

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	13 May 2015
DIRECTOR	Angela Scott (Acting Director of Corporate Governance)
TITLE OF REPORT	John Murdoch Henderson Bequest - Reorganisation
REPORT NUMBER	CG/15/59
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

The purpose of this report is to put forward proposals for the reorganisation of the John Murdoch Henderson Bequest managed by the Council within a charitable trust. The aim is to:-

- a) Minimise the administrative burden and cost to the Council;
- b) Maximise the funds available for expenditure on charitable purposes; and
- c) Comply with the requirements of the Office of the Scottish Charities Regulator (OSCR).

2. RECOMMENDATION(S)

It is recommended that the Council:-

- a) Adopt the revised constitution shown at Appendix A for the future operation of the John Murdoch Henderson Bequest.
- b) Appoint the Head of Finance as treasurer and the Head of Legal and Democratic Services as secretary to the trust.
- c) Agree to the subscription of the Freegal Music Service for 2 years at a cost of approximately £19,000 and the Naxos Music Service for 3 years at a cost of approximately £7,200.
- d) Agree for the remaining trust funds be used for the purchase of music selected by the Library & Information Services Manager.
- e) Agree to wind up the trust when trust funds have been expended on the above purposes.

3. FINANCIAL IMPLICATIONS

There are no implications for the Council's financial position. All financial implications for the charitable trusts are dealt with in section five of the report and are intended to maximise the funds available for expenditure on charitable purposes.

4. OTHER IMPLICATIONS

The reorganisation of the charitable trusts secures the continuation of the trust's funds for their original charitable purposes, although altered to recognise changes in society.

5. BACKGROUND/MAIN ISSUES

John Murdoch Henderson Bequest

- 5.1 The will of John Murdoch Henderson, written in 1961 and settled in 1978, left £4,300 to the Central Library, Aberdeen "for the purchase of music of intrinsically Scottish interest".
- 5.2 The fund now contains over £30,000 but with low interest rates investment income is £300 per annum which is insufficient to cover the administrative costs of operating a modern charity, including the need for preparation and audit of statutory accounts. This charity is uneconomic with administrative costs greater than the annual income leaving no income available for charitable purposes.
- 5.3 The bequest is managed within a registered charity, Aberdeen City Council Charitable Trusts, SCO25063.
- 5.4 The Library & Information Service has found difficulty in spending funds due to the narrow purposes of the trust. In recent year trust expenditure has been mainly for the publication of books of local fiddle music in bound volumes. The Library has a large collection of sheet and recorded traditional Scottish music and does not feel that there is demand that cannot be met from the current collection or the current Library Service acquisitions budget resulting in little spend from the Trust in recent years.
- 5.5 Officers have discussed the future of the trust with the Office of the Scottish Charity Regulator (OSCR) and the changes in society that have impacted on the purposes of the trust, largely the globalisation of music and the way that technology has changed the way that music is accessed by listeners and players. OSCR are willing to allow a reorganisation of the trust on the basis of a revised constitution shown in Appendix A.

- 5.6 The revised constitution will allow trust funds to be used for a wider range of musical styles and to enable music to be purchased via subscription to an online service.
- 5.7 The Library Resources Management Working group researched and evaluated the range of music download subscription services available and consulted with other Library authorities who currently offered this type of service and have recommended subscription to the Freegal and Naxos music service which will allow users access to a wide range of music available via the internet. These services will offer access to download music of both Scottish and non- Scottish artists over a variety of musical styles.

6. IMPACT

It is essential that the Trusts are managed efficiently so that they continue to support the purposes for which they were established while recognising the changes within society.

7. MANAGEMENT OF RISK

If this trust is not reorganised there is a high risk that trust funds will be used solely for the administrative costs of operating a modern charity with no expenditure for the charitable purposes of the charity.

8. BACKGROUND PAPERS

None

9. REPORT AUTHOR DETAILS

James Hashmi - Team Leader Reporting & Monitoring (34) 6400
Email jhashmi@aberdeencity.gov.uk

Appendix A

Aberdeen City Council, the Local Authority for Aberdeen in terms of the Local Government, etc. (Scotland) Act 1994, and having its principal office at Marischal College, Broad Street, Aberdeen AB10 1AB is the trustee for the John Murdoch Henderson bequest (the "Trust").

The Trust was established by the last will and testament of John Murdoch Henderson dated 11 March 1961 and is registered with OSCR with charity reference number SC025063. The Trust purpose was "the purchase of music of intrinsically Scottish interest" for the Central Public Library Aberdeen.

This Trust Deed is a replacement and restatement deed, in order that the trust be reorganised in line with Section 39 of the Charities and Trustee Investment (Scotland) Act 2005, by an application to OSCR for a variation to the constitution.

(One) appoint as trustee ourselves (who and whose successors are 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 to (i) enable subscription to online music services for a variety of musical styles as the Trustee sees fit and (ii) to acquire any music for Aberdeen City Council's library service.
2. The expenses of creating and administering the Trust, and any tax payable in relation to the Trust, shall be met in priority to all other payments and transfers of assets out of the Trust Property.

Powers

3. In the administration of the Trust, the Trustee shall, in addition to the powers and rights which are conferred by law upon trustees who are acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if it was owner; in particular (but without limiting the scope of the powers which it 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 may be deemed 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's 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 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 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 other 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 which are 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 proper.
- (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 compromise or settle by arbitration all disputed claims by or against the Trust or the Trust Property.
- (s) To appoint solicitors to the Trust or agent for the Trustee in any other capacity, and to pay to such solicitors or other agent his/her/their usual charges.

(t) To reimburse the Trustee out of the Trust Property, in relation to all expenses reasonably incurred by him/her in the administration of the Trust.

(u) To wind up the Trust.

(v) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

Procedure at Trustee's meetings

4. Subject to the provisions of the following paragraphs, the Trustee may regulate the proceedings as it thinks fit.

Delegation

5. The Trustee may delegate any of its powers to any committee consisting of one or more representatives of the Trustee; any such delegation of powers may be made subject to such conditions as the Trustee may impose, and may be revoked or altered.

Remuneration

6. No Trustee may serve as an employee (full-time or part-time) of the Trust, and the Trustee shall not be given any remuneration by the Trust for carrying out its duties as a trustee.

Secretary

7. 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 them.
8. The Trustee shall ensure that the secretary:
 - (a) keeps proper minutes of all proceedings at any meetings of the Trustee (and at meetings of committees of the Trustee) including the names of the committee members present at each such meeting
 - (b) keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

Accounts

9. The Trustee shall appoint a treasurer to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustee may think fit; and any treasurer so appointed may be removed by them.
10. The Trustee shall ensure that the treasurer:

(a) maintains proper accounting records, in accordance with all applicable statutory requirements.

(b) shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if the Trustee otherwise think fit, the treasurer shall ensure that an audit of such accounts is carried out by a qualified auditor.

11. 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.

Operation of bank accounts

12. The signature of an authorised signatory of the Treasurer is required in relation to all cheques issued by the Trust and all other operations (excluding lodgement of funds) on the bank and building society accounts held by the Trust.

Payments to charities etc

13. The receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustee to any charity shall represent sufficient discharge to the Trustee.

Limitations on liability

14. The Trustee shall not be liable for loss or depreciation of the value of investments retained or made by it, 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.

Conduct of Trustee

15. The Trustee shall, in exercising its functions as a 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 of interest between the Trust and any other party

(i) put the interests of the Trust before that of the other party, in taking decisions as a Trustee

(ii) where any other duty prevents it from doing so, disclose the conflicting interest to the Trust and refrain from participating in any

discussions or decisions involving any other Trustees with regard to the matter in question

(d) ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

Amendment of Trust Deed/winding-up

16. If in the opinion of the Trustee 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 if in the opinion of the Trustee the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, or the Trust purposes have been fulfilled, the Trustee may (subject to clauses 17 and 19) in their discretion,

(a) 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 purposes is consistent with the spirit of Trust Deed ; or

(b) wind up the Trust and (if applicable) transfer the Trust Property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.

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

Interpretation

18. In this Trust Deed

“charity” shall mean a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts;

“charitable purpose” shall mean 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” ;

“the Trust Deed” means this trust deed (including any supplementation or amendment effected in accordance with the provisions of clauses 30 and 31);

“the Trust Property” means any such funds and assets as may from time to time be received by the Trustee as trustee under the Trust Deed (from us or any other person), and the assets in which any funds so received may from time to time be invested.

“the Trust Purposes” means the purposes specified in clause 1.

19. 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.

We declare that the Trust shall be irrevocable.

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

SIGNED by the said Aberdeen City Council

At Aberdeen on

in the