LATE REPORT

The following report was received too late to be included on the main agenda for this meeting and was marked “to follow”. It is now enclosed, as follows:

4. Guidance on the role of the Council as Corporate Trustee

MEMBERSHIP
Councillor Steve Curran- Chair
Councillors Theo Dennison, Hanif Khan, Mukesh Malhotra and Sheila O'Reilly.

13 January 2017

If you require further information about this agenda please contact: Wendy Merry, 020 8583 2061, wendy.merry@hounslow.gov.uk.
1. Details of Recommendations

1.1 That the guidance set out in this report be noted

1.2 That the Working Party consider how the guidance should best be promulgated

1.3 That further specific guidance be prepared in relation to specific charitable trusts as set out in the report.

If the recommendations are adopted, how will residents benefit?

<table>
<thead>
<tr>
<th>Benefits to residents and reasons why they will benefit, link to Values</th>
<th>Dates by which they can expect to notice a difference</th>
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<tbody>
<tr>
<td>The constitution is key to ensuring that the democratic processes of the Council are effective and transparent in the interests of the residents and businesses in the borough.</td>
<td>On-going</td>
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2. Report Summary

2.1 In March 2016 the Borough Council received a report entitled Review of Outside Bodies, which advised members of the outcomes of two separate reviews of outside bodies which had been carried out. The first review had looked at the diversity and geographical spread of outside bodies, and how the rationalisation of the list of outside bodies had worked in its first year of operation. The second review had been a legal review of the nature of each
outside body, particularly those operating as charitable trusts, to consider in each case the extent to which member involvement is necessary or desirable, and how best to minimise risks for individual members appointed to such bodies.

2.2 As well as noting the outcome of these reviews, the Council resolved that the Head of Governance should provide guidance and support for members – in particular in relation to best practice for the Council itself in cases where it acts as corporate charitable trustee.

2.3 This report accordingly provides general guidance on that issue. The guidance has been prepared taking into account guides produced by the Charity Commission and by the Local Government Association on this issue.

3. The role of the Council as a corporate charity trustee

3.1 A charity is an organisation or body established exclusively for purposes which are recognised in law as charitable or for the public benefit. Those who serve on the governing body of a charity are charity trustees, and have ultimate responsibility for directing the affairs of the charity, and ensuring that it is solvent, well run, and delivering the charitable objectives for which it was set up. A charitable trustee has a duty in law to act solely in the interests of the charity and its beneficiaries.

3.2 Charitable trustees are often individuals. However the Council itself, as a corporate body may also be a charitable trustee, where (for example) a donor has left land or property to the Council on condition that it is used for a public purpose.

3.3 Whilst it is important to recognise that trusteeship is a special and different role for a local authority as compared to its role in discharging its normal statutory functions, that does not mean that a local authority is not a suitable body to become a charitable trustee. On the contrary, the Charity Commission recognises that local authorities are well-suited to the role. Councils are rooted in the local community, open and transparent, accountable, and have high standards of conduct embedded in the way they work. There are many basic similarities between the law as it applies to a local authority in discharging its statutory functions, and the rules which apply to charities.

3.4 However, there are also differences, and it is important that they are recognised if the Council is to discharge a role as charitable trustee well and effectively. Particular dangers can arise in the following areas:

- There are restrictions on the use of charitable assets, including land and property, and they must be recognised. The Council cannot deal with property which it holds on trust in the same way that it may deal with other assets.

- Decisions must always be taken in the interests of the charity, even if the Council considers other decisions may benefit the wider public interest.

- In some cases, where assets were left to the Council many years ago, the precise terms of the charity, or even the fact that there is a charity, may be forgotten or overlooked.
3.5 To avoid problems of the kind referred to above, it is important that the Council, and its members when taking decisions for the Council as a charitable trustee, are aware of and follow the following principles:

(i) A charitable trust is and must be independent – that is it exists and operates independently of the Council for charitable purposes, not as a means of carrying out the policies or directions of the Council.

(ii) Where the Council corporately acts as trustee, it is the corporate body of the Council, acting in accordance with its usual procedures, which is the trustee. For Hounslow, which has the Leader and Cabinet model of governance, it is for the Cabinet, or an individual Cabinet member to whom the matter has been delegated, which must discharge the Council’s role.

(iii) The terms of any charity for which the Council is trustee must be clearly understood. If there is any doubt about the terms of a charity, or how the terms should be interpreted, advice should be sought – from the Council’s legal advisors and/or from the Charity Commission.

(iv) The management of the charity should be separated, as far as reasonably practicable, from the ordinary business of the Council. Depending upon the particular charity and its size and resources, it may be appropriate for a committee of Councillors to be allocated this task.

(v) The finances of the trust must be kept separate from the Council’s finances. That means that the charity’s assets must be accounted for separately, with income and expenditure being channelled through discrete cost centres. Whilst the Council may provide funds to the charity, in no circumstances may the charity’s funds be diverted to the Council (although the Council may in some cases be entitled to recover its costs of administering the charity from trust funds).

(vi) The charity should be periodically reviewed, to ensure that the charitable objectives are being met, and that it is possible for the charity to continue to meet them. If the original aims of the charity cannot realistically continue to be achieved, the Council should approach the Charity Commission to see if the trust can be changed or updated.

(vii) The legal registration and reporting requirements associated with trusteeship must be complied with. Eg all charities are required to file annual statements of account. Larger charities are required to be registered with the Charity Commission, or be subject to higher levels of accounting scrutiny.

(viii) Where any issues arise in relation to whether the Council has properly followed the terms of the charity, the Council should contact the Charity Commission in order to find a solution.

4. Other issues

4.1 In its handling of charities for which it is corporate trustee, the Council has already demonstrated good practice by reference to these principles. All outside bodies have been reviewed, and those which are charities identified. The Council is clear about the terms of trust of those charities for which it is
corporate trustee, having taken outside legal advice where necessary. It has kept trusts under review, and where necessary it has consulted with the Charity Commission upon the way forward.

4.2 However the guidance in this report is general guidance only, and further specific guidance on legal and governance issues in some cases will remain necessary, particularly where the Council as trustee wishes to progress proposals to change the terms of trusts in consultation with the Charity Commission (eg in the case of the David Henry Waring trust). In those cases specific guidance will be provided by the Monitoring Officer and the Council’s legal advisers as necessary, going forward.

5. Key Implications

As set out above.

6. Financial Details

a) Financial Impact On The Budget

There are financial costs to the Council in administering charities, and in many cases the Council has provided substantial funding to charities for which it is trustee without which they could not continue to operate.

Where the terms of the trust permit it, the Council can recover its administration costs. As set out in the report however, trust funds must be and are accounted for separately and are not co-mingled with the Council’s own resources

b) Comments of the Assistant Director Strategic Finance

There are no financial implications arising from this report.

7. Legal Details/Comments of the Head of Governance

As set out within the main body of the report.

8. Value for Money

N/A

9. Sustainability Impact Appraisal

N/A

10. Risk Management

N/A

11. Links to Council Priorities

The Members Constitutional Working Party is a committee of the Council. Its work ensures the continued efficient running of the Council and links to the priority to
create an ambitious council which improves the lives of residents and works in a transparent way.

12. Equalities, Human Rights and Community Cohesion
N/A

13. Staffing/Workforce and Accommodation implications:
N/A

14. Property and Assets
N/A

15. Any Other Implications
N/A

16. Consultation
N/A

17. Background Information

Councillor’s guide to a council’s role as charity trustee – Charity Commission and Local Government Association

Local authorities as charity trustees – Charity Commission

REPORT ENDS