

Terms of reference for a Charitable Trust Board

Background

A Charitable Trust can be established by a benefactor in their lifetime through a deed of trust or after their death through their will. Charitable Trusts have a charitable purpose as defined by the Charities Act and exist for the benefit of the public.

The Council's current responsibilities

The Council is responsible for the Trust detailed in Schedule 1, namely the Alice Park Trust having been appointed as sole Trustee by a Charity Commission Scheme in 1973, but subject to clarification of the status of the Trusts in Schedule 2. The legal basis and management responsibility for the Trusts listed in Schedule 2 are either independently managed but the land is owned/held by the Council or the Council's responsibility for management has still to be determined.

Governance principles

The constitution of a charitable trust is called its governing document. This will derive from the provisions of the original trust deed or will. It will specify the charitable purpose (objects) of the trust and set out arrangements for its governance and administration. Trust law completes the governance framework for Trusts, providing certain statutory powers for trustees. The Charity Commission is the regulator for charitable Trusts and their operation.

As the trustee, the Council's role is to provide leadership and direction for the charity in line with its governing documents. Its overriding duty is to act in the best interests of the charity at all times. In this role, the Council must not be influenced by the interests of other parties or organisations (including the Council as a whole). It must make independent decisions and be seen to do so.

Without specific arrangements in place, it is difficult to distinguish the role of trustee for the charity from that of managing the wider Council. The creation of a Charitable Trust Board, concerned solely with the interests of the charity Trusts, would facilitate the separation of these roles. The Charity Commission has indicated that it would regard such an arrangement as a satisfactory way forward.

Proposed Charitable Trust Board

It is important to remember that the Council corporately is the trustee of the charitable trust (Schedule 1). This structure cannot be changed by the Council.

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The Charitable Trust Board will be a committee of the Council and members of a Charitable Trust Board would not be trustees but nominated councillors (and possibly others who are co-opted onto it) which shall have delegated to it the operational management of the charitable trust (Schedule1) but with the Council as trustee retaining overall responsibility for the charity and its affairs.

Charities exist to provide benefit to the public and any Trust Board should fulfil the requirements of public accountability. This is principally achieved through the reporting regime and by making information publicly available. As a committee of the council the Trust Board would be subject to the Council's full range of procedures for Council committees and meetings

A Trust Board would be expected to be well informed about the needs and wishes of its beneficiaries. To achieve this end it could engage with interest groups and representatives of local residents and undertake consultation on plans and significant projects.

It would be possible to include in a Trust Board one or more individuals from outside the Council. Such a person could bring relevant skills or experience to the Board but the over-riding requirement would be that they apply independent and objective consideration in the best interests of the trust. Representatives of special interest or residents groups would not be appropriate because of the potential for conflicts of interest.

Since the Council is the sole trustee of the charities listed in Schedule 1 it could only delegate powers to a committee of the Council, i.e. a group of councillors. An independent person co-opted onto the Board would not have voting rights.

In the light of the above, it is considered that a Trust Board created as a committee of the council and consisting of a small number of councillors plus an independent person would be an appropriate arrangement. Constitutionally, the Board would create a sub-committee to manage each of the charities listed in Schedule 1 and act as an advisory board to the Council in respect of the charities listed in schedule 2.

The Council is responsible for a number of other charitable Trusts within its area (see Schedule 2). These are typically areas of open land or buildings. In most cases, the Council is the sole trustee, responsible for both managing the trust and holding the title to the land. In some cases, the title of the land is held by the Official Custodian. In the case of the Recreation Ground, the Council holds the title of the land but its management is the responsibility of an independent trustee body. Where possible and subject to further changes to the proposed ToR below the Board and sub-committees will have delegated to it/them the operational management functions in respect of those Trusts listed in Schedule 1 or where that is not possible will act in an advisory role to the Council in respect of those Trusts listed in Schedule 2

Proposed terms of reference

The purpose of the Charitable Trust Board is to facilitate the management of the charitable Trust for which the Council is the sole trustee; independently, in accordance with their governing documents and in the best interests of the charity.

In respect of the charities listed in Schedule 1 the Charitable Trust Board shall have the following powers delegated to it.

The Role of the Board is to exercise the powers delegated to it for the management of the trust, namely;

- to manage the charity in pursuit of the charitable purposes,
- to manage the finances of the charity and ensure its solvency,
- to ensure the charity acts within the governing documents,
- to ensure the charity deals with their regulatory and public accountability obligations, and
- to identify and manage potential conflicts of interest.

In respect of the charities listed in Schedule 2 the Charitable Trust Board shall investigate the governing documents of each charity and recommend to Council the inclusion of any Charity suitable for incorporation into Schedule 1 and until such time as the Council decides to delegate its functions in respect of such Trust to the Charitable Trust Board it shall advise the Council as trustee on;

- the strategic direction of those Trusts,
- the financial resources needed to operate those Trusts;

The Charitable Trust Board shall, in respect of all Trusts, ensure compliance with the Charity Commissions registration and reporting requirements and periodically consider if Trust's assets could be consolidated and more efficiently /effectively used in conjunction with another Trust. Where appropriate it should consult on consolidation proposals with the Charity Commission and interested parties and make any recommendations for consolidation in its annual report to Council.

The Board will comprise:

- Five councillors
(to include the Cabinet member responsible for Community Services and at least one councillor who is not a member of the controlling group but who's appointment is determined by the controlling group), and
- One independent person with suitable skills, experience or interests to be appointed by the Board from applicants who wish to be considered following advertisement of the role.

The Board will elect a Chair and Vice-Chair. Decisions will be by a majority of the councillors present. Quorum will be three councillors.

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The Board shall have the power to create a sub-committee for each charity listed in Schedule 1 to ensure that each charity shall be separately administered. Each sub-committee shall consist of at least 3 councillors and co-opted non-voting members consisting of the ward councillor(s) for the area where any land subject to the Trust is situated and any other non-voting members who may be able to assist it in its work. The Trust Board and each sub-committee shall undertake its duties through meetings as required and will meet at least twice annually.

In any meeting, the affairs of each Trust will be considered separately and in relation to the purpose and governing document of each Trust.

Each sub-committee will report annually to the Trust Board after submitting any annual report to the Charity Commissioners and the Trust Board shall thereafter provide an annual report to Council on the financial standing of each Trust and update the Council on the work undertaken by each Trust in the preceding year

Support for the Board and sub-committees as necessary will be provided through the relevant Council sections. Lead advisors will be identified for each charitable Trust in Schedule 1.

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Schedule 1
Charitable Trust for which the Council is sole trustee

The Alice Park

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Schedule 2
Charitable Trust for which the Council is responsible

Weston Recreation Ground
4, The Circus
Firs Field
Free Fields (Rainbow Woods)
Beechen Cliff
Newbridge Meadows (Queen Elizabeth the Second Fields)
Blackstones
Innox Park
Post Office Museum
Former Radstock Infant School