



CHARITY COMMISSION
FOR ENGLAND AND WALES

Mr Ian Curtis
By email only to:
IAN.CURTIS@FYLDE.GOV.UK

Charity Commission
PO Box 211
Bootle
L20 7YX

Date: 13 December 2023

Dear Mr Curtis

The Lytham Institute (1186995)

The Commission has recently completed its review of the decision to make a scheme to change the purpose of the above charity. A copy of the decision review is attached with this letter.

Please accept my apologies for the length of time that it has taken to complete the review. We received a large number of representations about the draft scheme, and it was important that these were given full consideration. It was also important for the Commission to consider the views of the Charity Tribunal in its decision on another cy pres scheme which had some similar features before we completed the review. Unfortunately, this judgment took longer to be handed down than we had anticipated.

The conclusion of the review is that the Scheme can be made but with certain amendments. As you will see, the Scheme now includes the requirement to appoint three additional trustees who are independent of the Council before key decisions can be made. If additional trustees are appointed, they will act jointly with the Council as charity trustees. These key decisions are:

- (i) to sell the Institute Building;
- (ii) change the purposes of the charity; or
- (iii) to cease to operate as a charity.

These decisions are where there is the potential for a serious conflict of interest and so appointing additional trustees will enable the trustees of the charity to manage the conflict. As explained in the decision review document and below, the role of the local authority as the sole trustee was a concern that was raised in the representations.

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The Scheme is clear that the requirement for additional trustees for the key decisions does not apply if the Council exercises the function of trustee by way of a committee of the executive which includes a majority of people who are independent of the Council. This is because this model of decision making would already enable conflicts of interest to be managed. While we understand that the Council does not have any current plans to make any of these key decisions, the new provisions will help to ensure that conflicts of interest are properly managed if any of these decisions are considered in the future.

I have now authorised the Scheme - please find it attached. The Scheme is now legally effective and is the charity's governing document. A copy should be kept with the charity's records which should be held separately from the Council's records as a local authority. We have updated the charity's file and Register entry (and this will be reflected on the public register from tomorrow).

In the Scheme, we have only included limited powers. The trustee is able to add additional relevant powers using the power in s.280 of the Charities Act 2011. Further information about amending the governing document is set out below. We suggest that the model governing document for trusts available on our website is used as a guide to useful powers which the trustee may wish to include.

https://assets.publishing.service.gov.uk/media/634565d2d3bf7f6184a293b5/GD2_Model_trust_deed_for_a_charitable_trust.docx

Further to the decision review, we are now providing you with formal advice under [section 15.2 of the Charities Act 2011](#). The Council as trustee is expected to follow this advice to ensure that it complies with its legal duties and responsibilities as trustee and act in the best interests of the charity.

Local Authorities as trustees

The Commission recognises that there are benefits to having a local authority as trustee of a charity. However, as highlighted in the recent Victoria Hall decision by the Charity Tribunal, there can be disadvantages too, including managing conflicts of interests. Again, this was also highlighted as a concern in many of the representations we received about the draft scheme.

A local authority acting as trustee must comply with the same legal duties as all other charity trustees. Any local authority acting as a charity trustee therefore needs to:

- avoid conflicts of interest (including between its corporate role and that of trustee);
- safeguard the charity's property; and
- safeguard the beneficiaries' interests.

There is further guidance about Local Authorities acting as trustee at the link below. This guidance highlights the need to keep charity and Council business separate and this includes the finances of both organisations.

[Local authorities as charity trustees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/local-authorities-as-charity-trustees)

The Commission also has guidance on managing conflicts of interest and this should be carefully considered:

[Conflicts of interest: a guide for charity trustees \(CC29\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/conflicts-of-interest-a-guide-for-charity-trustees-cc29)

Independent people

As part of the scheme making process, we understand that the Council is open to including people who are independent of the Council in its decision making. As noted above, the Scheme requires this if the circumstances in clause 6 of the Scheme apply. Including independent people can not only assist in meeting the legal duty to manage conflicts of interest, but also enables different perspectives and ideas on how to best use the charity's assets to further the new purpose and support beneficiaries.

There are a variety of ways including independent people can be achieved. Individuals can be appointed as additional charity trustees to act jointly with the local authority. The Council can also use a committee of the local authority or a committee of the executive to exercise the function of trustee for the local authority. Alternatively, the Council could appoint an advisory committee to assist in the exercise of its function as trustee. To appoint any of these types of committee would be an internal matter for the Council and would not require any amendment to the scheme.

As noted at point 5.13 of the decision review there are a number of complex issues of law, as well as practical considerations, when additional individual charity trustees are appointed or the Council delegates to a committee. We therefore recommend the trustee takes legal advice including under the Local Government Acts of 1972 and 2000.

If the trustee is considering making changes to the charity's governing document to allow for the appointment of additional trustees to act permanently, further guidance about making changes can be found at the link below:

[Changing your charity's governing document \(CC36\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/changing-your-charity-s-governing-document-cc36)

Decision making

As the trustee, the Council is responsible for making all decisions for the charity. There are some important legal principles to making good decisions, which we expect the trustee to follow. These principles are detailed in the guidance at the link below.

[It's your decision: charity trustees and decision making \(CC27\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/its-your-decision-charity-trustees-and-decision-making-cc27)

One of the principles is to ensure that decisions are made solely in the interests of the charity. The Council will therefore need to ensure that the charity has a conflict-of-interest policy in place. It is not sufficient to rely on the model Codes of Conduct for local authorities. This is because these Codes oblige a member of the Council with an interest to withdraw from a meeting of the authority

or the executive if the relevant business were being considered at that meeting but does not oblige a member to withdraw from a meeting of the charitable body. This is why the charity should have its own bespoke policy.

The decision making principles also include the need for any trustee to be properly informed when making decision. For a community use type charity, this would usually include consulting with beneficiaries to properly understand their needs. As noted in paragraph 4.29 of the decision review, you have advised that it is intended that there will be further consultation with community groups and other interested parties to discuss how to use the Institute Building for the new purpose.

We encourage the Council to ensure that this consultation is wide-ranging and takes account of the differing views within the community.

One of the other concerns raised in the representations was the need for the Council as trustee to have a plan to ensure the effective use of the Institute Building and the financial security of the charity. Decisions about these issues should be a priority for the Council following the making of this Scheme. Consulting beneficiaries will assist in formulating such a plan.

I hope this letter is helpful. If you have any questions about its content then please let me know.

Yours sincerely,

Nia Jones