Leicestershire County Council

CONSTITUTION & ETHICS COMMITTEE – 10 SEPTEMBER 2026

REPORT OF THE MONITORING OFFICER

THE COUNCIL'S CHARITY TRUSTEE AND TRUSTEE APPOINTMENT ROLES

Purpose of Report

1. The purpose of this report is to set out the circumstances in which the Council acts, or may be asked to nominate persons to act, as charity trustee, holding trustee, custodian trustee or appointing body, and to propose a clearer governance approach for recording and managing those roles. The report asks the Committee to note the current position, to support the maintenance of a consolidated register, and to note that further reports will be required where individual trusts require decisions by the Council acting in its trustee capacity and/or in connection with requests for the Council to nominate persons to act as charity trustee.

2. The Member Briefing Note entitled "Constitution & Ethics Committee – The Committee's Role Where the Council Acts as Charity Trustee or Accompanying Body" that was previously shared with the Committee has been updated. A copy of the updated Briefing Note is appended to this report.

Background

3. The Constitution and Ethics Committee is responsible for functions relating to the Council's charity trustee role and related charity governance responsibilities, including cases where the Council acts as corporate trustee, holding trustee or custodian trustee, or exercises a power to appoint or nominate trustees. Where the Council is acting as a charity trustee, it must approach the matter from the standpoint of the charity and decide what is in the charity's best interests, rather than treating the matter as ordinary Council business. Any person appointed as a trustee following nomination by the Council must similarly act in the best interests of the charity.

4. The Charity Commission's guidance for local authorities confirms that councils may be trustees of charities, including charitable land such as recreation grounds and funds such as school prize funds. Where the local authority is the trustee, the trustee is the local authority itself and not individual councillors and/or officers personally. In cases where the Council acts as corporate trustee, officers and members involved in the business are acting on behalf of the authority in its

trustee capacity and not in their personal capacity. In contrast, where persons are appointed as trustee following nomination by the Council, they are the trustees and not the Council.

5. The guidance also identifies a number of risks which are particularly relevant to local authorities, including not recognising that property or funds are held on charitable trust, using charity property for ordinary local authority purposes, failing to identify and manage conflicts of interest, allowing small funds to become dormant, not keeping separate accounts and not submitting required accounts or returns to the Charity Commission. These responsibilities are not limited to identifying charitable status.

6. Where the Council holds charitable land, funds or other assets, whether as charity trustee, holding trustee or custodian trustee, the Council must ensure that those assets are properly safeguarded, recorded and managed in the capacity in which they are held. This includes ensuring that charitable land is used consistently with the relevant charitable purposes, that charitable money is held and separately identifiable from ordinary Council funds, that appropriate records and accounts are maintained, and that any investment or deposit arrangements are suitable, secure and kept under review in accordance with the relevant governing document, charitable purposes, liquidity requirements and charity law duties. This does not necessarily require a separate bank account for each fund, but it does require clear accounting separation and appropriate oversight.

7. In practical terms, finance and service records should enable officers to identify, at any point, the balance held for each charitable fund, the restrictions on its use, and income and expenditure attributable to it, and the officer and service responsible for monitoring it. Periodic reconciliation between finance records, trust papers and any Charity Commissions record should be undertaken so that dormant balances, unapplied income, missing governing documents or unclear responsibilities can be identified and brought back to the Committee where a trustee or governance decision is required.

8. The Council has previously reviewed a number of legacy educational trust funds. Some dormant funds have been transferred or closed following Charity Commission involvement. Other funds remain subject to further work because the original purposes, trustee provisions, successor bodies or proposed transfer routes are not straightforward. There are also separate arrangements where the Council appears to have a holding trustee role or a power to appoint a trustee, rather than being the corporate charity trustee itself.

<u>Summary of current known trust-related roles</u>

9. The following table summarises the Council’s current charity-related roles:

Matter	Role	Current position	Proposed next step
Kibworth Beauchamp High School Foundation	The Council continues to manage the fund and related land interests.	Larger educational trust fund with capital, revenue and land interests. Further long-term proposals from the Mead Educational Trust remain unresolved.	Retain on the register and ensure any future grant, land or transfer decisions are reported as trustee decisions, such decisions to be taken in accordance with the charity's governance documents.
Kibworth Beauchamp Goodman Exhibition Fund	The Council holds and administers a small educational fund.	A fund established to provide small grants to former students for further education or training. A recent small grant has been dealt with through a light-touch agreement.	Retain on the register and ensure grant decisions are taken in accordance with the charity's governance documents and records are kept with the trust papers.
Mary Smith Scholarship Fund	Position requires regularisation. The Charity Commission record identifies the Council as sole trustee, but the governing schemes refer to multiple trustees.	Officers are progressing the appropriate route for regularising the governance arrangements, including any necessary engagement with the Charity Commission and specialist legal support.	With the aid of specialist legal advice, officers are exploring an appropriate route to regularise the governance arrangements and, if appropriate, transfer the fund in a way which preserves the original donor restrictions.
Hinckley John Cleveland Prize and Hinckley John Cleveland Scholarship Fund	Legacy educational trust funds held by the Council pending an agreed transfer route.	External advice supports dialogue with the Hinckley JCC Foundation about a conditional transfer	Seek Committee authority before committing to any transfer terms or change of objects.

Matter	Role	Current position	Proposed next step
		preserving the original donor restrictions.	
Piercy Scholarship Fund and Thompson Trust	The Council's role appears to be limited to a holding or custodian trustee role, subject to confirmation through the ongoing legal review.	The successor trustee position is uncertain and external advice is being used to identify the correct route forward.	With the aid of specialist legal advice, progress the Charity Commission scheme route and proposed trustee appointment arrangements.
Leicestershire Educational Trust Fund / former dormant educational trusts	Historic transfer and oversight role following earlier Committee and Charity Commission approvals.	Eight dormant trusts were closed and transferred into a consolidated fund administered by the Leicestershire and Rutland Community Foundation.	Keep transfer papers and any annual reports with the consolidated register. Where requested by LRCF, officers in the Council's CFS teams to liaise with the LRCF in respect of any query relating to the use and operation of this fund by the LRCF.
Bradgate Park and Swithland Wood Trust	Holding trustee role identified from internal correspondence.	The Council's current holding trustee position and any associated deed or release arrangements should be verified and recorded separately from corporate trustee cases.	Record separately from corporate trustee cases and verify the latest deed, any release and current holding trustee position.
Thomas Harley's Charity	Power to appoint one trustee.	The charity has invited the Council to appoint one trustee. The appointed person would act independently as a charity trustee.	Determine the appropriate Council appointment process, including eligibility, term of office, declarations, training, due

Matter	Role	Current position	Proposed next step
			diligence and confirmation that the appointed trustee will act independently in the interests of the charity.

Governance considerations

10. The key governance distinction is between the Council acting as the charity trustee, the Council holding property as a holding or custodian trustee, the Council exercising a power or discretion to appoint a trustee, and the Council merely holding funds pending regularisation or transfer. Those roles have different legal consequences and should not be conflated in reports, decision records or finance records.

11. Where the Council is the charity trustee, reports should expressly say that the Committee is being asked to consider the matter on behalf of the Council in its trustee capacity. The report should identify the relevant charitable purpose, the beneficiaries, the governing document, the proposed decision, the reasons why the decision is considered to be in the charity's best interests, any need for approval from non-Council trustees, any conflict with the Council's ordinary statutory or financial role, whether Charity Commission authority or advice is required and the need for any records to be held or filings made in respect of the decisions taken.

12. Where the Council is a holding trustee or custodian trustee, the record should identify the extent of that role, the property or assets held, the trustees or managing body on whose behalf the property is held, and whether the Council has any decision-making function beyond holding title or acting on lawful directions.

13. Where the Council has a power to appoint or nominate a trustee, the report should make clear that this is legally distinct from the Council acting as corporate charity trustee. An elected member, officer or other individual appointed as trustee acts personally in that capacity, owes trustee duties to the charity and its beneficiaries, does not represent the Council on the trustee board and must act in the best interests of the charity and its beneficiaries, rather than as a representative of the Council.

14. Future reports should therefore distinguish between:

    a. the Council itself acting as the corporate trustee;

b. the Council holding title to property as holding trustee or custodian trustee;
c. the Council exercising a power to appoint, nominate or remove a trustee; and
d. the Council being asked to identify an elected member, officer or other person willing to serve as an individual trustee.

15. Where the Council is asked to nominate or appoint an elected member, officer or other individual as charity trustee, the report should identify the person(s) proposed for appointment as charity trustee, the source of the appointment power, the term of office, the eligibility criteria, the process for making the appointment, any training or declaration requirements, and any conflict between the individual's role as trustee and their Council role. The report should also make clear that the appointed person owes their trustee duties to the charity and not to the Council when acting as trustee.

16. Any person proposed for nomination or appointment as charity trustee by the Council should undertake appropriate due diligence before accepting the role. This should include consideration of the trustee duties and responsibilities, the charity's governing documents, the form of charitable structure, the charity's accounts and recent trustee minutes, any potential personal liability, and whether trustee indemnity insurance is available and adequate. Legal advice should be taken where appropriate. Any appointment or nomination must also be made in accordance with the charity's governing documents.

<u>Proposed register and practical arrangements</u>

17. It is proposed that officers maintain a single consolidated register of charitable trusts, funds, bequests, charitable land, holding trustee roles and trustee appointment powers. The register should identify, for each matter, the governing document, charitable objects, beneficiaries, trustee or holding trustee status, Charity Commission registration details, finance code or asset reference, lead service, last Committee decision and next planned action. The register should also record, where applicable, the nature and location of any charitable land, the amount and character of any charitable fund, whether any fund is permanent endowment or otherwise restricted, the account or investment arrangements in place, the basis on which funds are held securely, the officer or service responsible for monitoring the asset or fund, and the date on which the governing document, asset record, finance record and Charity Commission record were last checked.

18. The register should be treated as a governance and assurance document rather than simply a finance schedule. It should help ensure that charitable assets are not treated as ordinary Council assets, that dormant or low-value funds are kept under review, and that reports to the Committee are framed in the correct legal capacity.

Recommendation

19. The Committee is asked to:

a) note the current working summary of the Council’s known charity-related roles;
b) agree that officers maintain a consolidated register of charitable trusts, charitable funds, charitable land, bequests, holding trustee roles and trustee appointment powers;
c) note that the register will need to be verified against original governing documents, Charity Commission records, finance records and asset records;
d) note that individual trust matters requiring a trustee decision, recommendation for trustee appointment, Charity Commission application, transfer, closure, grant approval or appointment decision will be reported separately where required;
e) request that future reports clearly distinguish between the Council acting as charity trustee, holding trustee, custodian trustee, appointing or recommending body or undertaking ordinary local authority functions;
f) agree that the register should record, where applicable, the arrangements for safeguarding, accounting for, applying and, where appropriate, investing charitable funds and managing charitable land;
g) note that where the Council holds charitable funds, officers should review whether the funds are held securely and separately from ordinary Council funds and whether any deposit or investment arrangements remain appropriate having regard to the charity’s purposes, governing document and liquidity requirements; and
h) note that where the Council is asked to appoint or nominate an elected member, officer or other individual as trustee, the appointment should be treated as legally distinct from the Council acting as corporate trustee, and the appointed person must act independently in the best interests of the charity.

Legal and governance implications

20. The legal and governance implications are set out in the body of this report. The principal risk is that the Council may inadvertently make decisions about charitable assets or funds as if they were ordinary Council assets or may fail to recognise the active responsibilities that arise from holding charitable property or money. Those responsibilities may include safeguarding charitable assets, ensuring that charitable land is used consistently with the relevant charitable purposes, keeping separate records and accounts, applying charitable funds only for the permitted purposes, reviewing dormant or low-value funds, and ensuring that any funds held pending application are deposited or invested in a suitable and secure manner.That risk can be mitigated through a clearer register, consistent reporting, express identification of the capacity in which the Council is acting, separate charity records where appropriate, active management of conflicts of interest and timely use of Charity Commission advice or authority where needed.

Financial, staffing, equalities and environmental implications

21. There are no immediate direct financial, staffing, equalities or environmental implications arising from noting this report. There will be officer time required to verify and maintain the register, review governing documents, liaise with services, and progress Charity Commission or external legal advice on individual trust matters. Specific financial, property, equality or environmental implications should be considered in the relevant future report where an individual trust decision is proposed.

Consultation

22. No public consultation has been undertaken for this governance report. Where a future decision involves a change of charitable purpose, disposal or change of use of charitable land, transfer of a fund, or a decision affecting beneficiaries, the need for beneficiary consultation, professional advice or Charity Commission authority should be considered as part of that specific report.

Background papers

Charity Commission guidance: Local authorities (or councils) as trustees of charities, updated 8 August 2024. https://www.gov.uk/government/publications/local-authorities-as-charity-trustees/local-authorities-or-councils-as-trustees-of-charities

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Appendices

Appendix - Updated copy of the Member Briefing Note “Constitution & Ethics Committee – The Committee’s Role Where the Council Acts as Charity Trustee or Accompanying Body.”