

Executive

17 March 2016

Report of the Director of Communities and Neighbourhoods

Portfolio of the Deputy Leader, Economic Development & Community Engagement

York Children and Young People's Fund

Summary

1. This report proposes the establishment of a new fund, for the benefit of Children and Young People within the City of York, to be managed by Two Ridings Community Foundation (TRCF).

Recommendations

2. The report asks the Executive:
 - To resolve to transfer the funds identified in paragraph 4 below, subject to the agreement of the Charity Commission and of any trustees external to the Council where applicable, to a new "York Children and Young People's Fund," to be managed by TRCF
 - To authorise officers to enter into the necessary legal agreements with TRCF to establish the new fund

Reason: To create an effective fund for the benefit of children and young people in York.

Background

3. The Council holds a number of funds in trust as a result of bequests and investments. In many cases, the funds have become moribund (i.e. dormant, with no payments having been made) or ineffective (i.e. regularly failing to spend their annual income) as the original intentions or governing documents of the funds are obsolescent.

Proposal

4. Following a review by the Corporate Management Team the following funds have been identified that fall in the moribund or ineffective categories:

Name of Fund	Approx. Value	Charitable Status	Purpose
Huntington Rd Day Centre (HRDC)	£65,062	Bequest (not a trust / charity). No expenditure	No stated purpose
T.A. Wain	£2,355	Trust fund. Dormant	No record
James Ashton	£3,070	Charity No. 523454 Dormant	Provision & maintenance of playing fields for children
Edmund Wilson	£21,134	Charity No. 523452 Ineffective	Instruction, promotion & encouragement of swimming, diving and life-saving.
Haughton Gardiner *	£54,050	Charity No. 529729 Ineffective	To help under 25s in need with school trips / educational / sports equipment / musical instruments
Barbara Edwards *	£5,186	Bequest. Ineffective	Administered with the Haughton Gardiner Fund
Horbury Organist	£198	Unknown. Dormant	Unknown
Bellerby Prize	£71	Unknown. Dormant	Unknown
RM Burton	£8	Trust. Dormant	Unknown
Siblings	£97	Trust. Dormant	Unknown
Alf Peacock Memorial Fund	£16	Trust. Dormant	Unknown
York Child	£1,430	Trust.	School uniforms for qualifying families
York Children's	£265	Trust	Unknown
TOTAL	£152,942		

* Transfer of funds subject to agreement from Haughton Gardiner / Barbara Edwards Trustees.

5. Action needs to be taken to make these funds workable again; however, it would not be legally possible or appropriate to absorb these funds into mainstream Council budgets. The Charity Commission is keen to see the release of dormant trust funds, locked up in local authorities around the country, and the Commission particularly supports the release of these funds to leading charitable bodies.
6. It is proposed that the most effective use of these funds would be to transfer them to a body who will act as trustee and manage the funds, providing a new small grants scheme, the “York Children and Young People’s Fund”, for charitable distribution to eligible individuals, community and voluntary groups and local charities broadly in line with the funds’ original objectives.
7. TRCF has been identified as the appropriate organisation to manage these funds on behalf of the Council. Community Foundations are now a well established part 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 generates income for grant making that is available over the long term, in order to respond to local needs and current issues.

Two Ridings Community Foundation

8. TRCF is a respected local charity (charity number 1084043) whose board members include senior representatives from the business, law and charitable sectors. As a member of UK Community Foundations, and accredited to standards endorsed by the Charity Commission, TRCF has, in the last five years, received a number of trust fund transfers with an asset value in excess of £800k, the value of which it has increased to £1.4m with the addition of government match funding.
9. TRCF manages a portfolio of endowment funds worth £2.3m, some of benefit to North or East Yorkshire but others of benefit to specific areas of geography or themes. During the past 3 year period investment returns have averaged 10.7% after fees and charges. It has made £500,000 in grants in the last 2 years to individuals, groups and projects supporting a broad range of thematic priorities:
 - Provision of education, training and positive opportunities for people

- Children and young people
 - Promotion of health and wellbeing
 - Culture sports and the arts
 - Support and advice for people experiencing rural and social isolation, especially elderly people and people with disabilities
10. The majority of grant applications have been assessed in tandem with donors' wishes in partnership with the Foundation. In addition to the funds that it manages, TRCF is able to signpost applicants to other funds suitable for applicants' particular needs.
 11. TRCF's investment policy has been devised by Trustees and supported by their Investment Managers: namely CCLA and Schroders. This policy confirms the Foundation's approach with respect to appetite for risk, investment strategy, corporate and socially responsible governance.
 12. Given the governance arrangements of the TRCF, their experience of managing funds and small grants schemes, and their low administration charges (see paragraph 20), officers recommend them as the body to administer the "York Children and Young People's Fund". No other locally based organisation has been identified which has the relevant experience or expertise to deal with the release of such dormant and frustrated funds.

The New Fund

13. Transfer of the funds will require the agreement of the Charity Commission and a transfer agreement between the Council and TRCF. The Board of Trustees of TRCF will become the trustees of the "York Children and Young People's Fund". The transfer agreement between the Council and TRCF will set out the charitable purposes of the Fund.
14. The capital sum of approximately £153k will form the initial capital endowment fund with interest from the fund distributed by TRCF as the "York Children and Young People's Fund" small grants programme. The proposed maximum grant size under this programme will be £1,000, which may be amended at a future time to take into account inflation. The amount available for distribution each year will depend on interest rates and other investment returns.
15. TRCF will continue to identify possible sources of additional funds so that the "York Children and Young People's Fund" will increase

over time. This could include donations by local businesses, further trust transfers and legacies and donations.

16. TRCF is proposing that the following fund structure is created to manage the transferred assets:

York Children and Young People's Fund			
<p>Prime Opportunities</p> <p>£19,000</p> <p>Panel process - donor advised</p> <p>Objects: Children & young people 10+ education and travel</p> <p>Small grants: £250</p>	<p>CYC General Fund</p> <p>£75,572 - from HRDC, TA Wain et al</p> <p>Panel process - TRCF grants committee</p> <p>Objects: Relief of poverty / sporting activities</p>	<p>Haughton Gardiner Trust (incl. Barbara Edwards Trust)</p> <p>£59,236</p> <p>Panel process - donor advised</p> <p>Objects: Under 25s - Equipment, trips</p> <p>Children & young people with mental health issues / experiencing bullying</p>	<p>Edmund Wilson Trust Fund</p> <p>£21,134</p> <p>TRCF grants committee</p> <p>Objects: swimming / aquatics</p>

17. This structure incorporates an existing TRCF fund, the Prime Opportunities fund, into the umbrella of the “York Children and Young People’s Fund”.
18. In respect of three of the above funds: Haughton Gardiner, Edmund Wilson and James Ashton, TRCF will, subject to Charity Commission approval, continue to fulfil the objects of the funds, delivering grants to qualifying individuals and grassroots community groups in the area of benefit. Where applicable, it will also seek continuing advice and support of the former trustees of those trusts who wish to adopt an advisory role in support of the new fund in the future.
19. It is proposed to make the transition by 31st March 2016 if possible.
20. The proposed fees to be charged by TRCF for administration of the new fund comprise two elements:
- (1) One off development and set up fee of £4,000 payable as soon as agreement is reached to transfer funds agreed; and
 - (2) Fees to provide management of both the distribution element of the Fund and to provide effective investment and governance of the endowment element of fund. The work involved will include publicising, managing, evaluating and reporting on the small grants scheme and the investment

management of the capital sum. This annual management fee is 1.5% of the value of the assets, held in the form of endowment, as at 31st March annually. Fees will be charged quarterly to the fund. As noted above, TRCF's track record suggests that the value of the funds should continue to increase well above the level of the fees charged

See Annex 1 for a full description of the activities covered by these fees.

21. The fee structure is comparable with other community foundations that generally charge around 1.5% for managing endowments of this size and between 2% and 5% for set up.
22. TRCF will publish guidelines and eligibility criteria for the "York Children and Young People's Fund". In accordance with TRCF practice, grants panels comprising local volunteers will make funding recommendations. TRCF, as the accountable body, will review and approve all recommendations made by local panels. Applications which do not meet the criteria of the "York Children and Young People's Fund" will be referred to alternative funds administered by TRCF, as will happen if the Fund is overbid. This will reduce the risk of applicants being disappointed.

Options

23. There are three principal options open to the Executive:
 - (i) To continue as at present, with the various funds continuing to be dormant or ineffective with no community benefit
 - (ii) To seek new arrangements with the Charity Commission to update the purpose of the funds and enable them to be distributed again
 - (iii) To transfer the funds identified to TRCF who will act as trustee and manage a new "York Children and Young People's Fund" for distribution broadly in line with the funds' original objective.

Analysis

24. Option (i) would perpetuate the present situation, whereby the funds are not meeting the needs of local people as envisaged by the original donors. Option (ii) would entail each revised fund remaining a charity in its own right. The Council would still have to act as sole trustee accountable for its management to the Charity Commission, resulting in increased administrative commitments and work that is not core to the Council's objectives. Option (iii) 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. Option (iii) is therefore the preferred option.

Next Steps

25. Following a decision, the next step would be transfer of the funds to TRCF. A firm protocol for this has been developed by TRCF with nominated team members within the Charity Commission utilising appropriate sections of the Charities Act 1993, as amended by the Charities Act of 2006 and consolidated within the Charities Act 2011. The Council will present the case to the Charity Commission for the effective closure of the following funds, removal from the Charity Commission Register, and transfer of the attaching assets to be held in a named fund within TRCF's portfolio:

- The Haughton Gardiner Trust Fund
- Edmund Wilson Trust Fund
- James Ashton Playing Fields

Only when this action has been completed, to the satisfaction of both sets of Trustees, will the assets of the Funds be transferred to TRCF and the charities closed.

26. TRCF will then establish 3 separate restricted funds:

- City of York Council (CYC) General Fund
- Haughton Gardiner / Barbara Edwards fund
- Edmund Wilson Fund

The funds listed above will be transferred into the appropriate restricted fund held by TRCF.

27. **“York Children & Young People’s Fund” decision making:** Under the umbrella designation of the “York Children & Young People’s Fund” decision-making in respect of the funds transferred from the Haughton Gardiner and Barbara Edwards trust will be exercised as defined in TRCF’s grants policy as a donor advised fund. This means that former trustees of Haughton Gardiner Trust will be presented by TRCF with a range of grant options for them to consider. The final decision on the distribution of a Donor Advised Fund is always subject to the discretion of the TRCF trustees. The CYC General Fund and the Edmund Wilson fund will be discretionary funds (as is the Prime Opportunities Fund). This

means that the awards of grants from the funds is distributed to the benefit of the community at the discretion of the Trustees of TRCF.

28. TRCF will treat each as a 'restricted fund' in its annual accounts within the meaning of the Statement of Recommended Practice (SORP 2005) 'Accounting and Reporting by Charities'. The purpose of the Funds is to support charitable purposes primarily benefiting the communities within the agreed eligible geographic area defined as the City of York (the "Area of Benefit").
29. For marketing purposes the funds will be promoted as the "York Children and Young People's" Fund and applications allocated to the relevant fund under this umbrella.
30. **Fund governance:** TRCF will hold, manage and invest the Funds exclusively for charitable purposes in accordance with the Trust Deed adopted by the Board of Trustees of TRCF. TRCF will provide an annual report detailing the income and expenditure of the Funds. TRCF will be responsible for the preparation of Fund accounts for the York Children and Young People's Fund as part of TRCF accounting. The Funds will be audited within the TRCF annual audit or independent examination. In line with Charity Commission requirements, TRCF trustees have ultimate responsibility for any grant awards made by TRCF. Decisions made by any donors will be ratified by the TRCF trustees.
31. **Grant-making administration:** The assessment of grants will be carried out by TRCF using standard procedures used by TRCF. TRCF will provide a regular report as to how the grants have been utilised and will monitor grants in accordance with its Grant Making Policy.
32. **Investment and governance management:** Investment decisions will be taken by the TRCF Investment Committee as part of its remit to oversee TRCF funds.
33. **Approach to determining annual funds for grant-making:** TRCF will confirm their approach to what investment income is available for grant making. This will balance the need to ensure adequate funds for an annual grant-making cycle alongside ensuring that capital fund balances are retained. Discretion may be exercised by TRCF to top slice a reasonable amount of accrued income, to provide for immediate grant-making.

34. **Marketing and fundraising:** If any funds are raised within the York area which the donors wish to be allocated to the York Children and Young People's Fund then those donations will be credited to the Funds. This includes any legacies received.
35. Once the transfer is complete, TRCF will assess the income from the fund and if sufficient funds have accrued, with agreement it will allocate a portion of the funds to be used for immediate grant making in 2016/17.

Implications

36. **Finance:** The charges for establishing the fund and the annual administration charge will be met from the funds with no financial implications for the Council.
37. The funds are currently invested as part of the Council's portfolio but the withdrawal of the funds would not alter the return on the remaining portfolio.
38. If these identified funds are transferred to TRCF some trust funds will remain under the administration of the Council. These funds are all live and would not be suitable for transfer at this time.
39. **Equalities:** The proposed arrangements will improve distribution of the funds in line with their intended charitable objectives and will therefore further equalities outcomes.
40. **Legal:** As the corporate trustee of the charities in question, the Council has a legal duty to act in those charities' best interests including to make the best use possible of the charities' respective funds for the purpose of achieving their charitable objectives.
41. Under the Charities Act 2011, the charity trustees of a charity may resolve to transfer all property of the charity to another charity, but the charity trustees must be satisfied that:
 - (a) it is expedient in the interests of furthering the purposes for which the property is held; and
 - (b) the purposes of any charity to which property is transferred are substantially similar to the purposes of the transferor charity.
42. A resolution must be passed by at least two-thirds of the trustees who vote on the matter and a copy of any such resolution, together with a statement of reasons, must be sent to the Charity Commission. In the case of those trusts for which the Council is the sole trustee the resolution of the Executive will serve for this

purpose. In the case of the Haughton Gardiner / Barbara Edwards, which has other trustees external to the Council, the resolution of the Executive will have the effect of instructing the Council's nominated trustee to vote for transfer at a subsequent meeting of the trustees.

Consultation

43. Consultation will take place as set out in the report with the trustees of relevant funds.

Council Plan

44. The proposals in this report are in line with the Council Plan priority whereby York's residents live and thrive in a city which allows them to contribute fully to their communities and neighbourhoods.

Risk Management

45. In compliance with the Council's risk management strategy the main risks that have been identified associated with the proposals contained in this report are those which pertain to damage to the reputation of the Council and failure to meet stakeholders' expectations. The level of risk is assessed as "Very Low" as the measures set out in this report are intended to mitigate this risk. This means that periodic monitoring is required of the operation of the new arrangements.

Contact Details

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Wards Affected:			All ✓
For further information please contact the author of the report.			

Annex: Management Activities

Glossary of abbreviations used in the report:

HRDC - Huntington Road Day Centre

CYC – City of York Council

CYPF – Children and Young People’s Fund

HRDC - Huntington Road Day Centre

TRCF – Two Ridings Community Foundation