



To: Councillor David Cameron, The Lord Provost, Master of Mortifications, Convener; and Councillor Delaney, The Depute Provost, Councillor Bonsell and S Halkerston, Lord Dean of Guild.

Town House,
ABERDEEN 29 November 2022

GUILDRY AND MORTIFICATION FUNDS COMMITTEE

The Members of the **GUILDRY AND MORTIFICATION FUNDS COMMITTEE** are requested to meet in **Council Chamber - Town House** on **MONDAY, 5 DECEMBER 2022 at 11.00 am.**

VIKKI CUTHBERT
INTERIM CHIEF OFFICER - GOVERNANCE

BUSINESS

- 1 Minute of Previous Meeting of 20 December 2021- for approval (Pages 3 - 4)
- 2 Guildry Fund- Review of Allowances (Pages 5 - 6)
- 3 Revised Constitution (Pages 7 - 30)
Appendix A- Proposed Revised Constitution for City of Aberdeen Council Guildry and Mortification Funds

Appendix B- Current Constitution for City of Aberdeen Council Guildry and Mortification Funds
- 4 Lord Dean of Guild Report- Verbal
- 5 Date of Next Meeting

Should you require any further information about this agenda, please contact Gogo Okafor, MOkafor@aberdeencity.gov.uk

GUILDRY AND MORTIFICATION FUNDS COMMITTEE

ABERDEEN, 20 December 2021. Minute of Meeting of the GUILDRY AND MORTIFICATION FUNDS COMMITTEE. Present:- Councillor Reynolds, Master of Mortifications, Convener; Councillor Mason; and Colin Taylor, Lord Dean of Guild.

Also Present: Aileen Duncan (Finance) and Gogo Okafor and Emma Robertson (Committee Services).

APOLOGIES

1. Apologies were intimated on behalf of Councillor Crockett, the Lord Provost.

MINUTE OF PREVIOUS MEETING OF 9 SEPTEMBER 2020

2. The Committee had before it the minute of its previous meeting of 9 September 2020.

The Committee resolved:-

to approve the minute.

GUILDRY FUNDS – REVIEW OF ALLOWANCES

3. The Committee had before it a paper by the Chief Officer - Finance which (a) provided information concerning (1) the amount of allowances paid from the Guildry fund to Burgesses of Guild, widows and widowers of Burgesses and children of Burgesses from 2007 to 2020; and (2) the number of people receiving allowances for the same period; and (b) proposed that the allowances be increased by either 2% or 5% rounded up to the nearest £1.

Ms Aileen Duncan, Finance Development Officer, advised the Committee that one of the Widows had passed away in June 2021 but Ms Duncan was still waiting to establish who was the Executor of the will.

The Committee resolved:

- (i) to recommend to Council that the following increases (5%) in annual allowances be approved backdated from 1 May 2021:-

Guildry Fund Allowance	Present Allowance	Proposed Allowance
Burgesses	£2,452	£2,575
Widows / Widowers of Burgesses	£2,452	£2,575
Children of Burgesses	£2,273	£2,387

; and

GUILDRY AND MORTIFICATION FUNDS COMMITTEE

20 December 2021

(ii) to note that Ms Duncan would update members by email with details on eligibility to claim the pension, the percentage increase and the process involved.

LORD DEAN OF GUILD REPORT AND VERBAL UPDATE

4. The Committee heard from the Lord Dean that there had been no Burgesses appointed during the past 12 months due to the covid-19 pandemic but that a series of lunches and evening events were being planned for when regulations allowed. The Lord Dean advised that he would be standing down in May 2022 after eight years in post

The Committee resolved:-

to note the update.

DATE OF NEXT MEETING

4. The Committee noted that the Clerk would identify a date in October 2022 for the next meeting and would advise Members accordingly.

- **John Reynolds, Master of Mortifications, Convener.**

**ABERDEEN CITY COUNCIL
GUILDRY FUNDS - REVIEW OF ALLOWANCES**

History of Allowances

	MAY															
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Burgesses	1350	1400	1470	1520	1600	1680	1765	1855	1950	2050	2155	2220	2335	2452	2575	
Widows of Burgesses	1350	1400	1470	1520	1600	1680	1765	1855	1950	2050	2155	2220	2335	2452	2575	
Daughters of Burgesses	1250	1300	1370	1410	1480	1560	1640	1725	1815	1905	2000	2060	2165	2273	2387	
Number of persons receiving allowances																
Burgesses	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Widows of Burgesses	3	3	3	3	3	3	2	2	2	2	2	2	2	2	1	1
Daughters of Burgesses	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	<u>5</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>1</u>	<u>1</u>

A 2% increase in the allowances rounded

Burgesses	0	2627	£0
Widows/Widowers of Burgesses	0	2627	£0
Daughters/Sons of Burgess	<u>0</u>	<u>2435</u>	<u>£0</u>
	<u><u>0</u></u>	<u><u>£0</u></u>	

or at 5% increase rounded

Burgesses	0	2704	£0
Widows/Widowers of Burgesses	0	2704	£0
Daughters/Sons of Burgess	<u>0</u>	<u>2506</u>	<u>£0</u>
	<u><u>0</u></u>	<u><u>£0</u></u>	

In 21/22 a 5% increase was awarded

Basic Retirement Pension

Rates From -

	<u>Single</u>	<u>Increase</u>	<u>Married</u>	<u>Increase</u>
	<u>Person</u>		<u>Couple</u>	
April 2007	87.30	4%	139.60	4%
April 2008	90.7	4%	145.05	4%
April 2009	95.25	5%	152.30	5%
April 2010	97.65	3%	156.15	3%
April 2011	102.15	5%	163.35	5%
April 2012	107.45	5%	171.85	5%
April 2013	110.15	3%	176.15	3%
April 2014	113.10	3%	180.90	3%
April 2015	115.95	3%	185.45	3%
April 2016	119.30	3%	190.80	3%
April 2017	122.30	3%	195.60	3%
April 2018	125.97	3%	201.47	3%
April 2019	129.20	3%	206.65	3%
April 2020	134.25	4%	214.70	4%
April 2021	137.60	2%	220.05	2%
April 2022	141.85	3%	226.85	3%

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ABERDEEN CITY COUNCIL

COMMITTEE	Guildry and Mortification Funds
DATE	5 December 2022
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Revised Constitution - City of Aberdeen Council Guildry & Mortification Funds
REPORT NUMBER	COM/22/295
DIRECTOR	Gale Beattie
CHIEF OFFICER	Vikki Cuthbert
REPORT AUTHOR	Kundai Sinclair
TERMS OF REFERENCE	General Delegations to Committees 8.7

1. PURPOSE OF REPORT

- 1.1 To consult with the Committee on a proposal for a revised constitution for the City of Aberdeen Council Guildry & Mortification Funds (charity number SC011857).

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 note and approve, as a consultee, the proposed revised constitution for the City of Aberdeen Council Guildry & Mortification Funds (charity number SC011857) ("the charity") in Appendix A;
- 2.2 note that the Chief Officer – Governance will submit a proposed revised constitution for the charity to a meeting of Council (as sole trustee of the charity) for its approval and thereafter submit it to the Office of the Scottish Charity Regulator (OSCR) for its approval.

3. CURRENT SITUATION

- 3.1 The City of Aberdeen Council Guildry & Mortification Funds are a charitable trust and Aberdeen City Council is sole trustee thereof.
- 3.2 Possession of the Guildry funds was transferred to the predecessor of Aberdeen City Council in 1838 by a Decree of Declarator granted by the Lords of Council and Session. Under the Aberdeen Town Council Act 1868, possession of the Mortification funds was also transferred to the predecessor of the Council. Since then, the Council (as sole trustee) has continued to manage the Guildry and Mortification Funds.
- 3.2 Until 1996, the sole purpose of the trust was to provide relief and support to Burgesses of Guild and their widows and families.

In 1996, the Court of Session approved that the trust purposes be broadened to allow for the provision, in certain circumstances, of financial support to individuals for education, vocational training and career advancement. See Appendix B for the current constitution. The current trust purposes are:

- (1) *Relieving financial hardship among the Burgesses of Guild of Aberdeen present and future and their widows or widowers and families (including without prejudice to the foregoing generality children of deceased Burgesses of Guild at Aberdeen) by the payment of annuities of such amounts as the trustees in their absolute discretion may determine; and*
- (2) *assisting persons born or habitually resident in the City of Aberdeen and intending to pursue careers that if pursued would qualify them for admission as Burgesses of Guild of Aberdeen to pursue educational or vocational training courses or otherwise to further their proposed careers, and that by means of grants or scholarships of such number and amounts as the trustees in their absolute discretion (but after such consultation with the Dean of Guild and his Assessors as the trustees in their absolute discretion may determine) may determine.*

Declaring that in the exercise of their discretion the trustees shall always give priority to purpose (1) above.

Since then, the Guildry Award Scheme has been administered by the Council and provides annuities, grants and scholarships in terms of the above purposes. The number of applications has however declined over the years.

- 3.3 The City of Aberdeen Council Guildry & Mortification Funds were registered as a Scottish charity by the Council's predecessor in 1992; and subsequently with OSCR in 2003 when the functions of the Scottish Charities Office were transferred to OSCR. The Council has recently worked with the Lord Dean of Guild to produce a proposed revised constitution which reflects modern charity legislation and the aspiration to use the Funds for a wider range of charitable purposes. This proposed constitution (including broader purposes) is at Appendix A and will require approval from the Council (as sole trustee) and, ultimately, from OSCR before it can take effect.

Charities and trusts do sometimes need to adapt the way they operate to reflect changes in society and the context in which they operate. It has been 25 years since the constitution was last updated. It is considered that the proposed changes are more in step with the modern needs of the inhabitants of Aberdeen.

In order to widen the pool of potential beneficiaries, it is proposed to remove the above requirement for applicants to demonstrate that they intend "*to pursue careers that if pursued would qualify them for admission as Burgesses of Guild of Aberdeen....*".

As well as retaining the above financial hardship purpose, it is proposed instead that the funds be used for:

(b) *assisting by means of grants or scholarships of such number and amounts as the Trustee in their absolute discretion (following consultation with the Lord Dean of Guild and her/his Assessors) may determine;*

(i) *persons born or habitually resident in the city of Aberdeen who are prevented or inhibited from pursuing their educational or career goals due to financial circumstances or who are intending to undertake educational or vocational training courses or otherwise to further their proposed careers; or*

(ii) *organisations or collective groups which are operating in the city of Aberdeen and undertaking, or intending to undertake, educational initiatives.*

The revised constitution would also contain criteria to ensure that only meritorious applications are granted (see clauses 3 and 4).

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications for the Council arising from the recommendations of this report.

5. LEGAL IMPLICATIONS

5.1 The proposed changes to the constitution are in line with the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”). Chapter 5 of the 2005 Act describes what a charity must do in order for OSCR to approve an application for reorganisation.

6. ENVIRONMENTAL IMPLICATIONS

6.1 There are no direct environmental implications arising from the recommendations of this report.

7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) <i>*taking into account controls/control actions</i>	*Does Target Risk Level Match Appetite Set?
Strategic Risk	No significant risk identified	N/A	N/A	N/A
Compliance	Council must comply with the	The recommendations are in compliance with the 2005 Act	L	Yes

	requirements under the 2005 Act			
Operational	No significant risk identified	N/A	N/A	N/A
Financial	No significant risk identified	N/A	N/A	N/A
Reputational	No significant risk identified	N/A	N/A	N/A
Environment / Climate	No significant risk identified	N/A	N/A	N/A

8. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
	Impact of Report
Aberdeen City Council Policy Statement	Supports the delivery of People Policy Statement 6 – Commit to closing the attainment gap in education while working with partners across the City.

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	Not required
Data Protection Impact Assessment	Not required
Other	N/A

10. BACKGROUND PAPERS

10.1 [Governance Review - Guildry Trust Deed - CG/17/018](#)

10.2 [Governance Review of Trusts - Update - GOV/19/446](#)

11. APPENDICES

- 11.1 Appendix A - proposed revised constitution for the City of Aberdeen Council Guildry & Mortification Funds
- 11.2 Appendix B – current constitution for the City of Aberdeen Council Guildry & Mortification Funds

12. REPORT AUTHOR CONTACT DETAILS

Name	Kundai Sinclair
Title	Solicitor, Regulatory & Compliance Team
Email Address	kusinclair@aberdeencity.gov.uk

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CITY OF ABERDEEN COUNCIL GUILDRY & MORTIFICATION FUNDS

TRUST DEED

Aberdeen City Council, the local authority for the city of Aberdeen in terms of the Local Government etc. (Scotland) Act 1994, and having its principal office at Town House, Broad Street, Aberdeen, is the sole trustee of the City of Aberdeen Council Guildry & Mortification Funds (the "Trust").

The Trust (constituted by the Acts in Council dated 1 March 1609 and 9 March 1631 as narrated in the Extract Decree of Declarator granted by the Lords of Council and Session dated 9 March and 22 May 1838 and extracted on 21 June 1838; an Extract Decree of Declarator and Reduction granted by the Lords of Council and Session on 7 February 1871 and extracted on 10 April 1871; and an interlocutor from the Court of Session dated 18 December 1996) is registered with the Office of the Scottish Charity Regulator (OSCR) under the charity number SC011857.

This Trust Deed is a replacement and restatement deed by which the Trust is reorganised in terms of section 39 of the Charities and Trustee Investment (Scotland) Act 2005 following upon an application to OSCR for the variation of the constitution of the Trust.

Aberdeen City Council and its successors are herein referred to as "the Trustee".

Trust Purposes

1. The Trustee shall hold and apply any such funds and assets as may from time to time be comprised in the Trust Property, in trust for:-
 - (a) the prevention or relief of poverty; and
 - (b) the advancement of education.

2. The Trustee directs that the free annual revenue of the Trust shall be applied for the following purposes:-
 - (a) relieving financial hardship among the Burgesses of Guild of Aberdeen present and future and their widows or widowers and families (including without prejudice to the foregoing generality children of deceased Burgesses of Guild at Aberdeen) by the payment of annuities of such amounts as the Trustee in their absolute discretion may determine; and
 - (b) assisting by means of grants or scholarships of such number and amounts as the Trustee in their absolute discretion (following consultation with the Lord Dean of Guild and her/his Assessors) may determine;
 - (i) persons born or habitually resident in the city of Aberdeen who are prevented or inhibited from pursuing their educational or career goals due to financial circumstances or who are intending to undertake educational or vocational training courses or otherwise to further their proposed careers; or

- (ii) organisations or collective groups which are operating in the city of Aberdeen and undertaking, or intending to undertake, educational initiatives,

subject to clauses 3, 4 and 5.

3. The Trustee will means-test and consider applications under clause 2(a) in or around April and October each year and pay annuities to successful applicants half-yearly in or around May and November each year. The rates of annuities will be reviewed by the Trustee annually. The Trustee may require supporting evidence from applicants.
4. The Trustee will consider applications under clause 2(b)(i) only from individuals who intend to pursue their educational or career goals or undertake educational or vocational training courses or otherwise further their proposed careers at workplaces, facilities, establishments or academic or training institutions within the city of Aberdeen. The Trustee will consider such applications on a case-by-case basis and will consider circumstances including (but not limited to) household incomes, disabilities, long term illnesses of main household earners, care-experienced backgrounds and single parent families. The Trustee may require supporting evidence from applicants.
5. The expenses of administering the Trust, and any tax payable in relation to the Trust, shall be met or paid in priority to all other payments and transfers of assets out of the Trust Property.

Powers

6. In the administration of the Trust, the Trustee shall, in addition to the powers and rights which are conferred by law upon the trustee who is acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if they were the owner; in particular (but without limiting the scope of the powers which they may exercise under the preceding provision), the Trustee shall have the following powers:-
 - (a) To expend the whole assets of the Trust for the Trust Purposes;
 - (b) To carry on any other activities which further any of the Trust Purposes;
 - (c) To take such steps as they may deem appropriate for the purpose of raising funds;
 - (d) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them);
 - (e) To establish and/or support any other charity, and to make donations for any charitable purpose, falling within the Trust Purposes;
 - (f) To purchase, take on lease, hire, or otherwise acquire, any property or rights;
 - (g) To improve, manage, develop, or otherwise deal with, all or any part of the Trust Property;
 - (h) To sell, let, hire out, license, or otherwise dispose of, all or any part of the Trust Property;

- (i) To borrow money, and to give security in support of any such borrowings by the Trust;
- (j) To employ or otherwise appoint or engage such staff as are considered appropriate for the proper administration of the Trust or for the proper conduct of the Trust's activities, and to make reasonable provision for the remuneration of such staff and for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants;
- (k) To engage such consultants and advisers as are considered appropriate from time to time;
- (l) To effect insurance of all kinds (which may include officers' liability insurance);
- (m) To invest any funds, which are not immediately required for the administration of the Trust or for the Trust's activities, in such investments as may be considered appropriate (and to dispose of, and vary, such investments);
- (n) To liaise with voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the Trust Purposes;
- (o) To form any company which is a charity with objects similar (wholly or in part) to those of the Trust and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Property;
- (p) To retain any property comprised in the Trust Property for such time as the Trustee thinks appropriate;
- (q) To have any part of the Trust Property registered in the name of a nominee and to pay reasonable fees to such nominee;
- (r) To grant proxies in favour of the Trustee (or any other person) to attend, act and vote for the Trustee at any meetings (whether of the nature of general meetings, class meetings, creditors' meetings or otherwise) relating to any investment held by the Trustee or relating to any claim (or prospective claim) by the Trustee in any liquidation or sequestration proceedings;
- (s) To compromise or settle, including by means of arbitration, all claims by or against the Trust or in relation to the Trust Property; and
- (t) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

Trustee Meetings

7. Subject to the provisions of the following clauses, the Trustee may regulate their proceedings as they think fit.
8. A Trustee meeting shall be held at least once in each year.
9. The Trustee may call a meeting or request the secretary to the Trust to call a meeting.

Delegation

10. The Trustee may delegate any of its powers to any committee, sub-committee or officer of Aberdeen City Council; and any such delegation of powers may be made subject to such conditions as the Trustee may impose and may be revoked or altered.

Secretary

11. The Trustee shall appoint a secretary to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustee may think fit; and any secretary so appointed may be removed by the Trustee.
12. The Trustee shall ensure that the secretary:
 - (a) keeps proper minutes of all proceedings at Trustee meetings and meetings of committees of the Trustee; and
 - (b) keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

Accounts

13. The Trustee shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.
14. The Trustee shall prepare annual accounts, complying with all relevant statutory requirements; and the accounts shall be subject to external scrutiny in line with the relevant requirements of legislation.
15. An accountant engaged in an audit of the Trust's accounts shall be entitled to have access to all accounting records and other documents relating to the Trust.

Trustee Conduct

16. The Trustee shall, in exercising their functions as trustee of the Trust, act in the interests of the Trust; and, in particular, must:-
 - (a) seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with its objects (as set out in this Trust Deed);
 - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - (c) in circumstances giving rise to the possibility of a conflict of interest between the Trust and any other party, put the interests of the Trust before that of the other party, in taking decisions as Trustee.
 - (d) ensure that the Trust complies with any direction, requirement, notice or duty issued to it or imposed on it in terms of the Charities and Trustee Investment (Scotland) Act 2005 or other applicable legislation.

Limitations on liability

17. The Trustee shall not be liable for loss or depreciation of the value of investments retained or made by them, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.

Amendment of Trust Deed

18. If, in the opinion of the Trustee;
 - (a) any change in circumstances or alteration in the law has made, or is likely to make, execution of the Trust Purposes impossible or impracticable, or
 - (b) the administration of the Trust could be improved or the Trust Purposes be advanced in a more appropriate manner,

the Trustee may, in their discretion, supplement or amend the provisions of this Trust Deed or any deed supplemental to this Trust Deed, provided always that such supplement or amendment to the Trust Purposes is consistent with the spirit of the Trust Deed.

19. In no circumstances is the Trust Property to be held or applied for any purpose which is not an exclusively charitable purpose.

Interpretation

20. In this Trust Deed:-

- “charity” means a body on the Scottish Charity Register;
- “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
- “Trust Deed” means this trust deed (including any supplement or amendment);
- “Trust Property” means any funds and assets as may from time to time be held or received by the Trustee as trustee under the Trust Deed, and the assets in which any such funds may from time to time be invested.
- “Trust Purposes” means the purposes specified in clauses 1, 2, 3 and 4.

21. Any reference in this Trust Deed to a provision of any legislation shall include any statutory modification or re-enactment of that provision in force from time to time.

This Trust Deed, consisting of this and the 5 preceding pages, is executed as follows:-

SIGNED for and on behalf of the said Aberdeen City Council

Signature:

Name:

Title/Role:

At Aberdeen

on (date)

in the presence of

Signature: Witness

Name:

Address:

.....

Bill Fraser?

Note:

From:

File Ref: 19/0/1/316/VS

Murray Scott
Principal Committee Clerk

Mrs A K Mollison
Principal Solicitor
Court Team

Guildry Funds Petition

I enclose herewith a copy of the Certified Copy Interlocutor approving the proposed scheme for the Guildry Funds. The court do not issue an Extract Decree.



AKM
21/01/97

Enc

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COURT OF SESSION, SCOTLAND

CERTIFIED COPY INTERLOCUTOR

In Petition of

ABERDEEN CITY COUNCIL, Town
House, Aberdeen, as Trustees of the Funds
of the Burgesses of Guild of the City of
Aberdeen

for

Approval of a Scheme under and in terms
of Section 9 of the Law Reform
(Miscellaneous Provisions)(Scotland) Act
1990

18th December 1996

Lord Marnoch

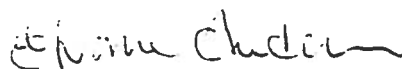
The Lord Ordinary having considered the Petition and Report by Morag E.

Armstrong, Advocate, and having heard Counsel for the Petitioner thereon, approves
the proposed scheme appended to the Petition as a scheme for the administration of
the funds held by the Petitioner as trustees of the funds of the Burgess of Guild of the
City of Aberdeen, collectively known as the Guildry Funds, and Decerns.

(sgd) MICHAEL R. BRUCE

EDINBURGH, 7th January 1997

Certified a true copy



Assistant Clerk of Session

ABERDEEN CITY COUNCIL, Town House,
Aberdeen, as Trustees of the Funds of
the Burgesses of Guild of the City of
Aberdeen

for

Approval of a Scheme under and in terms
of Section 9 of the Law Reform
(Miscellaneous Provisions) (Scotland)
Act 1990.

HUMBLY SHEWETH:

1. That the Petitioners are a local authority established by and under the Local Government etc. (Scotland) Act 1994, having their principal offices at Town House, Aberdeen. They are the statutory successors to The City of Aberdeen District Council, as the successors of the Magistrates Council and Office Bearers of the City and Royal Burgh of Aberdeen, and as such the trustees of the Funds of the Burgesses of Guild of the City of Aberdeen. Reference is made to an Extract Decree of Declarator dated 9 March and 22 May 1838 and extracted on 21 June 1838 (the "1838 Extract Decree") and an Extract Decree of Declarator and Reduction dated 7 February 1871 and extracted on 18 April 1871 (the "1871 Extract Decree"). Copies of the 1838 Extract Decree and the 1871 Extract Decree are produced and referred to for their terms which are held as repeated herein brevitatis causa. The trust is a public trust domiciled in Scotland. This Court accordingly has jurisdiction.

2. The funds of the Burgesses of Guild of the City of Aberdeen comprise the funds known as "the Guild Box", "the Additional Fund to the Guild Box" and "the Guild Brethren's Hospital" (known collectively and herein referred to as "the Guildry Funds"). By the 1838 Extract Decree your Lordships found that the Petitioners' predecessors had right to inter alia the funds known as "the Guild Box", "the Additional Fund to the Guild Box" and "the Guild Brethren's Hospital" and that the Petitioners' predecessors and their successors in office had the same jurisdiction and same right to and powers of administration of the said funds and of making all the usual necessary appointments in relation thereto which belonged to and were exercised by their predecessors in office.... In the 1838 Extract Decree it is narrated that the fund kept under the name of "The Guild Brethren's Hospital" had been devoted to the support of decayed Burgesses and their widows and children. The 1838 Extract Decree further narrated the terms of Acts in Council dated 1 March 1609 (referred to in the 1838 Extract Decree as 1 May 1609) and 9 March 1631 which set forth trust purposes of the fund known as "the Guild Brethren's Hospital". Since at least 1609 the said fund has been devoted to the support of decayed Burgesses and their widows and children. By the 1871 Extract Decree your Lordships found, decerned and declared that the Guild Box and the Additional Fund to the Guild Box were held by the Petitioners' predecessors as trustees "for the Burgesses of Guild of Aberdeen and for the widows and families of the Burgesses of Guild of Aberdeen and that the Petitioners' predecessors as Trustees are bound to apply and administer the same and the revenue thereof exclusively for the relief and support of decayed Burgesses of Guild present and future and the widows and families of Burgesses of Guild, such future Burgesses of Guild to be limited to those who make contributions.... in accordance with the regulations relative thereto...". To the knowledge of the Petitioners no other deeds or documents exist constituting the Trust or defining its purposes.
3. The Burgesses of Guild are an unincorporated association of merchants and men and women of business and commerce. The office bearers of the Burgesses of Guild are the Dean of Guild and (a maximum of) six

Assessors. The Dean of Guild is elected by the Burgesses of Guild from their own number at an Annual Meeting of the Burgesses of Guild and his Assessors are appointed by the Petitioners all in accordance with the Regulations of the Burgesses of Guild of Aberdeen. A copy of the said Regulations is produced. As at the date of presentation of this Petition there are between 700 and 800 Burgesses of Guild. The Dean of Guild and his Assessors are named and designed in the Schedule annexed hereto. Admission to the Burgesses of Guild is by application. Applicants require to be proposed and seconded by the Burgesses of Guild. Applications for admission are considered by the Dean of Guild and his Assessors who make recommendations in relation thereto to the Petitioners. Thereafter the Petitioners determine whether or not to admit an applicant to the Burgesses of Guild confirm this procedure as accurate. On admission to the Burgesses of Guild a Burgess pays a fee (currently £26). No other fee is subsequently payable. So far as the Petitioners are aware the Burgesses of Aberdeen were founded at least as early as 1179 when King William the Lion granted Royal Charters in favour of the Burgesses of Aberdeen. Thereafter, in about the 13th century, the Burgesses of Aberdeen divided into two groups, namely the Burgesses of Guild and the Burgesses of Trade, the former being the merchants of the city and the latter the craftsmen. Over the years the Burgesses of Guild became possessed of mercantile and trading rights within the Royal Burgh of Aberdeen and from about 1469 to about 1833 the government of the Burgh of Aberdeen was carried out by the Burgesses of Guild. To this day the Dean of Guild has a special seat, although no voting rights, at meetings of the Aberdeen City Council.

4. As at 3 February 1994 (being the date of the most recent statement of the Guildry Funds) the Guildry Funds amounted to £747,963. A copy of the said statement is produced and referred to for its terms which are held as repeated herein brevitatis causa.
5. From time to time the Petitioners, as trustees of the Guildry Funds, receive applications for aid from the Guildry Funds. Applications, which are means-tested are considered in April and October each year,

and the payment of annuities from the Guildry Funds to successful applicants are made half yearly in May and November of each year. As at the date of presentation of this Petition there are twenty five annuitants. The rate of annuities currently paid is £800 p.a. for Burgesses of Guild or their widows and £750 p.a. for children of Burgesses of Guild. The rate of annuities is reviewed annually. The number of annuitants has fallen considerably for many years. Despite increases in the rates of annuities a considerable surplus of funds has accrued. In recent years less than 50% of the income of the funds has been expended on annuities.

6. The Petitioners respectfully submit that the purposes of the trust provide a use for only part of the property available under the trust, that the class of persons entitled to benefit from the Guildry Funds has ceased to be suitable or appropriate having regard to the spirit of the trust as set forth in the said Acts in Council, the 1838 Extract Decree and the 1871 Extract Decree and that the purposes of the trust have, since the trust was constituted, been adequately provided for by other means. Reference is made to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Sections 9(1)(b), 9(c)(ii) and 9(d)(iii). The Petitioners respectfully submit that the spirit of the trust is the relief of poverty and the promotion of economic activity within the City of Aberdeen. Social and economic changes since 1871 such as improved public health and the provisions of social security benefits, have diminished the need for such provision. Increased provision under the trust could disentitle annuitants from social security benefits otherwise available to them. The Petitioners respectfully submit that it would be appropriate to approve the proposed scheme for the variation of the trust purposes set forth in the appendix hereto as being one which will enable the resources of the trust to be applied to better effect consistently with the spirit of the 1871 Extract Decree having regard to changes in social and economic conditions since the time when the trust was constituted. Reference is made to Section 9(2) of the said Act. The Petitioners have discussed the proposed changes to the purposes of the Trust with the Dean of Guild and his assessors.

7. The Petitioners respectfully submit that the expense of serving this Petition on all the Burgesses of Guild (being persons interested in the subject matter of the Petition within the meaning of Rule of Court 63.11) is unjustified having regard to the expense thereof and the number of such persons. Accordingly the Petitioners seek dispensation with such service and seek service of this Petition on the office bearers of the Burgesses of Guild alone.

8. This Petition is presented under and in terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 9 and the relative Rules of Court, in particular Chapters 14 and 63 thereof.

MAY IT THEREFORE please your Lordships to appoint this Petition to be intimated on the Walls and to be advertised once in the Aberdeen Press and Journal newspaper or otherwise as to your Lordships shall seem proper, and to be served upon the persons named and designed in the Schedule annexed hereto in the manner therein specified and to ordain them and any other parties claiming an interest to lodge Answers hereto, if so advised, within twenty one days of such intimation, advertisement and service; and to dispense with service on the Burgesses of Guild of the City of Aberdeen other than the Dean of Guild and his Assessors (all of whom are named and designed in the Schedule annexed hereto); and thereafter upon resuming consideration hereof, with or without Answers and after such enquiry, if any, as to your Lordships shall seem proper, to pronounce an order varying the trust purposes by approving and giving effect to the proposed scheme set forth in the appendix hereto; and for

a warrant for registration in terms of Rule of Court 63.14; and to decern; and for expenses against any person entering opposition to this application; or to do further or otherwise in the premises as to your Lordships shall seem proper.

ACCORDING TO JUSTICE, etc.

Graeme M Henderson

for I W F Ferguson

SCHEDULE

Service of this Petition is sought in common form upon:-

1. The Lord Advocate, Crown Office, 25 Chambers Street, Edinburgh.
2. William Wyllie, 3 Woodend Avenue, Aberdeen, as the Dean of Guild.
3. James Cameron, 109 Kings Gate, Aberdeen, as an Assessor of Guild.
4. Andrew D F Lewis, Glebe House, Durris, Banchory, Kincardineshire, AB31 3BQ, as an Assessor of Guild.
5. William Alexander McKimmie, Dunmore, 4 Ashgrove Road West, Aberdeen, AB2 5DZ, as an Assessor of Guild.
6. Kenneth J Peters, CBE., 47 Abergeldie Road, Aberdeen, AB1 6ED, as an Assessor of Guild.
7. Charles P Skene, OBE., 21 Rubislaw Den North, Aberdeen, AB2 4AL, as an Assessor of Guild.
8. Graeme Joss Wilson, Berrmore, Inchmarlo Road, Banchory, Kincardineshire, AB31 3RR, as an Assessor of Guild.

JM7211DEE

APPENDIX

Proposed Scheme for the Funds
of the Burgesses of Guild of the City of Aberdeen

1. In this Scheme the following expressions have the following meanings:-

"The trust deed" means the Acts in Council dated 1 March 1609 and 9 March 1631 as narrated in the Extract Decree of Declarator granted by the Lords of Council and Session dated 9 March and 22 May 1838 and extracted on 21 June 1838, and the Extract Decree of Declarator and Reduction granted by the Lords of Council and Session on 7 February 1871 and extracted on 10 April 1871.

"The trustees" means the Aberdeen City Council.

"The trust fund" means the whole property and assets for the time being held by the trustees under and in terms of and for the purposes of the trust deed as it is or as it may be varied under this Scheme.

"The operative date" means the date of the Interlocutor of the Court of Session approving this Scheme.

2. From and after the operative date the trust deed shall have effect subject to the provisions of this Scheme.
3. From and after the operative date the trustees shall hold the trust fund and shall apply the income thereof in such manner and at such times as the trustees in their absolute discretion may decide for the following purposes:-

- (1) Relieving financial hardship among the Burgesses of Guild of Aberdeen present and future and their widows or widowers and families (including without prejudice to the foregoing generality children of deceased Burgesses of Guild at Aberdeen) by the payment of annuities of such amounts as the trustees in their absolute discretion may determine; and

- (2) assisting persons born or habitually resident in the City of Aberdeen and intending to pursue careers that if pursued would qualify them for admission as Burgesses of Guild of Aberdeen to pursue educational or vocational training courses or otherwise to further their proposed careers, and that by means of grants or scholarships of such number and amounts as the trustees in their absolute discretion (but after such consultation with the Dean of Guild and his Assessors as the trustees in their absolute discretion may determine) may determine.

Declaring that in the exercise of their discretion the trustees shall always give priority to purpose (1) above.

4. In the administration and management of the trust fund the trustees shall continue to enjoy so far as applicable the same powers, privileges and immunities as were conferred upon them prior to the operative date and shall have sole power to make regulations for the maintenance and management of the trust fund.

18th December 1996

The foregoing scheme is signed and authenticated relative to interlocutor of this date.

Lord Marnoch

Sgd: Michael S R Bruce

KJM:GUILD DEE

COURT OF SESSION SCOTLAND

CERTIFIED COPY INTERLOCUTOR

In Petition of

**Aberdeen City Council as Trustees of the Funds of The
Burgesses of Guild for the City of Aberdeen**

for

Approval of a Scheme

1997