

Charitable Trusts – Trustee Obligations

Committee on the Jean F Watson Bequest

9 March 2010

1 Purpose of report

- 1.1 The purpose of this report is to provide details of the obligations placed on charity trustees generally and specifically on the requirements stipulated for the annual trustees' report and accounts.

2 Summary

- 2.1 On 16 March 2009, Committee requested the Director of Finance to submit a report covering:
- a) Council's review of the trust funds that it administers.
 - b) The obligations placed on charity trustees under the regulations applicable to Scotland.
 - c) The requirements of the Office of the Scottish Charity Regulator (OSCR) in respect of the annual trustees' report and accounts and the Council's proposed response to meeting those requirements.

3 Main report

Council's review of its trust funds

- 3.1 Under Council Standing Orders Pensions and Trusts Committee has delegated authority to "To undertake the functions of the Council as Governors and Administrators of Trinity Hospital and as trustees of other trust funds vested in the Council, except where the Council has expressly made other arrangements."
- 3.2 The City of Edinburgh Council administers 118 trusts. They vary in size; the largest (Trinity Hospital) has funds in excess of £6.0m, but the vast majority are very small. The total value at 31 March 2009 was £13.9m. During 2008/09 £223k of the £656k investment income was unused. There are three main reasons for some of the trusts not making full use of the income:
- a) The large number of small trusts.
 - b) The archaic constraints imposed by some of the trusts.

- c) Lack of dedicated of resources in the Departments responsible for administering awards.
- 3.3 The Jean F Watson Bequest benefits from an active Committee that manages the available income on a regular basis.
- 3.4 The Scottish Charity Regulator (OSCR) has contacted Local Authorities with two main aims:
- a) Ensuring that current structures are reviewed for effectiveness so that charitable income and capital is actually used for charitable purposes.
 - b) Ensuring that local authority charities meet the requirements of the Charities Statement of Recommended Practice (SORP) as regards the preparation of annual reports comprising a trustees' report and accounts.
- 3.5 In December 2008, Pensions and Trusts Committee approved a plan of action which divided the trusts into a number of discrete groups:

Group	Details
Trusts with distinct objectives to be retained by the Council	Nine trusts with distinct objectives closely related to a civic purpose. For example: the Jean F Watson, Lauriston Castle, and Nelson Halls.
Poverty related trusts	Individual trusts to be consolidated for ease of management.
Education related trusts	Individual trusts to be consolidated for ease of management.
Trusts to be extinguished by expenditure of capital	Small trusts, mainly related to burial grounds and parks, where the income is too small to achieve the purpose of the donor.
Trusts to be transferred to external charities	Trusts where the purpose is closely related to a viable external charity. For example: the preaching of sermons and prevention of cruelty to animals.

- 3.6 For the trusts with distinct objectives, Pensions and Trusts Committee has agreed that the constitutional documentation of each of the nine trusts should be reviewed and, if necessary, suitably updated to reflect the current requirements of charity best practice. In most cases (Jean F Watson being an exception), there is no specific Council Committee with responsibility for an individual trust.
- 3.7 Under Council Standing Orders, the Committee on the Jean F Watson Bequest has delegated authority: "With monies from the Jean F Watson Bequest, to purchase and commission for the City's collection works of artists and craftspeople

born, practising in, or otherwise associated with Scotland, and in particular Edinburgh; all decisions to be guided by the Collection and Disposal Policy for the City Museums and Galleries.” While the Council is the sole corporate trustee of the Jean F Watson Bequest, the Committee on the Jean F Watson Bequest has specific responsibility for purchasing works of art, and the Pensions and Trusts Committee is responsible for other trustee decisions.

- 3.8 In the event that any changes were thought to be necessary to the Jean F Watson Bequest deed (which is relatively modern), Pensions and Trusts Committee would consult with the Committee on the Jean F Watson Bequest.

Obligations placed on charity trustees

- 3.9 The obligations of a trustee of a charity registered in Scotland are established in the Charities and Trustee Investment (Scotland) Act 2005. OSCR has prepared a booklet entitled “Guidance for Charity Trustees” which sets out the obligations placed on trustees; this consists of four general duties and a number of specific ones. The general duties are:

- a) Act in the interests of the charity.
- b) Seek, in good faith, to ensure that the charity operates in a manner that is consistent with its objects or purposes.
- c) Act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.
- d) Ensure that the charity complies with the provisions of this Act, and other relevant legislation.

- 3.10 The specific duties are:

- a) Reporting to OSCR. This covers the completion of an annual return summarising the activities of a charity and the filing of a copy of the trustees’ report and accounts. There is also a duty to provide information on structural changes.
- b) Financial records and reporting. The requirement to keep proper financial records of sufficient detail and the preparation of trustees’ report and accounts, which must be independently examined or audited.
- c) Fundraising. This covers the rules as regards the use of professional fundraisers and public collections.
- d) Providing information to the public. This covers the right of the public to obtain charity accounts and governing documents. In addition, there are rules concerning the inclusion of charity details on stationery and other documents.

Requirements of OSCR in respect of annual trustees’ reports and accounts

- 3.11 On 26 August 2009, OSCR wrote to local authorities to advise them of the form and content of the accounts that need to be prepared in respect of the charities for which they act as trustee. For many years most local authorities limited

their reporting of charity finances to a brief section in the overall financial statements of the local authority itself.

- 3.12 For the last two years OSCR has been working with the Local Authority (Scotland) Accounting Advisory Committee (LASAAC) to move to a position where local authorities fully comply with the charity reporting requirements required by charities generally. Taking into consideration the difficulties that many local authorities face caused by large numbers of relatively small charities, OSCR has been phasing in the requirement for full compliance.
- 3.13 For 2008/9, OSCR set the following minimum requirements:
- a) One copy of the council's financial statements for 2008/09; inclusive of the audit certificate which covers the full financial statements and notes there to.
 - b) Separate accounts for each registered charity in line with the format for 'receipts and payments' accounts under the Accounts Regulations 2006.
 - c) A trustees' annual report covering each registered charity including all required elements under the requirements for receipts and payments accounts under the Regulations. This is considered to be a critical element of the submission to OSCR and equally as important as the financial information provided.
- 3.14 Pensions and Trusts Committee complied as fully as possible with the requirements for 2008/9. However, in future years the amount of information that will need to be disclosed is expected to increase. Such reporting is expected to be onerous. This means that for 2009/10, the expectation is that larger trusts, like the Jean F Watson Bequest, will need to prepare as full as possible trustees' report and accounts. The detailed requirements on charity reporting are set-out in guidance document called "Accounting and Reporting by Charities: Statement of Recommended Practice (revised 2005)".
- 3.15 In terms of a practical way forward, it is recommended that in order to deliver robust and consistent reporting across all the Council charities, that Pensions and Trusts Committee should be responsible for signing the trustees' report and accounts for all the individual charities. Where another committee is involved in the management of a charity, it is recommended that it is asked to provide input for the trustees' report. In the case of the Committee on the Jean F Watson Bequest it is recommended that the provision of information is allocated as follows:

Content	Notes	Committee Responsibility
Reference and administrative information	Names of trustees, auditors and professional advisers	Pensions and Trusts
Structure, governance and management	High level details of how the charity works, policy on trustee training and risk management	Pensions and Trusts
Objectives and activities	Purpose of the charity, the plan for achieving the purpose, activities during the year and policies	Watson Committee

Achievements and performance	Highlights of the year	Watson Committee
Financial review	Summary of financial events during year	Pensions and Trusts
Plans the future	High level review of future intentions	Watson Committee

3.16 In order to consider its input to the trustees' report, the Committee on the Jean F Watson Bequest would need to meet annually in June or July.

4 Financial Implications

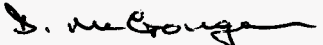
4.1 There are no immediate financial implications in respect of this report.

5 Environmental Impact

5.1 None

6 Recommendations

6.1 It is recommended that the Committee on the Jean F Watson Bequest approves the recommendations in respect of the preparation of future trustees' reports and accounts for the Bequest.


Donald McGougan
 Director of Finance
 25/2/2010

Appendices None

Contact/tel/Email Esmond Hamilton, Fund Accounting Manager
 Tel: 469 3521
 E-mail: esmond.hamilton@edinburgh.gov.uk

Wards affected All

Single Outcome Agreement **National Outcome 15** - Our public services are high quality, continually improving, efficient and responsive to local people's needs

Background Papers None