

COUNCILLORS' COMMISSION**9 DECEMBER 2019****GILSTRAP CHARITY AND CHARITY OF WILLIAM EDWARD KNIGHT - TRUSTEESHIP****1.0 Purpose of Report**

- 1.1 To consider the various constitutional and governance issues for the Council in discharging its duties, functions and liabilities when acting as charity/corporate trustee of the Gilstrap Charity and W E Knight Trust.

2.0 Background Information

- 2.1 At its meeting on 2 September, 2019 the Councillors' Commission considered a report about the way in which the Trustee Board of the Gilstrap Charity and W E Knight conducts its meetings. A number of Members have expressed concern regarding the transparency of the decision making processes of the Council when discharging its functions as charity trustee. It was agreed at the meeting in September that both the governance issues and whether the District Council is the appropriate body to act as Trustee, would be considered further by the Commission.
- 2.2 Members will recall from the report submitted in September, that following a recent court decision, guidance to local authorities acting as charitable trustees has been amended. This has clarified that since a local authority's activities as charitable trustee is one of its many functions arising from the exercise of its statutory powers, there is a strong public interest in transparency in matters relating to their administration.
- 2.3 Local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This is a recognition of the fact that councils are well suited to being charity trustees as they are rooted in the community, open and transparent in their dealings, highly accountable for their actions and have the high standards of public conduct embedded in the way they work.
- 2.4 It is helpful to refer to an extract from the Charity Commission guidance referring to constitutional issues for local authorities when acting as charity trustees.

"In cases where a local authority is sole trustee, it should be remembered that it is responsible in the same way as any other charity trustee for carrying out the normal duties and responsibilities of a charity trustee. It is up to the local authority to decide, within the scope of local government law, what structures should be used to reach decisions in its name as trustee. An alternative to requiring all the decisions to be reached by the full body of councillors, for example, is to set up a separate committee to discharge its responsibilities as trustees."

- 2.5 The council operates a committee style of governance, and therefore the mechanism by which it discharges its functions is either through the full Council itself, (acting through all 39 of its Members), or through delegation to committees, sub-committees and officers.

- 2.6 As detailed in the previous report, since 2013 the Council has discharged its role as charity trustee through appointing a 'committee' of five Members appointed each year by full Council to a Trustee Board. The reasoning for this was to keep the management of the Charity separate from the day-to-day business of the Council. Meetings of the Board have been dealt with as distinct from the Council's more operational committees. The Charity has its own website, however the Council administers and clerks its meetings. In addition, the finances of the Trusts are accounted for separately with income and expenditure channelled through discrete cost centres separate from those of the Council's finances. The Charity Commission's registration and reporting requirements are strictly observed through the way in which the Board meetings are conducted. Financial reporting is via the Charity Commission website in accordance with legal requirements. There are also two co-opted members on the Trustee Board:- representatives from the Newark Civic Trust; and Friends of Newark Castle. The Council has recently received an expression of interest from a direct descendant of John MacRae Gilstrap, Mrs Miranda Van Lynden, to play a role in the Trust and she has been invited to attend future meetings in an advisory capacity. It should be noted that it is not possible for non-council members to have voting rights on council committees under the Local Government and Housing Act 1989.
- 2.7 Whilst it is recognised that the Trustee Board needs to operate as a committee of the Council, any councillors appointed to it must act in the same way as 'trustees', that is to say they must act in the best interests of the charity, act exclusively for charitable purposes and exercise care to avoid the potential for the best interests of the charity to conflict with the best interest of the Council. Whilst they must act in the same way as trustees, they are in essence acting as agents of the 'Trustee', which is the Council as a corporate body. In summary therefore, the Council is discharging its function as Trustee through its appointed Board of Trustees much in the same way that it discharges other of its functions through its committees, albeit that the members of the Board are governed by the obligations and objects of the charities' constitutions and powers and procedures derived from charity law.

3.0 Future Operation of the Trustee Board

- 3.1 In order to enhance the transparency of decision making by the Council when discharging its functions as charity trustee, and to better reflect the most recent guidance and caselaw, it is recommended that the Trustee Board should operate in the same way that the Council's other committees, whilst still recognising the requirements to observe charity law. This means that membership of the Trustee Board should be reviewed to reflect the political balance of the Council in accordance with principles contained in the Local Government and Housing Act 1989. This would not conflict with the Charity Schemes, which do not require any specific number of members on the Trustee Board to be from the area of benefit of the charities.
- 3.2 The Access to Information Procedure Rules will also apply to the Trustee Board meetings, agendas and reports, which require them to be open to press and public. Therefore meeting agendas and reports should be published in advance, and meetings should be open to the public unless exempt items are to be considered, for example items relating to individuals or commercially sensitive items. Like other committees the Board would be able to exclude press and public for consideration of any items that it determines should be exempt by virtue of Schedule 12A of the Local Government Act.

4.0 Alternative Management Options for the Charities

- 4.1 As indicated in paragraph 2.1 the Commission also indicated, at its meeting in September, that it wished to consider whether the District Council should continue to be the appropriate body to act as Trustee or whether there were alternative options for management of the charities' affairs.
- 4.2 The Charity Commissioner's guidance recommends that reviews include consideration of whether trustee arrangements are still appropriate: -
- a. *Is it still in the charity's interest for the trustee to be the Council?*
 - b. *Would it be useful to have some/all independent trustees?*
 - c. *Would the charity benefit from having user trustees?*
- 4.3 The Charity Commission considers that local authorities have the skills, public knowledge and professionalism to manage charitable trusts effectively, but that nonetheless arrangements should be kept under review over time; collaboration or alternative arrangements could deliver benefits for a charity's beneficiaries.
- 4.4 The Council may wish to consider whether another body, such as Newark Town Council, would be better placed to act as trustee, or whether the Charities should become totally independent from local authority management with a newly appointed and independent board of trustees. Both options are possible, although the Town Council option is likely to be more straightforward given the fact that it is a public authority, already constituted, and the fact that the Charity Commission recognises that local authorities are well placed to run charitable trusts.
- 4.5 Changes of this nature would require Charity Commission consultation, advice and approval. The Council would need to carry out its own consultation and in some circumstances the Charity Commission will publish a public notice, and consider representations, before making a decision. The time-period to complete this process will vary depending upon the complexity of the option chosen but is likely to take a number of months. The Commission does not make a charge to process such applications but there would be a cost to the Council/charities in terms of officer time and the cost of publishing any required notices.
- 4.6 Currently the administration of the two charities is provided and undertaken by council officers, including the secretariat to Board meetings, legal advice and financial management of the charities' accounts. Any move to a different management option would need to take into account how these services would be provided.
- 4.7 It should be noted that the W E Knight Trust does not own any property but holds a capital sum which is invested in trust for the charity. Some time ago the Trustee Board committed, in accordance with the Trust Scheme, a significant contribution towards the replacement of facilities at Newark R&M Cricket Club. It is likely that this commitment will take up the whole of the remaining capital endowment fund of this Trust.

4.8 The main issue therefore relates to the Gilstrap Charity, and which would be the best future management option taking into account all the circumstances outlined in this report, i.e. for the District Council to remain the Trustee with the proposed changes to the governance procedures which would address the concerns about transparency and ensure greater scrutiny by full council of the decisions taken by the Board, or to move to a different management option for the Charity.

4.9 There is also the option, should the decision be to remain the charity trustee, for the District Council to expand membership of the Board to further external parties who are not councillors. However, as pointed out earlier in the report, such members would be co-opted as only District Councillors would have voting rights.

5.0 RECOMMENDATIONS that Members consider:

a) the proposals set out in the report to amend the governance arrangements for the Trustee Board for the Gilstrap and W E Knight charities and make recommendations to Full Council accordingly; and

b) the alternative management options for the Gilstrap Charity.

Background Papers

LGA Councillor's Guide to a council's role as charity trustee
ICO guidance for public authorities

For further information please contact Karen White on Ext 5240.

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