

# Report

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Report to:	<b>Finance and Corporate Resources Committee</b>
Date of Meeting:	<b>25 April 2018</b>
Report by:	<b>Executive Director (Finance and Corporate Resources)</b>

Subject:	<b>Modernisation of Charitable Trust Funds</b>
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## 1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ advise the Committee of proposals to modernise the Charitable Trust Funds administered by the Council

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the proposals to modernise the Charitable Trust Funds administered by the Council be approved;
- (2) that the proposed trust deeds as drafted by Legal Services and attached at Appendices 2 and 4 be approved; and
- (3) that the proposed trustees, as detailed at paragraphs 4.7 and 5.3, be endorsed and referred to the Executive Committee for formal appointment.

## 3. Background

3.1. South Lanarkshire Council administers a total of 69 individual Trust Funds. The value of these Trust Funds as at 1 April 2017 was £1.198m.

3.2. The individual Trust Funds are reported to the Office of the Scottish Charity Regulator (OSCR), under the following three Scottish Charities:-

- ◆ South Lanarkshire Council – Charitable Trusts (SC025089)
- ◆ South Lanarkshire Council – Educational Trusts (SC028135)
- ◆ East Kilbride Information Technology Centre Trust (SC015221)

3.3. The Finance and Corporate Resources Committee currently acts as the governing body of the Trusts. Annual reports are presented to Committee advising of monies distributed and remaining balances within Trusts.

3.4. The Trusts are primarily the result of bequests which have gifted varying sums of money to the Council for specific purposes such as assisting the poor, or to provide prizes in schools. Many of these Trusts were bequeathed many years ago, some over one hundred years ago. The vast majority do not have formal, documented constitutions.

- 3.5. The lack of constitutions or governing documents means that payments are made on a historic basis and many Trust Funds are dormant, with no payments being made at all. In addition, the purposes of some of the Trust Funds are outdated, for example providing bags of coal to the elderly. This means that the Trust Funds are not being used to their full potential.
- 3.6. Officers have continued to seek to maximise the benefit that can be derived from the Trust Funds that are held by the Council, however, the lack of formal constitutions has restricted the payments that can be made. This has driven a desire for change and discussions have taken place with OSCR and external audit on the modernisation of constitutions and the removal of obstacles such as restrictions on the distribution of capital and unknown or out of date purposes.
- 3.7. The purpose of this paper is to propose an approach to modernise each of the three Trust Funds recognised by OSCR that will enable additional benefit to be provided. Each of the 3 Trust Funds are detailed in Sections 4 to 6, while Section 7 sets out the Governance of the Trust Funds and Section 8 details the next steps to be taken.

#### **4. South Lanarkshire Council – Charitable Trusts (SC025089)**

- 4.1. This Trust Fund groups together the various individual Trust Funds that were inherited from the former district councils of Clydesdale, East Kilbride, Glasgow and Hamilton along with the funds for the Loudon Bequest which was inherited from Strathclyde Regional Council. The value at 31 March 2017 was £1.027m. Details of the individual Trust Funds are shown in Appendix 1.
- 4.2. For the Trust Funds inherited from the former district councils, payment to recipients is made on a historic basis, reflecting the practices that were in place in the district councils, however, for many of the individual Trust Funds, the purpose is either unknown or outdated and some trust funds remain dormant with no current activity. The lack of a formal constitution means that it is difficult to make payments from these dormant trust funds.
- 4.3. **Proposed Purpose of Charitable Trusts:** Officers in Legal Services have drafted a proposed trust deed which would provide a basis for the governance of the Trust Funds and specify the purposes for which payments from the Trust Fund can be made. The draft trust deeds for South Lanarkshire Council – Charitable Trusts are attached at Appendix 2 with the aims detailed below. The aims of the Trust Fund are intentionally wide ranging to allow its full potential to be realised without unnecessary restriction.
  - ◆ Prevention or relief of poverty
  - ◆ Relief, financial assistance or Welfare for those inhabitants of the South Lanarkshire Council area who are in need by reason of age, ill-health, disease, invalidity, disability, infirmity, financial hardship or other disadvantage
  - ◆ Advancement of health
  - ◆ Advancement of citizenship or community development
  - ◆ Advancement of art, heritage, culture or science
  - ◆ Provision of recreational facilities or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended
  - ◆ Assist other charitable organisations with purposes similar to the Trust so as to further their charitable purposes within the South Lanarkshire Council area by the provision of financial and/or material assistance
  - ◆ Any other purpose designated as charitable under The Charities and Trustee Investment (Scotland) Act 2005 Act.

- 4.4. **Proposed Trustees:** The draft trust deeds specify who the trustees will be. Legal Services have advised that there is no specific minimum or maximum requirement regarding the number of Trustees and that a small number of Trustees would be sufficient for the governance of the funds.
- 4.5. It is proposed that rather than named individuals being appointed as Trustees, they should be appointed ex-officio whereby the holder of a particular office is appointed when they enter office, and ceases when they leave office. Any subsequent holder of that office is automatically appointed, without needing any additional legal paperwork.
- 4.6. All charity trustees have legal duties and responsibilities under The Charities and Trustee Investment (Scotland) Act 2005 Act. Generally a trustee is required to act in the interests of the charity and would be responsible for ensuring stewardship of funds, meeting the aims of the trust, approving expenditure and fulfilling all reporting requirements.
- 4.7. As noted at paragraph 4.1, this Trust Fund groups together the various individual Trust Funds that were inherited from the former district councils. For this reason, it is proposed that the Chairs of the Area Committees are appointed as Trustees along with the Chair of the Finance and Corporate Resources Committee and the Executive Director (Finance and Corporate Resources). Should this Committee endorse this proposal, a subsequent report to the Executive Committee seeking formal appointment will be required.
- 4.8. **Sub Funds:** OSCR has confirmed that it is possible to hold sub funds within the overall South Lanarkshire Council Charitable Trust Fund. It is proposed to use this approach to establish specific sub funds reflecting the fact that these funds came from the former district councils and retaining the benefit within those areas.
- 4.9. The Loudon Bequest is paid out to the former authorities of Strathclyde Regional Council to fund holidays for elderly people. It is proposed that this continues, however, the Trustees would need to formally approve the request to make the payments to the local authorities.
- 4.10. Legal Services have advised that the funds held for burial lairs do not meet the objectives of a charity as they are specifically for individuals' burial lairs. Guidance is being sought from OSCR on whether these funds can be released from the Trust Fund and held separately.
- 4.11. The proposed sub funds are shown in the table below, and would need to be approved by the Trustees. Legal Services have advised that there is no need to specify the sub funds within the Trust Deed.

<b>Sub Fund</b>	<b>Balance</b>
Clydesdale Trust	£64,559.34
Hamilton Trust	£48,119.57
Rutherglen and Cambuslang Trust	£31,757.04
East Kilbride Trust	£5,009.30
Loudon Bequest	£871,545.23
Burial Lairs	£5,918.20
<b>Total</b>	<b>£1,026,908.68</b>

- 4.12. **Scheme of Operation:** The purposes of the revised Trust Fund constitutions are intentionally wide ranging to allow them to realise their full potential without unnecessary restriction, however, that said, it is proposed that a scheme of operation is developed that would set out how the Trust Funds would be managed in practice. This scheme would need to be agreed by the Trustees.
- 4.13. While the Trustees would have the power to distribute the Trust Funds without restriction, it is proposed that an annual budget is set as a percentage of the area sub funds. This will ensure that the Trust Funds can continue to provide benefit for a number of years as well as being of a level which would allow a substantive value of expenditure. The proposed annual allocation is 10% of the fund balance or £500, whichever, is greater. Louden Bequest will continue to pay on the basis it has been doing so.
- 4.14. In terms of administering the funds, it is proposed that each year the Trustees nominate a specific purpose chosen from the Trust Deed as detailed in Section 4.4 and bids for funding are requested from communities. These bids will be presented to the Trustees for consideration and approval.
- 4.15. Bids would need to include details on the outcomes that the funding would help achieve in order that the Trustees can make an informed decision on whether to approve or reject the bid. Feedback to Trustees would be provided the following financial year on the actual outcomes. The expenditure may be within Council Resources or in grant form to external organisations/individuals.
- 5. South Lanarkshire Council – Educational Trusts (SC028135)**
- 5.1. This Trust Fund groups together educational endowments transferred to South Lanarkshire Council under the Educational Endowments (Strathclyde Region) Transfer Scheme Order 1996. The value at 31 March 2017 was £0.144m. Details of the individual Trust Funds are shown in Appendix 3.
- 5.2. Officers in Legal Services have drafted a proposed trust deed which would provide a basis for the governance of the Trust Funds and specifies the purpose of the payments from the Trust Fund as advancement of education. The draft trust deeds for South Lanarkshire Council – Educational Trusts are attached at Appendix 4.
- 5.3. To avoid unnecessary duplication and to ease the administration process, it is proposed that the Trustees appointed to South Lanarkshire Council Charitable Trust Funds, as detailed at paragraph 4.7, are also appointed to be Trustees of the Educational Trust Fund. To reflect the aim of these Trust Funds, the Executive Director (Education Resources) will also be appointed as a Trustee to this Trust Fund. Should this Committee endorse this proposal, a subsequent report to the Executive Committee seeking formal appointment will be required.
- 5.4. Payments are made from all of the individual Trust Funds, mainly to individual school funds, but also to fund specific educational projects in East Kilbride from the Elizabeth B Mitchell Trust Fund.
- 5.5. Currently, the minimum payment made to schools is £10 and when a Trust Fund balance falls below £200, the school is offered the balance as a lump sum. It is proposed that this process is continued. As the Trust Funds are currently being distributed to schools, there is no need to develop a scheme of operation, however, payments to the schools, including the value of payments should be approved by the Trustees in advance.

## **6. East Kilbride Information Technology Centre Trust (SC015221)**

- 6.1. This Trust Fund was established by East Kilbride District Council, East Kilbride Development Corporation and Hamilton District Council in 1983 and transferred to South Lanarkshire Council at reorganisation in 1996.
- 6.2. A governing document in the form of a Trust Deed exists and details the purpose of the Trust to be the establishment and operation of a centre in East Kilbride to provide for young unemployed people living in the East Kilbride district for training and education appropriate to their needs in basic electronic assembly computing, electronic office and other work involving use of new technology.
- 6.3. This Trust Fund ceased to directly provide training services at re-organisation in 1996. The Trust Fund has been dormant for a number of years with no expenditure. The balance on the Trust Fund as at 31 March 2017 was £27,043.00.
- 6.4. Legal Services have advised that the Trustees have the power to pay part or all of the balance of the Trust Fund for the benefit of such purposes as law regards charitable, however, it would be preferable if the funds could be used in a way that would fit closely to the purpose of the Trust Fund.
- 6.5. Trustees were appointed at the Executive Committee on 28 June 2017 as follows:-
  - ◆ Councillor Margaret Cowie
  - ◆ Councillor Graeme Horne
  - ◆ Councillor Martin Grant Hose
  - ◆ Councillor Gladys Miller
- 6.6. Officers within Education Resources and Finance and Corporate Resources are working to develop suitable projects that would utilise the balance of the fund in its entirety. Once suitable projects have been identified, a meeting of the Trustees will be convened so that they can consider the proposals.

## **7. Governance**

- 7.1. Legal Services have drafted proposed trust deeds which would provide a basis for the governance of the Trust Funds and specify the purposes for which payments from the Trust Funds can be made. These are attached at Appendix 2 and 4.
- 7.2. The Trust Deed covers the following areas:-
  - 7.2.1. **Trustees duties and responsibilities:** Charity trustees are the people who control and manage a charity. They are responsible for complying with the law and are fully responsible for how the charity is run and what it does. The Trust Deed includes details of the minimum number of trustees required for each Trust, which is three to meet good practice. The document will list the duties of the Trustees, some of which are required by the Act, including OSCR requirements, providing information to the public, keeping good financial records and reporting to the Trust.
  - 7.2.2. **Administration of the Trust:** The Trust Deed states the Trustees may appoint South Lanarkshire Council to administer the Trust on their behalf which would include the day to day monitoring of the Trusts, organisation of payouts from the Trusts and also the preparation of the financial statements of the Trust. South Lanarkshire Council employees will ensure that OSCR is kept up to date with details of the Charity. Trustees are still responsible for ensuring that the duties delegated are met.

- 7.2.3. **Financial Records and Reporting:** It is a requirement of the Act to keep proper accounting records and to prepare a statement of accounts, including a report on activities at the end of each financial year. The financial statements must be audited and filed with OSCR within the prescribed timelines along with an annual return. These details are included within the Trust Deed.
- 7.2.4. **Meetings of the Trustees:** The Trust Deed provides information on meetings. South Lanarkshire Council employees will prepare a timetable for when the meetings will be held giving consideration to review the financial statements before they are submitted to OSCR.
- 7.3. **Trustee Induction and Training:** Good governance guidance states each new Trustee should receive an induction pack including the governing document and up to date information about the activities of the Charity. Officers within Finance and Corporate Resources will pull together an induction pack for new Trustees.
8. **Next Steps**
- 8.1. If approved, officers within Legal Services will commence dialogue with OSCR to formally adopt the constitutions for the two “umbrella” Trust Funds recognised by OSCR.
- 8.2. If the proposed trustees are endorsed by this Committee, a further report to the Executive Committee seeking formal appointment will be prepared.
- 8.3. A training plan for the Trustees will be established that will further set out their roles and responsibilities as summarised at paragraph 4.6.
- 8.4. Officers within Finance and Corporate Resources will establish a timetable of meetings for the Trustees. It is anticipated that this will be on a quarterly basis.
9. **Employee Implications**
- 9.1. None
10. **Financial Implications**
- 10.1. There are no direct financial implications arising from the modernisation of the Trust Funds, however, it is anticipated that this will result in higher annual expenditure than in recent years. This will be met from the Trust Fund balances.
11. **Other Implications**
- 11.1. If the Charitable Trust Funds are not modernised and formal constitutions adopted, then there is a risk that the governance of the Trust Funds is not improved and the potential benefit that can be derived from the funds continues to be limited.
- 11.2. There are no implications for sustainability in terms of the information contained within this report.
12. **Equality Impact Assessment and Consultation Arrangements**
- 12.1. There is no requirement to carry out an impact assessment in terms of the information contained in this report.
- 12.2. There is also no requirement to undertake any consultation in terms of the information contained in this report.

**Paul Manning**  
**Executive Director (Finance and Corporate Resources)**

5 April 2018

**Link(s) to Council Values/Ambitions and Objectives**

- ◆ Value: Accountable, effective, efficient and transparent

**Previous References**

- ◆ Finance and Corporate Resources Committee – 6 September 2017

**List of Background Papers**

- ◆ None

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

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**South Lanarkshire Council Charitable Trusts (SC025089)**

Name of Trust Fund	Origin and Purpose	Balance within Fund
John Nivison Bequest	Gifted by Mr. John Nivison - revenue to be applied in Dalserf Parish - 4/6ths coal for poor, 1/6th Dykehead Colliery Committee for infirm workmen and widows, 1/6th school prizes for schools in Larkhall./ (with power to change allocation, if necessary).	£6,907.12
JE Black	For the aid and benefit, individually or as a whole, of the residents of the town of Biggar, who are, or would be but for the lack of entitlement, in receipt of a Government retirement pension.	£1,159.06
Mungo Henshaw	Legacy by late Mungo Henshaw in 1857 for poor of Wiston and Roberton	£267.03
Walston Parish	Bequest for poor of Parish of Walston	£230.70
Vary Bequest	For the deserving poor to be divided equally between parishes of Carmichael 4, Pettinain 2, Lanark 6.	£7,557.60
James and Janet Alexander Nursing Bequest	To provide suitable nurses and medical attendance, medicine, medical and surgical appliances and necessaries for invalids and convalescents among inhabitants of Leadhills.	£32,426.73
James Alexander Coal Bequest	To provide coal for the poor of the village of Leadhills	£741.23
James Grierson	For the benefit of such poor and deserving persons residing in and natives of the Parish of Leadhills.	£11,331.43
Archibald Cameron	For the poor of Leadhills	£343.69
Symington Memorial	Upkeep of the William Symington Memorial in Leadhills	£181.20
Leadhills War Memorial	Unknown	£267.71
Mauldslie	Bequest by forefathers of late Sir Wyndham Anstruther for the poor of Parish of Carluke	£206.66
Rutherglen Mortified Money	For poor of Rutherglen	£26,892.66
McFarlane's Property	Unclaimed balance as per 1975 accounts	£4,864.38
Provost Fund Gen A/c	Unknown	£360.67
W Crawford Bequest	Gift for the poor of Parish - fund of East Kilbride	£2,302.48
Robert Nimmo Bequest	Unknown	£313.11
Robert Smillie Memorial	Unknown	£4,183.86



**South Lanarkshire Council Charitable Trusts (SC025089)**

<b>Name of Trust Fund</b>	<b>Origin and Purpose</b>	<b>Balance within Fund</b>
Alex Hamilton Bequest	Unknown	£7,319.15
Old Mortifications & Charities	Poor of Hamilton	£5,113.98
Daniel Smith Bequest	Poor of Hamilton	£2,402.22
David Nimmo Bequest	Poor of Hamilton	£268.44
Robert Downie Bequest	Poor of Hamilton	£2,628.13
Pollock Bequest	Poor of Hamilton	£5,227.30
Dr J Dixon Bequest	Poor of Hamilton	£5,019.03
John McNaughton Bequest	Unknown but Historically been Distributed to Boys Brigade and St Andrews Ambulance	£8,737.23
Gibson Bequest	Poor of Lanark	£574.35
Mitchell Bequest	Poor of Lanark	£295.05
Jeannie Fraser Bequest	Poor of Lanark	£722.28
Cowan Fund	Poor of Lanark	£266.96
Miss F.E.M. Bennett Bequest	Unknown	£157.98
Hospitlands	For the Deserving Poor of Lanark	£3,815.53
Alexander Hyslop	For poor of village of New Lanark.	£437.30
Lockhart Nemphlar	From Trustees of late Mr. Wm. Lockhart for deserving persons resident in Nemphlar.	£90.28
Robert Waugh Bequest	Bequest by late rev R Waugh for poor in Parish of Lesmahagow	£1,234.26
John M Waugh	For the benefit of the poor persons in the parish of Lesmahagow	£1,458.74
Robert Gillespie	For deserving poor in the Parish of Douglas	£546.53
John Gillespie	For poor persons in Parish of Douglas	£247.04
E Giffen Bequest	Bequest for poor persons in Parish of Avondale	£104.44

**South Lanarkshire Council Charitable Trusts (SC025089)**

<b>Name of Trust Fund</b>	<b>Origin and Purpose</b>	<b>Balance within Fund</b>
R Nimmo Bequest	Chapelton	£1,906.65
A Gebbie Bequest	Bequest for poor persons in Parish of Avondale	£86.48
H Gebbie Bequest	Bequest for poor persons, as defined, in Parish of Avondale - 5 poor persons annually	£57.45
J Gebbie Bequest	Bequest for deserving aged and delicate persons in Parish of Avondale	£191.13
Loudon Bequest	To fund holiday projects for elderly residents in former Strathclyde Regional Council area	£871,545.23
Agnes Taylor Hastie	For the purpose of maintaining the Burial Ground of Testatrix and her husband in Leadhills Churchyard in a neat and tidy condition.	£303.76
Alexander Kay	Fund created in 1926 by the trustees of the late Mr Alexander Kay of Cornhill for the upkeep of Testator's monument in Coulter Churchyard.	£1,480.53
Chancellor	Bequest by the late Archibald Cameron for upkeep of Chancellor Burial Ground in Quothquan Churchyard	£1,583.72
JS Waugh	Sum paid by Miss Jessie S Waugh for purpose of maintaining family burial place in St.John's Churchyard Symington	£2,337.18
J Reid Bequest	Bequest for keeping father's lair and gravestone in Chapelton Churchyard in order.	£213.01
<b>Total</b>		<b>£1,026,908.68</b>

**THE SOUTH LANARKSHIRE CHARITABLE TRUST**

established by South Lanarkshire Council, a body corporate under the Local Government Etc. (Scotland) Act 1994 and having its principal place of business at Council Offices, Almada Street, Hamilton, ML3 0AA.

WE the said South Lanarkshire Council (“the Council”) have resolved to establish the South Lanarkshire Charitable Trust (“the Trust”) in order to hold the assets of any existing charitable funds held by us and to be transferred into it and all further donations, legacies and other monies and property heritable and moveable, real and personal wherever situated and of whatever kind which may hereinafter accrue, be paid, transferred or issued to or acquired by either the Council or the Trust (the “Trust Fund”) for the Purposes after-mentioned (the “Trust Purposes”): THEREFORE WE DO HEREBY DECLARE that the Trust Fund shall be held by the Trustees in trust for the following purposes and subject to and with the benefit of the following powers and provisions:

**(ONE) TRUST PURPOSES**

The purposes of the Trust (“the Trust Purposes”) shall be as follows:-

- (a) For the prevention or relief of poverty
- (b) To provide relief, financial assistance or Welfare for those inhabitants of South Lanarkshire Council area who are in need by reason of age, ill-health, disease, invalidity, disability, infirmity, financial hardship or other disadvantage
- (c) Advancement of education
- (d) Advancement of health
- (e) Advancement of citizenship or community development
- (f) Advancement of art, heritage, culture or science
- (g) The provision of recreational facilities or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended
- (h) To assist other charitable organisations with purposes similar to the Trust so as to further their charitable purposes within South Lanarkshire Council area by the provision of financial and/or material assistance
- (i) Any other purpose designated as charitable under the CTISA.

## **(TWO) TRUSTEES**

The Trustees shall be [insert Names and Addresses of proposed Trustees – say 4 – 6 Trustees], subject to the power of the Council to remove or replace such Trustees as it sees fit, declaring that:

- (a) the Trustees [do not] [delete if not required] require to be current Councillors of South Lanarkshire;
- (b) any appointment or removal of a Trustee by the Council must be notified in writing to all Trustees, including the Trustee appointed to or removed from office;
- (c) any Trustee must, in exercising his or her functions as a Trustee, act solely in the interests of the Trust, and must, in circumstances capable of giving rise to a conflict of interest between the Trust and the Council, put the interest of the Trust before those of the Council; such a Trustee may not take part in the discussion and decision relative to any such circumstances;
- (d) the Trustees may, if they wish, appoint one of their number to be Chair of the Trust, to act as chair of the Trustees, or to Chair any meeting of the Trustees where the Chair is not present; and
- (e) a Trustee shall cease to be a Trustee if:
  - (i) by notice in writing to the Trust he or she resigns his or her office as Councillor; or
  - (ii) he or she becomes employed by the Trust or receives any payment for holding the office of; or
  - (iii) he or she becomes bankrupt, or insolvent or apparently insolvent or makes any arrangement or composition with creditor; or
  - (iv) he or she becomes incapable for medical reasons of fulfilling the duties of his or her office and such incapacity as certified by two medical practitioners is expected to continue for a period of more than six months from the date or later date of such certification; or
  - (v) he or she is disqualified from being a Trustee, or removed from being a Trustee under Section 69 of the CTISA or
  - (vi) in terms of Section 66(5) of CTISA, he or she is considered by the other Trustees to have been in serious or persistent breach of either or both of the duties listed in Sections 66(1) and 66(2) of CTISA.

### **(THREE) TRUST FUND**

(One) The Trust Fund shall be administered by the Trustees or by any agents appointed by them exclusively for the Trust Purposes and in the best interest of the Trust. The following shall apply:

- (a) The Trustees shall open and maintain such bank building society and other accounts and investments as they reasonably require from time to time.
- (b) All cheques and orders for payment shall be signed in such manner and subject to such limits as the Trustees may decide from time to time.
- (c) The Trustees shall have the power to make payments from income or capital of the Trust Fund at such time or times or of such amount or amounts as they in their sole discretion may determine; the Trustees need not pay out the whole of the income of any particular year but may carry forward part or the whole thereof into the succeeding year or years.

(Two) The Trustees may appoint South Lanarkshire Council to administer the Trust on their behalf, in which event the Council shall operate a separate Ledger Account or Accounts for the Trust; all cheques and orders for payment shall be signed by Council Officers and the Council's Standing Orders on Procedures, Scheme of Delegation, and Financial Regulations and other shall apply as if the Trust Funds were Council Funds; the Trustees may pay the Council a reasonable fee for any services provided..

### **(FOUR) POWER OF TRUSTEES**

The Trustees shall have the same full and unrestricted administrative powers of dealing with the Income and Capital of the Trust Fund in all respects as if they were beneficially entitled thereto and, without prejudice to the foregoing generality, they shall have all powers set out in Section 4 of the TSA as amended and may in their sole discretion:-

- (a) Make payments to or give donations to such persons as they consider are in need of assistance
- (b) promote and carry out research, surveys and investigations and develop initiatives, projects and programmes and carry on any other activities which further any of the Trust Purposes;
- (c) accept, purchase, acquire, lease, hire, retain, develop, improve, manage, transfer, dispose of or sell any property or assets, heritable or moveable, real and personal, of any and every description and whether situated throughout the world, whether or not producing income, whether or not quoted on any recognised Stock Exchange throughout the world and whether or not comprised by the word "investments" as ordinarily understood, provided such investments are appropriate for the Trust Purposes;
- (d) take such steps as may be deemed appropriate for the purpose of raising funds;

- (e) accept grants, donations bequests and legacies of all kinds to be used for the Trust Purposes or any of them, or to be used for designated purposes provided said designated purposes fall within the Trust Purposes whether from the Council or from Third Parties, and to accept any reasonable conditions attaching to such grants etc, or if the Trustees consider any condition not to be reasonable, to reject any grant, donation or legacy;
- (f) establish or support any other charitable body, and to make donations or provide grants (and to impose any reasonable conditions attaching thereto) for any charitable purpose which falls within the Trust Purposes;
- (g) set aside funds not immediately required as a reserve or for specific purposes, and subsequently to amend or cancel such reservation or allocation;
- (h) employ a professional investment manager who is entitled to carry on investment business under the supervision of the Financial Services Authority (or its successors) and to delegate to any such manager the exercise of all or any of its powers or investment on such terms and at such reasonable remuneration as the Trustees think fit, and to enable investments to be held for the Trust by nominees, but subject always to the provisions of Section 4 TSA as amended;
- (i) borrow money and give security in support of any such borrowings by the Trust;
- (j) employ such staff as they consider appropriate for the proper administration of the Trust or for the proper conduct of the Trust's activities and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants;
- (k) engage such consultants and advisors as are considered appropriate from time to time;
- (l) effect insurance of all kinds, including where appropriate indemnity insurance for the benefit of the Trustees in their acting as Trustees of the Trust;
- (m) form any charitable company with objects which are similar (wholly or in part) to those of the Trust, and if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Fund;
- (n) grant proxies in favour of any of the Trustees (or any other person) to attend, act and vote for the Trustees at any meetings (whether of the nature of general meetings, creditors' meetings or otherwise) relating to any investment held by the Trustees or relating to any claim by the Trustees in any liquidation or sequestration proceedings;
- (o) compromise or settle by arbitration all disputed claims by or against the Trust;
- (p) appoint solicitors and other professional agents to the Trust and to pay to such solicitors or other agents their usual charges;

- (q) reimburse any of the Trustees out of the Trust Fund, in relation to all expenses reasonably incurred by them in the creation and administration of the Trust;
- (r) if the Trustees appoint the Council to administer the Trust Funds under Clause (TWO)(two) hereof to refund to the Council any costs incurred in respect of such administration, and to pay a Council a reasonable sum to cover the cost of providing these services.
- (s) do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes;

#### **(FIVE) PROCEDURE AT TRUSTEES' MEETINGS**

- (a) The Trustees shall meet as often as expedient for the convenient dispatch of the business of the Trust.
- (b) A Trustee may at any time summon a meeting of the Trustees by notice served upon all Trustees, to take place at a reasonably convenient time and date.
- (c) Meetings of the Trustees may take place in person or by telephone conference call, video conference call or by any other collective electronic means unanimously approved by the Trustees from time to time.
- (d) No business shall be dealt with at a meeting of the Trustees unless a quorum is present; the quorum for meetings of the Trustees shall be one half of the Trustees, plus one at any time.
- (e) The Chair will endeavour to achieve consensus on all matters pertaining to the Trust, but where consensus is not possible, the matter shall be put to the vote. In case of an equality of votes, the Chair, or the chair of that meeting, shall have a second or casting vote.
- (f) The Trustees may delegate any of their powers to one or more individuals, or to committees consisting of not less than one Trustee and such other person or persons as the Trustees think fit. Any individual so delegated to or any sub-committee so formed shall, in the exercise of the powers so delegated, conform to any remit and regulations imposed by the Trustees.
- (g) All acts *bona fide* done by any meeting of the Trustees, by a committee or by a person acting as a Trustee, shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any Trustee or that any of them had ceased to hold office or was not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a Trustee and had been entitled to vote.
- (h) The Trustees may invite or allow any person to attend and speak, but not to vote, at any of its meetings or of its committees.

- (i) A resolution in writing signed by all the Trustees at the time shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held; a resolution of that kind may take the form of a number of copies containing the text of the resolution, with each copy being signed by one or more Trustees.
- (j) The business of the Trust and all its correspondence with and notification to or from Trustees may be conducted equally validly and effectively as by post if transmitted by fax or e-mail or otherwise if publicised on the Trust's website where the Trust has advised each Trustee of this.

## **(SIX) ACCOUNTS**

- One. The Trustees shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.
- Two. The Trustees shall prepare annual accounts, complying with all relevant statutory requirements.
- Three. The Trustees shall arrange for an independent financial examination of the accounts and shall provide such examiner with access to all accounting records and other documents relating to the Trust.
- Four. The Trustees shall be responsible for payment of the usual professional remuneration of the examiner.

## **(SEVEN) PAYMENTS TO BENEFICIARIES**

- One. A written receipt from the beneficiary of a payment or the receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustees to any such beneficiary or any charitable body shall represent sufficient discharge to the Trustee.
- Two. In no circumstances is the Trust Fund to be held or applied for any purpose which is not an exclusively charitable purpose which falls within the Trust Purposes.
- Three. No payment may be made to any Trustee of the Trust, except for reimbursement of reasonable out-of-pocket expenses as may be approved by the Trustees.

## **(EIGHT) LIMITATIONS ON LIABILITY**

The Trustees shall not be liable for loss or depreciation of the value of investments retained or made by them, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.



## **(NINE) AMENDMENT OF TRUST DEED OR WINDING-UP OF THE TRUST**

If in the opinion of the Trustees any change in circumstances or alterations in the law has made or is likely to make execution of the Trust Purposes impossible or impracticable, or if in the opinion of the Trustees the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, the Trustees may in their discretion:

- (a) supplement or amend the provisions of this trust deed or any deed supplemental to this trust deed; or
- (b) wind up the Trust and transfer the Trust Fund (after settlement of all debts and liabilities) to some other charitable body or bodies having similar objects to those of the Trust.

## **(TEN) GOVERNING LAW**

The Trust hereby established shall be governed by, subject to and conducted always in accordance with the Law of Scotland.

## **(ELEVEN) INTERPRETATION**

(one) In this trust deed

“charitable” shall be interpreted as being charitable within the meaning of the Charities and Trustee Investment (Scotland) Act 2005 (including any statutory amendment or re-enactment for the time being in force) and in relation to the application of the Taxes Acts;

“CTISA” means the Charity and Trustee Investment Scotland Act 2005

“South Lanarkshire Council Area” means the South Lanarkshire Council area in terms of the Local Government Etc. (Scotland) Act 1994 and in the event of any repeal or any amendment of that Act the Trustees shall be entitled to substitute such definition as the Trustees see fit.

“Trust Deed” means this trust deed (including any addition or amendment effected in accordance with the provisions of Clause NINE);

“Trust Fund” means such other funds and assets as may from time to time be received by the Trustees as Trustees under the Trust Deed and the assets in which any funds so received may from time to time be invested.

“Trust Purposes” means the purposes specified in Clause ONE.

TSA means the Trusts (Scotland) Act 1921

(two) Any reference to a Statute shall refer to the statute as amended or as re-enacted: **IN WITNESS WHEREOF** these presents printed on this and the Eight preceding pages are sealed with the Common Seal of the Council and are subscribed for and on their behalf by:-

..... Proper Officer (Sign) .....

at Hamilton on the ..... day of ..... 2017

<b>South Lanarkshire Council Educational Trusts (SC028135)</b>		
<b>Name of Trust Fund</b>	<b>Origin and Purpose</b>	<b>Balance within Fund</b>
Dr.John Shaw Mem. Prize	To provide a prize for the runner up to the Dux at Quarter Primary School	£5,607.65
J.W.Torrance Bursary	To provide a bursary for the best pupil in Quarter Primary School	£4,778.80
Mary A.B.B.Scott (Lamington Bequest)	To provide a bursary for a resident of the Parish of Lamington to attend a Scottish University	£19,879.27
Sir Nathaniel Dunlop Bursaries	To provide four bursaries in Glasgow University for pupils of Biggar High School	£20,610.17
James W.Allan Bursary	To provide a bursary for the study of Natural History to students in Lanark County	£27,943.68
The Hutton Prize	To provide prizes for French and German at Lanark Grammar	£31,524.83
Elizabeth. B. Mitchell Mem Trust	To commemorate the interest in East Kilbride New Town of the late Elizabeth B Mitchell.	£17,042.07
David L. Struthers Prize Fund	To provide four prizes at Gilmourton Primary School	£209.67
Sir John Mann Mem. Prize Fund	To provide prizes for the Dux boy and girl at Carnwath Primary School	£230.17
Marion N.Blackley Mem. Bequest	To provide shoes to deserving cases in Robert Smellie Memorial Primary School, Larkhall	£793.58
The William Vint Foster Memorial Prize Fund	Unknown	£4,246.64
Rev.James French Trust	To provide a gold medal for the best scholar or assistance to scholars at New Lanark	£900.10
Strathaven Male Voice Choir Music Prize	To provide a music prize for Strathaven Academy	£286.32
The Peter Shand Prize	To provide prizes for chemistry and physics at Lanark Grammar School	£238.63

George Stewart Memorial Prize	Deed of Trust from Daniel McMichael Andrew to provide Geography and History Prizes at Strathaven Academy	£363.01
Dr.Donald C.Buchanan Mem.Prize	To provide a prize for Latin in Rutherglen Academy	£1,253.84
Thos.Anderson Gold Medal Fund	To provide a gold medal for the best pupil in arithmetic at Hamilton Grammar	£325.43
John Adams Memorial Fund	St John's Grammar School	£2,051.75
George F. Pollock Trust	To provide University Bursaries for pupils at Hamilton Grammar	£6,048.46
<b>Total</b>		<b>£144,334.07</b>

**THE SOUTH LANARKSHIRE EDUCATIONAL TRUST**

established by South Lanarkshire Council, a body corporate under the Local Government Etc. (Scotland) Act 1994 and having its principal place of business at Council Offices, Almada Street, Hamilton, ML3 0AA.

WE the said South Lanarkshire Council (“the Council”) have resolved to establish the South Lanarkshire Charitable Trust (“the Trust”) in order to hold the assets of any existing charitable funds held by us and to be transferred into it and all further donations, legacies and other monies and property heritable and moveable, real and personal wherever situated and of whatever kind which may hereinafter accrue, be paid, transferred or issued to or acquired by either the Council or the Trust (the “Trust Fund”) for the Purposes after-mentioned (the “Trust Purposes”): THEREFORE WE DO HEREBY DECLARE that the Trust Fund shall be held by the Trustees in trust for the following purposes and subject to and with the benefit of the following powers and provisions:

**(ONE) TRUST PURPOSES**

The purposes of the Trust (“the Trust Purposes”) shall be as follows:-

- a. Advancement of education

**(TWO) TRUSTEES**

- One. The Trustees shall be [insert Names and Addresses of proposed Trustees – say 4 – 6 Trustees], subject to the power of the Council to remove or replace such Trustees as it sees fit, declaring that:
  - (i) the Trustees [do not] [delete if not required] require to be current Councillors of South Lanarkshire;
  - (ii) any appointment or removal of a Trustee by the Council must be notified in writing to all Trustees, including the Trustee appointed to or removed from office;
  - (iii) any Trustee must, in exercising his or her functions as a Trustee, act solely in the interests of the Trust, and must, in circumstances capable of giving rise to a conflict of interest between the Trust and the Council, put the interest of the Trust before those of the Council; such a Trustee may not take part in the discussion and decision relative to any such circumstances;

- (iv) the Trustees may, if they wish, appoint one of their number to be Chair of the Trust, to act as chair of the Trustees, or to Chair any meeting of the Trustees where the Chair is not present; and
- (v) a Trustee shall cease to be a Trustee if:
- i. by notice in writing to the Trust he or she resigns his or her office as Councillor; or
  - ii. he or she becomes employed by the Trust or receives any payment for holding the office of; or
  - iii. he or she becomes bankrupt, or insolvent or apparently insolvent or makes any arrangement or composition with creditor; or
  - iv. he or she becomes incapable for medical reasons of fulfilling the duties of his or her office and such incapacity as certified by two medical practitioners is expected to continue for a period of more than six months from the date or later date of such certification; or
  - v. he or she is disqualified from being a Trustee, or removed from being a Trustee under Section 69 of the CTISA or
  - vi. in terms of Section 66(5) of CTISA, he or she is considered by the other Trustees to have been in serious or persistent breach of either or both of the duties listed in Sections 66(1) and 66(2) of CTISA.

### **(THREE) TRUST FUND**

(One) The Trust Fund shall be administered by the Trustees or by any agents appointed by them exclusively for the Trust Purposes and in the best interest of the Trust. The following shall apply:

- One. The Trustees shall open and maintain such bank building society and other accounts and investments as they reasonably require from time to time.
- Two. All cheques and orders for payment shall be signed in such manner and subject to such limits as the Trustees may decide from time to time.
- Three. The Trustees shall have the power to make payments from income or capital of the Trust Fund at such time or times or of such amount or amounts as they in their sole discretion may determine; the Trustees need not pay out the whole of the income of any particular year but may carry forward part or the whole thereof into the succeeding year or years.

(Two) The Trustees may appoint South Lanarkshire Council to administer the Trust on their behalf, in which event the Council shall operate a separate Ledger Account or Accounts for the Trust; all cheques and orders for payment shall be signed by Council Officers and the Council's Standing Orders on Procedures, Scheme of Delegation, and Financial Regulations and other shall apply as if the Trust Funds were Council Funds; the Trustees may pay the Council a reasonable fee for any services provided.

#### **(FOUR) POWER OF TRUSTEES**

The Trustees shall have the same full and unrestricted administrative powers of dealing with the Income and Capital of the Trust Fund in all respects as if they were beneficially entitled thereto and, without prejudice to the foregoing generality, they shall have all powers set out in Section 4 of the TSA as amended and may in their sole discretion:-

- a) further the education of pupils in schools in South Lanarkshire
- b) award prizes to pupils for achievement at School, or provide funds towards such prizes
- c) provide visits to the theatre and other cultural or arts facilities
- d) provide books to schools
- e) provide support for pupils with barriers to learning
- f) make payments of or towards the expenses of pupils by way of travelling grants or otherwise:
- g) and to supply pupils with clothing; uniform, equipment, books, light, heat, medical attention and other necessaries or conveniences upon such terms, whether gratuitously or otherwise, as may seem expedient.
- h) provide financial assistance bursaries and scholarships
- i) accept grants, donations bequests and legacies of all kinds to be used for the Trust Purposes or any of them, or to be used for designated purposes provided said designated purposes fall within the Trust Purposes whether from the Council or from Third Parties, and to accept any reasonable conditions attaching to such grants etc, or if the Trustees consider any condition not to be reasonable, to reject any grant, donation or legacy;
- j) establish or support any other charitable body, and to make donations or provide grants (and to impose any reasonable conditions attaching thereto) for any charitable purpose which falls within the Trust Purposes;

- k) set aside funds not immediately required as a general reserve or for specific purposes, and subsequently to amend or cancel such reservation or allocation;
- l) employ a professional investment manager who is entitled to carry on investment business under the supervision of the Financial Services Authority (or its successors) and to delegate to any such manager the exercise of all or any of its powers or investment on such terms and at such reasonable remuneration as the Trustees think fit, and to enable investments to be held for the Trust by nominees, but subject always to the provisions of Section 4 TSA as amended;
- m) borrow money and give security in support of any such borrowings by the Trust;
- n) employ such staff as they consider appropriate for the proper administration of the Trust or for the proper conduct of the Trust's activities and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants;
- o) engage such consultants and advisors as are considered appropriate from time to time;
- p) effect insurance of all kinds, including where appropriate indemnity insurance for the benefit of the Trustees in their acting as Trustees of the Trust;
- q) form any charitable company with objects which are similar (wholly or in part) to those of the Trust, and if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Fund;
- r) grant proxies in favour of any of the Trustees (or any other person) to attend, act and vote for the Trustees at any meetings (whether of the nature of general meetings, creditors' meetings or otherwise) relating to any investment held by the Trustees or relating to any claim by the Trustees in any liquidation or sequestration proceedings;
- s) compromise or settle by arbitration all disputed claims by or against the Trust;
- t) appoint solicitors and other professional agents to the Trust and to pay to such solicitors or other agents their usual charges;
- u) reimburse any of the Trustees out of the Trust Fund, in relation to all expenses reasonably incurred by them in the creation and administration of the Trust;
- v) if the Trustees appoint the Council to administer the Trust Funds under Clause (TWO)(two) hereof to refund to the Council any costs incurred in respect of such administration, and to pay a Council a reasonable sum to cover the cost of providing these services.
- w) do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes;



## **(FIVE) PROCEDURE AT TRUSTEES' MEETINGS**

- One. The Trustees shall meet as often as expedient for the convenient dispatch of the business of the Trust.
- Two. A Trustee may at any time summon a meeting of the Trustees by notice served upon all Trustees, to take place at a reasonably convenient time and date.
- Three. Meetings of the Trustees may take place in person or by telephone conference call, video conference call or by any other collective electronic means unanimously approved by the Trustees from time to time.
- Four. No business shall be dealt with at a meeting of the Trustees unless a quorum is present; the quorum for meetings of the Trustees shall be one half of the Trustees plus one, at any time.
- Five. The Chair will endeavour to achieve consensus on all matters pertaining to the Trust, but where consensus is not possible, the matter shall be put to the vote. In case of an equality of votes, the Chair, or the chair of that meeting, shall have a second or casting vote.
- Six. The Trustees may delegate any of their powers to one or more individuals, or to committees consisting of not less than one Trustee and such other person or persons as the Trustees think fit. Any individual so delegated to or any sub-committee so formed shall, in the exercise of the powers so delegated, conform to any remit and regulations imposed by the Trustees.
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..... Proper Officer (Sign) .....

at Hamilton on the ..... day of ..... 2017