

Wiltshire Council

Cabinet

24 May 2011

Subject: Wiltshire Council Charitable Trusts

Cabinet member: Cllr John Thomson - Adult Care, Communities and Libraries

Key Decision: No

Executive Summary

This report sets out the background and rationale for the potential transfer of council Charitable Trusts to the Community Foundation for Wiltshire and Swindon, and in particular seeks Cabinet's approval for a specialist Community Foundation consultant to approach the Charity Commission for an 'in principle' sanction. The report therefore seeks Cabinet approval of the proposals set out below.

Proposal

That Cabinet:

1. gives approval to an approach being made to the Charity Commission to seek 'in principle' sanction to the transfer of 11 'in scope' Trusts to a leading charitable body;
2. approves the selection of the Community Foundation for Wiltshire and Swindon as an appropriate leading charitable body to whom the 11 'in scope' Trusts could be transferred, subject to the agreement of the Charity Commission;
3. gives approval to the appointment of a specialist Community Foundation consultant to undertake the work required to obtain 'in principle' sanction from the Charity Commission and
4. receives a further report following the approach to the Charity Commission for 'in principle' sanction, setting out the next steps including agreement to seek final sanction and to complete transfer, if appropriate.

Reason for Proposal

This is current best practice for making the most effective use of charitable trusts by local authorities. Transferring the Charitable Trusts to a leading charitable body will reduce costs associated with the management of these trusts which are not core Council business. Furthermore, the council will see a greater impact from the grant funding available due to the added value that will be derived from aligning the grant making of the transferred Trusts with the Community Foundation's existing grant making programmes.

Sue Redmond
Corporate Director, Community Services

Wiltshire Council

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Purpose of Report

1. To seek Cabinet approval to obtain 'in principle' sanction from the Charity Commission for the transfer of a number of Charitable Trusts from the council to the Community Foundation for Wiltshire & Swindon (CFWS).

Background

2. Wiltshire Council holds as Trustee (as sole or custodian trustee) 18 charitable trusts, bequests, and prizes made to and for various issues and causes in and around the county. In some cases, the funds have become dormant or frustrated as the original intentions or governing documents of the funds are now out of date.

The 18 Trusts are as follows:-

William "Doc" Couch Trust,	RMH, Childs Dacs trust
Alfred E Withy's Trust.	Warminster Old British School
Billen Bequest	John Creasey Trust
Bodinnar's Trust	Edwin Young Trust
Charles & Jess Fortune	Calne Library Endowment
Corsham British School Trus	Colonel William Llewellyn-Palmer Charity
Esme Parrot	Westbury Public Baths
Hosier Educational Trust	King Georges Field Warminster
JB Childs Dacs trust	King Georges Field Melksham

3. Increasingly, local authorities are recognising that acting as a charity trustee is not a core purpose and there is insufficient capacity and expertise to manage these funds effectively (for example, due to the recent staff restructurings at the council, the officer employed within Student Finance who managed many of the educational trusts left the council on the 31st March 2011 with no replacement currently identified to take on this role). Subsequently the Charity Commission has endorsed the release of these funds to leading charitable bodies.
4. Moreover the Charity Commission has specifically endorsed the transfer of assets to Community Foundations who have appropriate investment knowledge, charity commission reporting frameworks, and community grant-making track records (The Boost Initiative). Over 15 local authorities in England have transferred charitable assets to their local Community Foundation in order to get maximum benefit from Trusts which otherwise have traditionally under-achieved.
5. In line with Charity Commission thinking, and council practice nationwide, the Council is investigating the transfer of Wiltshire Council's Trusts to a third party charitable body.
6. In Wiltshire, the Community Foundation for Wiltshire and Swindon (CFWS) has been identified as a possible organisation to whom these funds can be transferred. Based on a model of philanthropic giving started in the USA nearly 100 years ago, Community Foundations are now well established and recognised parts of the British voluntary sector. They have been established to cover specific geographical areas and to support their local communities at grassroots level. They are set up as charitable trusts to enable many donors to collaborate in creating a permanent capital fund for the benefit of the local area. This will generate income for grant making that will be available for the long term, responding to local needs and issues at the time.
7. CFWS has a 20 year history of working for the good of Wiltshire by building a sustainable source of funding for the Voluntary Sector. They have an £8m endowment fund and deliver contracted grant making for funders across the country. Over the past 5 years CFWS have made grants amounting to just over £1.3 million to support over 300 groups, individuals and projects across the Council area, working to meet a range of needs, including the support of children and young people, the arts, older people, disabled people, conservation and the environment.
8. The Council has a well established working relationship with CFWS and provides core funding under the terms of a three year Partnership Agreement. In the current financial year the council is using the CFWS to distribute small amounts of grant funding. (Further information about CFWS and their relationship with Wiltshire Council can be found in their proposal at Appendix 1).
9. A number of meetings have been held between CFSW and the council's Voluntary and Community Sector Unit to explore the possibility of the transfer of the council's charitable trusts.

10. In addition, consultation has taken place with Legal Services and colleagues in Central Finance, Student Finance and the Arts Service, who are all involved directly in the administration of the council's Trusts.
11. A further meeting was held in January 2011, involving representatives of CFWS, legal services and a specialist Community Foundation consultant Colin Evans, where an analysis of the 18 trusts resulted in the identification of 11 'in-scope' and seven 'out of scope trusts'.

The 11 trusts identified as being 'in scope' and appropriate for transfer are:-

William "Doc" Couch Trust,	Esme Parrot
Alfred E Withy's Trust #	Hosier Educational Trust
Billen Bequest	JB Childs Dacs trust *
Bodinnar's Trust	RMH, Childs Dacs trust *
Charles & Jess Fortune	Warminster Old British School
Corsham British School Trust	

The Alfred E Withy Trust is part 'owned' by Swindon Borough Council. The ownership of the trust dates back to when Swindon were part of Wiltshire County Council. As WC and SBC are separate authorities, a payment of 29% of the income is paid to Swindon Borough Council every six months.

* The JB Childs Dacs Trust and RMH Childs Dacs Trust are funds held by the Council in respect of compensation payments awarded to two individual 'named' children from the Criminal Injuries Compensation Board. The money is held by the Council, and will be released to the recipients when they reach eighteen years of age)

12. The remaining seven trusts deemed as being 'out of scope' and inappropriate for transfer are:-

John Creasy Trust	Westbury Public Baths
Edwin Young Trust	King Georges Field Warminster
Calne Library Endowment	King Georges Field Melksham
Colonel William Llewellyn-Palmer Charity	

13. The reasons for these seven being deemed out of scope are as follows

- The John Creasey Trust and Edwin Young Trust have been subject to a review by the Manager of the Arts and Archives service and have been found to offer the council a significant opportunity to fundraise, and generate income through tourism revenues. In addition they also have the potential to

acquire significant works at below market rates or as gifts. The Trusts also provide a potential long term opportunity to grow a collection of regional/national significance, which in turn would offer the opportunity to fundraise for the development of a municipal art gallery.

- The Colonel William Llewellyn-Palmer Charity, whilst distributing charitable funds also involves the holding of land. This does not fit with CFSW's profile regarding the holding of land or property. Furthermore this Trust is also subject to a separate proposal from Bradford on Avon Town Council to take on this responsibility.
 - Westbury Public Baths, King George's Field Warminster and King George's Field Melksham all involve the holding of land. As with the Colonel William Llewellyn-Palmer Charity this does not fit with CFSW's profile regarding the holding of land or property. Westbury Public Baths are being considered as part of the leisure review in consultation with the community.
 - Calne Library Endowment does not fit with the Foundation's grant priorities and with the endowment set up to exclusively to fund projects within Calne library there is little added value that CFWS could bring.
14. Further to the meeting of the 31st January 2011 a detailed proposal from the CFWS has now been received and can be found at Appendix 1.
15. To assist with the transfer process it is proposed to engage the services of a specialist Community Foundation consultant, Colin Evans. Mr Evans is the Vice President – Public Sector, for the Community Foundation for Greater Manchester. He has extensive experience in working with local authorities and has overseen the relationship with the 10 Local Authorities across Greater Manchester, identifying and liberating over £2m of Moribund (Dormant and Ineffective) Trust Funds in Greater Manchester and personally transferring over 600 Trust Funds to Community Foundations from local Authorities across England and Wales

Main Considerations for the Council

Benefits

16. In transferring its Charitable Trusts to a leading charitable body the Council will benefit from a reduction in the costs associated with activities that are not part of the Council's core business. The true cost of this work to the Council includes the salaries of officers administering, assessing and distributing the grants, supervision of the employees by line managers, involvement of Service Directors for grants being made in their areas, involvement of portfolio holders and councillors on panels, legal, accountancy and auditing costs, reports to the Charity Commission and Trustees of the Trusts and time reviewing performance. In addition there are investment management fees and monitoring by finance staff.

17. Furthermore, the council is likely to see a greater impact from the grant funding available due to the added value that will be derived by aligning the grant making of the transferred Trusts with CFWS's existing grant making programmes. The CFWS will also be in a position to grow the size of the funds by attracting additional resources that are not available to the council.

Appropriateness

18. For the council's Charitable Trust's to be transferred to the Community Foundation there must be accord between the charitable objectives set out in each fund's Trust Deed and the charitable objectives of the Foundation.
19. Following a review of all the council's Trusts, both dormant and active, two large trusts, the William "Doc" Couch Trust and the Alfred E Withy's Trust and a group of smaller trusts (Billen Bequest, Bodinnar's Trust, Charles & Jess Fortune, Corsham British School Trust, Esme Parrot, Hosier Educational Trust, JB Childs Dacs trust, RMH Childs Dacs trust and Warminster Old British School) have been deemed suitable by both parties and considered 'in scope' for possible transfer.
20. These trusts fall within the charitable objects of the Foundation and would fit within their two main strands of work, grants to individuals and grants to groups.
21. The Trusts identified have combined assets of £4,456,928 as of 31 March 2010. The Foundation proposes using £2,029,000 of these assets towards groups and £2,427,928 towards grants to individuals as set out in more detail in Appendix 1

Environmental Impact of the Proposal

22. The proposal has no adverse environmental impact.

Equalities Impact of the Proposal

23. WSCF operates under the terms of a robust Equal Opportunities Policy that governs all aspects of the Foundation's work including the delivery of funding programmes. CFWS are opposed to discrimination on any grounds and recognise that in some situations it is necessary to take positive action to eliminate discrimination and disadvantage. Regarding the delivery of grant programmes CFWS criteria are informed by equal opportunities considerations.
24. CFWS also recognise that positive action may be required to address social and cultural inclusion, and that there are implications for allocation of resources when planning and delivering programmes of work. CFWS also manage and distribute funds, grants and awards on behalf of a range of other national, regional and local funding bodies and private donors, each of which operate within separate sets of criteria, often using positive action to target resources where they are most needed, or directing funds to special interest groups or geographic areas according to private donors wishes.

25. Monitoring this aspect of the policy is carried out through an analysis of grants and funds allocated, evaluation reports, and adhering to the distribution and reporting requirements of funders.
26. Whilst there are no proposals to change the charitable purposes of the council Trusts 'in scope', it will be both possible and preferable, in some cases, to redefine the target recipients. Such a change of emphasis will help to ensure that future grant making better meets the needs of today's diverse communities and that grant making is more inclusive in terms of the people it supports and irrespective of where they live in the county.
27. For example, CFWS's proposals for distributing the funds generated for grants from the William "Doc" Couch Trust involve a wider interpretation of the original charitable purpose that will enable the support of disadvantaged young people from across the whole of Wiltshire to access further/higher education. This will add value and extend the reach of an existing CFWS programme 'One Degree More' which currently only enables them to provide financial support to disadvantaged young people living in the old district of West Wiltshire.

Risk Assessment

28. By seeking 'In Principle' sanction to transfer the 11 'in-scope' trusts from the Charity Commission the risks to the council are minimal because at this stage the council would not be committed to any further action.
29. If the council were to subsequently transfer the 11 'in-scope' Trusts to the CFWS it could do so knowing that the risk to the council would be minimised by transferring to an organisation with appropriate investment knowledge, charity commission reporting frameworks, and community grant-making track records. Furthermore WSCF is part of the national network of Community Foundations that have been specifically endorsed by the Charity Commission through the Boost Initiative. CFWS is an associate of the Boost Initiative.
30. The CFWS is also fully accredited by the national Community Foundation Network, having received its re-accreditation in April 2010. The Community Foundation accreditation scheme is one of only seven voluntary sector accreditation schemes that have been officially endorsed by the Charity Commission.

Financial Implications

31. There are no financial issues relating to seeking 'in principle' sanction from the Charity Commission. Whilst the costs of engaging the specialist Community Foundation consultant will be in the region of £1200, a request will be made by the consultant to the Charity Commission to allow ALL 'fair and reasonable' professional fees to be deducted from the assets at the time of final transfer. The cost of engaging the consultant are such that this can be carried out without the need to tender.

32. If these 11 Trusts are transferred to the CFWS this will leave seven funds still to be administered by the council. Of these seven, two Trusts, The John Creasey Trust and Edwin Young Trust have been reviewed by the Manager – Arts and Archives, and have been found to offer the council a significant opportunity to fundraise, and generate income through Tourism revenues.

Legal Implications

33. The Charity Commission will be consulted in order to receive ‘in principle’ support regarding the possible transfer.
34. Any subsequent transfer of the funds will require the specific agreement of the Charity Commission following application by the council using either a scheme arrangement; appropriate resolution given by the current trustee(s) or sections 74 and 75 of the Charities Act 1993 as amended by the Charities Act 2006.
35. Any subsequent transfer would also be examined in relation to the council’s Contract Regulations and Procurement Rules. However, based on the experience of the other local authorities in England the act of transferring these charitable assets will be a transaction between one set of trustees and another, and ultimately because the CFWS will not be providing a service on behalf of Council this should remove the need to deal with the transfer under the council’s procurement rules.

Options Considered

36. Option (a): To continue as at present, with all 18 trust funds being managed by Wiltshire Council
37. Option (a) would continue the present situation, whereby the council continues to incur costs associated with the management and administration of the Trusts, some funds continue to be moribund and others are not meeting the needs of local people as effectively as they could be.
38. Option (b): To transfer the 11 ‘in scope’ trust funds to a body who will act as trustee and manage the funds.
39. Option (b) would result in a reduction in both time and financial costs incurred by the council. It would result in the funds being used to meet the needs of local people through an independent organisation regulated by the Charity Commission which would also be best placed to grow the size of the funds by attracting resources that are not available to the council.

Conclusions

40. Cabinet are asked to ratify the recommendations contained within this report.

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Date of report:

Background Papers

The following unpublished documents have been relied on in the preparation of this report: None

Appendices

Appendix 1 – ‘Proposal for The transfer of Wiltshire Council held Charitable Trusts to The Community Foundation’ April 2011 (The Community Foundation for Wiltshire & Swindon)