

Swillington Educational Charity
Draft Minutes of Trustees meeting held Friday 27th March 2015

Present:, Reverend Canon Rosemarie Hayes (Chair), Councillor Ian Wallace, Councillor Judith Woodhead. Jacqui Smith, Janet Taylor, Councillor Andrea McKenna, Reverend Diane Flynn, Minute taker Margaret Forth.

1. The meeting was opened by Reverend Canon Rosemarie Hayes

2. Apologies: None

3. Minutes of Trustees Meeting, 30/01/2015:

Following a proposal by Jacqui Smith and being seconded by Councillor Judith Woodhead the minutes were agreed as a true record.

4. Matters Arising from Trustees meeting:

4.1 An article on the updated situation as regards the Charity had been printed in the Rothwell Record. There had been no responses to this.

5. Charity Commission Correspondence:

5.1 It would appear that the Charity Commission had not referred to previous correspondence when replying to the last queries sent to them. It is still unclear if £5,000 can be retained from sale of property in order to start making grants, or if Scheme can be modified. (Copy of all correspondence attached to these minutes)

5.2 It was agreed that Councillor Ian Wallace would contact Mr Turton at the Charity Commission to seek clarification.

5.3 It was agreed that Councillor Andrea McKenna would ask if Leeds City Council Legal advisers would be able to offer advice. The Trustees would like legal advice but do not want to incur expensive fees.

5.4 A request for a grant to assist with school fees has been received from a Swillington resident. Councillor Ian Wallace will reply to say that no grants possible at present but the Trustees will look favourably at the request when funds available.

6. Financial Reports and Investments:

6.1 The current Bank Statement, 6th February - 5th March 2015, shows a balance of £51,011.84

6.2 Jacqui Smith proposed that £45,000 be invested immediately so that interest can be accrued to enable grants to be made at least in a years time if the £5,000 cannot be used now. This was seconded by Reverend Canon Rosemarie Hayes and agreed unanimously. Councillor Ian Wallace will action this.

7. Any Other Business:

7.1 A letter has been received from the Parochial Church Council of St. Mary Swillington agreeing to the amendment to the wording on Rule 6 in the Scheme so that the words 'or his/her nominee' could be inserted following the word 'Rector'.

7.2 A letter received regarding rates for the property. Councillor Ian Wallace has contacted Leeds City Council to inform of change of ownership.

7.3 Letter from Electricity supplier and Water Authority have been passed to the new owners.

7.4 Following elections to Parish Councils in May this year nominations will be needed for Trustees from Great and Little Preston and Swillington Parish Councils.

8. Date of next meeting:

Friday 22nd May, 2.00 pm at Bowers Row Chapel

Signed

_____ **Chairperson.**

_____ **Minutes Secretary**

Link to previous minutes

<http://www.greatandlittlepreston-pc.org.uk/sec.html>

Correspondence with Charity Commissioners since completion of sale

SWILLINGTON EDUCATIONAL CHARITY Charity No. 511871.

Sent 06 October 2014

Dear Mr Turton,

Further to our correspondence in 2013, the sale of the old school and school masters house have been completed.

The current Trustees have at all times acted in the best interests of the Charity and the wishes of local residents.

Here is an update on the position of the Charity at the present time.

The committee have had to make the decisions with only three nominative trustees and one ex officio member after exhaustive efforts to try and recruit the required two co optative trustees failed.

Unfortunately, on June 28, the nominated Trustee from Leeds City Council resigned.

The Outer East Community Committee of Leeds City Council are set to ratify the nomination of a replacement at their meeting on October 7.

At the moment we are operating with the bare minimum of three Trustees.

Now the sale of the uninsured, semi derelict property has gone through, the personal liability of the trustees has somewhat reduced. Understandably this was the main factor in the reluctance of local people to come forward for co option. We now have applications from four persons, who qualify through residency, requesting consideration for co option. A special selection meeting is scheduled for October 24. The trustees were given 21 days notice.

The income from the sale of the property, at the moment, is in the Charity current account. It is ring fenced and the Trustees are aware that these funds are regarded as capital and should be invested as soon as possible and not be used without the Charity Commissioners permission.

A Trustees meeting is scheduled to take place after the above special meeting, on the agenda for discussion will be the transferring of the capital into a new COIF investment fund account.

The interest from that account will be paid into a COIF deposit account. This will be the only income of the charity

The Trustees feel that the Scheme is now not fit for purpose and will call a public meeting in November to ask residents in the area of benefit for suggestions on changes to the Scheme. Residents will be made aware that any requests to the Commission for Scheme changes will ultimately be made by the Trustees. The Trustees do not want to make several minor changes to the Scheme, they would rather wait until after the public meeting and then decide on a new Scheme or wind up the Charity.

Therefore could you please give me some advice on some questions I am sure will be asked.

1. Is it possible to keep £5000 of the income from the sale of the property in an accessible account to be able to consider applications for grants under the current Scheme application of benefit before investing the remainder?. This will give time for the investment fund to release interest from the capital to give the Charity its only income. The Charity will have minimal administration costs.

2. Under the power to make regulations, can the Trustees increase the number of copted Trustees from two to four before any major Scheme changes are made?

3. If a request to wind up the Charity is made to the Commissioners who can decide how any capital is distributed?

4. Under the current Scheme is it possible to give financial assistance to the uniform groups to enable them to secure storage facilities.

Yours sincerely
Cllr Ian Wallace

Nominated Trustee of Swillington Educational Charity.

Charity Commission reply 30 October 2014

Subject:20141030 - Charity Governance - to Wallace, Ian CRM:0102032

From: (OperationsTaunton@charitycommission.gsi.gov.uk)

Dear Mr Wallace

Thank you for your letter in which you request guidance from the Commission.

Firstly, I would like to have on record the actual amount that the charity received from the sale.

I am encouraged to see that the trustees intend to invest the money.

You say in your email that the trustees feel that the current governing document i.e. the Scheme of the 23 July 1981 is now not fit for purpose. I would be grateful for an explanation as to why or how the trustees have arrived at that decision.

I will now deal with your numbered questions in the same order you have set them out:

QUESTION 1. Is it possible to keep £5000 of the income from the sale of the property in an accessible account to be able to consider applications for grants under the current Scheme application of benefit before investing the remainder?. This will give time for the investment fund to release interest from the capital to give the Charity its only income. The Charity will have minimal administration costs.

ANSWER The trustees will need to apply to the Commission for permission to keep £5000 of the income, giving reasons. The trustees should read the following guidance for which I enclose a link <http://connectog/g545a002.aspx> you should consider the advice at E2.

QUESTION 2. Under the power to make regulations, can the Trustees increase the number of co opted Trustees from two to four before any major Scheme changes are made?

ANSWER Under section 282 Charities Act 2011 the trustees can pass a resolution to alter the make-up of the trustee body, however if the trustees intend to do this then before any changes are made, the agreement of the Ex-officio trustee and the nominating body for the Nominative Trustee (if these are to be changed) must be obtained. If any changes are made then a copy of the Resolution showing the changes should be forwarded to the Commission to amend our records.

QUESTION 3. If a request to wind up the Charity is made to the Commissioners who can decide how any capital is distributed?

ANSWER Under what circumstances would the trustees consider winding up the charity. For your help the following guidance is available <https://www.gov.uk/how-to-close-a-charity>.

QUESTION 4. Under the current Scheme is it possible to give financial assistance to the uniform groups to enable them to secure storage facilities.

ANSWER I do not understand this question. The Scheme is quite clear at clause 27 'Application of Income', as to where and on whom the charity's funds can be spent. I am not sure how your request fits in with clause 27.

I look forward to your response.

Yours sincerely

Robert Turton

From: Ian Wallace

19/12/2014 10:49

To: FC Email Team (Queue)

Subject: Form submission - 0058496 Request permission to spend permanent endowment.
Submitted 19 Dec 2014 10:47:51

Request permission to spend permanent endowment Submitted: 19/12/2014 10:11:10

Your charity number 511871

Your charity name Swillington Educational Charity

Your name Ian Wallace

Your email address ian.wallace21@btopenworld.com

Your telephone number 01132867991

Your position Trustee

(i) At a quorate meeting held on 14/11/2014 00:00:00

(iii) The resolution stated as follows

At a Trustees meeting held on the 14 November 2014.

Item7.5 It was proposed by Reverend Canon Rosemarie Hayes and seconded by Councillor Jacqui Smith that £45000 be transferred into a CCLA investment account to be named SEC Investment and £5000 into a CCLA deposit account to be named SEC Deposit. The latter would be dependant on the Charity Commission approval.(see 4.1). The resolution was unanimously agreed.

(4.1 Q1. Was a question asked to the Charity Commission. A1 Is the answer given. Hence this application)

4.1.Q1. Is it possible to keep £5000 of the income from the sale of the property in an accessible account to be able to consider applications for grants under the current Scheme 'application of benefit' before investing the remainder?. This will give time for the investment fund to release interest from the capital to give the Charity its only income.The Charity will have minimal administration costs.

A1. The trustees will need to apply to the Commission for permission to keep£5000 of the income, giving reasons.

(iv) Please state why the purposes of the trusts on which the capital of the fund is held can be carried out more effectively by expending capital as well as income.

The Charity has no income until the proposed COIF account starts to pay dividends. The ?5000 will be accessible in a COIF deposit account and allow the charity to start receiving applications for grants until the benefit account has sufficient funds to facilitate such requests.

If the founder or donor is still alive, state whether they agree with the proposal

The Charity has been dormant for several decades and has not paid out any grants in that time. The buildings were used by several community groups. All the income from the hiring of the buildings were used on the upkeep. In 2011 all but one of the then 'trustees' abandoned the buildings, leaving the board without a quorum and the semi derelict buildings un insured. Two nominated from the Parish Councils and the ex officio trustee from the Church stepped up in 2012 and formed the current board. Unable to obtain insurance for the buildings and with limited funds in the bank and no income, the Trustees were left with little option other than to sell the land and buildings. The income from the sale is to be deposited in a COIF investment account any dividends from this investment will be paid into a COIF deposit account. Which eventually be used to benefit any applicants in the area of benefit as set out in the scheme.

I confirm that the statement above is true and correct to the best of my knowledge

True

From: FC Email Team (Queue) <fcemailteam@charitycommission.gsi.gov.uk>

To: Ian Wallace <ian.wallace21@btopenworld.com>

Sent: Tuesday, 17 March 2015, 15:49

Subject: FAO Mr Ian Wallace - SWILLINGTON EDUCATIONAL CHARITY - 511871 [Request to spend permanent endowment] CRM:0293360

Dear Mrs Wallace

SWILLINGTON EDUCATIONAL CHARITY – 511871

Thank you for your email dated 19 December 2014 about the above named charity.

May I apologise on behalf of the Commission for the delay in responding to your request and for the inconvenience that this may have caused you. This was due to us experiencing a very busy period at present where we are dealing with large volumes of work.

Unfortunately, we are unable to concur with your request on this occasion. This means that your request has been rejected. This is because we do not have all of the information that we require.

Therefore, we would be grateful if you could please provide us with the following information again as soon as conveniently possible:

- What is the permanent endowment that the trustees intend to spend?
- What is the current market value of the permanent endowment that the trustees intend to spend?
- How much of the permanent endowment do the trustees intend to spend?

- It is not clear which statutory power is being applied (i.e. Is it in line with the requirements of s282-284 or s288 or s289 of the Charities Act 2011 – Please specify - see guidance below). Please note that the statutory power to spend permanent endowment cannot be used for a change of purpose. If a change of purpose is intended then the trustees will be able to meet the requirements of the statutory power of s275 of the Charities 2011 as this is a small charity;
- It is not entirely clear what the trustees' intentions are. What do the trustees intend to do with the charity over the long term? What happens when the £5000 funds have been applied in line with the charity's objects? Please note that a new scheme would not be viable in this instance as the trustees already have a wide variety of statutory powers available that allow them to amend the scheme by trustees' resolutions (i.e. See sections s275, s280 and s282 of the charities Act 2011). Therefore, careful consideration is required. We recommend that you refer to the guidance below;
- We note that clause 27 of this charity's governing document explains what the purposes of this charity are. We also note that you state that the charity has no income. Why is this so? Charity trustees collectively have and must accept ultimate responsibility for directing the affairs of this charity. They must ensure that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up in accordance with the charity's governing document, charity law and all other relevant legislation. Their roles and responsibilities are clearly explained in our publication called "CC3 - The Essential Trustee: what you need to know" which can be found at: <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know#duty-of-prudence> (See sections "6.1 What are the financial duties of trustees?" and "6.3 What duties do trustees have towards charity property?" in particular).

If the trustees only intend to spend permanent endowment then please provide precise details including the relevant section of the Charities Act 2011 being used. You can provide us with this information again by completing the following online application form again:

- **Request permission to spend permanent endowment (Online form):**
<http://forms.charitycommission.gov.uk/contact-us/get-our-permission/spend-or-transfer-permanent-endowment/spend-permanent-endowment/request-permission-to-spend-permanent-endowment/> (See section "B1.2 Our consideration of the application" in particular)

As soon as we have received the information that we require in line with the relevant statutory requirement, we shall advise you again of our decision accordingly.

It may be helpful if you refer to the following guidance:

- **It's your decision: charity trustees and decision making:**
<https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making/its-your-decision-charity-trustees-and-decision-making> (See section "2.1 How do trustees act within their powers?" in particular);
- **Good Governance code:** <http://www.governancecode.org/wp-content/uploads/2012/06/Code-of-Governance-Full1.pdf> (See principal 2 in particular)
- **OG 519 Unincorporated Charities: Changes to Governing Documents and Transfer of Property (Charities Act sections 268, 275 and 280):**
<http://ogs.charitycommission.gov.uk/g519a001.aspx> (See sections "B3 Replacing charitable purposes - section 275" and "B5 Modifying procedures for the administration of a charity - section 280" in particular);
- **Charities and fundraising (CC20):**
<https://www.gov.uk/government/publications/charities-and-fundraising-cc20/charities-and-fundraising>
- **Charities and investment matters: a guide for trustees (CC14):**
<https://www.gov.uk/government/publications/charities-and-investment-matters-a-guide-for-trustees-cc14/charities-and-investment-matters-a-guide-for-trustees>
- **OG545-1 Identifying and Spending Permanent Endowment:**
<http://ogs.charitycommission.gov.uk/g545a001.aspx> (See section "E2 The statutory power to spend permanent endowment, which charities can use it and when" in particular)
- **Permanent endowment: rules for charities:** <https://www.gov.uk/permanent-endowment-rules-for-charities>
- **OG 519 Unincorporated Charities: Changes to Governing Documents and Transfer of Property (Charities Act sections 268, 275 and 280):**
<http://ogs.charitycommission.gov.uk/g519a001.aspx> (See section "B2 Property Transfer Resolutions - sections 268, 273 and 274" in particular)
- **Making Mergers Work: Helping you succeed:**
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407825/Making_mergers_work.pdf

I trust that this response is helpful to you.

Very often, the fastest way to answer your enquiries will be to look on our website
<https://www.gov.uk/government/organisations/charity-commission>

Yours sincerely

Michael Delaney

Charity Commission - First Contact