable if things go wrong.”*<sup>26</sup>

### **Duties of trustees under Charity Law**

63. In its own guidance, the Charities Commission lays out the responsibilities of trustees of charities. It specifies the following:

*“Before decisions are made about whether an agreement with a commercial partner is in your charity’s best interests you should have effective systems in place to ensure that...the partner is a suitable and appropriate body to work with – a significant aspect of a trustee’s legal duty to protect charitable assets, and to do so with care, means that there should be proper due diligence checks on those organisations that work closely with the charity; ensuring that the appropriate level of research and checks are carried out will help you and your co-trustees to satisfy yourselves about the solvency, integrity and reputation of the partner and their ability to deliver to an acceptable standard.”* [Emphasis added]<sup>27</sup>

64. The Gallery’s trustees have a legal duty to safeguard the gallery’s reputation and manage risks. The Charities Commission also specifies that for more significant partnerships, a more extensive process of due diligence is required:

*“Other donors give significant grants to charity and the charity may have a close working relationship with them. It is for significant donors like these that trustees are likely to need to carry out further due diligence and take steps to identify and verify the identity of the donor so they can assess any risks.”* [Emphasis added]<sup>28</sup>

65. Much of what is laid out by the Charities Commission is given as best practice but it is by undertaking these steps that trustees can be said to have fulfilled their legal obligations. Crucially, the Charities Commission suggests that for significant donors – which the Gallery has indicated that it believes BP to be through public statements made by its director – trustees will likely need to

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<sup>25</sup> 12.3. (a) ‘Preparation’, from ‘Code of Fundraising Practice’, Fundraising Regulator’s website. See:

<https://www.fundraisingregulator.org.uk/12-0-corporate-partners/>

<sup>26</sup> L11.2 (b) from ‘Key Requirements – Trustee Duties’, Code of Fundraising Practice, Fundraising Regulator’s website. See:

<https://www.fundraisingregulator.org.uk/11-0-trustee-duties/>

<sup>27</sup> Article 5.3 from ‘Guidance – Charity Fundraising: A Guide to Trustee Duties (CC20)’, Charities Commission. See:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/566105/CC20.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566105/CC20.pdf)

<sup>28</sup> Article 5.1 from Chapter 2, ‘Compliance Toolkit: Protecting Charities from Harm’, Charities Commission. See:

<https://www.gov.uk/government/collections/protecting-charities-from-harm-compliance-toolkit>

carry out further due diligence checks, above and beyond what would be considered standard practice.<sup>29</sup>

### ***Institute of Fundraising's Guidance***

66. Further to this, the Institute of Fundraising's 'Guidance on working with business' outlines what should be considered standard practice in terms of decision-making processes relating to arrangements with corporate partners:

*"A policy on working with companies, agreed by the trustees, is essential for a charity to be able to engage effectively with the corporate sector. The policy should define the parameters of associations across all types of corporate and partnership activity. However this is just the first step. There needs to be a process for decision-making, including a clear delegation of responsibilities, since working with companies is the classic example of where value judgements need to be made. All those responsible for the development of these relationships should be given specific instruction on the charity's boundaries on corporate engagement and at what point the decision making body decides whether or not an initiatives should proceed. The complexity of the issues that need to be addressed will define the process."<sup>30</sup>*

### ***Breach of the Museums Association's 'Code of Ethics'***

67. The National Portrait Gallery abides by the Museums Association *Code of Ethics*.<sup>31</sup> The Museums Association expects museums to seek support from organisations whose "ethical values are consistent with those of the museum". In order to do this, the National Portrait Gallery needed to have demonstrated that its ethical values were consistent with a sponsorship relationship with BP.
68. Article 3.6 of the Museums Association's *Code of Ethics* specifies that museums should:

*"Carefully consider offers of financial support from commercial organisations and other sources in the UK and internationally and seek support from organisations whose ethical values are consistent with those of the museum. Exercise due diligence in understanding the ethical standards of commercial partners with a view to maintaining public trust and integrity in all museum activities." [Emphasis added]<sup>32</sup>*

69. In their Additional Guidance document accompanying the *Code of Ethics*, the Museums Association specifies the following:

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<sup>29</sup> At the time the new sponsorship deal was launched, Nicholas Cullinan, director of the gallery was reported as saying: 'We are extremely grateful for and proud of this ongoing partnership, for such longevity and loyalty is unique in corporate sponsorship. At a time when funding for public institutions is increasingly stretched, the support of the arts that BP provides is vital.' The Guardian, 28<sup>th</sup> July 2016. See: <https://www.theguardian.com/business/2016/jul/28/bp-sponsorship-arts-organisations-british-museum-national-portrait-gallery>

<sup>30</sup> 'Charities Working With Business', from the Institute of Fundraising. See: <http://www.institute-of-fundraising.org.uk/code-of-fundraising-practice/guidance/charities-working-with-business-guidance/>

<sup>31</sup> 'Code of Ethics', Museums Association. See: <http://www.museumsassociation.org/download?id=1155827>

<sup>32</sup> Ibid.



*“When considering partnerships or sponsorships, museums should consider whether the non-museum partner’s activities and ethos are aligned with those of the museum. It is the responsibility of the museum to conduct due diligence on potential and current partners and understand their ethical standards to ensure that public trust can be upheld, and that neither the institution nor the sector are brought into disrepute. Where this is not the case, the museum should consider seeking alternative partners or sponsors.” [Emphasis added]<sup>33</sup>*

70. On the Museums Association’s website, it elaborates on this issue through a case study where a fictitious oil company attempts to sponsor a museum. In this case study, the expectations of how such a decision-making process should be undertaken are made clear:

*“...The museum ought to actively seek out support from organisations whose values chime with those of the museum, rather than those whose values appear at odds with those of the museum. The museum will also need to conduct thorough and well documented research to demonstrate that they have understood the nature of the company’s business, and any claims made against it. The museum must also make a judgment about whether the involvement of the oil company is a reputational risk that will damage the museum’s standing with the public. This judgment might vary depending on how closely the museums activities overlap with those of the company.”<sup>34</sup> [Emphasis added]*

#### **D. BREACHES**

##### **(1) Breaches of the Gallery’s own policies**

71. The Gallery’s continuing acceptance of BP’s sponsorship breaches its own Ethical Fundraising Policy.
72. First, it is not in the best interests of the Gallery to accept the funding given the widespread concern about the decision to renew sponsorship from a company for all of the reasons outlined in Section B above. Not only is BP a significant contributor to climate change, it has committed grave safety violations (causing untold environmental harm) and it has close relationships with regimes known or suspected to be in violation of human rights. Consequently, this sponsorship deal violates or is inconsistent with the clear criteria and approach set out in the Ethical Fundraising Policy.
73. Second, these failures to uphold the values and provisions laid out in the Ethical Fundraising Policy appear to arise from a failure to undertake a full and proportionate process of due diligence in relation to BP’s offer of sponsorship.
74. From the information made available by the Gallery, no proper research and due diligence process has ever been conducted in respect of BP’s

<sup>33</sup> Additional Guidance to ‘Code of Ethics’, Museums Association. See: <http://www.museumsassociation.org/download?id=1173810>

<sup>34</sup> Case Study: ‘Ethical Dilemmas – Sponsorship’, Museums Association website. See: <http://www.museumsassociation.org/ethics/26012016-ethical-dilemmas-sponsorship>

sponsorship, whether at its commencement or in relation to the decision specifically in issue, the decision to renew in 2016.

75. When asked as part of a Freedom of Information request, ‘whether a process of due diligence was undertaken when BP was first accepted as the Portrait Award’s sponsor in 1990’, the gallery stated that:

*”I can’t confirm or deny if due diligence process took place as the Gallery have no records of this.”<sup>35</sup>*

76. The gallery also provided a snapshot from its CRM system of research records relating to BP but none of these records related to any research into BP’s business activity or operations.<sup>36</sup>

77. There is therefore no basis upon which the Gallery can claim it carried out an initial thorough assessment of the propriety of the original decision to accept sponsorship. For present purposes this is important because there appears to be no past assessment of the appropriateness of accepting sponsorship upon which the Gallery could seek to rely in justifying the renewal decision in 2016.

78. In any event, the key point is that given the nature of BP and its actions and relationships, as noted above, it was incumbent on the Gallery to undertake a proper due diligence and assessment process in deciding whether to renew. There is no evidence that such a process was completed.

79. As part of a Freedom of Information request, the gallery was asked whether, “a specific process of due diligence exercised in relation to the renewal of BP’s sponsorship?” and, “if so, what steps were undertaken?” The gallery responded that:

*“There is no ethics committee or other body that would specifically look after this matter. All departments and individuals involved in this partnership renewal worked in accordance with internal procedures and policies and the best interest of the Gallery and its public service. The National Portrait Gallery has been following an internal process... You have also asked if this has been reviewed by the board/board of trustees, and I would like to confirm that it has been reviewed during one of the Gallery’s Board of Trustees Meeting.”<sup>37</sup>*

80. As part of a separate Freedom of Information request, the gallery was asked to confirm whether ‘no research has been undertaken by the gallery in order to understand the ethical standards of BP or of the ethical issues related to, and impacts of, BP’s business activity’. The gallery responded that:

*“The Gallery had internal discussions about the BP contract renewal which were not minuted. The discussion was based on the existing relationship with this long term sponsor, success of previous projects and opportunities for the future. Gallery staff involved in the renewal*

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<sup>35</sup> See Appendix 4

<sup>36</sup> See Appendix 5

<sup>37</sup> See Appendix 6

*process (Director, Deputy Director and Development team) have a detailed working knowledge of the content of the Ethical Fundraising Policy and Research Guidelines.*<sup>38</sup>

81. Thus, the Gallery has provided little evidence that a process of due diligence proportionate to the scale of the relationship with BP was carried out prior to agreeing a new partnership and the trustees have failed in their duty to ensure that such a process was undertaken.
82. Yet, the actions of BP clearly created a “*possible risk*” within the meaning of the Research Guidance which necessitated a full and proper review procedure, including the obtaining of further information and advice. Moreover, given the value of the sponsorship, a full research profile should have been generated in respect of the decision to renew – yet no such profile appears to exist. Despite Freedom of Information requests, the gallery has not identified or disclosed any such research profile.
83. It appears that the Gallery has not gone much, if at all, beyond the mere step of introducing an Ethical Fundraising Policy and Research Guidance document. But there are no systems in place, and in any event no actual due diligence and review processes being carried out with respect to its decision to renew BP’s sponsorship. Any such due diligence procedure should have identified the key concerns about BP’s conduct and practice – and should have resulted in a full report to and consideration by the Trustees and senior individuals. There is simply no evidence of this report being compiled or any other evidence of a due diligence process being followed.
84. The above concerns are only amplified by the comments from the 2010 renewal decision that Trustees approved that decision because they decided they:

*“were not adverse [sic.] to continuing the partnership since BP had been a very good sponsor.”*<sup>39</sup>

85. As a result of the failures outlined above, the Gallery has accepted sponsorship from a company, BP, which does not align with its ethos.

## **(2) Breaches of external obligations**

86. First, for all of the reasons given above, it seems equally clear that there is an absence of effective systems in place to ensure that significant donors, such as BP, are subject to the due diligence checks required by external guidance and/or obligations. The absence of an Ethics Committee, in particular, is a matter of concern.
87. Second, and importantly, by failing to ensure that the due diligence and decision-making process was conducted properly, the gallery’s trustees have neglected their legal duty to safeguard the reputation of the gallery.

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<sup>38</sup> See Appendix 7

<sup>39</sup> See Appendix 8

88. In short, it would appear that the Gallery did not respond to the Museums Association's clear indication that they should carefully scrutinize all sponsorship deals in light of the recently revised Code of Ethics for Museums. There is no evidence of such due diligence, whether in compliance with the Code of Ethics for Museums or in compliance with any other of the guidance or obligations to that effect.

**E. REMEDIES**

89. In order to remedy these issues, the National Portrait Gallery should:
- a. conduct a thorough and well-documented process of due diligence, proportionate to the scale of the proposed relationship with BP, as specified in the Fundraising Regulator's 'Code of Fundraising Practice' and make its outcome available to the public; and
  - b. take full account of the evidence raised in this complaint and identify a strategy for evaluating that evidence free of any pre-existing bias or any potential conflicts of interest.
90. Having done so, the Gallery should either: (a) terminate its existing relationship with BP; or (b) if that is not contractually possible, commit to terminating that relationship at the expiry of the agreement currently in force.
91. In order to restore public trust and protect its reputation, the National Portrait Gallery should also:
- a. Convene a dedicated ethics committee, whose membership represents all levels of the gallery's workforce, with the dedicated role of scrutinising decisions and instances where significant ethical questions are raised
  - b. Revise its Ethical Fundraising Policy and Research Guidance in order that its implementation rests on objective assessment of specific evidence over and above the perception of, or opinion on, any controversy related to a sponsor

## **Appendix 1**

### **National Portrait Gallery Ethical Fundraising Policy**

#### **Introduction**

Founded in 1856, the aim of the National Portrait Gallery, London is 'to promote through the medium of portraits the appreciation and understanding of the men and women who have made and are making British history and culture, and to promote the appreciation and understanding of portraiture in all media'.

The National Portrait Gallery aims to be the foremost centre for the study of and research into portraiture, as well as making its work and activities of interest to as wide a range of visitors as possible.

#### **Rationale for Fundraising**

Like other national museums, the Gallery is supported both by government and by a growing number of individuals, companies, trusts and foundations. The Gallery actively seeks private donations and sponsorships to support core activities, as well as exhibitions, projects, and acquisitions.

In order to meet our current and future financial needs, it is recognised that the Gallery must be proactive and energetic in its approach to fundraising, seeking supporters of all kinds not only from within the UK but also internationally.

The Gallery aims to ensure that its fundraising activities are conducted with integrity, openness, respect and accountability. We have a responsibility to ensure donations are not accepted from questionable or inappropriate sources. We also have a responsibility to our current and prospective supporters, ensuring that their trust is not violated.

#### **Fundraising Practices**

The Gallery aims to be highly regarded by its supporters and to adhere to best practice in the solicitation and stewardship of supporters of all kinds.

In particular, the Gallery will ensure that:

- All fundraising solicitations are truthful and accurately describe the Gallery's activities and the intended use of donated funds
- All those involved in the solicitation of funds, including volunteers, act with fairness, integrity, and in accordance with all applicable laws
- Requests by current or prospective supporters to limit or cease solicitation or contact are respected and addressed promptly

Particular care and sensitivity will be shown in relation to legacies. Whilst it is ultimately the supporter's responsibility to consider the impact of any proposed gift on their family members, the Gallery will encourage prospective supporters to consider such implications and to seek independent advice

- No inappropriate benefit is secured in return for a gift
- Its fundraising activities meet the provisions of the Bribery Act and other relevant legislation intended to protect against bribery in respect of donations.
- Supporters' requests to remain anonymous will be respected as far as is legally, practically, and ethically possible.
- The privacy of supporters and prospective supporters is respected. Any supporter records that are maintained by the Gallery's Development Team will be kept confidential to the greatest extent possible. Records will not be shared within the Gallery nor with any third party.
- Requests from supporters and legators to allocate their donations to specific areas of Gallery activity are adhered to, wherever possible and appropriate. If necessary due to programme or organisational changes, alternative uses will be discussed where possible with the supporter or the supporter's legal representative. If the supporter is deceased or lacks mental capacity, and the Gallery is unable to contact a legal representative, the donation will be used in a manner that is as consistent as possible with the supporter's original intent.
- Any complaints by supporters or prospective supporters are addressed promptly. A designated member of the Development Team will attempt to satisfy the complainant's concerns in the first instance. A complainant who remains dissatisfied may request in writing a review of their complaint by the Deputy Director, and will be advised of the outcome of this review.
- The Director will be informed at least annually of the number, type, and disposition of complaints received from supporters or prospective supporters about matters that are addressed in this code.
- The cost effectiveness of the Gallery's fundraising programme will be regularly reviewed by the Senior Management Team and trustees.
- Supporters and prospective supporters are entitled to the following, promptly upon request:
  - the most recent annual report and financial statements;
  - confirmation of the exempt charitable status of the Gallery;
  - a copy of this policy.

## **Unacceptable Sources of Funding**

The Gallery considers each gift and sponsorship carefully, and recognises that there may be occasions when it would not be in the Gallery's best interests to accept funding.

The Gallery reserves the right to reject offers of support that meet any of the following criteria:

- Where support is known or suspected to derive from the proceeds of crime
- Where money laundering is suspected
- Where the supporting source is known or suspected to be closely associated with a regime known or suspected to be in violation of human rights
- Where support would impinge on the artistic or academic freedom of the Gallery or would otherwise compromise its status as an independent institution
- Where support would jeopardise existing and future relationships with other supporters and/or partners
- Where support is deemed to be in any other way in conflict with the objectives and values of the Gallery.
- Where insufficient information can be found about the identity, source of wealth, business interests or reputation of the donor

Unsubstantiated rumours or allegations will not necessarily prevent acceptance of support. However, the Gallery is mindful of the risk involved in accepting support or continuing negotiations which may cause significant potential damage to the Gallery's reputation.

The Gallery recognises the risks of accepting gifts without provenance. A truly anonymous donation, where the Gallery is only able to deal with an intermediary who will not identify the donor, consequently cannot be accepted.

Where the Gallery offers to name a building, room, post or other aspect of its activity in recognition of a particular supporter or gift, the Gallery reserves the right to withdraw such named recognition should it subsequently become apparent that there are significant reputational or ethical risks in maintaining such recognition as outlined above.

## **Risk Assessment**

The Gallery will undertake an initial risk assessment in relation to all prospective sponsors, partners, trusts, foundations, Portrait Circle members and other individuals proposing to make donations of £10,000 and above.

An initial screening will be undertaken by the relevant member of the Gallery's Development Team in accordance with an agreed checklist as devised and agreed by the Development Team, Deputy Director and Director. Publically available information will be reviewed with a particular focus on any activities which may be the source of ethical risk for the Gallery as outlined above. This screening will take place at the earliest possible stage and, ideally, prospective supporters will have been subject to a thorough review before discussions about possible gifts or sponsorships take place.

Should a prospective supporter be deemed to pose a possible risk, they will be referred to the Head of Development and/or the Head of Major Gifts & Appeals for further review. The Head of Development and/or the Head of Major Gifts & Appeals will make a recommendation to the Deputy Director and Director about how to proceed. Where necessary, further information and advice will be sought from third parties, such as professional search firms, international due diligence providers, and individual contacts who may have further knowledge of prospective supporters.

All prospective donations from new or existing supporters of more than £100,000 will be referred to the Deputy Director and Director for review along with a full research profile. They will seek the further advice and agreement of the Chairman and Trustees as appropriate.

Gifts of more than £500,000 and any gift where the Gallery offers to name a building, room, post or other aspect of its activity, will be subject to review by the Deputy Director, Director, Chairman and Board of Trustees.

Should concerns be raised under the guidelines above about a gift that has already been accepted, the Director, Deputy Director and, where appropriate, the Chairman and Trustees, will review whether it is appropriate to retain the gift.

[Name redacted within reproduction here]

Head of Major Donors & Appeals  
June 2015



## **Appendix 2**

### **Research Guidance (to accompany National Portrait Gallery Ethical Policy)**

#### **Background**

The Gallery reserves the right to reject offers of support that meet any of the following criteria:

- Where support is known or suspected to derive from the proceeds of crime
- Where accepting support could potentially constitute a crime under the Bribery Act 2010
- Where money laundering is suspected
- Where the supporting source is known or suspected to be closely associated with a regime known or suspected to be in violation of human rights
- Where support would impinge on the artistic or academic freedom of the Gallery or would otherwise compromise its status as an independent institution
- Where support would jeopardise existing and future relationships with other supporters and/or partners
- Where support is deemed to be in any other way in conflict with the objectives and values of the Gallery.
- Where insufficient information can be found about the identity, source of wealth, business interests or reputation of the donor

All members of the Development Team should be mindful of this criteria and have a responsibility to notify the Head of Development and/or the Head of Major Gifts & Appeals of any concerns they may have about existing and prospective supporters.

Should a prospect or supporter be deemed inappropriate in light of the criteria above, they should not be approached by any member of the team unless specifically agreed by the Head of Development and/or the Head of Major Gifts & Appeals.

Should a prospect or supporter be deemed inappropriate in light of the criteria above, team members should be particularly mindful to consider any associated individuals, trusts, and companies and to ensure that they are reviewed accordingly.

## **Risk Assessment**

In line with our Ethical Fundraising policy, an initial risk assessment should be undertaken on any prospective sponsor, partner, trust, foundation, Portrait Circle member or other individual proposing to make a donation of £10,000 and above.

This initial assessment should be undertaken by the member of the team who is proposing or in touch with the prospect, referred to henceforward as the 'Canvasser'. The canvasser will be supported in their research by the Individual Giving Manager, Catalyst & Appeals (the team's current lead for research) as well as the Head of Corporate Development and the Head of Major Gifts & Appeals.

An initial assessment should utilise publically available sources to assess the following:

### **For Individuals**

- Has the individual, their spouse or other close family member been subject to any criminal conviction or suspected of criminal activity?
- Has the individual, their spouse or other close family member been investigated for – or suspected of – fraud, money laundering, or tax evasion?
- Does the individual, their spouse or other close family member have any associations with regimes known or suspected to be in violation of human rights? This may include past regimes.
- Does the individual have the capacity to honour any pledges to the Gallery?
- Is the source of the individual's wealth apparent and legitimate?
- Are businesses relating to the individual solvent?
- Are any businesses relating to the individual of potential concern in relation to the guidance on companies below?
- Are trusts relating to the individual active and sufficiently capitalised?
- Are any trusts relating to the individual of potential concern in relation to the guidance on companies below?
- Has the individual, their spouse or other close family member been subject to adverse publicity which could expose the Gallery to reputational risk or jeopardise relationships with supporters and/or partners?

## **For Trusts and Foundations**

The Trust and Foundation team will conduct research into grant giving bodies using similar criteria to those set out for individuals. In the first instance for UK-based bodies the Charity Commission website enable the Gallery to get an instant profile – and whether they are compliant with the information they are required to submit to the Charity Commission, for example annual accounts.

For overseas grant giving bodies the Gallery will conduct desk research to identify level of support, and types of organisations supported. From this we can assess both the likelihood to give, as well as the legitimacy of the organisations supported.

All approaches to be made by the Trust and Foundations team will be reviewed by the Head of Major Gifts and Appeals and/ or the Head of Corporate Development prior to applications being submitted.

## **For Companies (including parent companies, subsidiaries or major partners, as appropriate)**

- Has there been any adverse publicity about the company in the press or media recently or in the less recent past (in the UK and/ or overseas)?
- Has any individual known to be connected to the company, including senior staff members or Board members been subject to adverse publicity recently or in the less recent past?
- Is there any past, recent, current or planned litigation against the company?
- Is the company primarily involved in the manufacture and/ or sale of firearms or tobacco or other proscribed sectors?
- Does the company, its Executive or non-Executive the Directors have any associations with regimes known or suspected to be in violation of human rights?
- Does the company generally have a good reputation in relation to corporate social responsibility (CSR)? Do they demonstrate a commitment to instituting and / or improving their CSR?
- Does the company have an evident equality and diversity policy?
- Does the company have a long track record and stable structure?
- Is the company publicly traded and does it issue annual reports and audited accounts?
- Does the company appear to have the financial capacity to honour any pledges to the Gallery?

- Are any individuals relating to the business of potential concern in relation to the guidance on individuals above?
- Are any trusts relating to the company of potential concern in relation to the guidance on trusts above?

Canvassers should err on the side of caution and refer any concerns to the Head of Corporate Development and/or the Head of Major Gifts & Appeals who will then decide whether to proceed with the prospect or undertake further investigation.

### **Useful Resources**

Sunday Times Richlist

[www.forbes.com/lists](http://www.forbes.com/lists)

[www.bloomberg.com/billionaires](http://www.bloomberg.com/billionaires)

<http://apps.charitycommission.gov.uk/Showcharity/RegisterOfCharities/registerhomepage.aspx>

Charity Commission guidance on due diligence:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/413719/CT-2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413719/CT-2.pdf)

<https://fdo.foundationcenter.org/>

[www.duedil.com](http://www.duedil.com)

[www.zoopla.co.uk](http://www.zoopla.co.uk)

[www.gov.uk/government/organisations/companies-house](http://www.gov.uk/government/organisations/companies-house)

[www.companycheck.co.uk](http://www.companycheck.co.uk)

<http://www.lse.co.uk/ShareNews.asp?shareprice=LSE>

<http://www.ft.com/companies>

<https://www.gov.uk/government/publications/bribery-act-2010-guidance>

National Portrait Gallery Anti Fraud Policy on the Gallery shared XX drive:  
[Link redacted in reproduction here]

### Statement on the Gallery's ethical approach to sponsorship and external partnerships

The National Portrait Gallery has a long-established history of working with various external funders to support the Gallery's work.

The Gallery actively seeks support from:

- **Individuals** (donations, memberships, legacies, bequests)
- **Trusts/Foundation**s (grants to support our work)
- **Companies** (sponsorship for exhibitions, project sponsorship, Corporate Membership, donations towards education/outreach work)

The combined value of this support is regularly in excess of £3m each year and therefore forms a large proportion of self-generated income.

### The Gallery's current approach to its funding partners

The great majority of support comes from partners with whom the Gallery has had a lengthy 'cultivation' process. During that process, the Gallery's Development team, Director and Deputy Directors, will get to know the individual, trust, foundation or company well. Key individuals will be met and research into the funder's history, structure and reputation is undertaken by the Gallery's Development team.

The only specific 'type' of corporate funder that the Gallery will currently not work with is a tobacco company. We also will not work with an alcohol brand or manufacturer if the project needing support is targeted towards young people (aged 18 and under).

The Development team assesses funders on a case-by-case basis, and for major funders (£10,000+) undertakes research (desk-based including internet searches and talking to peers within the arts and charitable field) into their reputation and status.

On occasions where a possible partnership with a company has raised questions and necessitated further research it has been agreed, following this process that they presented a very low-level risk of reputational damage to the Gallery and that on balance, the support that they were offering would enable the Gallery to meet its aims and objectives.

In recent years continuing sponsorship from BP (the company has sponsored the *BP Portrait Award* since 1990) has brought attention from environmental protest groups, and demonstrations have been staged on the Awards night or at the private view, and these groups – mainly Art Not Oil – have published written statements against the Gallery. The demonstrations have been peaceful and, for the most part, external to the Gallery.

BP has been immensely supportive to the Gallery and the long-term nature of their support – offering five years in any one contract period, recently renewed until 2018 – has allowed a stability to the Gallery's fundraising. BP continues to be an important arts sponsor more widely with its support to Tate, the British Museum and the Royal Opera House.

The Gallery does not make any comments on environmental issues and when asked to comment the press statement is:

The National Portrait Gallery, while principally supported by grant-in-aid from government, is pleased to work with a wide range of companies in support of its exhibitions and displays. The sponsorship of the annual *Portrait Award* by BP since 1990

and their support directly encourages the work of artists and helps gain wider recognition for them.

We are grateful to BP for their long term commitment, sharing the vision that our artistic programmes should be made available to the widest possible audience.

In addition to this, in 2011 a joint statement was produced with the Royal Opera House, Tate and British Museum which read:

The British Museum, National Portrait Gallery, Royal Opera House and Tate work with a wide range of companies who support the work of each organisation alongside government subsidy, commercial enterprise and philanthropy. The income generated through corporate partnerships is vital to the mixed economy of successful arts organisations and enables each of us to deliver a rich and vibrant cultural programme. BP has, for many years, made a very significant contribution to the arts and cultural life of this country including support for the Royal Opera House since 1988, the *BP Portrait Award* since 1990, Tate since 1990 and the British Museum since 1996.

The National Portrait Gallery will continue to monitor new and existing partnerships on a case by case basis.

## Appendix 4

Extract from National Portrait Gallery's Freedom of Information Act response (response made on the 21<sup>st</sup> December 2016):

**1.a. Whether a process of due diligence was undertaken when BP was first accepted as the Portrait Award's sponsor in 1990**

I can't confirm or deny if due diligence process took place as the Gallery have no records of this. I have included extract of Trustees Meeting Minutes since 1989 when discussion with BP started. Please see attached document titled: 'Extracts from Trustees Meeting Minutes related to BP Sponsorship and or Ethical Review.pdf'

## Appendix 5

Extract from National Portrait Gallery's Freedom of Information Act response (response made on the 21<sup>st</sup> December 2016):

**1.b. What steps that process of due diligence included and how that process was documented at the time.**

Because we have no records other than contract and exhibition files for the first BP Portrait Award, I'm unable to answer your questions.

**1.c. If that process of due diligence has been reviewed, revised, repeated or updated since 1990, taking into account new research and/or information about BP's business activity, corporate criminality or environmental damage, and the renewal of sponsorship contracts with BP.**

I have also included below a snapshot from our CRM system with Research Notes. However the research activity did not cover BP's business activity but rather covers corporate business engagement. Redaction made in accordance with section 40 of FOIA (Personal Data) + Data Protection Act.

## Appendix 6

Extract from National Portrait Gallery's Freedom of Information Act response (response made on the 21<sup>st</sup> December 2016):

**2.a. Was a specific process of due diligence exercised in relation to the renewal of BP's sponsorship? If so, what steps were undertaken?**

There is no ethics committee or other body that would specifically look after this matter. All departments and individuals involved in this partnership renewal worked in accordance with internal procedures and policies and the best interest of the Gallery and its public service.

The National Portrait Gallery has been following an internal process. For your reference, attached are the Ethical Fundraising Policy and Research Guidelines.

You have also asked if this has been reviewed by the board/board of trustees, and I would like to confirm that it has been reviewed during one of the Gallery's Board of Trustees Meeting, and you can see the meeting minutes in the link provided below:

<http://www.npg.org.uk/assets/files/pdf/trustees-meetings/tmNPG-763.pdf> March 2016.

Also for your reference I would like to provide you with a link to the Gallery's Corporate Support information available on our website <http://www.npg.org.uk/support/corporate.php>

## Appendix 7

Extract from National Portrait Gallery's Freedom of Information Act response (response made on the 1<sup>st</sup> March 2017):

Referring back to the Museums Association's *Code of Ethics*, it states that museums should 'exercise due diligence in order to understand the ethical standards of commercial partners with a view to maintaining public trust and integrity in all museum activities'.

Based on the information provided in your response to my request, it is my understanding that no research has been undertaken by the gallery in order to understand the ethical standards of BP or of the ethical issues related to, and impacts of, BP's business activity. Is this understanding correct?

**The Gallery had internal discussions about the BP contract renewal which were not minuted. The discussion was based on the existing relationship with this long term sponsor, success of previous projects and opportunities for the future. Gallery staff involved in the renewal process (Director, Deputy Director and Development team) have a detailed working knowledge of the content of the Ethical Fundraising Policy and Research Guidelines**



## Appendix 8

Extracts from Trustee Meeting Minutes provided by the National Portrait Gallery on 21<sup>st</sup> December 2016 in response to a Freedom of Information Act request

### **Extracts from Trustees Meeting Minutes related to BP Sponsorship and / or ethical review**

Redaction made under s.40 Personal Data + Data Protection Act

#### **763RD MEETING**

Minutes of the Meeting of the Trustees held at the National Portrait Gallery on Thursday 17 March 2016

<http://www.npg.org.uk/assets/files/pdf/trustees-meetings/tmNPG-763.pdf>

The Director reported that BP had recently announced its decision to cease funding to Tate. BP sought to renew funding the National Portrait Gallery for five years from 2018 and the Trustees were supportive of this.

#### **743rd MEETING**

Minutes of the Meeting of the Trustees held at the National Portrait Gallery on Thursday 17 February 2011

<http://www.npg.org.uk/assets/files/pdf/trustees-meetings/tmNPG-743.pdf>

The Director reported that the Thomas Lawrence exhibition had received really excellent reviews even though the attendance was less than predicted, perhaps influenced by the adverse weather before Christmas and competition from exhibitions at other galleries. There was no evidence that the ticket price had kept people away. The Director drew attention to the statement appended to his report on the Gallery's ethical approach to sponsorship and external partnerships. He said that BP had supported the Gallery for 21 years. The Trustees were not adverse to continuing the partnership since BP had been a very good sponsor.

#### **742nd MEETING**

Minutes of the Meeting of the Trustees held at the National Portrait Gallery on Thursday 21 October 2010

<http://www.npg.org.uk/assets/files/pdf/trustees-meetings/tmNPG-742.pdf>

The Director reported that he had visited Nick Clegg in his capacity as an ex-officio trustee and had set out the Gallery's current activities. The Chairman said that the BP Portrait Award had been very successful despite the adverse publicity around BP.

#### **741st MEETING**

Minutes of the Meeting of the Trustees held at the National Portrait Gallery on Thursday 1 July 2010

<http://www.npg.org.uk/assets/files/pdf/trustees-meetings/tmNPG-741.pdf>

The Director reported on the successful opening of the BP Portrait Award and on the current interest in BP's sponsorship, following events in the Gulf of Mexico. BP had sponsored the Portrait Award for 21 years, a remarkably consistent act of support for any sponsor. There had been some press coverage of BP's role as an arts sponsor, and especially of protests at Tate. The Gallery has kept to a joint statement, prepared with other arts institutions supported by BP.

The Chairman set the long-term benefits of BP's support against the risk of damage to reputation, as recorded in the Gallery's risk register. The current agreement on sponsorship continues to 2012. We would want in any case to review the format of the Portrait Award exhibition and, as part of this, the Gallery would also be entering into discussions on sponsorship at an appropriate time. Trustees highlighted the need for a short and medium term press strategy, both proactive and contingent; the differences between wider public opinion and that of environmentalists; and the need to keep in unison with other arts organisations supported by BP.

#### **740th MEETING**

Minutes of the Meeting of the Trustees held at the National Portrait Gallery on Thursday 20 May 2010

<http://www.npg.org.uk/assets/files/pdf/trustees-meetings/tmNPG-740.pdf>

Further discussion focused on the value of regular staff surveys, the development of the disaster recovery plan and the risks associated with receiving sponsorship from BP at the present time.

David Ross drew attention to the Risk Management Annual Report, in particular to the significant areas of risk for 2010-11. On the Annual Review of Risk Appetite, Trustees were content to continue with the present risk appetite framework and the evaluation criteria.