
CHARITY REORGANISATION UPDATE

Report by the Chief Financial Officer

SCOTTISH BORDERS COUNCIL

21 MAY 2015

1 PURPOSE AND SUMMARY

- 1.1 This report provides an update on the progress of the reorganisation of the Council's registered Trust Fund Charities and proposes the recommended approach to governance for the new Charitable Trusts.**
- 1.2 At its meeting on 30 January 2014, the Council agreed the establishment of three new Charitable Trusts and the reorganisation and winding up of the existing Council Charity Funds, excluding the Common Good Charity Fund, into one of the new Charitable Trusts.
- 1.3 The Council successfully set up and registered the three new Charitable Trusts with the Office of Scottish Charity Regulator (OSCR) in March 2014: SBC Welfare Trust; SBC Community Enhancement Trust and SBC Educational Trust. The Council is the sole corporate trustee of each of these charities. The Trust Deeds are provided in Appendix 1.
- 1.4 Applications for reorganisations of the individual OSCR registered funds (summarised in Appendix 2) were all put to OSCR before 31 March 2014, which had the effect of removing them from the requirement of a full audit. The Ormiston Trust, due to the presence of heritable assets, will remain as a separate charity, and work to re-organise the Thomas Howden Wildlife Trust is underway. Appendix 3 summarises the agreed outcome of these applications and discussions with OSCR and any associated agreed geographical or charitable purpose restriction.
- 1.5 OSCR has confirmed de-registration of the 34 charities highlighted in this report, and these have now been wound up.
- 1.6 There is continued work on the re-organisation of the combined Charitable Trust (with 76 individual funds) and the non-Charitable Trust funds and this will be reported to Council as work is progressed.
- 1.7 In order to efficiently manage the funds of the new Charitable Trusts, it is proposed to create area based Charitable Trusts Sub-Committees with the remit as set out in Appendix 4. In addition, where awards are to specific individuals or families the award criteria will be established by the Sub-Committees but the individual applications will be agreed under delegated authority as set out in paragraphs 5.9 and 5.10

2 RECOMMENDATIONS

2.1 It is recommended that the Council:

- (a) Notes the establishment and registration of SBC Education Trust, SBC Welfare Trust and SBC Community Enhancement Trust as Charitable Trusts, each having all of the elected members of the Council as Trustees and the purposes as set out in Appendix 1;**
- (b) Agrees that the Trust Funds will start with a maximum revenue balance of 5% of the combined capital and revenue balances, that any excess revenue balances above this level will be transferred to the capital balance and invest this in accordance with the Common Good and Trust Fund Investment Strategy;**
- (c) Agrees that the budget for the expenditure from the Charitable Trusts will normally be based on the income generated in the preceding year;**
- (d) Approves the appointment of the Convenor of the Scottish Borders Council as Chairman of SBC Educational Trust, SBC Welfare Trust and SBC Community Enhancement Trust;**
- (e) Approves the appointment of the Chief Financial Officer of the Scottish Borders Council as Treasurer of SBC Educational Trust, SBC Welfare Trust and SBC Community Enhancement Trust;**
- (f) Approves the creation of Charitable Trusts Sub-Committees of Council for the management of the various Charitable Funds with the remit as set out in Appendix 4, and amends the Scheme of Administration to include these new Sub-Committees;**
- (g) Approves the amendment to the Scheme of Delegation to add the Specific Delegated Function of "Make payments to individuals from educational trusts and SBC Education Trust according to set criteria" to the Service Director – Children and Young People and remove it from the Chief Financial Officer;**
- (h) Approves the amendment to the Scheme of Delegation to add the Specific Delegated Function of "Make payments to individuals or families SBC Welfare Trust according to set criteria" to the Services Director – Neighbourhood Services;**
- (i) Agrees to receive further reports on the re-organisation of the combined Charitable Trust and non-Charitable Trust funds as the work continues;**
- (j) Agrees that all of the Charitable Trusts administered by the Council formally adopt the Council's Scheme of Administration, Procedural Standing Orders, Scheme of Delegation, Local Code of Corporate Governance and Financial Regulations as they are currently approved by Council and that any subsequent appropriately approved amendments will automatically apply to these Charitable Trusts, unless there are explicit exceptions approved by the Trustees; and**
- (k) Agrees that the Council's Policy Register as is currently**

approved by Council and that any subsequent appropriately approved amendments will also automatically apply to all the Charitable Trusts administered by the Council, unless there are explicit exceptions approved by the Trustees.

3 BACKGROUND

- 3.1 Previous Scottish Borders' Town, County, District and Regional Councils had taken advantage of tax and other legislation beneficial to charities, and as a result 112 different Trusts, Endowments, Funds and Bequests that are registered as Charities out of a total of 289 different Trusts, Endowments, Funds and Bequests (the Trust Funds) are now managed by this Council.
- 3.2 Following the establishment of the Office of the Scottish Charities Regulator (OSCR) these funds were all adopted as Scottish Charities Registered with OSCR.
- 3.3 Of these registered Charities some 37 were registered individually with unique registration numbers, all of the Common Good Funds were registered as a single charity and the balance were registered under a single holding charity registration number.
- 3.4 In January 2014 the Council agreed the establishment of three new Charitable Trusts and the reorganisation and winding up of the existing Council Charity Funds, excluding the Common Good Charity Fund, into these new Charitable Trusts, where appropriate.
- 3.5 Charities, whose Trustees are exclusively elected members of the Council, are bound by the regulations issued under both the Local Authority (Scotland) Act 1973 and the Charities and Trustee Investment (Scotland) Act 2005. Following transitional concessions, under these regulations each Registered Charity will have to have its Annual Accounts subject to a full audit no matter the size of the Charity for the financial year ended on 31 March 2014. However Audit Scotland and OSCR have agreed that there will be no audit requirement if a Charity had applied to be wound up prior to 31 March 2014.
- 3.6 In March 2014 OSCR approved the establishment of :
- SBC Community Enhancement Trust – Scottish Charity Number SC044764
SBC Welfare Trust – Scottish Charity Number SC044765
SBC Educational Trust – Scottish Charity Number SC044762
- Referred to collectively as the Charitable Trusts for the purpose of this report, **Appendix 1** contains a copy of the Trust Deed for each one.
- 3.7 Many of the existing funds were very restrictive in their use. In some cases these can no longer be used for the initially detailed purpose, and for specific geographic areas a number of funds providing benefit for the same purpose can be found. The reorganisation approvals from OSCR now permit more effective grouping of the funds within the Charitable Trusts and reflect their use in more contemporary ways. The use of funds for the maintenance of graves is no longer a charitable purpose but with the growth of genealogical study and the use of grave stones in this research OSCR have agreed that the funds previously set up for grave maintenance can be used for heritage purposes throughout the Borders.

- 3.8 The charitable purposes of the SBC Community Enhancement Trust (**Appendix 1a**) are that funds and assets are held in trust for the following purposes:
- (a) The advancement of community development;
 - (b) The advancement of arts, heritage, culture or science, including the upkeep of heritage assets;
 - (c) The provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended; or
 - (d) The advancement of environmental protection or improvement.
- 3.9 The charitable purposes of the SBC Welfare Trust (**Appendix 1b**) are that funds and assets are held in trust for the following purposes:
- (a) The prevention or relief of poverty;
 - (b) The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage; or
 - (c) The advancement of health, including the advancement of education in health.
- 3.10 The charitable purposes of the SBC Education Trust (**Appendix 1c**) are that funds and assets are held in trust for the following purposes:
- (a) The advancement of education,
and/or
 - (b) the promotion of cultural exchange.
- 3.11 The creation of the new Charitable Trusts will also permit the Trustees (i.e. Scottish Borders Council) to make use of the Capital Balance as well as the Revenue Balance of the transferred funds, which replaces the previous restriction on the use of the Capital Balances other than as an income generating investment.
- 3.12 The appropriate requests to wind up the historic individual charitable trusts have been submitted to OSCR removing the need to prepare separate annual accounts for 2014/15 for these charities.
- 3.13 The next step in the reorganisation programme is to establish the appropriate transition, where appropriate, for the Councils Trust Funds into these new Charitable Trusts.

4 INDIVIDUALLY REGISTERED CHARITY FUNDS

- 4.1 The individually registered charities, excluding the Common Good Funds, are detailed in **Appendix 2**. Approval has been received from both the Council and OSCR to progress with the reorganisation/wind up of these Charities.
- 4.2 The charities which are the subject of this report hold funds in the main for the following purposes:-
Educational prizes and bursaries
Welfare and the relief of poverty
Heritage, memorials, environment and grave maintenance.
- 4.3 In order to wind up any of the Council's existing Charities there has to be a suitable charity into which the funds can be transferred through a reorganisation and held therein as an Unrestricted Fund or as a Restricted Fund i.e. held for a clear identified particular purpose. The creation of the new Charitable Trusts provides the Council with such suitable charities.
- 4.4 **Appendix 3** shows the outcome of the reorganisation applications and discussions with OSCR of the Charitable Trust into which the transfer of funds can be made and the approved charitable purposes and/or geographic restrictions to apply to each transfer.
- 4.5 **Appendix 3** also shows that the approved reorganisations have provided for a number of restricted funds within each of the new charities. These restrictions are on the basis of charitable purpose and/or geographic area restriction. Both restrictions have been kept as wide as possible to create funds large enough to give meaningful distributions and to take account of the fact that due to modern transport, people identify with local towns or villages by both living in them, and living in their locality and making use of their facilities.
- 4.6 Due to these geographical and charitable purpose restrictions on many of the funds transferring into the new Charitable Trusts specific governance arrangement have been proposed in Section 5 to enable this to be managed appropriately.
- 4.7 In order to both make the management of and access to the current charity funds easier and reduce the ongoing running costs including the future external audit costs schemes of reorganisation have been agreed with OSCR which now require certain actions to put these schemes into place.
- 4.8 In order to finalise the reorganisation of the individually registered charities the transfer of the funds has been into the appropriate fund within the new Charitable Trusts is effective as of 1 April 2014 as set out in **Appendix 3**.

- 4.9 This will permit the purpose for which the funds are held to be updated so that, whilst they will be similar to those in place before reorganisation, they will be expressed in terms more relevant to the current age and compliant with OSCR's charity test, so improving access to these funds by the public.
- 4.10 It is further proposed to re-assess the level of revenue and capital balances within the funds, and start the Charitable Trusts off with a maximum revenue balance of 5% of the total revenue and capital balances of the funds. With the proposal that any additions to the capital balances as a result of this will be invested in accordance with the Common Good and Trust Funds Investment Strategy (i.e. with the Newton Fund).
- 4.11 It is further proposed that the intention will be that, due to the variable nature of the returns from the Newton Fund, the budget for the annual disbursements from the Charitable Trusts will normally be restricted to the amount of income generated in the preceding year. This should avoid any over accumulation of revenue balances or expenditure in excess of the income generated from the capital balances.
- 4.12 OSCR has confirmed the de-registration the 34 charities and therefore the charities have been fully wound up.
- 4.13 There are two remaining individual charities not included in **Appendix 3**, the first of which is the Ormiston Trust, Melrose (SC019162) where it is proposed to continue to have this as a separate charity due to the complexity associated with having physical property as part of the assets of the Trust.
- 4.14 The second charity is the Thomas Howden Wildlife Award (SC01564) for Peebles. Further work is required with OSCR before this charity can be reorganised and this will be reported to Committee as appropriate.

5 GOVERNANCE ARRANGEMENTS FOR THE NEW CHARITABLE TRUSTS

- 5.1 In order to both make the management of and access to the current charity funds easier it has been identified that the Governance Arrangements around the new Charitable Trusts require to be established.

Chairman

- 5.2 Under the terms of the New Charity Trust Deeds the Trustees should appoint a Chairman and it is proposed that the Convenor of the Council is the Chairman for each of the 3 new Charitable Trusts. It is also proposed that the Council's Chief Financial Officer shall act as Treasurer to each Charitable Trusts.

Trustees

- 5.3 All Elected Members of the Council will be Trustees of each of the Charitable Trusts and will execute their duties in this respect through the Council meetings.

- 5.4 It should be noted that in the event that the Council decides to add additional Trustees, who are not elected members of Scottish Borders Council, to the Charitable Trusts then the governance arrangements will need to be reviewed as a meeting of full Council will not constitute a meeting of all of the Trustees.

Charitable Trust Sub-Committees

- 5.5 In order to execute the area restricted business of the Charitable Trusts Funds it is proposed to create geographically based Charitable Trusts Sub-Committees (the Sub-Committees). These Sub-Committees would be established around the current Ward structure for Elected Members as set out in Appendix 4.
- 5.6 Membership of the these Sub-Committees will be restricted to Elected Members from the local wards and will be constituted around the Area Forum grouping of Wards to minimise the number of meetings that are required and reflect that for 3 of the 5 groupings the restricted funds apply equally to both Wards in the area. This will allow the elements of the Charitable Trust Funds with a geographic restriction to be managed by locally based elected members.
- 5.7 It is proposed that these Sub-Committees would determine the allocation of the annual budget for awards/payments within the restrictions of the Charitable Trusts and funds available, and where appropriate the proportion available for group/organisation and to specific individual/family awards. In addition the Sub-Committees would make the decision on any award/payment to a group or organisation applying for support.
- 5.8 Where there is an intention for the budget or a proportion of the budget to be made available to applications from specific individuals or families the Sub-Committees would agree the approach and criteria for award allocation but would delegate the assessment of applications to an Officer of the Council relevant to the charitable purposes of the Charitable Trust. This is intended to respect the confidentiality of individual circumstances.

Amendments to Scheme of Administration

- 5.9 **Appendix 4** contains the proposed amendment to the Council's Scheme of Administration to enable this to happen.
- 5.10 It is proposed that, in line with the current Educational Trusts that were inherited from the District Councils and the proposal in paragraph 5.7, the Service Director – Children and Young People will be responsible for the awarding of payments to specific individuals from the SBC Education Trust according to set criteria as agreed by the Council. This will require an amendment to the Scheme of Delegation to add:
- “Make payments to individuals from educational trusts and SBC Education Trust according to set criteria”
- to the Specific Delegated Functions of the Service Director – Children and Young People and remove from those of the Chief Financial Officer .
- 5.11 It is proposed that, in line with the proposal in paragraph 5.7, the Service Director – Neighbourhood Services will be responsible for the awarding of payments to specific individuals/families from the from the SBC Welfare Trust according to set criteria as agreed by the Council. This will require

an amendment to the Scheme of Delegation to add:

“Make payments to individuals or families from SBC Welfare Trust according to set criteria”

to the Specific Delegated Functions of the Service Director – Neighbourhood Services.

Reporting to Council

- 5.12 Once a year an annual report for each of the Charitable Trusts will be brought to full Council and this will, where possible, coincide with a presentation from the Newton Investment Fund Manager.

Policy and Procedural Framework

- 5.13 It is important that all of the Charitable Trusts administered by the Council operate within a formal policy and procedural framework.
- 5.14 The Council’s Code of Governance comprises of five key documents:
- a) Scheme of Administration,
 - b) Procedural Standing Orders,
 - c) Scheme of Delegation,
 - d) Local Code of Corporate Governance, and
 - e) Financial Regulations.
- 5.15 It is proposed that all the Charitable Trusts administered by the Council will formally adopt all five of these documents in their current form and that the Charitable Trusts will adhere to these in their future forms as they are approved through the appropriate Council mechanisms, unless there are explicit exceptions approved by a meeting of all Trustees.
- 5.16 The Council also maintains a Policy Register of all policies that are approved within the Council’s decision making frameworks and which apply to the operation of the Council. The definition of a Policy within this context is a set of rules to be applied by officers/committees to make decisions or plan/take a course of action. These rules are to be applied at all times until rescinded/amended by committee. It is therefore also proposed that Policy Register also is formally adopted by all of the Charitable Trusts administered by the Council.

6 IMPLICATIONS

6.1 Financial

There are no further financial implications beyond those explained above in Sections 3, 4 and 5.

6.2 Risk and Mitigations

No significant risk to the financial position of the charity funds is identified; in fact these proposals enable the funds to be used for appropriate purposes to support the community.

6.3 Equalities

An Equalities Impact Scoping Assessment has been carried out on this

proposal and it is anticipated that there are no adverse equality implications.

6.4 Carbon Management

There are no significant impacts on the economy, community or environment arising from the proposals contained in this report.

6.5 Rural Proofing

There are no significant effects on carbon emissions arising from the proposals contained in this report.

6.6 Acting Sustainably

Whilst there are no economic, social or environmental effects arising from the proposals contained in this report, there should be easier access to funds by beneficiaries, which will impact upon the economic, social and environment of the Borders. The clarified administration and fund amalgamations should produce more sustainable Funds.

6.7 Changes to Scheme of Administration or Scheme of Delegation

The new Charitable Trusts are separate legal entities from the Council and are governed by their Trust Deeds. However as the Council is currently sole corporate trustee of these Charitable Trusts, it has been agreed with Legal Services the decision making for the Trusts can be run through meetings of Scottish Borders Council, providing the requirements of the Trust Deeds are followed. As a result of this the Council's Scheme of Administration and Scheme of Delegation is proposed to change as set out in Appendix 4 and paragraphs 5.9 and 5.10.

7 CONSULTATION

7.1 The Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and their appropriate comments have been incorporated into this report.

7.2 The Administration Policy Working Group considered this report on the 10 March 2015 and supported the approval of the proposed recommendations.

Approved by

David Robertson
Chief Financial Officer

Signature

Author(s)

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Background Papers: Email from OSCR confirming reorganisation application and de-registration

Previous Minute Reference: Scottish Borders Council, 30 January 2014

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Corporate Finance Manager can also give information on other language translations as well as providing additional copies.

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