

Report of the Strategic Director, Environment and Sport to the meeting of the Regulatory and Appeals Committee to be held on 15 October 2014.

AC

Subject: Trusts and Charities: The Decision Making Process

Summary statement:

The Council acts as the Charity Trustee for several charities across the district. This report seeks to clarify and confirm the process currently in place for the making of decisions on behalf of charities.

Steve Hartley
Strategic Director
Environment and Sport

Portfolio: Environment , Sport and
Sustainability/Public Service Transformation

Report Contact: Phil Barker
Assistant Director Sport and Leisure
Phone: (01274) 432616
E-mail: phil.barker@bradford.gov.uk

Overview & Scrutiny Area:
Corporate

1. SUMMARY

The Council acts as the Charity Trustee for several charities across the district. This report seeks to clarify and confirm the process currently in place for the making of decisions on behalf of charities.

2. BACKGROUND

The Council is Charity Trustee for approximately 38 charities spread over several Council departments including Environment & Sport, Adult and Children's Services. The Sport & Leisure Service within Environment & Sport has responsibility for by far the biggest number with 28 charities within its remit.

The trusts broadly fall into two categories - those that hold funds (19 in number) and those that do not.

The Council's Constitution, article 8 subsection 8.4.9 gives the Regulatory and Appeals Committee the power to

'Discharge the functions of the Council under legislation relating to charities and make decisions in relation to charities of which the Council is trustee.'

The following guidance for Local Authority Trustees has been received from an independent legal source and is based on the Charity Commission's guidelines.

2.1 Independence from role as Local Authorities:

Although the Council and the officers/councillors making decisions on its behalf will be mindful of the concerns/requirements of its local electorate, they must act in the interests of the charity and not the Council when making decisions relating to the charity. They must recognise the Council's duty to be prudent and act solely in the best interests of the charity. For a body to be a charity it must be independent acting solely in accordance with its charitable purpose and not the policies of the Council.

2.2 Clarity of the terms of the charity:

Council trustees and councillors/officers acting on its behalf must ensure they clearly understand the terms of the charity as set out within its governing document. The governing document will set out the charitable purposes of the charity and how its assets may be used. If there is any doubt/lack of clarity regarding the terms of the charity then advice should be sought either from legal advisors or from the Charity Commission.

As an example, the King George V (Marley) Trust includes provisions that the money can only be spent on the site delivering the objectives of the Charity. Recent spend includes supporting a new all weather pitch at the site and associated ground works



2.3 Separate management of the charity including specific guidelines and processes:

The management of the charity should always be kept separate from the business of the Council where possible. It may make sense for a separate body of individuals such as a committee to undertake this management role. There must be a clear line of responsibility for the management of the charity by the Council and clear and concise guidelines for officers and councillors regarding their roles and terms of reference.

2.4 Independent management of Charity Assets:

The Council must ensure that the charitable assets for which it is a trustee are managed independently in accordance with the charitable purpose and the terms/restrictions contained with the governing document. Finances of the trust must also be managed independently and kept separate from the Council's own finances. The assets must be accounted for separately and income and expenditure channelled through separate cost centres. The council may contribute funds to the charity's finances but funds must not pass from the charity to the council's accounts.

2.5 Process in place for management of conflicts of interests:

There must be a process in place for identifying and managing any conflicts of interest which may arise. Given the Council's role in the community this may arise quite frequently.

2.6 Active management of the charity:

The Council must ensure that charity records are kept up to date and the accounts, returns and reports as required are submitted to the Charity Commission. There should also be regular review of risks, investments and opportunities, recording any conflicts of interest that arise and general house keeping of the charity's documentation.

3. OTHER CONSIDERATIONS

At this point in time all decisions relating to distribution of income relating to trusts rests with the Regulatory and Appeals Committee as does the power to make application to the Charity Commission for changing the terms of individual trusts.

The Regulatory and Appeals Committee could delegate its powers outlined above to officers or a sub committee provided that the delegation was based on criteria agreed by the committee and any subsequent decisions were made in accordance with the provisions of the various trusts.

Advice received suggests that there could be issues regarding the transparency of officer based decisions leading to the possibility of challenge.



The creation of a sub committee for this purpose would involve an amendment to the Constitution which the Regulatory and Appeals committee can only recommend to the Governance and Audit committee who in turn can make a recommendation to full Council. Bearing in mind the current frequency of Regulatory and Appeals committee meetings, members may consider that the creation of a separate sub committee may not be required.

4. FINANCIAL & RESOURCE APPRAISAL

Nineteen of the charities under the control of the Council have financial deposits ranging from, for example, Royd House Trust at Wilsden that has assets of £97,515 and available cash reserves of £40,248 to Cashmere Street Recreation Ground in Keighley that has no assets and no reserves.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

To ensure that the committee is seen to be acting in the best interests of the various trusts rather than the Council, it is suggested that a break is taken at the end of the committee's normal business before reconvening to discuss any charitable business as a separate meeting.

6. LEGAL APPRAISAL

6.1 Section 139 of the Local Government Act 1972

6.1.1 In accordance with the section 139 of the Local Government Act 1972, Local authorities are empowered to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or acts of parliament.

6.1.2 Local authorities will often hold land and buildings for a particular purpose and funds and investments to award grants to the community. In either of these cases it is essential that the assets are held and applied in accordance with the charity's purpose.

6.2 When acting as a charity trustee any decision must be made in what is in the best interest of the charity, in accordance with its charitable purpose and not the policies of the Council

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

None



7.2 SUSTAINABILITY IMPLICATIONS

No sustainability implications

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

None

7.4 COMMUNITY SAFETY IMPLICATIONS

No community safety implications

7.5 HUMAN RIGHTS ACT

Not applicable

7.6 TRADE UNION

No implications for the Trade Unions

7.7 WARD IMPLICATIONS

No Ward Implications

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

- 9.1** The Regulatory and Appeals Committee continues to discharge all of the functions of the Council under legislation relating to charities and to make all decisions in relation to charities of which the Council is trustee.
- 9.2** The Regulatory and Appeals Committee choose to delegate all or part of the functions of the Council under legislation relating to charities and decisions in relation to charities of which the Council is trustee to an appropriate and nominated officer.
- 9.3** The Regulatory and Appeals Committee choose to delegate all or part of the functions of the Council under legislation relating to charities and decisions in relation to charities of which the Council is trustee to a dedicated sub committee of the Regulatory and Appeals Committee



10. RECOMMENDATIONS

That the Regulatory and Appeals Committee approves:

- 10.1** The proposal to continue its responsibility to discharge all of the functions of the Council under legislation relating to charities and to make all decisions in relation to charities of which the Council is trustee.
- 10.2** The proposal to consider all such Charity matters in meetings convened for this purpose alone.

11. APPENDICES

List of Charitable Trusts – To be supplied at meeting

12. BACKGROUND DOCUMENTS

No Background Documents.