

Council as Corporate Trustee - Governance Arrangements

Purpose of this Report

1. To provide Members with the context and papers for pre-decision scrutiny of a report to Cabinet proposing the future governance arrangements to be adopted for discharging the Council's role as a corporate trustee.

Structure of the Papers

2. Attached to this report to assist Members preparations for the scrutiny:
Appendix 1: Cabinet Report – Trusts – Governance Arrangements

To which is appended:

Appendix A: Trusts Decision Making - Flowchart

Background & Context

3. Within its Terms of Reference this Committee has responsibility for scrutiny of the Council's Governance and Legal Services.
4. For clarity, a trust is a legal relationship created when assets are placed under the control of a trustee for the benefit of a beneficiary, or for a specified purpose. For example, when a donor has gifted land or property to the Council on condition it is used for a public purpose. A trustee must act in the best interests of the trust to ensure that its assets are used for the trust's purposes for the benefit of its beneficiaries. Where the Council is a corporate trustee, it must ensure that trust assets are held separately from the Council's own estate and property and are

used strictly in accordance with the trust's particular purpose and not generally for Council functions

5. In 2023 the Council faced a conflict of interest, which had arisen because it is the sole corporate trustee of Maindy Park, a registered charity; and in a separate capacity, is the Local Education Authority making a proposal to expand Cathays High School using land under the control of the Maindy Park charitable trust.
6. Maindy Park Trust is a registered charity with the objective to use land at Maindy Park for recreation, playground and open space. In March 2023 Cabinet agreed a report in its capacity as sole corporate trustee of Maindy Park Trust that recommended a review of the governance and financial management arrangements of all trusts of which the Council is a trustee, to identify any necessary improvements to be agreed and put in place.
7. The Cabinet report attached at **Appendix 1** provides an update on the ongoing review and proposes improvements to the Council's governance arrangements when discharging its role as a corporate trustee.
8. The outcome of this review will allow all Council directorates that deal with trust property to have knowledge and easy access to relevant trust information, before any detailed discussions are commenced concerning trust assets.

Issues

9. The Cabinet report addresses a Council's role as a trustee, citing Local Authorities as well suited to the role due to their roots in the local community; their openness and transparency; their accountability for their actions; and the high standards of public conduct embedded in the way they work.
10. The report refers to guidance published by the Local Government Association and the Charity Commission on the management of charitable trusts. The **5 key principles** are independence from local authority policy; oversight and decision-making must rest with the Cabinet as corporate trustee; clearly understood terms; separate management; and separate finances.

11. The report provides explanations of the **specific issues** a local authority as a charity trustee must account for, such as:

- *Conflicts of Interest (points 16-17);*
- *Consultation (points 18- 21);*
- *Proposed Governance Arrangements (see **Appendix A**)*
- *Trusts Cabinet Committee (points 22-26)*
- *Conflicts of Interest Policy & Register of Interest (points 27)*
- *Serious Conflicts of Interest (point 28)*
- *Appointment of Additional Trustees (points 29-31)*
- *Distinguishing between more and less serious conflicts (point 32)*
- *Independent Advisory Committee (as established in the case of Maindy Park Trust) (points 33-38)*
- *Charity Commission consent (points 39-40)*

Recommendations to Cabinet

12. With this report the Cabinet is seeking *'to improve governance arrangements in respect of trusts where the Council is corporate trustee and ensure trust decisions are taken lawfully and properly in the best interests of the relevant trust'*, and therefore Cabinet is recommended to:

- **Approve the appointment of a Cabinet Committee**, 'the Trusts Cabinet Committee,' comprised of 5 Cabinet members, with the following Terms of Reference:
 - *'(a) In relation to any Trust of which the Council is a Corporate Trustee, to exercise all functions of the Council as Corporate Trustee, having regard to all relevant issues and appropriate professional advice, and acting always in the best interests of the Trust.*
 - *(b) To adopt any appropriate policies and procedures to govern the discharge of its functions, including but without limitation to a Trusts Conflicts of Interest Policy and Procedure.*
 - *(c) All Members of the Cabinet Committee will be required to undertake relevant training to enable them to properly discharge their duties.'*
- Subject to approval of recommendation 1, to **appoint 5 Cabinet members to the Trusts Cabinet Committee**; and

- **Recommend to Council the appointment of an Advisory Committee, 'the Trusts Advisory Committee,' comprised of 3 independent members of the Standards and Ethics Committee,** with the following Terms of Reference:
 - *'In relation to any Trust of which the Council is a Corporate Trustee and any proposal in respect of which the Council has a serious conflict of interests, in line with Charity Commission guidance and or legal advice, to make a recommendation/s to the Trusts Cabinet Committee or the Cabinet on whether or not the proposal should be agreed, with or without modification/s, in the best interests of the Trust, having regard to all relevant issues and advice.'*

Previous Scrutiny

13. The Committee has previously undertaken pre-decision scrutiny of the Maindy Park Trust Advisory Committee recommendations to Cabinet as Trustee of Maindy Park in March 2023. It was the Committee's consensual view that the decision-making process put in place to resolve this matter had been robust and independent, that stakeholder voices had been heard, due process had been applied and had provided a good evidence base for the conclusions and the recommendation the Advisory Committee had arrived at.- *that the proposed exchange of the Maindy Park land for the land at Cae Delyn Park is in the best interests of the Charity, subject to compliance with....6 conditions:*
14. Following the scrutiny, the Committee welcomed the creation of an internal board led by the Head of Finance to review the mechanisms in place for holding records of Council Trusts.
15. Prior to this the Committee had scrutinised the proposed decision-making process for Maindy Park Trust in September 2022, following which Members unanimously agreed that the proposal to establish an Advisory Committee, comprised of members of the Council's independently appointed Standards and Ethics Committee, was an elegant solution to an awkward problem and were pleased that meetings of the Advisory Committee would be held in public. On this occasion the Committee recommended that *the Council avoids conflicts of interest delaying future projects by putting in place mechanisms that prevent such a recurrence.*

16. A response to the Committee's recommendation confirmed 'a review of governance and financial management arrangements of all trusts of which the Council is a trustee will be carried out by the Corporate Director Resources and the Director of Governance and Legal Services, under delegated authority to identify any necessary improvements to be agreed and put in place., with a view to avoiding any conflicts of interest delaying future projects.'

Scope of this Scrutiny

17. In attendance to respond to Members questions will be Councillor Huw Thomas, Leader, Chris Lee, Director of Resources, and Debbie Marles, Interim Monitoring Officer. There will be a short presentation of the proposals, following which Members will be invited to explore how well the review and the proposals address the specific issues faced by the Council as corporate trustee; and whether the Council is proposing to put in place effective mechanisms that will avoid conflicts of interest delaying future projects.

Legal Implications

18. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

19. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATIONS

The Committee is recommended to:

- I. Note the recommendations as set out at paragraph 12.
- II. Consider whether it wishes to pass on any comments, observations, or recommendations to the Cabinet prior to its consideration of the proposals on 21 March 2024.

LEANNE WESTON

Interim Deputy Monitoring Officer

7 March 2024