

## Report to: Finance Committee

**Report Ref:** F1903  
**Meeting Date:** 24<sup>th</sup> June 2019  
**Agenda Item:** 11  
**Prepared By:** Town Clerk



**Subject:** Establishing a Mayor's Charity

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### 1.0 BACKGROUND

#### 1.1 BACKGROUND TO REPORT

It is tradition that the Town Mayor raises funds for local charities during their year in office. This has been operated as part of the town council. The previous Town Mayor raised the idea of establishing the fundraising efforts as a legal charity, this would enable it to directly receive match funding and donations from companies which restrict their giving to registered charities.

This report sets out information on the establishment of a charity for the mayor's fundraising and outlines a proposed structure.

#### 1.2 CHARITY STRUCTURES

A charity is defined by the reasons a body is established rather than a specific form or structure and the Charity Commission identifies four main models for establishing a charity; these vary on their legal entity, membership and governing document.

A charitable company limited by guarantee (charitable company) and a charitable incorporated organisation (CIO) both create a legal identity as a corporate body. A corporate body is a distinct legal entity from its members and is recognised in law as a person. Trustees to a charity that is a corporate body are not personally liable for what the charity does.

Charitable trusts and unincorporated charitable associations are not corporate bodies which places a greater personal liability on the trustees. A charitable trust is usually established and governed by a trust deed which details the assets (land or money) the charity will start with. Unincorporated charitable associations are the most common type of charity and are governed by a constitution.

A charitable company is a private company and as such must be registered with Companies House requiring additional reporting. It is governed by a memorandum and articles of association but as a charity it cannot distribute profits to members or shareholders and can only apply its assets to its charitable purpose.

A CIO must be registered with the Charity Commission in order for it to exist legally. Other forms of charity with an annual income below £5,000 cannot usually register with the Charity Commission.



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The Charity Commission requires that the charity is established before it applies to be a registered charity.

### **1.3 CHARITY TRUSTEES**

Charities are usually governed by a board of trustees<sup>1</sup>. The Charity Commission requires a minimum of three trustees to be appointed when registering a charity and trustees are subject to eligibility criteria such as age, criminal record and disqualification. It is recommended that governing documents include a term limit for trustees.

Trustees are under a legal duty to further the objects of the charity and are responsible for ensuring its good governance and compliance with Charity Law and, if applicable, Company Law; this means ensuring the charity only undertakes activity for its charitable purpose. Trustees carry personal liability, regardless of the legal identity of the charity, in respect of losses due to breach of trust, dishonesty and insolvency.

Ultimately, the board of trustees are responsible for the governance of the charity and it is important to draw a distinction between management and governance: governance is agreeing the mission and strategy whilst management is about delivering these. The Trustee's role therefore continues to be one of holding management to account in the operation of the charity.

Charities in England and Wales are regulated by the Charity Commission which has a range of responsibilities in ensuring the sector is well managed in particular with an aim to maintain public confidence in charities. The commission is empowered to make changes to charities, including appointing trustees. This regulation is delivered through requiring charities to register with the commission and, based on different thresholds, submit annual returns, reports and accounts. This level of regulation allows for a lighter touch system for smaller charities whilst requiring a more in-depth system of regulation for larger charities.

Charitable companies must also submit returns to Companies House; both annually and following changes to the company governance.

A charity's governing documents may require meetings of the members and the board will meet as required or in line with the governing document. A combination of law and best practice set out a range of requirements for the management of meetings and the keeping of minutes. The Charities Act 2011 requires that registered charities must state that they are registered on certain documents.

## **2.0 BENEFITS OF ESTABLISHING A CHARITY**

The principal benefits of establishing a charity are the opportunity to obtain direct match funding (e.g. from Barclays), opportunity to receive donations from companies which restrict giving to charities, the opportunity to reclaim gift aid on donations and the opportunity to benefit from fundraising services such as JustGiving.

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<sup>1</sup> in accordance with the charity's governing document or, if silent, in accordance with Company Law or, for unincorporated charities, the Trustee Act 1925 (Charity Commission, 2013a)



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### **3.0 PROPOSED SCHEME AND OPERATIONAL IMPLICATIONS**

#### **3.1 PROPOSED STRUCTURE**

It is proposed to establish a Charitable Incorporated Organisation. This forms a legally distinct organisation with limited liability for its trustees. A draft constitution is attached and has used the recommended model constitution provided by the Charity Commission.

The constitution sets out that it will comprise four trustees, two appointed by the Charity itself and two by virtue of external office, the Town Mayor and Deputy Town Mayor. The initial appointed trustees are suggested to be the incumbent Chairman and Deputy Chairman of the Finance Committee.

As part of establishing a charity the charitable objects must be specified, the following have been included in the draft constitution:

*to collect charitable donations and either distribute for the benefit of charitable organisations benefitting the inhabitants of the parish of Knutsford or make grants to organisations providing freely available recreational facilities within the parish of Knutsford.*

*The focus will change from year to year so that each year the CIO will support different organisations and projects as determined by the Mayor and Trustees.*

Noting Cllr Malloy's fundraising is focused on providing funds for a skatepark, and that this could be most efficiently delivered by the Town Council or Cheshire East Council which are not charitable organisations, the objects also include to provide grants for recreational facilities, a charitable object that would allow it to give funds to either council towards a skatepark.

#### **3.2 OPERATIONAL IMPLICATIONS**

As a legally distinct organisation, the governance of the charity would not fall under the responsibility of the Town Council. It would, therefore, not be subject to the council's policies and accounting arrangements. The charity would have to adopt its own arrangements.

The charity would require its own public liability insurance for its events.

As part of establishing the charity it is recommended that the Town Clerk and the charity agree a service level agreement for the town council to provide support services in the form of a clerk and treasurer (the Town Clerk) and operational support (the Mayor's PA). This would mirror the existing operational management of the mayor's charity fundraising.

The Town Clerk would be responsible to the charity for the accounts and charity commission returns.

There would be a requirement to hold trustee meetings, but these can be held electronically. There should be minimal operational difference in operating the fundraising as a registered charity.

### **4.0 DECISIONS REQUIRED**

The committee should consider the establishment of a charity as outlined.



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