

## **CHAMBERS INSTITUTION TRUST CONSTITUTION – NOTE TO TRUSTEES**

The Chambers Institution Trust was created in 1859 by Disposition and Mortification from Sir William Chalmers to the Provost Magistrates and Councillors (and their successors in office) of the Royal Burgh of Peebles, as Trustees (**Trust Deed**). Since 1859 there have been several local government re-organisations, changes in Trust Law and significant changes in the way that local services are delivered to the community. Accordingly, during this time, there have been changes to the way the Trust has operated; some which have resulted as a change of legislation regarding local government and others as a result of changes being made in attempts to revitalise the Trust to ensure that the Trust provides the services to the community that it was created for. As a result we are left with quite a complex situation where the documentation has been interpreted in different ways over the years, with multiple Counsel's Opinions being obtained; these Opinions have not always aligned in their views. It is clear that as a result of the age and nature of the Trust that there is not always a definitive answer to many of the issues that the Trust and Trustees face. This paper seeks to provide a summary of the:

- constitution of the Trust;
- evolution of the Trust;
- appointment of Trustees and lay members; and
- Duties of Trustees.

### **Background**

The Trust Deed vested the Chamber Institute in the Town Council in Trust for the community of Peebles in 1859. The Trust Deed provided that the building was to be held in Trust and devoted to "the social, moral and intellectual improvement" of the Peeblesshire Community; for use as a public reading room, public library and gallery of Arts and museum of natural and other objects for the instruction of the public and a great hall for public meetings and exhibitions of various kinds.

The Trust Deed appointed a board of Directors to manage the property consisting of William Chalmers, the Provost and Magistrates of the Burgh, the Member of Parliament for the County of Peebles, various notable office holder and 5 elected subscribers who were connected to the town or neighbourhood. The Directors were given equal powers to the Trustees "as if the same were actually vested in themselves".

In 1905 the Directors were authorised by the Court of Session to borrow money to provide cloakrooms, following an application to the Court as the Trust Deed did not provide for this. In 1910 to facilitate expansion and improvement of the library, museum and art gallery, a gift of £10,000 was received from Andrew Carnegie. The gift to the Trust provided the funds required to acquire the shop premises 23 and 25 High Street to support the library and museum extension. It was a condition of the gift that the Town Council adopt the Public Libraries Consolidation (Scotland) Act 1887, with the administration of the Institute being transferred at that time from the Board of Directors to a committee set up in terms of the 1887 Act i.e. a committee to administer the library and museum functions of the Council. The committee members were to be appointed by the Town Council

and were to include 2 householders from the burgh of Peebles. The conditions of this gift were formalised in the Chambers Institution Peebles Order Confirmation Act 1911.

These committees were then replaced following the Local Government Scotland Act 1973 which transferred the powers to the local councils. As a result Borders Regional Council became responsible for the management and administration of the Institute in addition to the property being vested in them in Trust.

In 1994 the Local Government etc. (Scotland) Act transferred the functions of Borders Regional Council to Scottish Borders Council (**SBC**). The Institute is therefore vested in SBC in Trust and SBC is the body responsible for the management of the Institute by virtue of the 1973 Act. While there is some overlap with these different interests there is also the potential for conflict i.e. if SBC decided it would be preferable to relocate the library in the town, the Trustees would be concerned about the potential impact on the purposes of the Trust. It is therefore important separate governance is in place for both interests.

### **Evolution of the Trust**

As detailed above the management structure of the Trust has changed following legislative changes to local government structures. In recent years there has been efforts by SBC to revitalise the Trust.

In 2010 extensive work was undertaken to revitalise the Trust and to meet the aspirations of the Trustees to establish the Trust as a charitable body. The Trustee body's aspiration to be a charitable body was predicated on being able to be an independent body which could access donations, bequests and Gift Aid as well as other tax reliefs. At this time negotiations were entered into between the Trustees and SBC regarding new leases and repair obligations to regularise SBC's use of the building. The Trustees received independent legal advice from Anderson Strathern, who assisted with the new arrangements for the building and the application to OSCR.

In 2011 the Trustees appointed 6 "lay" members as Trustees. However 1 lay member resigned in 2012.

In 2014 the application to OSCR was still unresolved and the SBC took the decision to pause the process while a full review of all possible options was undertaken regarding the revitalisation of the Trust to ensure that the Institute can realise its potential as a significant community asset.

In 2015 a Report was presented to Council which stated:-

- The application for OSCR registration was complex and problematic;
- Since the decision for SBC to carry out a full review, a further 4 of the lay trustees had resigned, with only one remaining as Chair on an interim caretaking basis;
- Officers had considered 4 options:-
  - Continuation of the OSCR application;
  - The Trust reverting to Council control;

- The Trust reverting to Council control with external consultants developing a bid for lottery funding; and
- The Council attempting to appoint external trustees to jointly manage the building.
- External advice was obtained and each option was considered in detail



CIT Options Appendix  
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- On 21 May 2015 SBC decided that :
  - The Trust was to proceed with the 6 Tweeddale Councillors as Trustees
  - A public consultation was to be undertaken in conjunction with the Scottish Historic Building Trust (SBHT) to gather the views of the wider local population regarding best way to redevelop the building;
  - The OSCR application was to be withdrawn
  - All bank accounts for the Trust were to be ring-fenced.

These decisions were predicated on ensuring that a clear governance structure was in place for the Trust, with clear lines of accountability through the elected members. It was also considered that the public consultation was important to ensure that the potential of the building was not constrained by 'Council thinking' and that the views of the beneficiaries was sought regarding the future of the assets of the Trust.

The public consultation process took place from September 2015 to April 2016 by SBHT, with SBHT recommending a vision for the future of the building. A paper providing an update of these proposals and works will be available at the meeting of the Trustees in January 2021.

### **Appointment of Trustees**

The Local Government Scotland Act 1994 provides that the Council should nominate a sufficient number of Councillors to act as Trustees in respect of any property held in Trust. The appointment of Councillors as Trustees is on an ex officio basis, by reason of their role as an elected member. While it is legally possible that the Council could appoint all of its Councillors to act as Trustees for the Institution; it was decided by SBC in 2010 that it would be prudent to limit the Trustees to the 6 Tweeddale Councillors (as a practical solution to have the Councillors resident in the area to administer the Trust) along with the Executive Members for Finance and Education. Then in 2012 a decision was taken by SBC that only the Tweeddale Councillors should be appointed as Trustees. The appointment of Councillors and officers as Trustees is at the discretion of the Council.

It should be noted that the terms of the Trust Deed are outdated and quite inflexible. Over the years different Counsel Opinions have been obtained regarding the powers and governance of the Trust which have included opinions regarding lay representation in the Trust. It is clear that there is no definitive answer regarding this as different views have been expressed. While the original Trust Deeds and 1911 Act provided for lay representation as part of the Board of

Directors and the committee, it has been considered in one Counsel opinion that the replacement of library committees in terms of the 1973 Act could render a challenge for lay representation unsound; whereas when the OSCR application was being made another Counsel considered that the appointment of lay representation would be valid as this would ensure that the Trust was demonstrably independent of the Council. From reading the Report submitted to Council in 2014 and 2015 it would appear that there may have been challenges with the governance model of the Trust regarding the role of Trustees. These arose as the Trust Deed directs that the building is vested in SBC in Trust and therefore cannot be disposed of to another body, only its successor. It has therefore been necessary to consider what the Trustees role comprised. Proposals to have 2 different classes of trustee has been considered – one to own the building (SBC appointees) and one to manage the building. However the fact that the building is vested in SBC in Trust would limit the ability of the managing trustees to obtain funding, as the funders would be unable to take a standard security over the building, which proved to be a significant issue for the previous lay representatives.

### **Trustees Duties**

The principal role of the Trustees is to focus on the proper management of the Trust to the benefit of the beneficiaries. Under Scots law, Trustees can act by a majority decision of the Trustees, the Trust Deed requires a quorum of 3. All of the Trustees must be consulted prior to any decisions being taken.

In term of the Trust Deed, Trustees have specific responsibilities:

- To ensure that the premises are kept in good condition and are capable of being used for the purpose of the Trust;
- That the rental income is properly determined and collected;
- That proper accounts are kept; and
- That the purposes of the Trust are promoted.

There are also general responsibilities that apply to all Trustees:-

- Trustees owe a duty of care to protect the trust property for the beneficiaries of the Trust. The standard of care expected is that Trustees act with the same care and diligence which a person of ordinary prudence would use in attending to his/her own affairs.
- Trustees must meet together as often as is necessary and devote such time to the trust's affairs as is required for the proper administration of the trust.
- Trustees cannot delegate any of their powers as Trustees, unless a trust deed permits them to do so. They may appoint agents to carry out certain tasks, such as appointing accountants to prepare the trust accounts and lawyers to prepare trust documents, but may not delegate their primary role of overall responsibility for the administration of the trust and for taking decisions.
- Trustees should not act in a way which brings them into conflict with the interests of the Trust.
- Trustees should take advice from properly qualified persons with regard to matters on which they are not themselves expert.

- The Trustees are subject to the general law and may only act in accordance with the powers conferred upon them under the trust deed or the general law.
- While in terms of law a trustee is potentially personally liable for any breach of trust that may occur as a result of their actions and is normally jointly and severally liable for the actions of all the Trustees; Counsels advice was obtained in 2010 which stated that "in the particular circumstances of this Trust it is unlikely that the Trustees would find themselves personally liable under contract or delict (assuming that all contracts are made qua Trustees and proper insurance is taken out).

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