



EXECUTIVE BOARD DECISION

REPORT OF:	Executive Member for Resources
LEAD OFFICERS:	Director of HR, Legal and Corporate Services
DATE:	12 October 2017

PORTFOLIO/S AFFECTED:	ALL
WARD/S AFFECTED:	All
KEY DECISION:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

SUBJECT: CLOSURE OF COUNCIL CHARITY: HARRIET HOLT TRUST

1. EXECUTIVE SUMMARY

To address the issue of a dormant charity held by the Council, Harriet Holt Trust and to seek authorisation to close all business, dealings and the accounts for the Trust.

2. RECOMMENDATIONS

That the Executive Board:

- note the background and options available to the Council relating to this Council's charity that has been dormant for a number of years;
- authorises the closing of the charity and the account of the Harriet Holt Trust;
- to apply to the Charities Commission to make a direction as to the transfer of funds for a dormant bank account under the provisions of the Charities Act 2011
- and in doing so to enter into discussion/consultation with other charities that may be eligible to receive the funds from the Harriet Holt Trust, or as directed by the Charities Commission and;
- approves the distribution of the monies to such charity/charities who have been identified as having the same aims and purpose

3. BACKGROUND

The Council is the trustee/part trustee of five inactive charities/trusts that are no longer in operation or meeting the purpose they were initially set up to achieve. The five charities are:-

Harriet Holt Trust
Common Goods Trust,
Garstang Lecture Fund,
Henrietta Kenyon Bequest,
Poors Land Charity

Over the years these charities have gradually become redundant. This now unfortunately means that whilst funds are available in each of the accounts the charities themselves are inactive. For most of the charities, the purpose for which they were set up has become obsolete therefore restricting

spending of the monies held in the accounts. With others the reason for the inactivity has largely been due to a lack of presence of trustees to conduct business. As a result monies have remained in accounts for numerous years with accrued interest. Three of these charities are registered with the Charities Commission whereby annual accounts are submitted yearly being a resources strain on the Council.

Given that the charities are dormant no further monies have been injected into or spent from the accounts for almost 15 years, in some cases it may have been even longer.

Collectively there are sums of approximately £81,851 held in the accounts. Given this lack of activity it is now considered appropriate for the Council to consider options for utilising the dormant funds for good causes in the Borough.

Given the differing nature of each of the dormant accounts it is intended that separate reports will be presented for each charity.

The first account reviewed is the Harriet Holt Trust.

4. KEY ISSUES & RISKS

The Harriet Holt Trust is not a registered charity. It has been clarified however that it was established for the benefit of blind people in Darwen. The funds were transferred from Lancashire County Council in the financial year 1998/1999 and since then the Council has accounted for the Trust.

In reviewing the history of this account, the Council made contact with the Charities Commission and Lancashire County Council to try to establish the Harriet Holt Trust's status as a charity or otherwise. The Charities Commission has confirmed that it holds no records of the Trust being a registered charity. Lancashire County Council have also confirmed that they do not hold any record relating to this account.

The Charities Act 2011 provides that "charity" means an institution which is established for charitable purposes only. A 'charitable purpose' is a purpose which is for the 'benefit of the public' and for other purposes including 'the advancement of health or the saving of lives', 'the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage' (amongst other reasons set out in the legislation).

It can be established in this case that the Harriet Holt Trust was established for charitable purpose being for the benefit of blind people in Darwen.

The Trust however has never been registered as a 'charity' and this may have been due to not meeting the income threshold required to register as a charity. (If a charity has below £5,000 income it does not need to be registered with the Charities Commission). Unregistered charities are able to make decisions without involvement from the Charities Commission as they are required to follow the procedure set out in their Governing Document (a document approved by all the trustees setting out the rules intentions and procedure for that charity).

In this case the Harriet Holt Trust is not registered as a charity; however there is also no Governing Document that has been found to date. This causes a concern for the Council as the lack of a Governing Document means there is no knowledge of who the trustees are, particularly if a resolution is required of any sort, and what the required procedure would be to close the accounts.

Following the advice of the Charities Commission it is recommended that given the absence of registration and the lack of a Governing Document that the Trust should be treated as an 'unincorporated charity'. This provides for the Council to apply to the Charities Commission, under the Charities Act 2011 to request a direction to be made in relation to this as a dormant account. Under

these arrangements following making reasonable enquiries and where the Council is unable to locate the charity or any of its trustees, it may seek a direction as regards closing the account.

For the Harriet Holt Trust this is considered to be the most viable option for the Council i.e. transferring the funds of the account in an ethical and prudent manner, under the direction of the Charities Commission.

There are currently monies in the sum of £7,717.55 held in the charity's account which have not been added to or drawn from for a number of years.

In respect of the Harriet Holt Trust it is therefore considered that the best option is to:-

- a) Close the account
- b) Apply to the Charities Commission to make a direction relating to the dormant account
- c) Transfer monies to another local charity/charities operating in Darwen that perform the same purpose.
- d) If for whatever reason, the Charities Commission do not make a direction or are not able to make a direction then the matter will be referred back to members of the Executive Board Committee to discuss further alternative options.
- e)

In this respect it has been identified that the Blackburn and District Blind Society provide welfare services to the blind and partially sighted within Blackburn with Darwen, Hyndburn and Ribble Valley. It is suggested a transfer of the funds from the Harriet Holt Trust to this Charity with a stipulation that the funds be used to provide welfare services to the blind and partially sighted in Darwen, would be reasonable.

5. POLICY IMPLICATIONS

The Council supports a range of services in the local community and transferring money from a dormant charity account to support local services reflects the Council's objectives of improving health and wellbeing of all persons in our community.

6. FINANCIAL IMPLICATIONS

There are no direct financial costs to the proposals to transfer money from a dormant account to a local charity as set out in the report.

7. LEGAL IMPLICATIONS

As Harriet Holt Trust has a charitable function which is for the benefit of the public, the Council needs to be mindful of the ethos of a charity when disposing funds.

An unincorporated charity can be closed and the assets transferred to other charities that carry out similar work or have similar objectives. Section 268 of the Charities Act 2011 enables trustees of a charity, by resolution, to transfer all property of a charity to another charity or two or more charities as specified in that resolution. The trustees have to be satisfied that it is expedient in the interests of furthering the purpose in which the property is held and that the purposes of the charities are similar.

The resolution must be passed by a majority of not less than two-thirds of the charity trustees who vote on the resolution. Notice is also required to be sent to the Charities Commission who may direct that publicity is given to the proposed transfer, they may ask for additional information or may object to the proposal.

Additionally there are provisions in the Charities Act 2011 at section 107 that allows the Charities Commission to make a direction where accounts are dormant and the trustees are unknown, to transfer funds to another charity.

The Council will apply for a direction and in the event that a direction is not made by the Charities Commission, a further report will be presented to members to discuss further. The process of applying for a direction is crucial and sensible at this stage given the lack of a Governing Document. Once this option is exhausted the Council will be able to consider alternative suitable options.

Any transfer of funds will be subject to consultation and discussion with the receiving charity and also checking the activity of the receiving charity and work history.

All existing debts and liabilities will need to be cleared before the remaining assets are transferred.

8. RESOURCE IMPLICATIONS

The legal processes required will be funded from within existing resources and once completed the transfer will result in a small resources utilisation saving within the Financial Services Team which is factored into the current restructuring programme.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

10. CONSULTATIONS

Consultation has been made with Lancashire County Council and the Charities Commission.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION: 1

CONTACT OFFICER: David Fairclough and Rabia Saghir

DATE:	4 th September 2017
BACKGROUND PAPER:	Review of Charities Accounts.