

**CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES  
4 OCTOBER 2010**

**FORMULATION OF A DISASTER RELIEF CHARITY**

**Report by County Solicitor and Monitoring Officer**

**Introduction**

1. Leaders of the Political Groups in May 2010 supported a proposal that a Charitable Trust be set up with the County Council as sole Trustee with the object to include the undertaking of 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 as 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. 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.
4. Officers and Members of the Local Authority involved in the Charity's affairs would be acting under the delegated authority of the Council and would need to make decisions in accordance with the Council's usual procedures and Constitution. It needs to be emphasised, however, that those involved 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.
5. 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).

6. As a Corporate Trust this will allow the Council to appoint relevant persons to assist in the work of any disaster and affords complete flexibility as to involvement of appropriate persons 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.
7. The Draft Trust Deed (see Annex 1) allows the County Council to decide within the scope of Local Government law what mechanisms should be used to reach decisions in its name as Corporate Trustee. Appointed postholders will need to bear in mind that the County Council as Trustee of the Trust must act in the best interests of the Trust and not in the best interests of the County Council.
8. The Trust, by law, is only required to register with the Charity Commission when its income reaches £10,000 per annum. However, earlier registration of the Trust might be considered advisable as this provides some assurance with regard to its bona fides in advance of any emergency appeal. Registration, however, is not a certainty as the Charity Commission may refuse to register a dormant charity and must be satisfied that it is appropriate to register even through it is below the £10,000 per annum minimum and must be satisfied that there is no conflict of interest between that of the Trust and that of the County Council.

## **RECOMMENDATION**

9. **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) **delegate to the Chief Executive authority to appoint the first Trustees to the Trust.**

Peter G Clark  
County Solicitor and Monitoring Officer

Background papers: Nil

September 2010

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**Annex 1**

**DRAFT**

**DATED**

**2010**

**OXFORDSHIRE COUNTY COUNCIL**

**TRUST DEED**  
**Establishing a charity called the**  
**OXFORDSHIRE DISASTER RELIEF FUND**

**THIS TRUST DEED** is made the            day of            2010  
**BY**

**OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford, OX1 1ND and any successor body that carries out its functions (“the First Trustee”)

The First Trustee holds the sum of £1.00 (one pound) on the trusts declared in this deed and expects that more money or assets will be acquired on the same trusts.

The First Trustee shall act initially as sole corporate trustee of the Charity, and may continue to act as sole corporate trustee of the Charity.

**NOW THIS DEED WITNESSES** as follows:

**1 Administration**

The charitable trust constituted by this deed (“the Charity”) and its trust property (“the trust fund”) shall be administered and managed by the Trustees. (In this deed, the expression “the Trustees” refers to the individuals(s) and/or organisation(s) who are the Trustees of the Charity at any given time. It includes the First Trustee and its successors. The word “Trustee” is used to refer to any one of the Trustees).

**2 Name of Charity**

The Charity shall be called the Oxfordshire Disaster Relief Fund but the Trustees may by resolution change the Charity’s name from time to time. Before doing so they must obtain the written approval of the Charity Commission for England and Wales (“the Commission”) for a new name

**3 Trustees**

The Trustees of the Charity and the trust fund shall be the First Trustee and/or such other Trustees as may be appointed by the Trustees.

**4 Application of Income**

The Trustees must apply the income of the Charity in furthering the following objects (“the Objects”)

The relief of financial need and suffering among inhabitants of Oxfordshire who are victims of natural or other kinds of disasters in the form of money (or other means deemed suitable) for persons bodies and organisations affected (including the provision of medical aid and emergency accommodation).

**5 Application of Capital**

At their discretion the Trustees may spend all or part of the capital of the Charity in furthering the Objects

**6 Powers of Trustees**

In addition to any other powers, the Trustees may exercise any of the following powers in order to further the objects (but not for any other purpose):

- (i) to raise funds. In exercising this power, the Trustees must not

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undertake any substantial permanent trading activity and must comply with any relevant statutory regulations.

- (ii) to buy, take on, lease or in exchange, hire or otherwise acquire property and to maintain and equip it for use (except property which once transferred to the Charity would be held by the Charity in trust for an ecclesiastical charity or for a charity for the relief of poverty);
- (iii) to sell, lease or otherwise dispose of all or any part of the property belonging to the Charity. In exercising this power, the Trustees must comply as appropriate with sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006.
- (iv) to borrow money and to charge the whole or any part of the property belonging to the Charity as security for repayment of the money borrowed. The Trustees must comply as appropriate with sections 38 and 39 of the Charities Act 1993, as amended by the Charities Act 2006, if they wish to mortgage land owned by the Charity;
- (v) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- (vi) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects;
- (vii) to acquire, merge with or enter into any partnership or joint venture arrangement with any other Charity formed for any of the objects;
- (viii) to create such advisory committees as the Trustees think fit;
- (ix) to employ and remunerate such staff as necessary for carrying out the work of the Charity;
- (x) to do any other lawful thing that is necessary or desirable for the achievement of the objects.

### **7 Statutory Powers**

Nothing in this deed restricts or excludes the exercise by the Trustees of the powers given by the Trustee Act 2000 as regards investment, the acquisition or disposal of land and the employment of agents, nominees and custodians.

### **8 Delegation**

- (i) In addition to its statutory powers, the Trustees may delegate any of their powers or functions to a committee of two or more Trustees. A committee must act in accordance with any directions given by the Trustees. It must report its decisions and activities fully and promptly to the Trustees. It must not incur expenditure on behalf of the Charity except in accordance with a budget previously agreed by the Trustees.
- (ii) The Trustees must exercise their powers jointly at properly convened meetings except where they have:

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- (a) Delegated the exercise of the powers (either under this provision or under any statutory provisions), or
  - (b) Made some other arrangements, by regulations under clause 22.
- (iii) The Trustees must consider from time to time whether the powers or functions which they have delegated should continue to be delegated.

### **9 Duty of care and extent of liability**

When exercising any power (whether given to them by this deed, or by statute, or by any rule of law) in administering or managing the Charity, each of the Trustees must use the level of care and skill that is reasonable in the circumstances, taking into account any special knowledge or experience that he or she has or claims to have (“the duty of care”).

No Trustee, and no one exercising powers or responsibilities that have been delegated by the Trustees, shall be liable for any act or failure to act unless, in acting or in failing to act, he or she has failed to discharge the duty of care.

### **10 Appointment of Trustees**

- (i) There must be at least three Trustees unless a corporate Trustee is appointed. A corporate Trustee may act as sole Trustee or jointly with other Trustees. For the avoidance of doubt a sole corporate Trustee can exercise any of the powers and will have all of the responsibilities given to the Trustees under this Deed or by law. Apart from the First Trustee every Trustee must be appointed by a resolution of the Trustees passed as a special meeting called under clause 15 of this deed.
- (ii) In selecting individuals for appointment as Trustees, the Trustees must have regard to the skills, knowledge and experience needed for the effective administration of the Charity.
- (iii) The Trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each Trustee.
- (iv) The Trustees must make available to each new Trustee, on his or her first appointment:
  - (a) a copy of this deed and any amendments made to it;
  - (b) a copy of the Charity’s latest report and statement of accounts.

### **11 Eligibility for Trusteeship**

- (i) No one shall be appointed as Trustee:
  - (a) if he or she is under the age of 18 years; or

- (b) if he or she would at once be disqualified from office under the provisions of clause 12 of this deed.
- (ii) No one shall be entitled to act as a Trustee whether on appointment or on any re-appointment as Trustee until he or she has expressly acknowledged, in whatever way the Trustees decide, his or her acceptance of the office of Trustee of the Charity.

## **12 Termination of Trusteeship**

A Trustee shall cease to hold office if he or she:

- (i) is disqualified for acting as a Trustee by virtue of section 72 of the Charities Act 1993 or any statutory re-enactment or modification of that provision;
- (ii) becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs;
- (iii) is absent without the permission of the Trustees from all their meetings held within a period of six months and the Trustees resolve that his or her office be vacated; or
- (iv) notifies to the Trustees a wish to resign (but only if enough Trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).

## **13 Vacancies**

- (i) If a vacancy occurs the Trustees must note the fact in the minutes of their next meeting. Any eligible Trustee may be re-appointed.
- (iii) If a sole corporate Trustee has not been appointed and fewer than three natural persons have been appointed as Trustees, none of the powers or discretion conferred by this deed or law on the Trustees shall be exercisable by the Trustees except the power to appoint new Trustees
- (iv) A sole corporate Trustee may not resign unless another corporate body or at least one natural person has been appointed as a Trustee

## **14 Ordinary meetings**

The Trustees must hold at least one ordinary meeting each year. One such meeting in each year must involve the physical presence of those Trustees who attend the meeting. Other meetings may take such form, including videoconferencing, as the Trustees decide provided that the form chosen enables the Trustees both to see and to hear each other.

## **15 Calling meetings**

The Trustees must arrange at each of their meetings the date, time and place of their next meeting, unless such arrangements have already been made. Ordinary meetings may also be called at any time by the person elected to chair the meetings of the Trustees or by any two Trustees. In that case not less than ten days' clear

notice must be given to the other Trustees. The first meeting of the Trustees must be by the First Trustee or, if not meeting has been called within three months after the date of this deed, by any two of the Trustees.

## **16 Special meetings**

A special meeting may be called at any time by the person elected to chair meetings of the Trustees or by any two Trustees. Not less than four days' clear notice must be given to the other Trustees of the matters to be discussed at the meeting. However, if those matters include the appointment of a Trustee or a proposal to amend any of the trusts of this deed, not less than 21 days' notice must be given. A special meeting may be called to take place immediately after or before an ordinary meeting.

## **17 Chairing of meetings**

The Trustees at their first ordinary meeting in each year must elect one of their number to chair their meetings. The person elected shall always be eligible for re-election. If that person is not present within ten minutes after the time appointed for holding a meeting, or if no one has been elected, or if the person elected has ceased to be a Trustee, the Trustees present must choose one of their number to chair the meeting.

The person elected to chair meetings of the Trustees shall have no other additional function or powers except those conferred by this deed or delegate to him or her by the Trustees.

## **18 Quorum**

(i) Subject to the following provision of this clause, no business shall be conducted at a meeting of the Trustees unless at least one third of the total number of Trustees at the time, or two Trustees (whichever is the greater) are present throughout the meeting.

(ii) The Trustees may make regulations specifying different quorums for meetings dealing with different types of business.

## **19 Voting**

At meetings, decisions must be made by a majority of the Trustees present and voting on the question. The person chairing the meeting shall have a casting vote whether or not he or she has voted previously on the same question but no Trustee in any other circumstances shall have more than one vote.

## **20 Conflict of interest**

A Trustee must absent himself or herself from any discussions of the Trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Charity and any personal interest (including but not limited to any personal financial interest).

## **21 Minutes**

The Trustees must keep minutes, in books kept for the purpose or by such other means as the Trustees decide, of the proceedings at their meetings. In the minutes the Trustees must record their decisions and, where appropriate, the reasons for

those decisions. The Trustees must approve the minutes in accordance with the procedures, laid down in regulations made under clause 22 of this deed.

## **22 General power to make regulations**

The Trustees may from time to time make regulations for the management of the Charity and for the conduct of their business, including:

- (i) the calling of meetings;
- (ii) methods of making decisions in order to deal with cases or urgency when a meeting is impractical;
- (iii) the deposit of money at a bank;
- (iv) the custody of documents; and
- (v) the keeping and authenticating of records. (If regulations made under this clause permit records of the Charity to be kept in electronic form and requires a Trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)

The Trustees must not make regulations which are inconsistent with anything in this deed.

## **23 Accounts, Annual Report and Annual Return**

The Trustees must comply with their obligations under the Charities Act 1993, as amended by the Charities Act 2006, with regard to:

- (i) the keeping of accounting records for the Charity;
- (ii) the preparation of annual statements of account for the Charity;
- (iii) the auditing or independent examination of the statements of account of the Charity;
- (iv) the transmission of the statements of account of the Charity to the Commission;
- (v) the preparation of an annual report and its transmission to the Commission;
- (vi) the preparation of an annual return and its transmission to the Commission.

## **24 Registered particulars**

The Trustees must notify the Commission promptly of any changes to the Charity's entry on the Central Register of Charities.

## **25 Bank account**

Any bank or building society account in which any of the funds of the Charity are

deposited must be operated by the Trustees and held in the name of the Charity. Unless the regulations of the Trustees make other provision, all cheques and orders for the payment of money from such an account shall be signed by at least one Trustee.

**26 Trustees not to benefit financially from their Trusteeship**

- (i)
  - (a) No Trustee may buy goods or services from the Charity, or sell goods or services to the Charity, or receive any other financial benefit from Charity or from any trading company owned by the Charity, except in accordance with this deed or the prior written approval of the Commission and any condition it prescribes
  - (b) The Trustees may employ, or enter into a contract for the supply of goods or services with, one of their number. Before doing so, the Trustees must be satisfied that it is in the best interests of the Charity to employ, or contract with, that Trustee rather than someone who has no connection with the Charity. In reaching that decision, they must balance the advantage of employing a Trustee against the disadvantages of doing so (especially the loss of the Trustee's services as a result of dealing with the Trustee's conflict of interest as required by the next sub-clause). The remuneration or other sums paid to the Trustee must not exceed an amount that is reasonable in all the circumstances. The Trustees must record the reason for their decision in their minute book.
  - (c) A Trustee must be absent from the part of any meeting at which his or her employment or remuneration, or any matter concerning the contract, are discussed. He or she must also be absent from the part of any meeting at which his or her performance in that employment, or his or her performance of the contract, is considered. He or she must not vote on any matter relating to his employment or the contract and must not be counted when calculating whether a quorum of Trustees is present at the meeting.
  - (d) At no time may a majority of the Trustees benefit under this provision.
- (iii) This clause applies to a firm or company of which a Trustee is:
  - (a) a partner;
  - (b) an employee;
  - (c) a consultant;
  - (d) a director; or
  - (e) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Trustee

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holds less than 1% of the issued capital, as it applies to a Trustee personally.

- (iv) In this clause:
- (a) "Charity" shall include any company in which the Charity:
- holds more than 50% of the shares; or
  - controls more than 50% of the voting rights attached to the shares; or
  - has the right to appoint one or more directors to the Board of the company.
- (b) "Trustee" shall include any child, parent, grandchild, grandparent, brother, sister or spouse of the Trustee or any person living with the Trustee as his or her partner.

### **27 Repair and insurance**

The Trustees must keep in repair and insure to their full value against fire and other usual risks all the buildings of the Charity (except those buildings that are required to be kept in repair and insured by a tenant). They must also insure suitably in respect of public liability and employers' liability.

### **28 Expenses**

The Trustees may use the Charity's funds to meet any necessary and reasonable expenses which they incur in the course of carrying out their responsibilities as Trustees of the Charity.

### **29 Amendment of Trust Deed**

- (i) The Trustees may amend the provisions of this deed, provided that:
- (a) no amendment may be made to clause 4 (Application of income), clause 9 (Duty of care), clause 26 (Trustees not to benefit financially from their Trusteeship), clause 31 (Dissolution) of this clause without the prior consent in writing of the Commission; and
- (b) no amendment may be made whose effect is that the Charity ceases to be a Charity at law.
- (ii) Any amendment of this deed must be made by deed following a decision of the Trustees made at a special meeting.
- (iii) The Trustees must send to the Commission a certified copy of the deed effecting any amendment made under this clause within three months of it being made.

### **31 Dissolution**

The Trustees may dissolve the Charity if they decide that it is necessary or desirable to do so. To be effective, a proposal to dissolve the Charity must be passed at a special meeting by a two-thirds majority of the Trustees. Any assets of the Charity that are left after the Charity's debts have been paid ("the net assets") must be given:

- (i) to another charity (or other charities) with objects that are no wider than the Charity's own, for the general purposes of the recipient charity (or charities); or
- (ii) to any charity for use for particular purposes which fall within the charity's objects.

The Commission must be notified promptly that the Charity has been dissolved and, if the Trustees were obliged to send the Charity's accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the Charity's final accounts.

**32 Interpretation**

In this deed, all references to particular legislation are to be understood as references to legislation in force at the date of this deed and also to any subsequent legislation that adds to, modifies or replaces that legislation.

**IN WITNESS** whereof this deed has been executed by Oxfordshire County Council and is delivered on the date first above written the parties have hereunto set their respective hands the day and year first before written.

Executed as a deed by Oxfordshire County Council  
By affixing the common seal of Oxfordshire County Council  
in the presence of:

.....

County Solicitor/Designated Officer