

Cheltenham Borough Council

Council – 12 December 2011

Representation on Certain Charitable Trusts

Accountable member	Cabinet Member Corporate Services, Councillor Colin Hay
Accountable officer	Director Commissioning
Accountable scrutiny committee	Economy and Business Improvement
Ward(s) affected	None
Significant Decision	No
Executive summary	<p>The Council nominates trustees to 4 Charitable Trusts (Hays Trust Fund and the Caroline Strickland Homes, which provide almshouses at Naunton Park and Hales Road respectively, and the Turner Long Fund and the Walker Memorial Trust, which both provide for the grant of small sums of money to the elderly).</p> <p>The management of these four Trusts (who are separate legal entities, and whose accounts and records have to be maintained separately from the Council's, and in accordance with Charity Commission requirements) is outside the course of the Council's usual business, and imposes a substantial administrative burden both upon the nominated Members and upon Council staff.</p> <p>Discussions have therefore been taking place with the Cheltenham Family Welfare Association (CFWA) with a view to the CFWA taking over the administrative role in respect of the four Charities. The CFWA also has the necessary expertise to ensure the almshouse trusts are managed according to the high standards required for Almshouse management. The CFWA has expressed a willingness to do so, but as a condition of so doing requires the power of appointment of trustees to be consistent with the other charitable trusts the CFWA manages.</p> <p>This requirement will mean that the Council will surrender its rights to nominate trustees in the future, and that the Mayor will no longer be an ex-officio Trustee on any of the above named charities.</p>
Recommendations	<p>Council RESOLVES THAT:</p> <ol style="list-style-type: none">(1) It consents to the amendment of the Schemes to the Hays Trust Fund, the Caroline Strickland Homes, the Turner Long Fund and the Walker Memorial Trust whereby the Council will no longer have power to nominate Trustees to those charities; and(2) It consents to the amendment of the Schemes to the Hays Trust Fund, the Caroline Strickland Homes, the Turner Long Fund and the Walker Memorial Trust whereby the Mayor of Cheltenham Borough Council will no longer be an ex-officio Trustee of those charities.

Financial implications	There are no financial implications to report. This will however free up member and officer time which was provided to administrate the Charitable Trusts. Contact officer: Andrew Sherbourne, andrew.sherbourne@cheltenham.gov.uk, 01242 264337
Legal implications	Contained within the Report Contact officer: Rose Gemmell, rose.gemmell@tewkesbury.gov.uk, 01684 272014
HR implications (including learning and organisational development)	None arising as a direct result of this report. Contact officer: Julie Mcarthy, HR Operations Manager julie.mccarthy@cheltenham.gov.uk 01242 26 4355
Key risks	None
Corporate and community plan Implications	None
Environmental and climate change implications	None

1. Background

- 1.1 The Council has the right to nominate trustees to a number of registered charities. A number of these charities date back many years, pre-dating modern provision for relief of poverty and accommodation for the elderly.
- 1.2 The four charities the subject of this Report are:

Hays Trust Fund

This was established in 1899, and provides 12 almshouses for occupation by “aged or infirm persons” who are inhabitants of the parish of Cheltenham.

The Trustees are:

- The Rector of the Parish of St Mary the Virgin with St Matthew, Cheltenham;
- The Mayor of Cheltenham Borough Council;
- 5 other trustees who nominated by Cheltenham Borough Council, but need not be Members of Cheltenham Borough Council.

The Caroline Strickland Homes

The Charity was established in 1911, and provides 5 almshouses for “poor persons who are resident in the Borough of Cheltenham at the time of appointment”.

The Trustees are:

- The Mayor of Cheltenham Borough Council
- 4 other trustees who are nominated by Cheltenham Borough Council, but need not be Members of Cheltenham Borough Council; and
- 2 co-opted trustees.

Turner Long Fund

This Charity was established in 1944, and provides for the relief of financial hardship of elderly people living within the Cheltenham borough boundaries by making grants of money. The grants made are small: the last payments were £100 to each of approximately 20 applicants.

The Trustees are:

- The Mayor of Cheltenham Borough Council;
- 5 other trustees who nominated by Cheltenham Borough Council, but need not be Members of Cheltenham Borough Council.

Walker Memorial Trust.

The Charity was established in 1878, and makes grants on the same terms as the Turner Long Fund. The last payments were £100 to approximately 7 - 10 applicants.

The nomination of Trustees is the same as for the Turner Long Fund.

- 1.3** The provision of Almshouses is outside the usual business of the Council, especially as (with the establishment of Cheltenham Borough Homes) the management of the properties is outside the scope of in-house repair and management services.

Similarly, the allocation of small grants made under the Turner Long and Walker Memorial Charities is also outside the usual scope of the Council's business.

The result is that both the Members who are appointed to the Trusts, and the Officers who (by default) have been dealing with the administration, are expending considerable amounts of time on Trust business. The Trusts themselves, although separate legal entities, have no staff employed by them and are entirely dependent upon input by Members and Council staff to ensure their continued operation.

Discussions have taken place with the Cheltenham Family Welfare Association. The Association is a registered Charity whose activities are (1) the administration of two almshouse charities in Cheltenham, and (2) the administration of charitable funds to assist persons and families in financial difficulties due to sickness or unemployment. The Association employs staff to deal with the management of the Charities under its auspices, who are experienced in the day-to-day running of charities very similar to the four charities the subject of this report. Major refurbishment work is required to both sets of almshouses and the CFWA have experience of this type of work with their existing almshouses.

The Association has indicated that it is willing to take over the administration of the four Council charities, but would require each of the Charities to change their constitution ("the Scheme" approved by the Charity Commission) to match that of the Association's existing charities.

The proposed new Trustee appointments would be as follows:

1. Appointment of Trustees

- a. There must be at least four trustees. Every trustee must be appointed by a resolution of the trustees passed as a special meeting.
- b. In selecting individuals for appointment as trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration of the charity.
- c. The trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each trustee.

- d. The trustees must make available to each new trustee, on his or her first appointment:
 - i. a copy of the deed of trust dated [*as relevant for each charity*] and any amendments made to it;
 - ii. a copy of the Charity's latest report and statement of accounts.

2. Eligibility for trusteeship

- a. No one shall be appointed as a trustee:
 - i. if he or she is under the age of 18 years; or
 - ii. if he or she would at once be disqualified from office under the provisions clause 6 as aforesaid.
- b. No one shall be entitled to act as a trustee whether on appointment or on any re-appointment as trustee until he or she has expressly acknowledged, in whatever way the Trustees decide, his or her acceptance of the office of trustee of the charity.

3. Termination of trusteeship

- a. A trustee shall cease to hold office if he or she:
 - i. is disqualified for acting as a trustee by virtue of section 72 of the Charities Act 1993 or any statutory re-enactment or modification of that provision;
 - ii. becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs;
 - iii. is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or
 - iv. notifies to the trustees a wish to resign (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).

4. Vacancies

- a. If a vacancy occurs the trustees must note the fact in the minutes of their next meeting. Any eligible trustee may be reappointed. So long as there are fewer than four trustees, none of the powers or discretions conferred by this deed or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

The Charity Commission will require the consent of those currently empowered to nominate Trustees to the four Trusts before they approve the new Scheme for the charities.

2. Reasons for recommendations

2.1 The transfer of responsibilities to CFWA will:

- Provide management and administration which is geared to the specialised needs of the respective trusts and the inhabitants of the almshouses;
- Enable the refurbishment of both sets of almshouses to take place under the expert management of CFWA.

- Relieve Members of obligations which are not directly related to the Council's business;
- Free up Officer time

2.2 Therefore, the recommendations regarding appointments will enable the CFWA to take on the management and administration of the trusts.

3. Alternative options considered

3.1 The possibility of retaining the Trusts under the management and control of the Council has been considered, but rejected due to the circumstances set out in paragraph 1.3.

4. Consultation and feedback

4.1 Consultation has taken place with the residents of both sets of Almshouses through newsletters, meetings and site visits.

5. Performance management –monitoring and review

5.1 Subject to the Council's consent as to the removal of the Mayor and the nominative trustees for the above charities at the meeting on 12 December, a meeting of the trustees will then be convened to change the governing documents for each charity. The appropriate trustees need to pass the above resolutions at a properly constituted meeting with at least a quorum of the trustees present and in agreement. Once passed and the resolutions signed, these will be submitted to the Charity Commission so that they can update their records.

5.2 Once the Charity Commission have confirmed receipt of the resolutions then the appropriate trustees will be able to retire and the CFWA will be able to be appoint their own trustees. It is planned that Councillor Garth Barnes and Carol Wallace, currently Chair and Vice-chair of the Trustees of all four charities will remain as trustees to ensure continuity and that the interests of the trusts are met under the new arrangements.

5.3 The handover from officers in Finance and Democratic Services to CFWA is planned to take place in the New Year and the aim will be for the complete handover to be completed by 31 March 2012.

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Appendices	1. Risk Assessment
Background information	1. None

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-4	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the council does not have the resources with the right levels of skills and expertise they may not be able to support the administration of the trusts to the appropriate high standards		July 2010	3	3	12	Reduce	Utilise the skills and expertise to bring about the transfer to CFWA		Rosalind Reeves DSM	
	If the handover to CFWA is not completed successfully there could be dissatisfaction from residents and a reputational risk to the council	Trustees CFWA	July 2010	3	3	9	Manage	Ensure some continuity of trustees under the new arrangement. Communicate with residents throughout the transition and emphasise the future benefits to residents that CFWA management will provide.		Rosalind Reeves DSM	
	If the transfer to CFWA does not go ahead the council may not be in a position to manage the refurbishment work needed to both sets of almshouses.			4	3	12	Reduce	Enable the expertise of CFWA to be utilised by completing the transfer		Rosalind Reeves DSM	

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-4 (4 being the greatest impact)

Likelihood – how likely is it that the risk will occur on a scale of 1-6 (6 being most likely)

Impact Description	Impact score		Probability	Likelihood Description	Likelihood Score
Negligible	<u>1</u>		0% - 5%	Almost impossible	<u>1</u>
Marginal	<u>2</u>		5% - 15%	Very low	<u>2</u>
Major	<u>3</u>		15% - 30%	Low	<u>3</u>
Critical	<u>4</u>		30% - 60%	Significant	<u>4</u>
			60% - 90%	High	<u>5</u>
			> 90%	Very high	<u>6</u>

Control - Either: Reduce / Accept / Transfer to 3rd party / Close