

To: Finance, Resources & Customer Service Policy Board

On: 5 September 2018

Report by: Director of Finance & Resources

Heading: Charitable registration of Common Good Funds

1. Summary

- 1.1 The three Common Good Funds controlled by the Council (Paisley, Renfrew and Johnstone) are registered with the Office of the Scottish Charity Regulator (OSCR) as charities, each in their own right. The original registration of the Funds as charities was made many years ago when charity registration was managed by Her Majesties Revenue & Customs, possibly to take advantage of tax benefits available at the time with regards investment income, particularly in relation to share dividends.
- 1.2 These tax benefits are no longer available, and there exists an anomalous position whereby the majority of common good funds controlled by Scottish local authorities are not registered as charities. The provisions of local government legislation in relation to the use of Common Good Funds would suggest that there is also a question as to whether any Common Good Fund should be registered as a charity. In addition, there are particular costs associated with the accounting and auditing arrangements for charities which the Common Good Funds currently bear which potentially could be avoided were the Funds not registered.
- 1.3 It is proposed therefore that an application to de-register each of the three Common Good Funds is lodged with OSCR in order to clarify and address the current apparent anomalous position.

2. **Recommendations**

- 2.1 To agree a formal application be submitted to the Office of the Scottish Charity Regulator requesting the de-registration of the Paisley Common Good Fund, SC019478, Renfrew Common Good Fund, SC019479 and Johnstone Common Good Fund SC019480.

3. **Background**

- 3.1 The three Common Good Funds controlled by the Council (Paisley, Renfrew and Johnstone) are registered with the Office of the Scottish Charity Regulator (OSCR) as charities, each in their own right. The original registration of the Funds as charities was made many years ago when charity registration was managed by Her Majesties Revenue & Customs, possibly to take advantage of tax benefits available at the time with regards investment income, particularly in relation to share dividends.
- 3.2 The tax relief which appears to have been the basis of the decision to register the Funds as charities has not existed for many years, so the original motive for registration is no longer valid. Since that time, the administration of the charities register has moved to OSCR in line with the provisions of the Charities and Trustee Investment (Scotland) Act 2005 and associated regulations. Under this legislation, and to secure charitable status, a body must pass the 'Charity Test'.
- 3.3 The use of all Common Good Funds has been for some time and remains subject to the test set down in longstanding local government legislation, more recently in Section 222(2) of the Local Government (Scotland) Act 1973 as now carried forward by Section 15(4) of the Local Government etc. (Scotland) Act 1994. The test in dealing with property held as part of the Common Good is "to have regard to the interests of the inhabitants" of the area to which the fund relates, a broad discretion which can include but would not strictly be confined to charitable purposes. When it is compared with a charity, a common good fund has the following essential differences –

- A common good fund does not have trustees as the fund belongs to the local authority which manages the fund in accordance with its own internal governance arrangements.
- A common good fund does not have a trust deed and therefore does not have declared trust purposes, charitable or otherwise.
- A common good fund, however, is and has been governed by legislation for some considerable time with the principal rule for spending its funds ("regard for the interests of the inhabitants") the only criterion specifically applying to it.

It would therefore appear that, in terms of the strict application of the charity test as applied by OSCR, there is considerable doubt as to whether any common good fund would meet this test.

- 3.4 The current position with regards registration of common good funds is inconsistent, with the vast majority of funds controlled by Scottish local authorities not being registered as charities. According to the OSCR register, it would appear that there are only six common good funds registered, (three of which are controlled by Renfrewshire Council), despite the fact that thirty out of thirty two councils control common good funds.
- 3.5 For councils whose common good funds are not registered as charities, local government accounting regulations apply, which demand that common good funds are separately accounted for and are clearly reported within each council's annual accounts. The audit of these funds is consolidated with the audit of the council's own accounts.
- 3.6 In Renfrewshire's case, as each fund is a registered charity, the provisions of the above noted charities legislation also applies, meaning the common good funds require a separate set of accounts, which are separately audited. This incurs an annual audit fee which is borne by the common good funds in the order of £5,000. This cost excludes the officer time to prepare the accounts and provide monitoring returns to OSCR.
- 3.7 In order to address the apparent inconsistent position which currently exists, it is proposed that an application to de-register the three funds as charities is submitted to OSCR. In the event they agree the application, there would be no change to the current procedures for monitoring spend, agreeing the annual budget or in the management of assets. Annual reporting would be consolidated within the Council annual accounts and would be open to both elected member and public scrutiny as is currently the case. Control of assets, spend and scrutiny would remain with the Finance, Resources and Customer Services

Policy Board. In the event OSCR do not agree with the basis of the application, then no change would be made to the current monitoring and reporting processes.

Implications of the Report

1. **Financial** – the de-registration of the Common Good Funds as charities would generate cost efficiencies in terms of additional audit fees. The reporting and transparency of spend and assets would continue to be in line with the relevant local government legislation and proper accounting practice.
2. **HR & Organisational Development** - none
3. **Community/Council Planning** – none
4. **Legal** – the charitable status of the Common Good Funds controlled by the Council would be removed, however there is no change in the applicability of local government legislation which governs how common good funds and assets may be utilised.
5. **Property/Assets** – none
6. **Information Technology** - none
7. **Equality & Human Rights** - The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** - none
9. **Procurement** – none
10. **Risk** - none

- 11. **Privacy Impact** - none
- 12. **Cosla Policy Position** – none

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