

ADVICE – ENABLING GRANT FUNDING OUT OF CAPITAL MONIES HELD BY THE CHARITY.

The Charity : The Trust of Mrs Sarah Anne Lees

This note is based on the Charity Commission's own guidance as at 24 October 2022 AND also based on the advice given to the Council by the Charity Commission in an email dated 24 August 2022 ("Email").

In the Email the Charity Commission stated that in its opinion if the Charity Trustees pass a resolution under s281 Charities Act 2011 then this will be sufficient to enable the expenditure of the permanent endowment for the purposes of the objects of the Charity.

The Objects of the Charity

In the Scheme issued by the Charity Commission in 2018 it was confirmed that the object of the Charity is:

"...to advance the education of the public by grant funding charities offering training and learning in the life skills necessary to manage financial hardship, social or economic deprivation, social exclusion or poor mental or physical health."

According to s281 Charities Act 2011, if the Charity wishes to make grant funding available on application by other suitable charities out of the capital fund (ie permanent endowment) held by the Charity, **the following steps will have to be taken by the CTC:**

- 1. STEP 1 – Hold a meeting of the Trustees with a sufficient presence at that meeting to enable a decision to be made and the appropriate resolution to be passed. The Trustees should ensure that for the meeting they have confirmation that the annual income to the Charity is below £1,000***.**
- 2. STEP 2 – The Trustees need to pass a resolution (if the necessary agreement can be reached by the Trustees) that they the Trustees are satisfied that the Charity's object (see above) could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income because, in view of the very small income to the Charity (which is less than £1,000 per annum?), in order to provide an effective level of grant funding in accordance with the Charity's object, it is necessary to be able to use the capital monies held for the purposes of such grant funding. The resolution should therefore be in the following form (if the statements in it are accurate and agreed by the Trustees):**

"IT IS HEREBY RESOLVED that the Charity's object can be carried out more effectively if the capital of the fund held by the Charity can be expended as well as income accruing to that fund, rather than the income accruing only because, in view of the very small income received by the Charity (which is less than £1,000 per annum) in order to provide an effective level of grant funding in accordance with the Charity's object, it is necessary to be able to use the capital monies held for the purposes of such grant funding and IT IS THEREFORE FURTHER RESOLVED that pursuant to and for the purposes of Section 281 Charities Act 2011 that the Charity's capital fund (permanent endowment) ought to be

freed from any restrictions with respect to expenditure of capital that apply to it with effect from the date of the resolution.”

3. **STEP 3 – This Resolution must be kept with the Charity’s records.**
4. **STEP 4 – It is understood from section 281 Charities Act 2011 that the fund may be expended as from such date as is specified for this purpose in the Resolution. Therefore, once the Resolution has been made, the Charity Trustees may proceed to invite from appropriate other charities applications to the Charity Trustees for grant funding.**

IMPORTANT: The Charity Trustees must at all times bear in mind the object of the Charity when considering applications taking into account the nature of the charities making the applications and the charitable purposes of those charities to ensure that grant funding is properly allocated in accordance with the object of the Charity.

BACKGROUND AND RATIONALE FOR ADVICE

The property which was originally gifted to the Council by Mrs Sarah Anne Lees to be held as charity property known as 146 Werneth Hall Road, was sold pursuant to scheme obtained from the Charity Commission and its proceeds of sale which are technically permanent endowment are currently held by the Charity.

It is understood that the Charity Trustees are of the view that the best way in which the charitable objects of the Charity can be met is for these proceeds not to be invested but for them to be donated to other charities which meet the criteria set out in the Charity’s object (see above).

(Incidentally, according to the Guidance Note referred to by the Charity Commission in their Email for “further information”, owing to the fact that this Charity’s governing document does not state that the charity can transfer permanent endowment to another charity or charities with similar purposes, the following steps have to be taken:

1. A meeting of the CTC must be held with a sufficient number of trustees present to pass a resolution.
2. Discuss the transfer - you need to agree that it’s the right thing to do, that any receiving charity is suitable and all other requirements are met.
3. Hold a vote - at least two thirds of the trustees voting must be in favour of the transfer (don’t count people who abstain from voting).
4. Decide how the assets will be transferred (especially if transferring to more than one charity) and how you will make sure they’re used for similar purposes by the receiving charity.
5. Ask the commission to approve the resolution and confirm to it that the purposes of the receiving charity or charities are substantially similar to yours.

The Guidance says that applications can only be made online to the Charity Commission if the income of the charity is less than £1,000 (which it is) AND the permanent endowment is less than £10,000.

This part of the Guidance appears to conflict with the advice in the Email but in the light of the Email (which after all concerned this particular Charity and was sent in response to an application for consent) it is suggested that the advice in the Email is taken and that section 281 Charities Act 2011 is the procedure to be adopted.)

Therefore, if the income of the charity is less than £1,000, the Charity can proceed to pass a resolution under section 281 CA 2011 to enable the Charity to proceed with “transferring” parts of the permanent endowment/capital monies of the Charity. Section 281 is set out below:

281 Power of unincorporated charities to spend capital: general

(1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.

(2) But this section does not apply to a fund if sections 282 to 284 (power to spend larger fund given for particular purpose) apply to it. [NOTE – THIS IS WHERE THE INCOME IS OVER £1,000 PER ANNUM AND THE PERMANENT ENDOWMENT IS OVER £10,000. THEREFORE, IF INCOME IS LESS THAN £1,000 SECTION 282 TO 284 DO NOT APPLY]

(3) If the condition in subsection (4) is met in relation to the charity, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(4) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the capital of the fund, or the relevant portion of the capital, could be expended as well as income accruing to it, rather than just such income.

(5) Once the charity trustees have passed a resolution under subsection (3), the fund or portion may by virtue of this section be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions mentioned in that subsection.

(6) The fund or portion may be so expended as from such date as is specified for this purpose in the resolution.

(7) In this section “available endowment fund”, in relation to a charity, means—

(a) the whole of the charity's permanent endowment if it is all subject to the same trusts, or

(b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject.

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