

**Audit and Standards Committee – Monday 16 September 2013  
County Council – Thursday 10 October 2013**

**Proposed Changes to the Constitution –  
Establishment of a Charities and Trusts Committee**

**1. Recommendations**

1.1 That Council be recommended to:

- (a) approve the establishment of a Charities and Trusts Committee comprising 5 members (not to include Cabinet members) with delegated powers to make decisions on all matters relating to the Charities and Trusts for which the County Council is a Trustee
- (b) approve the draft Terms of Reference for the Committee shown at Appendix 3 to this report
- (c) to approve the following additions to the Scheme of Delegation to officers:
  - To the Director of Finance and Resources to make decisions on the management of all Funds held by Charities and Trusts for which the County Council is a Trustee
  - To all members of the Senior Leadership Team to implement decisions made by or on behalf of the County Council in its capacity of Trustee of any charity or Trust
- (d) Approve the necessary amendments to the Constitution.

**Report of the Director for Democracy, Law and Transformation**

**2. Background**

- 2.1 A charity is an organisation established exclusively for purposes which are charitable and for the public benefit. Members of governing bodies of charities are Trustees with ultimate responsibility for the day to day management of assets (funds, land, property) left for the benefit of the public.
- 2.2 Due to a combination of numerous historic events and circumstances the County Council is a Trustee of a wide variety of charities and trusts involving funds, land or property or any combination of those 3. A list of those Charities and Trusts which are currently known to officers is

shown at Appendix 2. It is accepted that this list might not be exhaustive and may need to be updated in future as issues come to light.

2.3 Until recently the administration of Charities and Trusts has, in the main, been low key generally involving the monitoring of investments made on their behalf and the submission of annual returns as required by the Charity Commission. Of late the position is changing as the County Council increases it's involvement in land transactions (eg transfers of land to Academies, sale of surplus assets connected to County Council land). Some of these transactions have proven complicated where small parcels of the land involved have been found to be owned by a charity or trust. This has brought to the fore the need for a proper decision making mechanism for the County Councils Sole Trustee responsibilities.

### **3. Charity Commission Guidance**

3.1 Guidance jointly issued by the Local Government Association and the Charity Commission ('Councillors Guide') stresses the importance of clear decision making processes to provide transparency and protect the finances of the Charitable Trust and reputation of the local authority. They also emphasise the requirement for decision making arrangements to be entirely separate from the local authority's own arrangements given that when acting as Trustees members have different legal duties, rights and responsibilities and are required to act entirely in the interest of the Charity and its beneficiaries.

### **4. Charities and Trusts Committee**

4.1 Whilst the Guidance includes reference to full Councils holding separate meetings to discharge their Trustee responsibilities it also suggests that a more practical approach is the establishment of a separate Charities and Trusts Committee. As for any other Committee, it is open to members to determine the extent to which powers should be delegated to the Committee however for practical purposes it would be preferable for the Committee to have full delegated powers to make decisions on and administer all matters relating to Charities and Trust for which the County Council is a Trustee.

4.2 In recognition of the County Councils ultimate responsibility for the Charities and Trusts an annual report on matters considered by the Committee could be submitted to full council.

4.3 Examples of the scale and type of decision which the Committee might be asked to make are:

#### **4.3.1 *Financial***

(a) to establish a general policy to uphold, and to make decisions on the investments taken by the charities

(b) to decide on the merging and closing of each charity

(c) to establish a policy that will make decisions in respect of the service charges for each charity. As smaller charities are unable to support the charges,

(d) to oversee and approve the year end accounts

(e) to establish delegated powers for day to day management of charities

#### 4.3.2. *Legal/Property*

(a) the use of charity land, endowments and grants in accordance with the objects of the relevant trust deed;

(b) the amendment of a trust deed or current trust scheme in order to alter the objects of the charity;

(c) the “disposal” of charity land including, but not limited to, all decisions relating to the sale of a parcel of land, the granting of leases and/or licences over such land, the granting of easements over such land and the obtaining of a Charity Commission Order confirming the Commission’s consent to that particular disposal;

(d) the day to day property management of charity land; and,

(e) any other miscellaneous property matters that may arise from time to time and which relate to charity land.

### **4.4. Membership and frequency of meetings**

4.4.1 Given the potentially specialised nature of reports to the Committee it is suggested that it’s membership be limited to 5 members – mirroring the Panels already listed in the Constitution. To avoid conflict of interest (eg on land transactions) it is recommended that the membership does NOT include any cabinet member.

4.4.2. The frequency with which the Committee would be required to meet is uncertain therefore it is proposed that 2 meetings per annum be formally calendared with other meetings convened as and when required. Meetings would be administered by Member and Democratic Services and supported by officers from other service areas as required. Training would be key and would be provided in a timely manner to ensure that members had sufficient knowledge of a subject to be confident in their decision making.

## **5. Delegations to Officers**

- 5.1. As mentioned above much of the Trustee activity for charities and Trusts relates to day to day management of funds invested. To date due to the absence of specific authority to include funds in his treasury management activity the Director of Finance and Resources has been unable to maximise their investment potential. It is therefore proposed that the Scheme of Delegation to Officers be amended to include authority for the Director of Finance and Resources to make all decisions relating to the day to day investment and management of those funds.
  
- 5.2. Senior Leadership Team members have delegated authority to take all steps to implement decisions of the county council. In view of the fact that the Committee would be making decisions as Trustees rather than Councillors it is recommended that an additional delegation be added to the Scheme of Delegation to officers to grant all Senior Leadership Team members authority to implement decision made by or on behalf of the County Council in its capacity as a Trustee of any charity or trust.

## **Appendix 1**

### **1.0. Equalities Implications**

None

### **2.0. Legal Implications**

Each Charity and Trust is a separate legal entity and completely independent of the County Council; . It is important that they are treated as such when their affairs are being administered.

### **3.0 Resource and Value for Money Implications**

Costs will relate to the administration of, and support for, the Committee.

### **4.0 Risk Implications**

Improvements to the decision making processes in relation to charity and trust issues will reduce the potential for legal challenge to action taken on behalf of the County Council

Report Author:

Author's name: Julie Plant  
Telephone No: (01785) 276135  
e-mail: Julie.plant@staffordshire.gov.uk



Main Name	Notes
BREWOD EDUCATIONAL CHARITY	Brewood Grammar School & Brewood Middle School
BREWOD MIDDLE SCHOOL CHARITY	Brewood Grammar School & Brewood Middle School
KING EDWARD VI HIGH SCHOOL, LICHFIELD	King Edward VI High School, Lichfield
STAFFORD EDUCATIONAL ENDOWMENT CHARITY	Chetwyn Centre
STAFFORDSHIRE COUNTY COUNCIL CHARITY FUND	Grants to organisations and individuals
THE QUEEN ELIZABETH'S MERCIAN SCHOOL	
THOMAS ALLEYNE'S HIGH SCHOOL FUND	Provision of prizes and awards, contributions and financial assistance
THOMAS RUSSELL'S FOUNDATION	Grants to organisations and individuals
THE RUGELEY EDUCATIONAL ENDOWMENT	Grants to organisations and individuals
DOSTHILL PLAING FIELD AND RECREATION GROUND	Provides buildings/facilities/open space
TAMWORTH YOUTH CENTRE FUND	Provides buildings/facilities/open space
ALLEYNES GRAMMAR SCHOOL STONE	Grants to organisations and individuals
NICHOLSON INSTITUTE	Provides buildings/facilities/open
ALLEYNE'S HIGH SCHOOL	Grants to organisations and individuals

## **Charities and Trusts Committee**

### **Terms of Reference**

To exercise those powers and duties held by the County Council in its capacity as a Trustee for Charities and Trusts registered with the Charity Commission and recording the County Council as a Trustee.

*Specifically but not exclusively to:*

- a approve annual reports and accounts
- b approve Charity Commission returns and other regulatory documents
- c Respond to enquiries from auditors and independent examiners
- d to make decisions on the use/disposal of charity property and assets
- e to oversee the management of any Charity and Trust for which the County Council is a Trustee
- f To act as the accountable manager for, and take all necessary administrative decisions on any Charity and Trust for which the County Council is the a Trustee
- g To compile and maintain an up to date list of Charities and Trusts for which the County Council is a Trustee
- h To take any other action required to ensure the proper management and administration of Charities and Trusts for which the County Council is a Trustee.
- i To report annually to the full County Council on decision made on its behalf.

### **Membership**

The Committee shall comprise 5 members (Cabinet members shall not be eligible for appointment to this Committee).

### **Frequency of Meetings**

The Committee shall hold a minimum of 2 meetings per municipal year. Additional meetings to be held as and when required.