

## **PUBLIC TRUSTS – DELEGATION, POWERS AND DUTIES**

In law, the Moray Council is a corporate body and all of its decisions are taken by or on behalf of Full Council.

Where the Moray Council (or any of its predecessors) is named as trustee in a particular trust deed, it is the corporate body, acting in accordance with its usual procedures, which is “the trustee”.

In practice the ‘usual procedure’ is Section (III) (A) (20) of the Administrative Scheme which means that the Policy and Resources Committee is the trustee of most public trusts, with exceptions including some Educational and Social Work Trusts (managed by their respective committees) or trusts which nominate specific members (rather than the Council) as trustees e.g. Lawtie Mortification.

When dealing with trust matters the Committee members have 2 distinct roles:

- 1) As trustees in relation to Trust **Administration** – in this role members must operate in terms of the trust purposes (see table below) and legislation e.g. Section 4 Trusts (Scotland) Act 1921 (appendix I) and not in pursuance of the policies or directions of the Council.

*Distinguishable from*

- 2) As committee members in relation to **Policy and Management** of the Trust Portfolio – in terms of Council Policy (e.g. Disbursement Policy extract Appendix II)

### **Conflict**

Broadly speaking conflicts of interest affecting trustees arise in three ways: direct financial gain/benefit to the trustee; indirect financial gain/benefit to the trustee and conflicts of loyalty.

In terms of financial (direct or indirect) gain/benefit the trustee should declare an interest and withdraw from the process. Conflicts of loyalty will be less common but potentially more serious as they may affect all trustees due to their joint roles as trustees and elected members. *In these circumstances the trustees’ overriding duty is to act in the interests of the trust.*

Extract from Councillors' Code of Conduct:

3.17 You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

<b><u>Trust</u></b>	<b><u>Trustees</u></b>	<b><u>Trust Assets</u></b>	<b><u>Trust Purposes</u></b>	<b><u>Office of the Scottish Charity Regulator (OSCR)</u></b>	<b><u>Other</u></b>	<b><u>Trustees Powers and Duties</u></b>	<b><u>Council Policy</u></b>
<b><u>PROPERTY</u></b>							
Diamond Jubilee Cottages, Elgin	P&R on behalf of the Moray Council	Eight, one bedroom terraced cottages at Victoria Road, Elgin	For poor people of respectable character who are unable to otherwise provide comfortable home for the similar class for themselves.	Registered	Grade C Listed	Maintain & rebuild. Resell to TMC	P&R 18.3.14 (see minutes)
Cooper Park and Grant Lodge, Elgin	P&R on behalf of the Moray Council	Cooper Park, Grant Lodge, East Lodge, West Lodge, Pavilion.	Grant Lodge - local studies centre incorporating the provision of archival and genealogical services, registrars and related wedding room. Cooper Park – for recreational purposes of the people of Elgin	Not Registered	Grant Lodge is Grade B Listed.  Long lease prohibited – has recently been taken to mean no more than 5 years.	Maintain.	ED&I 14.1.14 No Council action in terms of economic development to be taken other than facilitation of those who may access non-council funds. Alternative use = Court of Session.
Sir Archibald Williamson's Gift	P&R on behalf of the Moray Council	Ladyhill Cottages - 2 cottages.	Housing suitable persons – preference to ex forces -nominal rent	Not Registered (informal advice from OSCR that registration	Grade C listed	Maintain. Can lease to 3 <sup>rd</sup> party with full discretion.	P&R 18.3.14 (see minutes)

				unlikely as not charitable purpose)			
Miltonduff, Community Hall	P&R on behalf of the Moray Council	Community Hall and Grounds	Deed currently missing	Not Registered	Long lease to Community Group who have successfully managed the Hall to good effect for many years.	unknown	See 'other' column
3 Logie Cottages, Forres	P&R on behalf of the Moray Council	House	Rent free home for "such respectable retired couple or widow with small family or a single woman whether widowed or unmarried indigent ( <i>poor</i> ) circumstances".	Not Registered	In need of repair & report to Committee re funding of work under consideration	Select tenants. Power to sell house & apply funds to poor relief in Forres.	See 'Other' column
Lawtie Mortification	Convenor, Chair of Health & Social Care and Senior Member for Keith and Cullen Ward.	3.88 Hectares of land lying to South of Cullen £100k+	Provision for the social welfare of persons affected by poverty living in Cullen or Lintmill or with a substantial connection with the area.	Not Registered	Some land currently leased for allotments.  Potential future industrial estate development	Manage land and fund for Trust Purposes	Trustees, meet ad hoc to agree grants.
Lossie Wynd/ Green	P&R on behalf of the Moray Council	Land to the East and West of North Street, Elgin and South of the River Lossie (portion of Car Parks and Hard Standing)	Keep open as exercising Ground. Lay out for recreation and amusement of people of Elgin.	Not Registered	Trust currently receiving income as proportion of Car Park fees at Lossie Green & Wynd	1998 Decree allowing TMC to lease or sell the subjects	Trust land forms part of area under consideration re 'Elgin City Centre Regeneration' Full Council, 5.02.14 Item 7, agreed to contribute £75,000 to the Community Links programme.

Longmore Hall & Bowling Green (not bowling club)	P&R on behalf of the Moray Council	Hall and Bowling Green	Maintain, finance, improve and manage. Erect memorial plaque re donation by William Longmore of Hall. Use as Town Hall or other purposes at discretion of Trustees. Continue lease of bowling green to Keith Bowling Club. St Rufus Church to have preferential right to use Hall.	Not Registered		Maintain, finance, improve and manage.	No recent consideration by Committee
Arthur Stuart Murdoch Trust River Findhorn, Fishing Rights	Forres Member (Cllr Creswell), Chair Forres CC, Ministers Rafford & Forres, Rector Forres Academy.	Fishing Rights on portion of River Findhorn . By agreement in 1962 Forres Angling Association manage the Trust on behalf of Trustees. A Trustee attends the AGM of the FAA.	Facilitate/regulate fishing on the Findhorn.	Not Registered	The Trust is an external body to which a Forres member is appointed as Trustee.		As per appointment to external bodies. Declaration of member's interests.

<b><u>MONETARY</u></b> <b><u>£50k +</u></b>							
Auchernack Trust	Forres local members following delegation by P&R	£635k	For the benefit of the elderly community in the Forres area and that solely for relief of those in need by reason of advanced age	Registered	Reorganised: only 1 application received since reorg so not been able to test efficiency	Able to make disbursements from both capital and income. Full powers detailed in new Deed of Amendment	Category 3 Yellow- consider for reorganisation (overtaken)
Banffshire Educational Trust	Joint Board of Governors (3 elected members appointed from each of Moray and Aberdeenshire Councils)	£575k	Grants payable to persons resident in former County for university, college, post graduate courses, apprenticeships, trainees, school equipment, sports facilities, supporting clubs, promoting drama, music and	Not registered		Means tested in line with Trust scheme; for residents in former County area; upper household income of £34k applies	Category 5 - Green-no action required re reorganisation.

			visual arts; travel grants and school excursions			(Linked to Student Awards Agency for Scotland – Young Students' Bursary limits) for eligibility. Trust scheme in place.	
Craigmoray Bequest	Not known	£320k	Presumed to be for the benefit of residents of Craigmoray Care Home in Bishopmill, Elgin (no longer operative)	Not registered	No trust documents and insufficient information available to trace same. May be linked to earlier trusts	Not known	Category 3 Yellow- consider for reorganisation
Donald Manson Edinkillie Fund	CYPS (D22 Admin Scheme) daily administration by Jean Anne Goodbrand	£270k	3 bursaries for children resident in parish in s1 plus further educational bursary for student aged under 18.	Not registered		Educational Maintenance Allowance guidelines used to assess applications- grants means tested – upper limit for household income £20.4k or £22.4k if more than one dependent child.	Category 5 - Green- no action required re reorganisation.
Donald Manson Forbes Fund	CYPS (D22 Admin Scheme) administration by Jean Anne Goodbrand	£80K	Bursary for one s1 pupil resident in Forbes	Not registered		As above Trust	Category 5 - Green -no action required re reorganisation.
Elgin Cathedral Amenity Fund	P&R on behalf of the Moray Council	£75k	Burial ground and amenities improvements.	Registered	OSCR approval to wind up trust granted and funds to be transferred to Historic Scotland Foundation. This will be achieved by 31 March 2014	No original trust documentation.	Category 3- Yellow- consider for modernisation/ reorganisation.  Capital and interest on trust funds can be applied.

Glenisla Comforts Fund	P&R on behalf of the Moray Council	£105k	For the benefit of residents in Glenisla Care Home	Not registered	P&R 28.3.01 – manager of home applies for funds – finance liaise with local members re approval/refusal	Not known	Category 4- Green- no action required.  Trust document missing
Hospital Master for Auchray	P&R on behalf of the Moray Council	£120k	4 poor old men/ merchants  Otherwise purposes unknown.	Registered	FRUSTRATED; Outdated; no proper trust conditions in old mortification deed.	Help, maintenance and subsistence of 4 poor old decayed or broken merchants who are inhabitants of Elgin; preference to be given to those of name Cumming or nearest related name. No other trustee powers specified.	Category 2 – Orange- to be reorganised.  Fully Frustrated trust
Laing Mortification	P&R on behalf of the Moray Council	£275K	For the benefit of a decayed merchant in Elgin- otherwise purposes unknown.	Not registered	No trust documents available	Not known	Category 3- Yellow- consider for modernisation/ reorganisation.
Macdonald Benevolent Fund	HSCS E(5) Admin Scheme	£255K	Income to be used in such manner as to provide pecuniary assistance, to those in need of financial relief or in straitened circumstances, as deemed fit by Community Care across Moray, but with special focus on Dufftown.	Not Registered	Operates successfully	Free annual revenue to be expended as noted. No other trustee powers specified.	Category 2- Orange- to be reorganised.  Currently delegated to P&R committee due to ongoing trust reorganisation.
Milnes Institution	CYPS (D22 Admin Scheme)	£220K	Educational enrichment of pupils attending Milnes High	Not registered	Annual grant awards to	Educational Maintenance	Category 5 Green -no action

	disbursement undertaken by Jean Anne Goodbrand		and Primary Schools.		Milne's High and Milne's Primary.	Allowance guidelines used to assess applications- £30k upper income threshold. Grants means tested – upper limit for household income if £22.5k.	required re reorganisation.  Annual income to be apportioned to schools on pro rata basis by reference to attendance rolls respectively.
Moray & Nairn Educational Trust	CYPS (D21 Admin Scheme) Educational Services General Purposes sub-committee	£500K	Grants payable to persons resident in former Joint County for university, college, adult education, school equipment, sports facilities, travel grants and school excursions	Not registered		Bursaries and grants subject to 3 year minimum residence test and means testing- upper household income limit £34k. (Linked to Student Awards Agency for Scotland – Young Students' Bursary limits) Trust scheme in place.	Category 5 Green -no action required re reorganisation.
Pringle Trust for Ministers	P&R on behalf of the Moray Council	£100K	Interest to be divided annually equally per capita amongst all Ministers of congregations of the Church of Scotland; United Free Church of Scotland; Free Church of Scotland; Baptist Union of Scotland; and the Congregational Union of Scotland situated in Moray, to include all Colleague Ministers and Ministers Emeriti of said Congregations resident in Moray.	Not registered	Charitable purposes now questionable	For Trustees to apply such rules and regulations as they deem fit.	Category 3- Yellow- consider for modernisation/ reorganisation.

## Appendix I

Section 4 of the Trusts (Scotland) Act 1921 contains seventeen general powers of trustees where such acts are not at variance with the terms or purposes of the trust. These general powers are:

- (1) to sell the trust estate or any part thereof, heritable as well as moveable;
- (2) to grant feus of the heritable estate or any part thereof;
- (3) to grant leases of any duration (including mineral leases) of the heritable estate or any part thereof and to remove tenants;
- (4) to borrow money on the security of the trust estate or any part thereof, heritable as well as moveable;
- (5) to excamb any part of the trust estate which is heritable;
- (6) to acquire with funds of the trust estate any interest in residential accommodation (whether in Scotland or elsewhere) reasonably required to enable the trustees to provide a suitable residence for occupation by any of the beneficiaries;
- (7) to appoint factors and law agents and to pay them suitable remuneration;
- (8) to discharge trustees who have resigned and the representatives of trustees who have died;
- (9) to uplift, discharge, or assign debts due to the trust estate;
- (10) to compromise or to submit and refer all claims connected with the trust estate;
- (11) to refrain from doing diligence for the recovery of any debt due to the truster which the trustees may reasonably deem irrecoverable;
- (12) to grant all deeds necessary for carrying into effect the powers vested in the trustees;
- (13) to pay debts due by the truster or by the trust estate without requiring the creditors to constitute such debts where the trustees are satisfied that the debts are proper debts of the trust;
- (14) to make abatement or reduction, either temporary or permanent, of the rent, lordship, royalty or other consideration stipulated in any lease of land, houses, tenements, minerals, metals or other subjects, and to accept renunciations of leases of any such subjects;
- (15) to apply the whole or any part of trust funds which the trustees are empowered or directed by the trust deed to invest in the purchase of heritable property in the payment or redemption of any debt or burden affecting heritable property which may be destined to the same series of heirs and subject to the same conditions as are by the trust deed made applicable to heritable property directed to be purchased;
- (16) to concur, in respect of any securities of a company (being securities comprised in the trust estate), in any scheme or arrangement:

- i. for the reconstruction of the company,



- ii. for the sale of all or any part of the property and undertaking of the company to another company,
- iii. for the acquisition of the securities of the company, or of control thereof, by another company,
- iv. for the amalgamation of the company with another company, or
- v. for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them,
- vi. in like manner as if the trustees were entitled to such securities beneficially; to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of, or in exchange for, all or any of the first mentioned securities; and to retain any securities so accepted as aforesaid for any period for which the trustees could have properly retained the original securities;

(17) to exercise, to such extent as the trustees think fit, any conditional or preferential right to subscribe for any securities in a company (being a right offered to them in respect of any holding in the company), to apply capital money of the trust estate in payment of the consideration, and to retain any such securities for which they have subscribed for any period for which they have power to retain the holding in respect of which the right to subscribe for the securities was offered (but subject to any conditions subject to which they have that power); to renounce, to such extent as they think fit, any such right; or to assign, to such extent as they think fit and for the best consideration that can reasonably be obtained, the benefit of such right or the title thereto to any person, including any beneficiary under the trust.

Where trustees enter into a transaction with a third party involving acts under any of heads (1) to (6), the validity of the transaction or the title acquired by the third party cannot be challenged by the third party on the ground that the act in question was at variance with the terms or purposes of the trust.

The above powers have been supplemented by other statutes. Thus this list of general powers is treated as if there were included in it a power:

- to enter into forestry dedication agreements relating to the trust estate or any part thereof;
- to enter into access agreements relating to the trust estate or any part thereof;
- to execute deeds relating to amalgamations and boundary adjustments relating to the trust estate or any part thereof;
- to enter into acknowledgment payment agreements relating to the trust estate or any part thereof.

## **Appendix II**

At Policy & Resources Committee on 8 October 2013 it was agreed:

- (a) where a trust deed allows disbursement of capital then elected members, acting as trustees on behalf of the Council, shall be entitled to make payment of capital from the trust funds in accordance with the trust deed, provided there is unanimity amongst the trustees;
- (b) for all other trusts, the whole annual income of the trust shall be available for disbursement in accordance with the trust deed;
- (c) as a safeguard, where the Head of Financial Services has concerns that any payment made under (a) or (b) above would compromise the particular trust fund, the Head of Finance may require that the proposed payment is reported to the Policy and Resources Committee for approval;
- (d) (applies to Common Good only)
- (e) the policy not to disburse Common Good and trust funds unless the cumulative disposable income is greater than £50 is retained;

## **Appendix III**

### **Financial Costs – recharges for in-house staff**

Prior to 2013/14, recharges to Trusts for in-house services included only the work undertaken for the financial administration. The cost of the legal in-house team was not recharged. This effectively resulted in Council services covering these costs through the Central Services recharge.

During 2012/13, legal services staff undertook some 590 hours work relating to the trusts, which would have resulted in a further £15,600 being recharged to trusts for that year in addition to charges for financial administration.

An analysis of hours for 2013/14 (as at 14 March 2014) shows that a similar figure £15,300) should be recharged for legal services for the current financial year. The recharge rates used for legal services have been benchmarked and are significantly below private sector market rates which ensures value for money for the trusts.

From 2013/14 onwards, in order to reflect the true costs of administering Trusts, recharges will be made for in-house services undertaken for the financial administration and legal work by Council employees.

A significant amount of time by officers has been incurred for property trusts such as Grant Lodge and Jubilee cottages. As these trusts do not have a cash balance the recharge will result in them having a deficit revenue balance.

Members should be aware when requesting work to be undertaken, that in accordance with the policy of full cost recovery and reflecting the distinction between services to the Council and services to trusts which are separate legal bodies, additional costs from in-house teams will be recharged to reflect the true cost to the trusts.