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**Children, Education & Communities Policy & Scrutiny Committee** 14 November 2017

Report of the Assistant Director (Communities and Equalities)

**York Museums Trust (YMT) Scrutiny Review Update**

**Background**

1. The report of the Learning & Culture Policy & Scrutiny Committee task group, dated 24 March 2016, recommended that the future legal relationship between the Council and YMT should be based on: *A charity with a governing document or scheme which would set out how the buildings and collections would be managed.*
2. The Task Group agreed that any new scheme should:
  - Put a double-lock protection on the assets so that neither YMT nor the Council could dispose of or use them outside of the terms of the governing document or scheme without the other's consent (and, in the case of the core assets, the Charity Commission)
  - Provide clarity and consistency of approach regarding the long-term use and management of the assets
  - Reassure potential donors to the collections regarding the long-term security of their donations
  - Reassure potential funders, legacy donors and others regarding the long-term security of their contributions
  - Demonstrate the long-term commitment of both the Council and YMT to a partnership approach to protect, preserve and enhance the assets for the public good
3. This paper reports back on progress against that recommendation.

**Legal Advice Received**

4. The Council and YMT have sought independent legal advice. This has established the following headline options:

- Option 1, amended version of existing structure – retain YMT, York Museum and Gardens (YMG) and Kirk Collection with YMT being the trustee of YMG and the Kirk Collection. YMG amended to receive new assets such as the Art Gallery assets on permanent endowment. Updated documentation to provide the constitutional safeguards and terminate existing documentation where relevant.
- Option 2, amended version of existing structure with new charitable trust for assets transferred – retain YMT, YMG and Kirk Collection with YMT being the trustee of YMG and the Kirk Collection. Updated documentation to provide the constitutional safeguards and terminate existing documentation where relevant. Create a new charitable trust to own the new assets transferred over, e.g. assets from the Art Gallery, with the Trust as sole corporate trustee and Council as custodian trustee, i.e. a parallel trust to YMG.
- Option 3, transfer of YMG to YMT – transfer the YMG to YMT so that all assets are held by YMT, with the YMG assets held on a separate trust where required. Updated documentation to provide the constitutional safeguards and terminate existing documentation where relevant.

5. Option 2 is established as the preferred approach, ie:

- to retain the overall framework of organisations that currently exist: YMT, YMG and Kirk Collection. The Council would continue to act as custodian trustee in respect of land held in the YMG and Kirk Collection providing further balance to the power and responsibilities of the parties;
- to revise the governance arrangements for YMT, YMG and Kirk Collection so that the Council has greater safeguards over the future use of the assets. The additional safeguards would pave the way for the Council to terminate the contractual controls it has and transfer the collections on a permanent basis which could be on terms that created permanent endowment;
- to create a new charitable trust in parallel to the YMG for new assets, such as the Art Gallery assets, to be transferred on terms that create permanent endowment. The structure would mirror the YMG with the Trust as managing trustee and the Council as custodian trustee.

6. This would retain the current structure of YMT, YMG and the Kirk Collection together with the Council as custodian trustee, all of which represents a well understood and effective way of managing the assets. Creating a new charitable trust mirroring the YMG structure will allow the Council to transfer

assets as permanent endowment without changing the terms of the YMG. This offers a clean approach with the additional assets being transferred being held in a separate trust. This should facilitate clear communication as to the changes to the structure. The ability to link the new charity with YMT will mean there will not need to be material additional administration in the on-going management of the new trust. Whilst this option does involve the creation of a new charitable trust, Option 1 would involve amending the YMG constitution to allow for the new assets to be transferred so the difference between the two would in practice be minimal.

7. The revised governance arrangements would centre on requiring both YMT and the Council to agree to certain key decisions, for example around disposing of any of the collections. This would be achieved by amending the constitutional documents of YMT, YMG and the Kirk Collection and creating the new charitable trust that includes equivalent provisions. For YMG and the Kirk Collection this would involve applying to the Charity Commission for a revised scheme. For YMT it would involve amending the articles of association by special resolution (75% majority of the members). The parties would need to agree the list of decisions that would require unanimous agreement.

### **Next Steps**

8. The legal advice received will now be considered by YMT's trustees. Once a response has been received from YMT a further report will be brought to this committee.

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**Report Approved**  **Date** 31.10.17.

#### **Wards Affected:**

**All**



For further information please contact the author of the report