

## **CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES 8 NOVEMBER 2010**

### **FORMULATION OF A DISASTER RELIEF CHARITY**

**Report by County Solicitor and Monitoring Officer**

#### **Introduction**

1. Leaders of the Political Group in May 2010 supported a proposal that a Charitable Trust be set up with the County Council as sole Trustee with the power to undertake any necessary emergency appeal, the collection of funds and the distribution of aid to those most in need.
2. Whilst there are certain restrictions on Local Authorities operating Charitable Trusts, nonetheless, there is a statutory provision to allow for the Council to be a Trustee under Section 139 of the Local Government Act 1972. This gives the Council the power to hold and accept gifts of land and other property (including money) for the benefit of people living in Oxfordshire but the Council is specifically prevented from doing anything that is related to the relief of poverty.
3. As a corporate body, the Council is permitted to be a sole Trustee of a Charitable Trust under the Charities Acts and general trusts law. Under Part 7.4, clause B (f) of the Council's Constitution the County Solicitor '*is authorised to act as trustee on behalf of the Council in respect of any matter he or she considers appropriate*'. Further, in accordance with clause 9(i) of the Trust Deed, (Refer Annex 1) one or all of the following post holders may act on behalf of the Council in connection with the Trust: Chief Executive, County Solicitor and/or Leader of the Cabinet. In the event all three post holders are appointed, decisions must be made by majority.
4. The benefit of the Council being sole Trustee is that individual Officers or Members would not have the responsibility and liabilities of named Trustees. In addition, there is a significant advantage in this arrangement as the Trust would, in reality, be dormant until required and would, therefore, not be dependent on amending details because of any change of personnel, nor would it incur additional financial costs by submitting detailed annual accounts other than a simple Trustees annual report.
5. It needs to be emphasised, however, that those involved (e.g. the County Solicitor) would need to act in the best interests of the Charity rather than the County Council when making decisions and arrangements for handling possible conflicts of interest are incorporated into the governance model.
6. The Trust is not an incorporated body and so is not a separate legal entity. Appointing Oxfordshire County Council as a Corporate Trustee means that it can enter into contracts on behalf of the Trust and will be responsible for meeting any losses or liabilities incurred by the Trust that cannot be satisfied from the Trust's assets. Officers or Members acting on behalf of the County Council in administering the Trust will not be personally liable for any losses

or liabilities (although individual officers who commit Oxfordshire County Council (OCC) to an action which results in a breach of trust may be in turn liable to compensate OCC under local government law).

7. The Council will be appointed as the first trustee of the Trust by the Trust Deed. The County Solicitor, acting on behalf of the Council as corporate trustee of the trust will have the power to appoint any further trustees if this is appropriate in the future under clause 11 (i) of the Trust Deed.
8. This affords complete flexibility as to the involvement of appropriate persons to assist in the work of any disaster, such as Chief Executives and Lead Members of particular District Councils that may be affected by a particular disaster. It is essential for appropriate local involvement but until it is clear what the nature and extent of a particular disaster is, it is not possible to foresee who the appropriate members would be to be involved in advising and deciding on relevant appeals, collection and distribution of aid.
9. The Trust, by law, is only required to register with the Charity Commission when its income reaches £5,000 per annum. The trust will be a charity regardless of whether it is registered with the Charity Commission; an organisation will be a charity provided its aims are exclusively charitable, and the Trust's aims are exclusively charitable. However, earlier registration of the Trust might be considered advisable as donations are more likely to be forthcoming if the trust is registered with the Charity Commission. Further, in an emergency the Trust may cross the £5,000 per annum income threshold, at which point the Council must register the Trust with the Commission. It would be preferable not to be obliged to divert resources to registering the charity with the Charity Commission at that point, when it may be more beneficial to utilise resources responding to the disaster. Registration, however, is not a certainty as the Charity Commission may refuse to register the Trust as its income falls below the threshold currently. The Commission must be satisfied that it is appropriate to register, even though it is below the £5,000 per annum minimum. Legal Services has obtained confirmation from the Charity Commission that it will consider registration of a charity to deal with disaster appeals despite it not having a current source of income.

## **RECOMMENDATION**

10. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to:**
  - (a) **delegate authority to the County Solicitor to draft and enact a Trust Deed in accordance with the provisions of this report;**
  - (b) **appoint the County Solicitor to act on behalf of the Trust.**

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Background papers: Nil

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