

REPORT TO: East Lothian Council

MEETING DATE: 27 June 2023

BY: Executive Director for Council Resources

SUBJECT: Trust Funds Review 2022/23

1 PURPOSE

- 1.1 To inform the Council of potential options for the future stewardship of Trust Funds in its care and seek approval in relation to the future direction of the review project.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Council:
- Agree in principle the proposal to explore the transfer of stewardship and administration of the Trust Funds to a specialist third party, noting that this excludes the Richardson Bequest.
 - Authorise the Head of Finance to consult with Group Leaders to progress the transfer of stewardship to a specialist third party, subject to confirmation that this option will maximise best value for the Trust Funds.
 - Note that some funds, particularly those with property assets, may be retained within the stewardship and administration of the Council. In that event a framework for stewardship and administration for those funds will be developed.

3 BACKGROUND

Current Position and Reason for Review

- 3.1 The Council is responsible for the stewardship of Trust Funds. These funds are not taxpayer funds and are subject to use under the terms of the deeds, will and bequests which established the funds. The administration of the Richardson Bequest is being considered separately as there are ongoing legal proceedings seeking to secure the release of these funds. This paper relates to the remaining 45 Trust Funds. One fund (the Dr Bruce Fund) is [monitored by OSCR as a registered charity](#). As at 31/03/23

the unaudited annual accounts include reserve balances of some £2.870m for these funds. The largest is some £0.684m, the smallest is £0.001m (see Appendix A).

- 3.2 Audit Scotland have noted that “There is a risk that trust funds held could become dormant due to lack of use and lack of wider knowledge in the community as to their existence. If charitable objectives are not being met, there is scope for OSCR to withdraw the charitable status of the funds.” They have recommended that to meet funds’ objectives and discharge trustees duties appropriately the Council should, for example, consider whether there is scope to consolidate any or all of the trusts and promote the availability of the funds. This paper seeks to address the concerns raised by Audit Scotland, and provide recommendations which will enable the respective trust fund objectives to be met.

Objectives and Areas for Change

- 3.3 The status quo is not considered to be a viable option and will not represent an adequate response to the Audit Scotland findings or enable the Council to fulfil its responsibilities in relation to Trust Funds. The overall requirement is therefore to implement changes which will ensure the effective fulfilment of the Trust Funds’ objectives in a manner which provides value for money for the Trust Funds, without the use of taxpayer funding. It is considered that this will, at a minimum, require changes in the following aspects:
- Review of each Trust’s objectives, and appropriate modification where the objectives are identified as being impractical to comply with (e.g. funds established for the provision of coal).
 - Governance arrangements, for instance formal scheduled meetings of the Trustees of each fund
 - Publicity of Trust Funds’ availability and the required criteria for applications (or use) for each fund
 - Grant application process and evidence required to support applications or use
 - Assessment of grant applications or fund use proposals
 - Payment of grants and/or implementation of use proposals
 - Other relevant administration and governance support.
- 3.4 In considering the above, two initial key options have been identified which are outlined below.
- 3.5 Stakeholder engagement and consultation would also be envisaged as informing the development of the options.
- 3.6 Ensuring that the benefits and costs of any proposal provides value for money is critical.
- 3.7 Legal Services’ review of any proposal will also be required to minimise and manage the risk of the Council failing to properly perform its duties for the funds in its care.

Option: Investment in Council Capacity to Support Trust Funds

3.8 The Council can choose to retain stewardship and administration responsibilities by using Trust Fund balances to implement:

- Trust Funds consolidation and re-organisation, potentially merging some trusts where possible. This may require seeking court approval for trust deed changes. Where allowed it may also involve the full exhaustion of some funds (e.g. awarding grants to fully utilise the existing fund balance).
- Governance changes through the establishment of a more formal committee structure for Trust Fund matters, with regular Councillor participation, officer support for agendas, minutes and communications, identification of relevant Councillors for consideration of each Fund (primarily on an area basis)
- Outreach changes to publicise and inform local communities and individuals of the availability and criteria of grant support in each area or for each client group
- Grant application and fund use proposals changes, including a process for fund use proposals to be invited and evaluated, a formal application form, evidence requirements to accompany applications, a formal evaluation process, payment of grants, assessment of whether outcomes have been achieved, and criteria for recovery of monies where relevant.
- Appropriate professional support relating to legal, governance and financial aspects of the Trust Funds' activities. This would include monitoring and reporting of financial information; internal and external audit functions; liaison with the Investec investment management advisers; OSCR registration and liaison; and legal consideration of applications or changes in legislation where relevant.

3.9 This option is not recommended on the bases that:

- Any costs incurred by the Council will be recharged to the Trust Funds. This is considered unlikely to provide value for money for the Trust Funds given that the fixed costs associated with this option will be disproportionate to the levels of funds available for distribution. However, the cost of this arrangement will be reviewed against the alternatives with a view to maximising best value for the Trusts and ensuring that the most cost effective solution is implemented.
- The Council does not currently have sufficient in-house expertise to administer the Trust Funds, or capacity to prioritise this alongside other demands. It would need to procure these, through extra staff or external service provision.

- Councillors may potentially face a conflict of interest where an applicant specifically requests their support or is known to them. This may mean that a Councillor would be unable to fulfil their role as a fund Trustee in considering grant award or fund use decisions.

3.10 Further investigation of this option would need to more definitely establish the implementation of such changes. This would include more detailed estimation of the staff expertise and time, the physical resources, and the third party services required, as well as the availability of these resources.

Option: Transfer Responsibilities to a Specialist Third Party

3.11 The Council can choose to transfer stewardship and administration responsibilities to a specialist third party. The third party concerned would be an OSCR registered charity with a specific focus on maximising, for benefit at a geographic locality level, the use of dormant charity funds. This arrangement could be open to flexibility and specification dependent on the extent to which the Council wishes to maintain Councillors' involvement in grant award and fund use decisions.

3.12 Key aspects for consideration under this option include:

- This would not involve immediate investment of Trust Fund balances in establishing a framework of support for the Trust Funds. Instead the third party would adopt stewardship and administration responsibilities, subsuming these into their existing framework for other charities.
- The third party would charge each Trust Fund with a service fee. The extent of fee would depend on the complexity of the administration and the exact nature of any agreement between the Council and the third party in transferring the trusts. This would remain subject to review relative to the costs of creating an in-house service, with a view to implementing the arrangement which will offer best value to the Trusts.
- The Council would require to specify the use of each fund as part of any transfer, including reference to trusts deeds, etc., geographic area, and beneficiary criteria. In doing so, the Council can undertake some consolidation work to reduce the number of trusts, particularly combining trusts in the same area and with similar purposes together.
- Specification as to the extent of Councillors' involvement in the grant award process is possible.
- As part of any potential transfer of Trust Funds to a third party to administer, the Council will be able to specify the level of involvement and regarding the use of funds. With this in mind, the opportunity to promote the utilisation of balances held within trust funds, aligning with council plans, such as the Council's Poverty

Plan, which are consistent with the objectives of the trusts will be explored further as part of this review.

- Specification as to whether the funds transferred are to be maintained in perpetuity (i.e. only the interest earned is available for awards) or can be consumed (i.e. reduced over time) through grant award will be required.
- Transfers of land and building assets would not be possible, and therefore three Trust Funds may remain with the Council.
- The pooled investment fund currently managed by Investec would need to be disaggregated. Transfer of existing investments held may be acceptable however there could be a requirement to realise investments held for cash which would require significant liaison with Investec.
- Transfer of the Trust Funds may involve some minor loss of income to Council services for recharges made to the Trust Funds. This should free up relevant resources to then support taxpayer services.

3.13 This option is recommended on the grounds that it would improve achievement of the objectives of the Trust Funds while providing better value for money for the Trust Funds. This is on the bases that the arrangement would provide:

- A more cost effective solution for the trust funds.
- Application of an existing stewardship and administration framework
- Expertise in utilising and re-purposing dormant charity funds in liaison with OSCR
- Local contacts and alternative support delivery options within East Lothian for the granting and use of funds
- Expertise in the legislative requirements relating to Scottish charity law
- Scope, dependent on the transfer agreement, for some level of Councillor involvement or influence in the grant award or fund use decision-making process
- The ability for Councillors, and officers, to publicise the role and availability of the transferred funds to potential beneficiaries.

3.14 The further investigation of this option will involve more detailed discussion with the third party, particularly regarding the potential nature and wording of any transfer agreement. Some funds, especially those with property assets, may not be able to be included in a transfer.

4 POLICY IMPLICATIONS

- 4.1 Changes to the Trust Funds arrangements should primarily be assessed in terms of the Council's responsibilities for the Trust Funds. The options above are considered to support this through more active use and governance of Trust Funds for East Lothian area beneficiaries.
- 4.2 The options above are also considered to align with the Council's stated policy regarding growing our people, growing our communities, and growing our capacity. Public perception and reaction to any proposals may be a consideration.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report has been through the Integrated Impact Assessment process and no negative impacts have been identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial –The effectiveness of Trust Funds should be improved, with a key consideration being the value for money offered by each alternative. If a transfer approach is adopted there may be some minor loss of income to the Council; however, this should free up resources for taxpayer service support.
- 6.2 Personnel - Enhancement of Council support for Trust Funds would involve Council staff, with recharges to the Trust Funds on an ongoing basis for this. Where relevant a share of sick leave cover, maternity leave, redundancy and other costs may be involved. Transferring to a third party would involve staff time in initial discussions and finalisation with no significant staff time envisaged as involved after that.
- 6.3 Other – Legal services review of any proposals or option determined will be required, and a risk assessment regarding the Council's reputation and legal duties would be appropriate.

7 BACKGROUND PAPERS

- 7.1 Audit & Governance Committee – 1 November 2022 – 2021/22 Annual Audit Report

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DATE	9 June 2023

Appendix A	Draft (unaudited) balances at 31/03/23	
	Fund	Property Assets
John Hume Fund	£447,880.00	£683,701.11
Brown Bequest		£364,367.41
James McKelvie Bequest		£292,285.56
Wrights & Masons Trust	£318,087.65	£235,331.01
New Hall Fund		£205,343.29
Yester Precious Lands	£170,000.00	£156,757.34
T&AR Taylor Trust		£146,545.40
Dunbar Memorial Trust		£142,867.46
Haddington Combined Trust		£77,915.10
Coronation Fund		£64,521.90
Gourlay Trust		£50,168.94
Museums Purchases Fund		£46,835.22
Frank Tindall Trust		£40,097.22
Dirleton Parish Fund/ Lady Hamilton Bequest		£34,946.66
Inveresk Churchyard		£30,356.37
Thomas Carse Fund		£28,008.50
Jessie Dickson Mackay Fund		£25,984.55
WS Davidson Trust		£24,731.53
Burial Grounds Funds		£24,320.66
Christina Milne Bequest		£24,165.81
Dr Bruce's Fund		£20,310.66
Clark-Campbell Bequest		£13,997.14
Hamilton (Innerwick) Bequest		£13,655.84
Agnes Neillan Bequest		£13,076.03
Sailors Park Trust		£11,400.40
Oldhamstocks Parish Fund		£11,177.86
Belhaven Bequest		£10,529.94
Mrs Bridges Bequest (Musselburgh)		£9,875.16
Humbie Parish Fund		£9,643.10
Caplan Charity		£8,118.42
John Gray Trust		£7,357.18
James Hislop Legacy		£6,501.77
Bankton (Prestonpans) Bequest		£5,177.26
Brunton Bequest		£5,066.20
Lady Milne Memorial Fund		£3,609.90
Hamilton (Pencaitland) Bequest		£2,979.56
Helen Bridges Bequest (North Berwick)		£2,805.39
Bankton (Tranent) Bequest		£2,575.17
Midlothian Educational Trust		£2,520.34
Guildry Fund		£2,135.40
Yester Parish Fund		£1,921.53
Mrs M Brown's Legacy		£1,877.35
Guns Green		£1,520.90
James Easton Bequest		£1,329.77
Hamilton (Stenton) Bequest		£1,147.69
	£935,967.65	£2,869,561.00