

# The City of Edinburgh Council

10.05am, Thursday, 2 May 2019

## Removal of Council member as a governor of the Charles Smith Trust Scheme 1991

Item number 8.4  
Executive/routine  
Wards  
Council Commitments

### 1. Recommendations

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- 1.1 To approve the removal of the requirement to appoint one member of the Council as a governor of the Charles Smith Trust.

**Stephen S. Moir**

Executive Director of Resources

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# Report

## Removal of Council member as a governor of the Charles Smith Trust Scheme 1991

### 2. Executive Summary

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- 2.1 This report seeks approval to remove the requirement to appoint one member of the Council as a governor of the Trust.

### 3. Background

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- 3.1 The clerk to the Trust has asked the Council to agree to the removal of one of its members as a governor of the Trust as no council member has served as a governor since 1995.

### 4. Main report

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- 4.1 In 1991 the Edinburgh Bookseller's Society Limited ("the Society") asked Lothian Regional Council whether they would agree to the Society taking over the control of the investment of the Charles Smith Endowment and the distribution of its income.
- 4.2 Lothian Regional Council agreed and the Trust was registered as a charity on 20 March 1992.
- 4.3 The function of the Trust is to provide grants to apprentices to the trade of bookseller and /or stationer.
- 4.4 The Trust is audited by Grant Thornton and had an annual income of £3,089 in the year to June 2018.
- 4.5 The constitution of the Trust is governed by five governors/trustees of which one is an elected member of the Council as statutory successor to Lothian Regional Council. The other four governors/trustees are one from Napier University and three from the Society.
- 4.6 The last council member of Lothian Regional Council to act as governor of the Trust was from 1992 -1995.
- 4.7 In 1996 the Council succeeded to Lothian Regional Council and has never sent a member to be a governor of the Trust.
- 4.8 The Trust is a separate legal entity from the Council and the Council's only power is to appoint a governor to the governing body of the Trust.

- 4.9 The clerk of the Trust has asked that the Council agrees to the removal of one of its members as a governor of the Trust in view of the fact there has been no council governor since 1995.

## **5. Next Steps**

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- 5.1 The Trust shall be advised of the Council's recommendation.
- 5.2 The Trust will notify the Office of the Scottish Charity Regulator (OSCR) of this recommendation and request agreement.

## **6. Financial impact**

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- 6.1 There is no financial impact if the Council approves the recommendation.

## **7. Stakeholder/Community Impact**

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- 7.1 There is no direct impact on stakeholders or the community from the content of the report.

## **8. Background reading/external references**

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- 8.1 None

## **9. Appendices**

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Appendix 1 – Charles Smith Trust deed



Education (Scotland) Act 1980

THE CHARLES SMITH TRUST SCHEME 1991

G F G WELSH

Regional Solicitor

The Lothian Regional Council

5RA00031

Education (Scotland) Act 1980

THE CHARLES SMITH TRUST SCHEME 1991

MEMORANDUM

The Edinburgh Booksellers' Society Limited have made representations to The Lothian Regional Council that they should take over from the Council the functions of the Charles Smith Committee under Section 29 of the Midlothian Educational Trust Scheme 1962 regarding allowances for technical education of apprentices and others. This would achieve administrative savings for the Council.

X The Council have decided that that Society, the Principal of the Napier Polytechnic of Edinburgh or his nominee and one member of the Council should take over the functions of the Charles Smith Committee essentially on the same terms as Section 29 of the 1962 Scheme.

5RA00031

Under the new Scheme the governing body will be empowered to provide grants to persons within Lothian Region, as opposed to the County of Midlothian under the 1962 Scheme. Persons receiving grants shall become bound as apprentices to the trade of bookseller or bookseller and stationer, or, failing these trades to any other respectable trade, occupation or profession in Lothian Region, or shall engage in a trade, occupation or profession approved by the governing body. In selecting the persons to benefit, the governing body shall, other things being equal, prefer applicants from the Parish of Currie or the Parish of Glencorse.

The area of benefit under the new Scheme has been extended to Lothian Region so as to maximise the persons who are entitled to grants from the governing body.

THE CHARLES SMITH TRUST SCHEME 1991

Made 2 October 1991

Coming into Operation 1 January 1992

ARRANGEMENT OF PARAGRAPHS

PART I

CITATION AND INTERPRETATION

Paragraph

1. Citation

2. Interpretation

PART II

CONSTITUTION OF THE GOVERNING BODY

3. Constitution of the governing body

4. Composition of the governing body

5. Appointment of governors

6. Periods of office

7. Demission of office

8. Vacancies

9. Validity of proceedings of governing body

10. Execution of deeds

11. Transitional provisions

PART III

ADMINISTRATIVE ARRANGEMENTS

12. Chairman

13. Administrative staff



14. Meetings of governing body

15. Quorum of governing body

16. Minute book

17. Rules and standing orders

#### **PART IV**

#### **FINANCIAL ARRANGEMENTS**

18. Vesting of Trust

19. Transfer of cash balances, books, deeds and papers

20. Additional donations

21. Powers of investment

#### **PART V**

#### **TRUST PURPOSES**

22. Application of income

23. Purposes of the Trust

24. Conditions of award of grants

25. Tenure of award

26. Limitation of value of awards

27. Continuation of benefits

28. Publicising of Trust

#### **PART VI**

#### **MISCELLANEOUS AND GENERAL PROVISIONS**

29. Copies of scheme

30. Revocation

In exercise of the powers conferred on them by sections 105 and 112 of the Education (Scotland) Act 1980 and of all other powers enabling them in that behalf and after –

- (a) preparing a draft scheme for the future management of part of the Midlothian Educational Trust,
- (b) carrying out the procedure specified in section 112(1) and 112(1A) of the said Act
- (c) no objections or proposed amendments to the draft Scheme having been received

The Lothian Regional Council hereby make the following scheme:-

#### PART I

##### CITATION AND INTERPRETATION

###### Citation

1. This scheme may be cited as "The Charles Smith Trust Scheme 1991".

###### Interpretation

- 2(1) In this scheme unless the context otherwise requires:-

"Council" means The Lothian Regional Council;

"governing body" means the Governors of The Charles Smith Trust, as constituted in terms of paragraph 3 of this scheme; and

"Trust" means the Charles Smith Trust.

- (2) References in this scheme to a Part or paragraph shall, except where the context otherwise requires, be construed as references to a Part or paragraph to this scheme, as the case may be.

#### PART II

##### CONSTITUTION OF THE GOVERNING BODY

###### Constitution of the governing body

3. For the purpose of carrying this scheme into effect a governing body shall be constituted under the name of "The Governors of the Charles Smith Trust" and under that name shall be a body corporate with perpetual succession, a common seal and all rights, privileges and powers of a body corporate.

**Composition of the governing body**

4. The governing body shall consist of five governors, composed as follows- --
- (a) the Preses or his nominee, Treasurer or his nominee and one other member of the Edinburgh Booksellers' Society Limited,
  - (b) the Principal of the Napier Polytechnic of Edinburgh or his nominee and
  - (c) a member of the Council.

**Appointment of governors**

5. The first appointments to the office of governor shall be made by the respective appointing bodies as soon as possible after 1 January 1992 and all appointments to the governing body shall be made either at ordinary meetings of the above bodies or their committees to which the power of appointment has been delegated or at meetings summoned for the purpose which shall be convened and conducted according to the ordinary rules and practices of those bodies or their committees.

**Periods of office**

- 6(1) Subject to the provisions of sub-paragraph (2) below and paragraph 7, each governor shall hold office for four years, the term of office of the original appointees being deemed to run from the date of the first meeting of the governing body. A governor shall be eligible for re-appointment on the expiry of his period of office.
- (2) Subject to the provisions of paragraph 7, of the governors first appointed under this scheme, the governor appointed by the Council shall hold office for a period of two years.

#### Demission of office

7. A governor shall be deemed to have vacated office as a member of the governing body and the governing body shall declare his place vacant in any of the following circumstances-
- (a) where he intimates in writing to the governing body his resignation as a governor;
  - (b) where he has had his estate sequestrated or has made a trust deed for his creditors;
  - (c) where he has become incapacitated to act as a governor; or
  - (d) where he has for the space of one year without reasonable cause failed to attend any meeting of the governing body.

#### Vacancies

- 8(1) Every vacancy whether occasioned by the expiry of a term of office as a governor or by resignation or any other cause shall be entered in the minute book.
- (2) Each vacancy shall be intimated by the clerk of the governing body to the body entitled under paragraph 4 to appoint a successor. In the case of a vacancy caused by the expiry of the normal term of office, the intimation shall be made not less than one month before the date of the vacancy and, in any other case, as soon as may be after its occurrence. Within three months of the intimation, a successor shall be appointed by the body entitled to do so.
- X (3) If the body entitled to appoint a governor fails to do so within the said three month period, it shall be in the power of the governing body to appoint a successor and any appointment under this sub—paragraph shall be deemed to be an appointment by the body entitled to make the appointment.

Validity of proceedings of governing body

9. The validity of the proceedings of the governing body shall not be affected by any vacancy among or by any defect in the appointment of any of the governors.

Execution of deeds

10. All deeds and other writings, sealed with the corporate seal and signed by one of the governors and by a duly authorised officer of the governing body appointed for the purpose shall be held to be validly executed on behalf of the governing body.

Transitional Provisions

11. As soon as can be conveniently arranged after 1 January 1992 the Preses of the Edinburgh Booksellers' Society Limited shall convene the first meeting of the governing body, notice of which shall be given to each member of the governing body or, if the names of such members have not been intimated to the Preses of the Edinburgh Booksellers' Society Limited, to the bodies entitled to appoint governors.

PART III

ADMINISTRATIVE ARRANGEMENTS

Chairman

12. The governing body shall at their first meeting appoint a chairman from their own number. A chairman shall hold office for four years or until his own period of office as a governor expires, whichever is the lesser, and shall be eligible for re-appointment. In the absence of the chairman, the governing body shall appoint one of their number to preside at any meeting.

Administrative staff

13. The governing body shall appoint a clerk and such other officers as they consider necessary at such reasonable salaries and under such conditions of service as they may determine. Such staff shall hold office at the pleasure of the governing body. Any officer of the governing body whose duties include intramissions with funds vested in the governing body shall find such caution as the governing body may require for his intramissions. No governor acting as clerk or other officer shall be entitled to any remuneration.

Meetings of governing body


- 14(1) The governing body shall hold at least one ordinary meeting in each year at such place and time as they may determine.
- X (2) The chairman may at any time convene a special meeting of the governing body.
- (3) Any three of the governors may for any cause which seems to them sufficient require a special meeting to be convened by giving notice in writing to the clerk to the governing body specifying the business to be transacted.
- (4) At least one week's notice of meetings shall be given and such notice, which shall be in writing, shall specify the date, time and place of the meeting and the business to be transacted.
- (5) Notwithstanding the provisions of sub-paragraph (4) above, the chairman may convene a meeting on less than one week's notice. He may also authorise any governor to convene a meeting on his behalf on less than one week's notice. No resolution or motion carried at such a meeting

shall be valid however unless it is voted for by a majority of all the governors then in office or unless it is confirmed at any subsequent meeting for which the usual notice has been given.


#### Quorum of governing body

- 15(1) At all meetings of the governing body three governors, one of whom shall not be either an office-bearer or member of the Edinburgh Booksellers' Society Limited, shall be a quorum and, subject to the terms of paragraph 14(5), all questions shall be determined by a majority of the governors present. In any case where there is an equality of votes, the chairman of any meeting shall have a second or casting vote in addition to a deliberative vote.
- (2) If at any time appointed for a meeting or if before the business of any meeting has been completed, the number of governors present is less than three, the governors present shall adjourn the meeting to such day or time as they may determine and the meeting may be re-convened on less than one week's notice being given.

#### Minute book

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16. A minute book shall be kept by the governing body and minutes of the proceedings of the governing body shall be entered therein, including resolutions authorising the execution of all writings or deeds on behalf of the governing body.

#### Rules and standing orders

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17. Subject to the provisions of this scheme, the governing body may make such rules and standing orders for the regulation of their proceedings, the keeping of records, the execution of documents and such other matters connected with their business as they think fit.

PART IV

FINANCIAL ARRANGEMENTS

Vesting of Trust

18. From and after 1 January 1992 the Charles Smith Trust shall vest in the governing body without the necessity of any instrument or conveyance, the endowment to be held, administered and applied exclusively by the governing body in accordance with the provisions of this scheme.

Transfer of cash balances, books, deeds and papers

- 19(1) As soon after 1 January 1992 as can conveniently be arranged, the Council shall make over to the governing body all cash balances, books, deeds and papers which relate wholly or mainly to the Charles Smith Committee as part of the Midlothian Educational Trust Scheme 1962 and to which they have right as the Council.
- (2) The governing body shall discharge such lawful debts relating to the said Charles Smith Committee as remain unpaid:
- Provided that the liability of the governing body shall be limited to the amount which can be realised from the assets of the endowment and the governing body shall, after satisfactory audit of the accounts relating to the said Charles Smith Committee, grant to the Council a discharge of their intromissions with the funds of the said Charles Smith Committee.

Additional donations

20. The governing body may accept donations, legacies, annuities, subscriptions and other gifts (hereinafter referred to as "additional donations") for the purposes of this scheme, or for purposes connected therewith. Such additional donations shall be applied in accordance with the directions of the respective testators or donors. In the



absence of any specific direction relating thereto, the governing body shall add any additional donation to the capital or income of the Trust or in such proportions as they think fit to both the said capital and income.

#### **Powers of investment**

- 21(1) It shall be in the power of the governing body to invest capital and to change the investments in which capital is invested, in such manner as they think fit. Before exercising these powers they shall obtain and consider proper advice.
- (2) It shall be in the power of the governing body to retain any investments in which capital is invested. The governing body shall review these investments at regular intervals and may hold such additional reviews as they consider desirable. For the purpose of such reviews they shall obtain and consider proper advice.
- (3) For the purposes of this paragraph "proper advice" means the advice of a person who is reasonably believed by the governing body to be qualified by his ability in, and practical experience of, financial matters to advise the governing body on the exercise of their powers under this paragraph.

### **PART V**

#### **TRUST PURPOSES**

##### **Application of income**

- 22(1) The governing body, after paying all necessary expenses of management and other outgoings affecting the Trust, shall in each financial year apply as nearly as possible the whole of the free income of the Trust, including any unexpended balance of income carried forward from the previous financial year, in fulfilment of the purposes laid down in paragraph 23.

- (2) If, notwithstanding the foregoing provisions of this paragraph, there is an unexpended balance of the free income of the Trust at the end of any financial year, the governing body shall carry the said balance or part thereof forward to the following financial year or shall add the said balance or part thereof to the capital of the Trust.

#### Purposes of the Trust

- 23(1) The governing body may in each financial year award grants of such annual value as they think fit to applicants of either sex:

- (a) who having been ordinarily resident in Lothian Region for the period of not less than five years have not ceased to be so resident for a period exceeding one-fifth of their period of ordinary residence in Lothian Region, or
- (b) one of whose parents has for the period of not less than five years been ordinarily resident in Lothian Region and has not ceased to be so resident for a period exceeding one-fifth of his or her period of ordinary residence in Lothian Region.

- (2) Persons receiving grants under the last foregoing sub-paragraph shall become bound as apprentices to the trade of bookseller or bookseller and stationer, or, failing these trades, to any other respectable trade, occupation or profession in Lothian Region, or shall engage in a trade, occupation or profession approved by the governing body. They shall attend such course at such school or college for technical or other education as may be approved by the governing body.

- (3) In the event of no suitable applicant, the governing body shall have power to withhold the annual grant payments and to add such sums to the capital of the Trust.

- (4) The benefits of this paragraph shall be extended only to persons who are in such financial circumstances as to require aid from the Trust during their apprenticeship or during the early years of their employment in a trade, occupation or profession, and in selecting the persons to benefit, the governing body shall, other things being equal, prefer applicants from the Parish of Currie or the Parish of Glencorse.

Condition of award of grants

24. When awarding grants under paragraph 23, the governing body shall associate the name of Charles Smith with each award made under this scheme.

Tenure of award

- 25(1) Each award shall be tenable for such period as the governing body thinks fit and it shall be in the power of the governing body to extend the period originally determined in any case in which they consider such extension to be justified.
- (2) The governing body shall cause sufficient inquiry to be made each year as to the conduct and progress of the holder of any grant under this scheme. If in the opinion of the governing body any such holder is guilty of serious misconduct or is failing to make sufficient progress, the governing body may withdraw the grant or suspend the holder from its benefits, and the decision of the governing body shall be final.

Limitation of value of awards

26. The amount of any award made under this scheme to a person who holds or is to hold a scholarship or other allowance which is paid out of monies provided by Parliament or out of any fund aided by grants from Parliament, shall not be such as may cause the said scholarship or other allowance to be reduced.

Continuation of benefits

27. Any person who at the date of coming into operation of this scheme is a beneficiary of any allowance received from the said Charles Smith Committee shall continue to enjoy the benefit thereof subject always to the conditions under which it was awarded until the expiry of the said person's period of tenure of the said benefit.

Publicising of Trust

28. The governing body shall take appropriate steps, which may include the insertion each year of an advertisement in a local newspaper circulating in the area of benefit, to make information about the purposes of the Trust available to the public.

PART VI

MISCELLANEOUS AND GENERAL PROVISIONS

Copies of scheme

29. The governing body shall maintain a supply of printed copies of this scheme, shall cause a copy to be kept available for inspection by any member or officer of the governing body and copies shall be available for sale to the public at a reasonable price.

Revocation

30. The parts of the Midlothian Educational Trust Scheme 1962 relating to the said Charles Smith Committee shall cease to have effect on the coming into operation of this scheme.

Given under the Seal of The Lothian Regional Council this Second day of October Nineteen hundred and Ninety-one.

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Councillor

Keith Geddes

Councillor

G F G Welsh

Regional Solicitor



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