

ABERDEEN CITY COUNCIL

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COMMITTEE	Guildry & Mortification Funds Sub Committee
DATE	1 September 2016
DIRECTOR	Richard Ellis (Interim)
TITLE OF REPORT	Governance Review - Guildry Trust Deed
REPORT NUMBER	CG/16/116
CHECKLIST COMPLETED	Yes

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1. PURPOSE OF REPORT

This report outlines the ongoing work to prepare a revised constitution for the Guildry and the recommendations to apply to The Office of the Scottish Charity Regulator (OSCR) to ask for the adoption of a revised constitution shown in this report.

2. RECOMMENDATION(S)

It is recommended that:-

- a) An application to reorganise the Guildry by the adoption of a new constitution be submitted to OSCR.
- b) Instruct that officers continue to work with the Office of the Scottish Charity Regulator (OSCR) on the reorganisation of the charitable trusts.

3. FINANCIAL IMPLICATIONS

The Guildry has a balance sheet value of £2.6m and comparatively little expenditure on charitable purposes. The proposed revised constitution will grant additional powers to trustees to enable all trust funds to be expended for a clearer set of charitable purposes.

4. OTHER IMPLICATIONS

- 4.1 Every charity has to be managed within existing charity legislation to maximize funds available for expenditure on charitable purposes. This report is part of that management framework and has been

produced to provide an overview of the current and planned position of creating a governance environment that will maximize funds available for charitable purposes.

4.2 Council will be aware that a wider Governance Review is underway to assess our arrangements against CIPFA's 7 principles of good governance. A review of trusts supported by the Council is included in the review, which will be supported by CIPFA. Further reports will be brought to Council as this stream of work develops.

## 5. BACKGROUND/MAIN ISSUES

The Guildry funds were transferred to the predecessor of Aberdeen City Council in 1838. The Council has continued to manage a scheme of financial assistance for Burgesses and their families. Over time, with the availability of means tested benefits the number receiving financial assistance from this scheme has reduced to 2 people.

In 1997 The Court of Session gave permission for Guildry funds to be used for a scheme of educational scholarships. The Guildry are currently working with Aberdeen's universities and the North East Scotland College on this scheme.

The Guildry has been working with OSCR on producing a revised constitution that both reflects modern charity legislation and the aspiration to use Guildry funds for a wider range of charitable purposes. OSCR has been unwilling to widen the range of charitable purposes for the Guildry. The current proposal is to submit the application shown in appendix A asking OSCR for permission to adopt the trust deed shown in Appendix B which will give the Guildry a modern trust deed.

## 6. IMPACT

### **Improving Customer Experience –**

Active management of the Council's trusts will maximise funds available for expenditure on trust purposes.

### **Improving Staff Experience –**

Management initiatives, such as trust reorganisation, have been successful in minimising the administrative burden of the charitable trusts.

### **Improving our use of Resources –**

As a public sector organisation, the Council has a legal duty to be open, transparent and accountable for spending public funds. Trust funds must be spent on specific purposes and the ongoing trust

reorganisation aims to maximise available funds to be expended on trust purposes.

**Corporate –**

Aberdeen the Smarter City:

*Smarter Governance (Participation)*

The ongoing charity reorganisation contributes to the process of Smarter Governance.

*Smarter Living (Quality of Life)*

Trust fund expenditure contributes towards the quality of life in Aberdeen.

**Public –**

The Council has a duty to ensure that best value is considered in all of its operations and this report helps to inform that process.

7. MANAGEMENT OF RISK

None.

8. BACKGROUND PAPERS

None.

9. REPORT AUTHOR DETAILS

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**Charity Name and Number: City of Aberdeen Council Guildry & Mortification Funds (SCO11857)**

**When it was established (if known)** The Trust is constituted and defined by an Extract Decree of Declarator dated 9 March and 22 May 1838 and extracted on 21 June 1838 and an Extract Decree of Declarator and Reduction dated 7 February 1871 and extracted on 18 April 1871 and was varied by a scheme under and in terms of s9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and approved by the Court of Session by interlocutor dated 7 January 1997.

**Purposes:** The Interlocutor of the scheme provides that the purposes of City of Aberdeen Council Guildry & Mortification Funds 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 of 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.

**Trust Income:** The audited accounts to 31 March 2015 record investment income of £13,222 and £135,392 income transferred to the Guildry from a variety of old charitable trusts subject to reorganisation. The unaudited accounts to 31 March 2016 show incoming resources of £124,736

**Changes Sought:**

The Council wish to vary the constitution of the above charity by the adoption of a new constitution.

Application to adopt a new constitution which would:

- 1) Add additional powers which would permit the trustees to spend capital and income.
- 2) Application to add additional purposes:
  - (i) for the prevention or relief of poverty in the City of Aberdeen;
  - (ii) for the advancement of education in the City of Aberdeen; and
  - (iii) for the relief of those in need in the City of Aberdeen;

## **Type of reorganisation scheme applied for-**

### **Re-organisation outcome-Section 39 - met and reasons why you believe the outcome will be met**

The Guildry effectively was part of the civic administration of Aberdeen, making laws for administration of the City, promoting trade and regulating markets, taking part in the policing and defence of the city, providing funding for festivities, playing a part in welcoming members of the Royal Family to Aberdeen and a variety of other functions relating to the common good of the city and its residents.

Guildry funds were invested in the Lands of Skene in 1710 to enable the provision of funds to enable the payment of financial assistance to Burgesses and their families. These payments have reduced to 2 recipients. The investment still returns an annual income from farm rents and cash has accumulated beyond the current ability of governance documents to enable expenditure on trust purposes.

The Council as Trustee of the Funds of the Burgesses of the Guild of the City of Aberdeen would like to enable the funds to be used for better effect given the changes to the social and economic conditions in recent years.

The Guildry Fund's purposes are currently the relief of financial hardship among the Burgesses of Guild of Aberdeen and their widows and families and assisting persons resident in Aberdeen to pursue educational or vocational training courses. The trustees would like to extend expenditure to cover the prevention and relief of poverty and advancement of education generally as well as the relief of those in need by reason of old age, ill health, disability and financial hardship in the City of Aberdeen.

As detailed below, the current trust purposes are adequately provided for by other means and the revised purposes would enable the resources of the charity to be applied to better effect and the charity to be administered more effectively while maintaining that all purposes should be for the benefit of the people of the City of Aberdeen.

The adoption of the proposed constitution will also recognise recent charity legislation which is applicable to this trust. The trust does not operate with a comprehensive governance document that meets the requirements of operating a modern charity with significant financial assets. Recent governance documentation relates to the Court of Session decision of 1996 and the Remit of the Guildry & Mortification Committee documented in 1993.

### **Re-organisation condition- Section 42(2) - met and reason why you believe the conditions is met**

42(2)(a)(i) The purpose in relation to the helping of Burgesses and their families in need of financial assistance has been adequately provided by a range of means tested benefits administered by the Department of Work & Pensions.

In recent cases applicants have turned down financial awards as the acceptance of Guildry funds would result in the reduction of a variety of means tested benefits. There are currently only 2 people in receipt of financial assistance.

As detailed below, the Guildry Funds also included the Guild Brethren's Hospital Fund. This Hospital no longer exists and the services it would have provided are now provided for by the NHS.

**Section 42(3) of the 2005 Act- and brief description of the changes sought - Section 42(3)(a) – variation of the constitution of the charity**

The Guildry has existed in Aberdeen for 800 years with the Funds of the Guildry coming under the control of the Council in 1833. In the last century the funds have been managed by the Guildry & Mortifications Sub Committee. The most recent change to the fund's governance was the Court of Session decision of 1996 enabling the funds to be used for educational bursaries. The Council would like to adopt a revised constitution to reflect both modern charity legislation and the wish to use trust funds for a wider range of activities that would benefit the people of Aberdeen.

The traditional use of Guildry funds in the last century was for the financial assistance of decaying burgesses and their family. There are now only 2 claimants for these funds as the granting of such financial assistance impacts the eligibility to means tested Housing Benefits and other forms of state financial assistance. Guildry funds have built up to the extent that the long term excess of income over expenditure have allowed fund in cash of £1.1m to build up. In addition the Guildry is a 40% participant investor in Land of Skene which owns a number of farm properties which provide ongoing rental income.

The Council wish to retain their current activities as set out in the 1997 Court of Session interlocutor, but add to them to reflect the original purposes of the Guildry Funds, as depicted in the 1838 Extract Decree of the Court.

The Guildry funds are an amalgamation of several different funds. The Guild Box fund was used to support "decayed burgesses" and their families. The term Decayed is not defined but it can be interpreted that this fund was originally intended to relief poverty, and assist those in need by reason of old age, ill health, disability and financial hardship. The Council wish to extend this purpose to assist people in Aberdeen generally by relieving poverty across the City, not just decayed burgesses, their widows, and their children. The Council also wish to add a purpose of assisting people in need by reason of old age, disability, ill health and financial hardship as this is consistent with the original purpose.

The 1997 Court of Session decision also extends the fund purposes to include the advancement of education. The Council also wish to extend this purpose as it currently is, to a more general purpose of the advancement of education across Aberdeen.

One of the historic funds that are included in this fund, but not currently reflected in the trust purposes is the Guild Brethren's Hospital Fund. Due to the formation of the National Health Service, this fund purpose is not required anymore. The funds can still be used for a similar purpose for the assistance of those in need by reason of ill health across the City of Aberdeen.

The Council may wish to support these various purposes by inviting local charities to apply to the Guildry and Mortifications Sub-Committee for grants to support the relief or prevention of poverty and for the advancement of education in the City of Aberdeen.

The documentation of the Guildry activities held by the Aberdeen City Archivist include minutes of meetings and accounts covering several hundred years evidencing participation in the civic administration of Aberdeen and working for the common good of the people of Aberdeen. The proposed changes to the trust deed will enable continuation of expenditure in areas that were once within the remit of the Guildry Funds but are now managed by different section of modern government and a modern governance document to manage the trust more effectively.

**Section 42(2)(d) of the 2005 Act – that it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity’s constitution.**

The proposed new constitution would grant the trustees additional powers. This would allow them to utilise all of the trust property. At present the trustees can only spend income (which in the year to 31 March 2015 amounted to investment income of £13,222 and £135,392 income transferred from other old reorganised charitable trusts and for the year to 31 March 2016 was £124,736). The assets of the trust as at 31 March 2016 amount to a sum of £2,668,724. The trusts original asset was 40% ownership of Lands of Skene which has investments in Land and Buildings and cash following the sale of assets and is shown on the Guildry’s balance sheet as an investment valued at £1.5m. £1.1m of cash has also been accumulated by the Guildry. Due to the historical nature of the Trust, it is not clear if these assets would constitute income of the Trust. The new constitution would allow the trustees to spend these assets as they see fit in accordance with their duties and the purposes of the Trust.

The revised constitution detailing the trustee powers and administration of the trust would also allow a modern, effective governance of the Trust in keeping with modern charity legislation.

**Does the charity have any heritable property or shares in a private limited company?**

The Trust has a 40% share in the Lands of Skene, a registered charity that owns and rents farm land and buildings and has funds from the sale of some of these assets.

## Appendix B

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 of the City of Aberdeen Council Guildry & Mortification Funds (the "Trust").

The Trust (constituted and defined by an Extract Decree of Declarator dated 9 March and 22 May 1838 and extracted on 21 June 1838 and an Extract Decree of Declarator and Reduction dated 7 February 1871 and extracted on 18 April 1871 and varied by a scheme under and in terms of s9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and approved by the Court of Session by interlocutor dated 7 January 1997) is registered with OSCR with charity reference number SC011857.

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 (i) to relieve financial hardship among the Burgesses of Guild of Aberdeen present and future and their widows and 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;  
  
(ii) to assist 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 consultation with the Lord Dean of Guild and his Assessors as the trustees in their absolute discretion may determine) may determine;  
  
(iii) for the prevention or relief of poverty in the City of Aberdeen;  
  
(iv) for the advancement of education in the City of Aberdeen;  
  
(v) for the relief of those in need by reason of old age, ill health, disability, financial hardship or other disadvantage in the City of Aberdeen;
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 clause 16);

“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 4 preceding pages, is executed as follows:-

SIGNED by the said Aberdeen City Council

At Aberdeen on

in the presence of