

Bath & North East Somerset Council		
MEETING	Charitable Trust Board	
MEETING	4 October 2016	
TITLE:	To report to the CTB the investigation into the Charity of Frances Georgina Cooke (charity number 266101) re No.4 Circus	
WARD:	Abbey	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1: Briefing note ‘4 Circus and the Charity of Frances Georgina Cooke’ (2013)		
Appendix 2: Charity Commission Scheme (1997)		

1 THE ISSUE

- 1.1 The Council created the Charitable Trust Board to discharge its functions in respect of charities for which it is the sole corporate trustee to ensure the clear separation of the Council's interest as sole trustee of those charities and the Council's interests as a Local Authority.
- 1.2 The Charity of Frances Georgina Cooke (charity number 266101) re 4 The Circus is a charity for which the Council is not a sole Corporate Trustee. The Scheme of arrangement for the charity provides for 4 trustees. The Trust has operated successfully to date but now requires additional trustees. There is no requirement to remove this Charity from Schedule 2 of the Board's Terms of Reference and the Board will in future receive an annual report to update it on the work of the trust in the preceding year.

2 RECOMMENDATION

- 2.1 To request the Board to nominate additional trustees to support the charity.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The Frances Georgina Cooke Charity is a registered Charity. Its only asset is the property No.4 Circus but it has no other resources. It is an established charity with trustees nominated by the Council already supporting its work. The Charity will continue to be resourced and supported by officers to undertake these functions.

- 3.2 The house is managed by Heritage Services, for which there is an operating budget of £34,120. Maintenance is undertaken through the Council's Project Delivery Team at a cost of £19,960 in 2016/17. These costs are partly offset by a rental income of £24,790 from Bath Spa University in 2016/17. The terms of a new lease, under which the University will take on more of the running costs and pay a revised level of rent, is currently the subject of negotiation between the Council's Estates Team and the University.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Terms of Reference require the Board to consider the properties listed in Schedule 2 of its Terms of Reference and recommend to Council incorporation of Trusts into Schedule 1 where the Council is sole corporate trustee. That is not required in the case of this Charity.

5. THE REPORT

- 5.1 No.4 Circus is a mid-eighteenth-century town house set within the south-west segment of the Circus, the first of the three segments to be built. It was designed by John Wood the Elder (who died in 1754 before its completion) and built by his son John Wood the Younger. No.4 was completed in 1760. The house is Grade I listed.
- 5.2 In 1958 Mr. Charles Allan Cooke and his wife Frances Georgina Cooke made mutual wills leaving their house, 4 Circus, to the survivor for life and, thereafter, to the Bath Preservation Trust (BPT). In 1960 Mr. Cooke died. At odds with the intention set out in the mutual wills signed by the Cookes, Mrs. Cooke approached Bath City Council (BCC) with a view to the Council taking over 4 Circus to make it available to the general public and, in particular, as a Georgian exhibition house. Discussions took place between BCC and BPT as to the situation which would arise on Mrs. Cooke's death and whether BPT would be prepared to take the house on lease from BCC for the use intended by her late husband. BPT eventually decided that it would not contest the passing of the house to BCC and renounced all claim on it, particularly as they had recently acquired the more suitable No.1 Royal Crescent to develop as a Georgian exhibition house.
- 5.3 In 1970 Mrs. Cooke died. In the absence of a joint scheme between BCC and BPT to realise the wishes of her late husband, the matter passed to the Official Custodian for Charities. In December 1973 the Charity Commissioners for England and Wales ('the Charity Commission') published a Scheme for a charity in the name of Frances Georgina Cooke.
- 5.4 The Charity Commission's Scheme requires the Council to appoint up to four trustees to the Charity. The trustees need not be, but invariably are, elected members of the local authority. The most recent trustees, all elected members of this authority, were:
- Councillor Paul Crossley;
 - Councillor Katie Hall;
 - Councillor Brian Webber;

- Councillor Malcolm Lees.

- 5.5 Councillor Brian Webber, resigned as a trustee after last May's elections when he was not returned to Council. Councillors Hall and Lees also left the Council; however under Charity Law nominees remain trustees for up to four years after ceasing to be part of the nominating body or until the Council replaces them. Councillor Crossley is therefore the sole remaining trustee.
- 5.6 New trustees need to be in place to approve a new sub-lease to Bath Spa University. The proposed terms provide for a lease ending early in 2019 which coincides with the end of the lease from the Trust to the Council, and one of the first tasks for the new trustees will be to consider what happens after this date.
- 5.7 Further details regarding the Frances Georgina Cooke Charity can be found in the briefing note attached at Appendix 1.

6 RATIONALE

- 6.1 There is no requirement to create a sub-committee to manage the Frances Georgina Cooke Charity. The charity is properly managed pursuant to the Charity Commission's Scheme; it can demonstrate that the Council is not a sole corporate trustee and the assets of the Trust are separately managed from the assets of the Council. However, the Charity does require new trustees to be nominated by the Council to provide continuity for the Charity.

7 OTHER OPTIONS CONSIDERED

- 7.1 None.

8 CONSULTATION

- 8.1 The monitoring Officer and s151 Officer have been consulted during the preparation of this report.

9 RISK MANAGEMENT

- 9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	Stephen Bird, Head of Heritage Services (01225) 477750
Background papers	<i>None</i>
Please contact the report author if you need to access this report in an alternative format	

Appendix 1

Briefing Note:

4 Circus and the Charity of Frances Georgina Cooke (charity number 266101)
August 2013

4 Circus is a mid-eighteenth-century town house set within the south-west segment of the Circus, the first of the three segments to be built. It was designed by John Wood the Elder (who died in 1754 before its completion) and built by his son John Wood the Younger. No.4 was completed in 1760. The house is Grade I listed.

1. Background to the Charity.

- 1.1 In 1958 Mr. Charles Allan Cooke and his wife Frances Georgina Cooke made mutual wills leaving their house, 4 Circus, to the survivor for life and, thereafter, to the Bath Preservation Trust (BPT).
- 1.2 In 1960 Mr. Cooke died. At odds with the intention set out in the mutual wills signed by the Cookes, Mrs. Cooke approached Bath City Council (BCC) with a view to the Council taking over 4 Circus to make it available to the general public and, in particular, as a Georgian exhibition house.
- 1.3 Discussions took place between BCC and BPT as to the situation which would arise on Mrs. Cooke's death and whether BPT would be prepared to take the house on lease from BCC for the use intended by her late husband. BPT eventually decided that it would not contest the passing of the house to BCC and renounced all claim on it, particularly as they had recently acquired the more suitable No.1 Royal Crescent to develop as a Georgian exhibition house.
- 1.4 BCC considered converting the house for housing purposes but decided that it would be better used as a much-needed adjunct to the Museum of Costume which, at that time, lacked space in the Assembly Rooms for storage, public research and study purposes.
- 1.5 In 1970 Mrs. Cooke died. In the absence of a joint scheme between BCC and BPT to realise the wishes of her late husband, the matter passed to the Official Custodian for Charities. In December 1973 the Charity Commissioners for England and Wales ('the Charity Commission') published a Scheme for a charity in the name of Frances Georgina Cooke.

2. The Charity of Frances Georgina Cooke.

- 2.1 The Charity Commission's Scheme required the Council to appoint up to four trustees to the Charity. These do not have to be, but to date invariably have been, elected members of the local authority. At the time of writing the trustees are

- Councillor Paul Crossley;
- Councillor Katie Hall;
- Councillor Malcolm Lees;
- Councillor Brian Webber.

2.2 The Trust's sole asset is 4 Circus. It has no funds and no staff of its own and is wholly administered by the Council, which maintains the building.

2.3 The Object of the Charity is

"The preservation and exhibition to the public of the building on the said land as a place of architectural and historic interest."

2.4 A Scheme drawn up by the Charity Commission in 1973 permitted the Trustees to grant a lease to BCC

"For purposes not inconsistent with the Object of the Charity which purposes may include use as a museum of costume."

2.5 In March 1976 a lease was granted to BCC for a period of twenty-one years.

3. Use of 4 Circus by the Council.

3.1 Planning permissions obtained in 1972 and 1973 authorised change of use of the building from residential to storage, research, office accommodation and first floor public exhibition space for the Museum of Costume.

3.2 In 1974 the Fashion Research Centre (FRC) opened as the study and education arm of the Museum of Costume. It was the only facility of its kind outside London, with an extensive reference library and study collection of costume. The FRC was managed by the Museum of Costume, whose staff occupied the building, and the house served as the correspondence address for the Museum. Being open to the public on a regular basis, the FRC supported the Object of the Charity.

3.3 In 1978, on the appointment of BCC's first senior museums officer, the house also became the main offices for the Council's Museums Service. These eventually moved to the Pump Room in 1997.

3.4 In 1979 the house was registered as the office of Bath Archaeological Trust (BAT), the field archaeology arm of the museums service more usually undertaken in-house by local authority museums services in the 1970s and 1980s. BAT occupied rooms on the top floor of the house, for which it paid a service charge, and the BCC Assistant Director (Museums & Tourism) was its Company Secretary.

3.5 In 1985 a textile conservation studio was created in the hitherto under-used basement with grant-aid from the Museums & Galleries Commission (MGC) and Area Museum Council for the South West (AMCSW). It was initially managed by the Museum of Costume and provided textile conservation

services not only to its host museum but to museums throughout the south-west region on a charged-out basis. Later, management of the studio transferred to the AMCSW.

- 3.6 Between 1985 and 1988 the overgrown and inaccessible garden behind the house was excavated by BAT. Many features of the original garden were discovered and the garden was restored to its 1760 century form including alterations made c.1770 at its bottom end. It was thought to be the first town garden in the world to be scientifically excavated and re-created in-situ. In 1992 it won a Civic Trust Environmental Award and, in the same year, was opened to the public as the 'Georgian Garden', accessed from Gravel Walk in Royal Victoria Park behind the Circus.

- 3.7 Although the original intention of Mr. C.A. Cooke was for public access to the house, the restoration and opening of the garden to the public was a major contribution to the Object of the Charity that he could not have foreseen. From the outset the Georgian Garden has been administered and promoted by the Council's Heritage Services and maintained by the Parks & Open Spaces team.

4. The current lease.

- 4.1 In 1995 the contractual term of the original lease expired. The Council, which became Bath and North East Somerset Council (B&NES) the following year, continued to hold the building under the terms of that lease on the usual basis of security of tenure for business leases.
- 4.2 In 1998 the Charity Commission created a new Scheme for the Charity and, in 2003, a new twenty-one year lease was granted to B&NES.
- 4.3 Also in 2003 the FRC's collections and services were merged with those of the Museum of Costume at the Assembly Rooms. This released space at 4 Circus and the search started for a partner tenant whose function would be compatible with that of the Museum and consistent with the Object of the Charity.

5. Bath Spa University (BSU).

- 5.1 In 2003 discussions took place between Heritage Services and BSU (then Bath Spa University College) to explore the feasibility of a working partnership between the Museum of Costume and BSU in the delivery of a new BA course in Fashion Design Skills. From the Council's point of view, a partnership with a major local educational institutional was an excellent opportunity to explore new uses of the Museum's collections, services and expertise.
- 5.2 In the same year a three-year lease for the ground floor and basement of 4 Circus was awarded by the Council to BSU. The Museum of Costume remained in control of the upper floors which were used in particular for the storage of collections for which there was no space available at the Assembly Rooms. Rental income would serve the Object of the Charity, ie the preservation of the building. The then Trustees agreed with the proposal

but were concerned to ensure that the Object of the Charity should still be met as far as was possible.

- 5.3 The use of parts of the building for teaching the Fashion Design Skills course was deemed to be in keeping with the Object of the Charity in that it made the building accessible to BSU students and staff. In addition, the house was opened for accompanied public viewing at certain times of year such as National Heritage Open Days. In theory members of the public could request sight of the interior at any time and would have to be admitted, although the ability to do this has never been made public.
- 5.4 Under the new working arrangements the Fashion Museum Manager would teach a given number of hours per week on the course, for which the Council would be paid by BSU. In return the students would enjoy privileged access to the Museum's collections for the purposes of study and handling.
- 5.5 BSU was keen to consolidate the partnership under a Memorandum of Co-operation as this would attract funding for the Fashion Design Skills course. In October 2004 a three-year Memorandum of Co-operation was signed by Frank Morgan, the Director and Chief Executive of Bath Spa University College, and Councillor Nicole O'Flaherty, the Council's Executive Member for Tourism, Leisure and Culture.
- 5.6 In subsequent years a further lease permitting BSU to occupy all of the first floor and some rooms on the second floor was awarded by the Council. The Fashion Museum retained its stores on the second and top floors, both out of necessity and to retain a foothold in the building for the Council as a means of fulfilling its duty of care for it. These consist of the entire top floor (Stores 41, 41A, 42 and 43) and one room (Store 44) on the second floor.
- 5.7 Upon the expiry of the Memorandum of Co-operation in 2007 further discussions took place with the intention of signing a new agreement. A new Memorandum was drawn up in December 2009 but a combination of staff turnover in BSU and protracted negotiations over a new lease between the Council and BSU meant that by 2013 it had still not been signed.

6. Compliance with the Object of the Charity.

- 6.1 A recurring discussion amongst the 4 Circus trustees has been the extent to which the activities taking place within the house fulfill the Object of the Frances Georgina Cooke Trust. To recap, the Object of the Charity is

"The preservation and exhibition to the public of the building on the said land as a place of architectural and historic interest."

- 6.2 Throughout the forty years of the Council's responsibility for the administration of the Charity, fulfilling the Object has only been achieved in part.
- 6.3 The "preservation" element of the responsibility has been discharged satisfactorily and the building has been subject to the same high standards of

care afforded by the Council to its own historic properties through its professional building surveyors. The house has been well-maintained and subjected to the same inspection and testing regimes as the Council's own historic buildings. Since its excavation and reinstatement the garden has been much better cared for than it was when the Council first assumed responsibility for the property.

- 6.4 There is a cost centre dedicated to 4 Circus in the Heritage Services budget.
- 6.5 The "exhibition to the public of the building as a place of architectural and historic interest" has been altogether more challenging. The interiors of the houses in the Circus vary considerably and no.4 is one of the more austere examples, with few internal architectural features of note. It does not bear comparison with the size and grandeur of Bath Preservation Trust's No.1 Royal Crescent which, throughout the period in question, has provided Bath with an excellent example of a furnished eighteenth-century town house. Nor has the Council had the collections furniture and fine and decorative arts with which to adorn the interior. Moreover the William Herschel Museum at 19 New King Street, also run by BPT, presents another opportunity to see the interior of a period town house.
- 6.6 When the house was used as the Fashion Research Centre there was a regular traffic of students and researchers through the building, in particular able to enjoy the large first-floor rooms which are the most ornate in the building.
- 6.7 The tall, narrow nature of the house compounds the problems of accessibility that are encountered when considering ways of making it available to public view on a regular basis. Its Grade I listing would be likely to preclude the drastic measures needed to provide step-free access both to the basement and to the upper floors. Even if it were possible, the cost of such access measures, combined with the cost of furnishing and interpreting the house, would be in the region of £300,000 to £500,000. Without provision for full accessibility, a scheme to convert the house for use as a visitor attraction would be ineligible for funding from the Heritage Lottery Fund.
- 6.8 The most successful element of the "exhibition to the public" requirement has been the developing and opening to the public of the Georgian Garden. More generally this has been a major addition to the public understanding of the eighteenth-century city and it complements the furnished house at No.1 Royal Crescent nearby very well. The garden provides the visitor with the opportunity to observe the rear elevation of the house and its neighbours, and it demonstrates the practical role of Gravel Walk in the later eighteenth century.
- 6.9 4 Circus is always included in the annual Heritage Open Days scheme. This is a nation-wide scheme which arranges public access to buildings not normally open to the public. It is a requirement of the lease with BSU that the house is included in the programme each year. BSU staff are also aware that, in the unlikely event that a member of the public rings the doorbell and asks to look around the house, they should be allowed to do so.

6.10 Nevertheless, despite these measures the “exhibition to the public” requirement remains difficult to achieve.

6.11 Legal advice to the Trustees over the last ten years has advised them that the present arrangements are only tangentially compliant with the Object of the Charity. As the principal lessee of the Charity, the Council’s foothold in the building through the Fashion Museum stores there and the regular staff visits that they necessitate, is an important means of retaining a practical interest in the house and discharging the Council’s responsibility towards it.

7. Summary of current position.

7.1 The Council remains responsible to the Trustees for the upkeep of the building. Rent from BSU mitigates but does not completely cover the running costs. The property, including the Georgian Garden, costs the Council £4,230 p.a. to run (2013/14).

7.2 The Council manages the Georgian Garden through its Heritage Services and Parks & Open Spaces teams. As principal lessee the Council retains a presence in the building through the Heritage Services Fashion Museum stores on the second floor and top floor and through inspections and repairs organised by the Service’s Operations staff.

7.3 BSU has a lease on the basement, ground and first floors and part of the second floor. The lease has expired and, at the time of writing, has not been renewed. BSU is therefore present on a ‘tenancy at will’ basis.

7.4 The Charity Commission Scheme of 1973, referred to again in the 2003 lease, permits the Trustees to lease 4 Circus to the Council

“For purposes not inconsistent with the Object of the Charity
which purposes may include use as a museum of costume”

7.5 The 1973 Scheme is as relevant today as it has ever been. Legal opinion is that the present arrangements are only compliant in small part with these purposes. The principal points of compliance are

- The ongoing presence of the Fashion Museum by virtue of its costume stores on the second and top floors;
- The formal relationship between the Fashion Museum and the BA Fashion Design Skills course, notwithstanding the expiry of the Memorandum of Co-operation.

7.6 The Council’s responsibility for the “preservation” of the building is discharged through its ongoing maintenance programme and the periodic inspection of the building by Council officers.

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With thanks to Andrew Reed, Property Law Manager (x5261)
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