

Local Members' Interest	
Jonathan Price	Stafford North

Charities and Trusts Committee

Stafford North End Community Association (Charity Number 522723)

Proposal

1. Stafford North End Community Association (Charity Number 522723) (“the Charity”) is a Charity for which Staffordshire County Council are trustees.
2. Staffordshire County Council have for a number of years had no active involvement in the running and the management of the Charity. The Charity has historically been run by a separate third party committee (‘the Managing Trustees’)
3. It is therefore proposed that steps are taken to remove Staffordshire County Council as a trustee of the Charity.

Report of the Director of Corporate Services

The Staffordshire County Council’s role as a Charity Trustee

4. Trustees have and must accept ultimate responsibility for directing the affairs of a charity, ensuring that it is solvent, well-run and delivers the charitable outcomes for the public benefit for which it has been set up.
5. Local Authorities are well suited to being a charity trustee as they are:-
 - rooted in the local community;
 - open and transparent in their dealings;
 - highly accountable for their actions, and
 - have the high standards of public conduct embedded in the way they work.
6. Charity trustees have a duty to act solely in the best interests of the charity and its beneficiaries with a view to furthering its charitable purposes and for no other purpose whatsoever. They must also ensure that any charitable assets are managed independently and prudently in accordance with their charitable purpose and any restrictions in the charity’s governing document.

Summary

7. The Managing Trustees have historically undertaken the management of the Charity and Staffordshire County Council have no direct involvement in the running of the Charity. As trustees of the Charity, Staffordshire County Council, remain liable for the acts of the Charity as set out in 4-6 above. Steps should therefore be taken to remove Staffordshire County Council as a trustee of the Charity.

Recommendations

8. The Committee is invited to recommend that a Deed of Indemnity, substantially in the form annexed hereto be completed. Further, it is recommended that approval to undertake any additional steps required to remove Staffordshire County Council as trustees of the Charity and/or to close the Charity be delegated to the Assistant Director for Commercial and Assets.

Background

9. On the 25th September 2019 the Charity and Trusts Committee were informed that Staffordshire County Council were trustees of the Charity but had no involvement of the day to day management of the Charity and that Staffordshire County Council had received a request from the Managing Trustees who were running the Charity to make changes to the constitution of the Charity. At that time, it was resolved that further information regarding the proposals be brought to a future meeting.
10. On the 19th November 2019, the Charity and Trust Committee were informed that Staffordshire County Council were still awaiting an update as to the Managing Trustees proposed amendments to the constitution of the Charity.
11. Staffordshire County Council have now been notified that the Managing Trustees have set up a new charity known as Stafford North End Community Association CIO that is registered under Charity Number 1192497 ('the New Charity') in order to further the charitable objectives of the Charity.
12. The Managing Trustees have also passed a resolution to transfer the assets of the Charity to the New Charity. They have confirmed that the only assets held were cash assets in current and savings accounts. These accounts have been maintained by the Managing Trustees and not by Staffordshire County Council.
13. Staffordshire County Council were not consulted before the New Charity was formed or the assets of the Charity transferred to the New Charity. These acts were authorised by the Managing Trustees of the Charity.

14. Steps now need to be taken to remove Staffordshire County Council as trustees of the Charity and/or close the Charity and to ensure that Staffordshire County Council are indemnified for any act by the Managing Trustees which are either not in accordance with the constitution of the Charity or ultra vires.

Equalities Implications

15. The statutory functions discharged by the Charity Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions. However, no decision is made until the trustees determine it is expedient in the interests of the Charity to enter into the Deed of Indemnity.

Legal Implications

16. Management and governance arrangements for charitable trusts are set out in the constitution under which they were established. Charity trustees in making decisions must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, and the Scheme failing which this will give rise to a breach of trust. Trustees have a duty to preserve the assets of trust. Decisions made by the charity must be expedient in the interests of the charity at all times. Staffordshire County Council could remain liable for any failure by the Managing Trustees to comply with these obligations.

Resource and value for Money Implications

17. Completion of the Deed of Indemnity is intended to reduce any potential future liability for Staffordshire County Council.

Risk Implications

18. While the Deed of Indemnity includes a covenant for the Managing Trustees to indemnify Staffordshire County Council for all liabilities it incurs as a trustee of the Charity as a result of an act of the Managing Trustees and/or the New Charity there is no guarantee that the covenant strength of the Managing Trustees and/or the New Charity will be sufficient to indemnify Staffordshire County Council on a full indemnity basis.

Conclusions

19. In order to reduce any further liability resulting from the day to day management of the Charity by the Managing Trustees, it is recommended that the Deed of Indemnity be completed. This includes an indemnity for any prior breaches but this will not guarantee complete reimbursement for any liability resulting from a prior breach as referred to above.

Decision of the Charities and Trust Committee

20. That the Committee approves:

- (i) the completion of a Deed of Indemnity, substantially in the form annexed hereto; and
- (ii) delegates approval to undertake any further steps to remove Staffordshire County Council as trustees and/or to close the Charity to the Assistant Director for Commercial and Assets.

Report Author:

Legal Services Unit, Staffordshire County Council

Annex – Deed of Indemnity

DATED

DEED OF INDEMNITY

relating to

Stafford North End Community Association

between

Staffordshire County Council

and

The Trustees of Stafford North End Community Association (Charity No 522723)

and

Stafford North End Community Association CIO (Charity No 1992497)

This deed is dated the

day of

2021

Parties

- (1) **Staffordshire County Council** of 1 Staffordshire Place, Tipping Street, Stafford, ST16 2LP ('**SCC**')
- (2) **Gerald D'arcy** of 11 Fair oak Avenue, Stafford ST16 1LT, Sarah Matthews of 16 Oakridge Way, Stafford ST17 0PS and **Paul Chapman** of 41 Holmcroft Road, Stafford ST16 1JG as the current Managing Trustees ('**the Managing Trustees**'); and
- (3) **Stafford North End Community Association CIO**, registered under charity number 1992497 of North End Community Centre Holmcroft Road Stafford ST16 1JG ('**SNECA**')

BACKGROUND

- (A) At the date hereof, SCC are shown on the Charity Commission website as the sole Trustee of Staffordshire North End Community Association (Charity Number 522723) ('**the Charity**').
- (B) The day to day management of the Charity has historically been dealt with by the Managing Trustees. SCC have had no involvement in the running of the Charity.
- (C) The Managing Trustees formed SNECA as a CIO to carry on the charitable objectives of the Charity in place of the Charity but under the same name as the Charity.
- (D) On the 14th December 2020 the Managing Trustees and SNECA passed a resolution to transfer the assets and liability of the Charity to SNECA.
- (E) SNECA have agreed to give an indemnity to SCC on the terms of this deed in respect of any acts by the Managing Trustees and/or SNECA.

Agreed terms

1. Interpretation

- 1.1 The definitions in this clause 1 apply in this deed.

Indemnity: the indemnity in clause 3.

Liabilities: any liabilities, costs and expenses SCC incur as a trustee of the Charity as a result of an act of the Managing Trustees and/or SNECA failure to close the Charity or as a result of any act of the Managing Trustees and/or SNECA prior to the closure of the Charity.

- 1.2 The definitions and rules of interpretation in the Trust apply in addition to those in this deed.

1.3 Words in the singular include the plural and those in the plural include the singular.

2. Closure of the Charity

2.1 SNECA must jointly with the Managing Trustees take all steps necessary, at their cost, to close the Charity and/or remove SCC as a trustee of the Charity.

2.2 SNECA and the Managing Trustees covenant with SCC to:

(a) keep SCC regularly informed as to the progress of their application under Clause 2.1; and

(b) provide evidence to SCC, within 10 days of receipt of confirmation from the Charity Commission, that Clause 2.1 has been complied with.

2.3 SCC covenant to use reasonable endeavours to assist with the application made under Clause 2.1, if required, provided all costs and expenses incurred by SCC in providing such assistance are paid on a full indemnity basis in accordance with Clause 3 hereof.

3. Indemnity

3.1 SNECA and the Managing Trustees must indemnify SCC on a full indemnity basis against the Liabilities by:

(a) paying the Liabilities; or

(b) if SCC have paid the Liabilities, reimbursing SCC

3.2 SNECA and the Managing Trustees are jointly and severally liable under clause 3.1.

This deed has been entered into on the date stated at the beginning of it.

The Common Seal of

Staffordshire County Council

was affixed to this deed in the presence of:

Authorised Signatory

Name of Authorised Signatory

Executed as a Deed by **Gerald D’Arcy**

in the presence of:

.....

Witness sign:

Witness name:

Witness address:

Executed as a Deed by **Sarah Matthews**

in the presence of:

.....

Witness sign:

Witness name:

Witness address:

Executed as a Deed by **Paul Chapman**

in the presence of:

.....

Witness sign:

Witness name:

Witness address:

Executed as a Deed by **Stafford North End**

Community Association CIO acting by

..... a Trustee

..... a Trustee