

Exploring a Charitable Trust

Option Being Explored	Charitable Trust
Lead Project Member	Michele Lucas, Manager Learning and Skills Team
Description of Model	<p>A legal organisation which can be set up by anyone who has decided that they want to set aside some of their assets or income for 'charitable causes' (see legal considerations).</p> <p>Charitable Trusts can be registered as companies and receive money tax-free using gift aid or through 'payroll giving'.</p> <p>The basic model needs:</p> <p style="padding-left: 40px;">A donor or 'settlor' (which may be a person or business); Trustees; Charitable purposes A trust deed.</p>
Legal Considerations	<p>The Charities Act 2006 (updated 2007, 2008)</p> <p>Charities Bill proposed for 2011.</p> <p>Equality Act 2010</p> <p>Charitable trusts are not allowed to be run for profit, nor can they have purposes that are not charitable (unless these are ancillary to the charitable purpose). It is considered unacceptable for charitable trusts to campaign for political or legal change, although discussing political issues in a neutral manner is acceptable.</p> <p>In this specific instance the creation of a Charitable Trust would meet eight (listed below) of the twelve specific headings (where only one would be required):</p> <ul style="list-style-type: none"> • the prevention or relief of poverty;

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- the advancement of education;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;

The trust is governed by a trust deed. It sets out the framework within which the trustees must operate. It will generally describe:

The powers and responsibilities of the trustees;

How they are appointed and removed;

The approach to investment;

How the constitution (but usually not the charitable purposes) can be altered;

Charitable trusts, as with other trusts, are administered by trustees, but there is no relationship between the trustees and the [beneficiaries](#). This results in two things; firstly, the trustees of a charitable trust are far freer to act than other trustees and secondly, beneficiaries cannot bring a court case against the trustees.

Jurisdiction over charitable disputes is shared equally between the High Court of Justice and the Charity Commission. The Commission, the first port of call, is tasked with regulating and promoting charitable trusts, as well as providing advice and opinions to trustees on administrative matters. Where the Commission feels there has been mismanagement or maladministration, it can sanction the trustees, removing them, appointing new ones or temporarily taking the trust property itself to prevent harm being

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	<p>done. Where there are flaws with a charity, the High Court can administer schemes directing the function of the charity, or even, under the Cy-près doctrine, change the purpose of the charity or gift altogether.</p> <p>Charities with an annual income above £5,000 must register with the Commission</p> <p>TUPE - extensive consultation with employees and trade unions as employees terms and conditions will be affected.</p>
Procurement Considerations	<p>Charity procurement must remain fully compliant with UK and EU procurement regulations.</p> <p>However, the trust can incorporate its own procurement criteria – thresholds and quoting structure in line with the council's.</p>
Equality Considerations	<p>The Equality Act makes it illegal to discriminate against anyone with a protected characteristic (strand) in many areas – for example, employment and providing services. There are some exemptions from this, including the charity exemption.</p> <p>The Act allows a charity to restrict its benefits to people with a shared protected characteristic. It must be justified for either of the following reasons:</p> <p>it helps to tackle disadvantages that particularly affect someone with a protected characteristic;</p> <p>or</p> <p>it is for some other reason a fair, balanced and reasonable ('proportionate') way of achieving a legitimate aim.</p> <p>Charities cannot limit their beneficiaries by reference to skin colour.</p>
Initial Overview of costs to be considered	<p>While there are likely to be costs associated with the transfer of staff the model is likely to benefit from savings on non-domestic rates and VAT. The new body will also have the opportunity to access new forms of funding that are not open to the council.</p>

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	<p>There are no financial stipulations on the amount required to set up a Charitable Trust.</p> <p>However, the establishment of a new trust will require several months of management effort and entail expenditure – successful implementation of the model has been achieved with a secondment offered to the Trust within its setting up phase.</p>
Comment on model for local authority	<p>The Trust could be steered by a board, including local councillors and employee representation, along with independent members. However the council's assets, will remain in the ownership of the local authority. The council will also monitor the direction and performance of the Trust, setting its budget and approving its business plan. It will also enter into a service level agreement with the Trust to steer the running of services on its behalf.</p> <p>There is a degree of uncertainty around the legal position regarding local authority representation on a trust board. Normal practice is for the authorities to hold less than 20% representation on the trust board, however there may be decisions taken where a conflict of interest arises between the Trust's interest and the local authority interest which will require careful management.</p> <p>The decision to consider a Trust is therefore in keeping with current approaches to protecting, and over time developing, services of this type whilst delivering tangible financial savings to the Council</p>
Comment on model for community	<p>The changeover - which should have minimal impact on service users and the community. By creating a charity like this, Thurrock Council will also be giving many important community services the chance to tap into external funding not open to the Council.</p> <p>Consultation with the community representatives will be important so as to ensure that there is a community ownership and understanding of the Trust going forward.</p>
Can assets be protected	<p>Yes.</p> <p>The trustees hold and control the trust's assets. They decide how the income and capital (assets) of the trust should be distributed, and make sure that this is in line with the charitable purposes of the trust.</p> <p>The charitable purposes, or aims, form part of the trust deed and describe the sort of causes that the</p>

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	<p>trust can support. These can be worded in quite a general way so the trustees can keep their options open and allow the areas of interest to develop over time, or they can be very specific to ensure that the funds are distributed for the purpose intended by the donor</p>
Advantages	<p>The trust will be able to take advantage of many tax benefits. Apart from the tax relief on donations it will not pay tax on its investment income. It will not pay corporation tax or inheritance tax, or business rates. Also the trust will not have to register for VAT, unless it is supplying a significant amount of products or services that are subject to VAT.</p> <p>The trust would be eligible for additional grant funding and be able to continue to deliver its services – it would also have the potential to enhance and develop a range of partnerships to support the longer term development of community services.</p> <p>The trust can become imbedded in the local community and provide both paid and volunteering opportunities as it develops.</p> <p>The council maintains ownership of its assets.</p>
Disadvantages	<p>In moving to a more 'arm's length' funding agreement, there is no certainty than the local authorities would cover any deficit or provide the annual funding required.</p> <p>There is a degree of uncertainty around the legal position regarding local authority representation on a trust board. Normal practice is for the authorities to hold less than 20% representation on the trust board, however there may be decisions taken where a conflict of interest arises between the Trust's interest and the local authority interest which will require careful management.</p> <p>There is often a perception that once a trust is set up, it will soon significantly improve performance. In practice, the trust will usually inherit most of the problems of the original service and often take several years to establish its new direction and sustainability.</p>

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	<p>Once a trust is created with a defined charitable purpose, it is difficult to use the trust assets for any other purpose.</p> <p>TUPE transfer of staff can be challenging – and time lines in relation to moving this model forward would need to be considered within a project plan.</p> <p>Ensuring the ongoing commitment of the local community can be a challenge and it is important that clarity around purpose and vision is undertaken on a regular basis.</p>
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