
CHAMBERS INSTITUTION TRUST

Report by Director - Finance and Regulatory

Scottish Borders Council

25th November 2021

1 PURPOSE AND SUMMARY

- 1.1 This Report is brought in response to the motion agreed at Council on the 27th May 2021 which called upon Officers to bring a report to Council regarding the Membership of the Chambers Institution Trust (CIT). That motion stated

"Scottish Borders Council requests that the Chief Executive brings a report to Council setting out the options and implications of including additional external members in the Chambers Institution Trust to supplement the existing governance arrangements."

- 1.2 Since that time an analysis of the options for adding lay trustees to the current Membership of the Trust has been undertaken. The history of the Trust has been considered as has the range of Counsel's Opinions which have been obtained by SBC over a number of years. Another Opinion of Senior Counsel was obtained to seek further clarity on certain issues. That Opinion is appended to this report.
- 1.3 It is noted that those Counsel's Opinions all agree that lay individuals cannot be Property Owning Trustees. By necessity this would mean that appointing such lay trustees would add an additional layer to the current make-up of the Trust and would therefore add a level of complication.
- 1.4 Further an examination of the possible role for such Lay Trustees identified that there was little decision making in which they could appropriately engage – given they would be neither vested in the property, nor vested in the statutory authority to act as library or museum authority.
- 1.5 The report therefore proposes that the Council leaves the position as it is and does not appoint lay Trustees to the CIT. It also recommends that a public engagement opportunity should be considered.

2 RECOMMENDATIONS

- 3.1 **It is recommended that the Council:-**

- (a) Leaves the membership of the Trustees to the Chambers Institution Trust unchanged and does not appoint lay trustees; and,**
- (b) Invites the Chambers Institution Trustees to consider how best to engage with stakeholders in Peeblesshire about the Chambers Institution.**

3 BACKGROUND

- 3.1 The Chambers Institution is an iconic Grade A - listed building in Peebles. It was gifted to the then Town Council by Dr William Chambers in 1859 to be held in Trust. The same Deed created a Board of Directors whose role it was to manage the Institution. The Board of Directors was to consist both of Town Councillors and local residents (Lay Appointees).
- 3.2 In 1911 there was a desire to accept a substantial gift of funds from Andrew Carnegie. It was a condition of that gift that the management of the Institution would thereafter be transferred to the Council to be managed through a Committee of that Council constituted under the Libraries Act of 1887. That Act provided that such a Committee would consist in of Councillors and Lay Appointees in equal measure. The 1911 Act also gave the Committee powers in addition to those in the Libraries Act – including, for example, the specific power to let the great hall and to charge for its use.
- 3.3 The Local Government (Scotland) Act 1973 repealed the provisions relating to Library Committees, in effect abolishing them. That 1973 Act provided that, from that time, the management of the Library and Museum and Art Gallery both sit with the Council itself. It is therefore clear that the legal **requirement** to have Lay Appointees involved in the administration of Libraries and Art Galleries ended when the 1973 Act came into force.

4 Recent History

- 4.1 In 2010 Scottish Borders Council agreed to revitalise the Chambers Institution Trust. Attached as Appendix Two is a timeline which details the principal events which occurred between that point and the current time.

5 Current Situation

- 5.1 There are two separate facets which operate to manage and control the Chambers Institution. This has always been the case and remains the position today: the management and administration of the Institution itself is one and the ownership and responsibility for the heritable property is the other.
- 5.2 The ownership of the property has, since 1859, vested in the Council, as Trustees for the benefit of the People of Peeblesshire.
- 5.3 The management and administration of the Chambers Institution are now also the responsibility of the Council since the 1973 Act came into effect. That is so because of the evolution through statute. The responsibility of the Board of Directors was passed to the Library Committee. That in turn was passed, through statute, to the Local Authority.
- 5.4 The Trust has been under sole Council control since 2015.

6 Consideration of the Council Motion

- 6.1 Council agreed a motion brought by Councillor Chapman on the 27th May 2021 which
- "requested that the Chief Executive brings a report to Council setting out the options and implications of including additional external members in the Chambers Institution Trust to supplement the existing governance arrangements."*
- 6.2 Representation on this matter has been made to the current Trustees of the Chambers Institution by both the Peebles Community Council and the Peebles Civic Society. Both of these groups are of the view that the Chambers Institution Trustees should again have Lay Appointees amongst their members. They consider that this would be in keeping with the original Trust Deed. They have also argued that the decision (over whether or not to appoint lay Trustees) is not one which Scottish Borders Council, sitting as Full Council, can competently make.
- 6.3 Officers have noted the content of a 2014 Counsel's Opinion that had advised the appointment of the Lay Appointees who were appointed as Trustees at that time was appropriate and competent. They equally noted the Opinion obtained from the same Counsel in 2006 which stated that if a legal challenge were made to the effect that there must still be some lay representation amongst the Trustees that challenge would not be a sound one. Officers concluded that the legal situation is, therefore, that Lay Appointees *can* be appointed, but that is not a legal requirement to do so.
- 6.4 The motion approved by Council required that a report be brought setting out the options and implications of appointing Lay Appointees. To respond to that the first matter to be considered is which body can actually make this decision. As has been noted, Scottish Borders Council has two distinct separate roles to play – the Owners of the Property in Trust, and the management of the Institution. These roles do need to be kept separate.
- 6.5 As also noted above, it has been argued that Council is not the body to make this decision. In order to ensure that this matter was properly considered, therefore, a further Opinion was sought from Senior Counsel asking which body was competent to make the decision as to appointing Trustees. Senior Counsel was also asked for advice on what the role of a Lay Trustee could be. This opinion is included as Appendix 1 of this report.
- 6.6 Senior Counsel's advises at paragraph 31 and 32 of her opinion that it **is** for Council to make this decision. This report is therefore brought to Council.
- 6.7 The motion also asks that the report addresses the implications of appointing Lay Appointees. To do so it is vital to understand what the role of such a Lay Appointee would and could be – given that they cannot be property owning Trustees. Much of Senior Counsel's Opinion sets out

her view on this issue, having first carefully outlined the background to explain the basis upon which her view was formed. She advises that the management of the Chambers Institution is for Council. Further she notes that the property vests in the Council as Trustees. She considers that it may be possible to appoint Lay Appointees, but advises that this would create two problems. The first problem she notes at paragraph 25 of her advice is that appointing Lay Appointees would create two different categories of Trustees. This she considers is "potentially fraught with difficulty". The second problem she notes in paragraph 26 to 29. The varying functions associated with the Chambers Institute and the Trust are already fully allocated – be that to the Council as administrator or the Trustees as property owners. On the role of Lay Appointees she therefore advises that "It appears to me that there is no meaningful separate and distinctive function for them to fulfil" and that:

"If they were to be active in decision-making that would risk cutting across the decisions that the property trustees are entitled to make in respect of the heritable property and the decisions that Council officers are entitled, indeed obliged, to make in respect of management and administration. I would foresee future difficulties in relation to clarity about respective roles."

- 6.8 Her conclusion at Paragraph 30 is that "the decision making remit of a lay trustee would be extremely limited. There is no obvious space for a remit between property decision-making and administrative and management decision-making.
- 6.9 Having regard to that extremely limited scope for decision making, together with the governance issues which are intrinsic in the two problems identified by Senior Counsel above, this report concludes that it would not be helpful, and indeed would be potentially damaging, to appoint Lay Appointees as Trustees. It therefore recommends that Council does not make any such appointments.
- 6.10 There does however appear to be a keen interest in the Institution and the Trust. Senior Counsel also notes that there may be good reason for involving the public in some way moving forward. This report therefore also recommends that the Chambers Institution Trustees should be invited to consider the best way to engage with stakeholders in Peeblesshire regarding the Institution.

5 IMPLICATIONS

5.1 Financial

There are no costs attached to any of the recommendations contained in this report.

5.2 Risk and Mitigations

(a) There is a risk that should the Council agree to appoint Lay Appointees, the governance of the Chambers Institution and Trust will become unwieldy and difficult.

(b) On the other hand, there is a risk that should Council decline to appoint Lay Trustees those Peebleshire residents who use the building will feel disaffected and excluded. This risk is mitigated by recommendation (b) above. It is further mitigated by the fact that independent advice has been obtained from Senior Counsel to ensure that the decision is taken in the context of that advice.

6.6 **Integrated Impact Assessment**

This report has no impact on those with a Protected Characteristic, though in seeking to ensure the governance for the Trust and the Institution remains robust the Council and the Trust will be best placed to continue to meet their statutory obligations in that regard.

6.7 **Sustainable Development Goals**

This report relates to the potential appointment of Lay Trustees to the Chambers Institution Trust and as such has no impact on UN Sustainable Development Goals.

6.8 **Climate Change**

The report has no relevance for climate change.

6.9 **Data Protection Impact Statement**

There are no personal data implications arising from the proposals contained in this report.

6.10 **Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to either the Scheme of Administration or the Scheme of Delegation arising as a result of the recommendations in this report.

7 **CONSULTATION**

7.1 The Director (Finance & Corporate Governance), the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications and any comments received will need to be incorporated into the final report.

Approved by

David Robertson

Title Director Finance and Corporate Governance

Author(s)

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Background Papers: [insert list of background papers used in compiling report]

Previous Minute Reference: [insert last Minute reference (if any)]

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