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**MANAGEMENT OF CHARITABLE FUNDS**

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**Responsible Cabinet Member – Councillor Stephen Harker,  
Deputy Leader and Efficiency and Resources Portfolio**

**Responsible Director – Paul Wildsmith, Director of Resources**

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**SUMMARY REPORT**

**Purpose of the Report**

1. The purpose of the report is to agree the future of a number of active, moribund and ineffective trust funds and their attaching assets which are currently managed and administered by Darlington Borough Council and to recommend transfer to a Darlington fund within the County Durham and Darlington Community Foundation (CDCF).

**Summary**

2. The report examines the current state of a number of trust funds and proposes a revised approach to the management of these funds.
3. The work relating to the management of funds will be supported by CDCF. CDCF have access to national expertise via an individual who has worked with other local authorities to transfer funds to maximise resources and obtain matched funding. Although covering both Durham and Darlington any transfer would ensure that the funding remained in Darlington.
4. Proposals for management of the funds are set out within the attached paper at **Appendix 1** which shows that the changes will not impact adversely on the level of grant available to distribute. As stated previously the funds will be ring-fenced for Darlington and existing allocation priorities for funding will also be included in the new criteria.

## **Recommendation**

5. It is recommended that :-
- (a) The funds of the moribund and ineffective trusts are transferred into a Darlington Fund managed by County Durham Community Foundation (CDCF) in accordance with Option a).
  - (b) The funds of the two Active Funds where the Council are sole trustee are transferred into a Darlington Fund managed by CDCF in accordance with option b).
  - (c) That subject to the agreement of trustees and the Charity Commission funds identified as Darlington Educational Charities are transferred as soon as possible to CDCF.
  - (d) Cabinet agree that CDCF will complete the necessary legal and financial processes, set up an endowment and oversee distribution of the funds in accordance with the agreed governance arrangements for which they will take a 1.5% annual management charge of the market value of the Darlington Fund.

## **Reasons**

6. The recommendations are supported by the following reasons :-
- (a) By transferring the funds to an endowment managed by CDCF the income available for grant will be increased and also the potential for further matched income will be made available.
  - (b) Liabilities and administration costs for the Council will be reduced
  - (c) Funding available for distribution to the residents will be increased.

**Paul Wildsmith**  
**Director of Resources**

## **Background Papers**

No background papers were used in the preparation of this report.

Catherine Whitehead/Mary Hall : Extension 2306

S17 Crime and Disorder	There are no negative implications for Crime and Disorder from proposed actions within the report. Some potential for positive activity may be developed during the implementation of this funding strategy.
Health and Well Being	Some potential for positive activity may be developed during the implementation of this funding strategy.
Carbon Impact	There are no negative impacts for sustainability and some funds developed if this paper is implemented could support energy efficiencies or other sustainability activity through grant allocations to the voluntary and community sector.
Diversity	Whilst there are no specific actions contained within this paper to address equality issues some of the funds may well be targeted to address equality issues. This will however be reliant on the wishes of each donor.
Wards Affected	All wards will be impacted upon equally by these proposals.
Groups Affected	No single group or community will be affected more than another.
Budget and Policy Framework	This report does not change the Council's budget or policy framework.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	This approach will increase funding available from external sources to deliver against priorities agreed within One Darlington: Perfectly Placed.
Efficiency	These proposals will : <ul style="list-style-type: none"> <li>• reduce demand on Council resources to manage Trust funds set out in this report</li> <li>• provide additional funding by leveraging in matched funding</li> <li>• increase potential interest accrued to these trust funds (interest rates can go down as well as up but CDCF have increased capacity and a high level of expertise in this field).</li> </ul>

## MAIN REPORT

### Section 1 - Trust Funds

7. The Council manages a number of trust funds where they are the sole trustee and it also manages a number of trust funds for and on behalf of lay trustees. In some cases the funds are active and fulfilling their objectives in other cases they are moribund as the original intentions or objects of the funds in scope are proving increasingly difficult to fulfil. This is a national as well as a local issue and an example is that of a fund to support children with smallpox which is no longer an issue in England.
8. Currently the Council absorbs costs in managing these trust funds but also the interest rate that the Council is able to obtain for these trusts is small. The Charity Commission is keen to see the release of ineffective trust funds to charitable bodies. The Council has looked at how the funding in both the active and inactive funds can be better used to support the people of Darlington both through reducing financial demands on the Council but also through increasing funds by securing a better interest rate and also obtaining matched funding where possible.
9. In particular the Council is looking to utilise the skills which exist within the CDCF. They were established in 1995 and since inception have distributed in excess of £20m worth of grants to support over 9,000 individuals and groups in Durham and Darlington. The Foundation is quality accredited to standards endorsed by the Charity Commission. There are a number of different funds and the strategy for each is considered below.

### Moribund and Ineffective Trust Funds

10. These are funds where the Council is the sole trustee and they have a total value in the region of over £73,000. There are three options for Cabinet to consider and these are:
  - (a) To close down and transfer to an independent body that will act as trustee, setting up an endowment ring-fenced for Darlington with the income of this endowment being used for small grants programme in line with the original objectives.  
This would allow the fund to be managed independently, attracting increased interest, thus increasing the funding available for the residents of Darlington.
  - (b) To close down individual funds, launch a totally new fund with new criteria but based on existing charitable objects. This would have to be set up as a charity with the necessary governance arrangements agreed by the Charity Commission and the Council would still be accountable as sole trustees. Whilst this option would re-launch the funds the Council would still have the cost of administration and the legal liabilities and obligations associated with this role.
  - (c) To take no action in relation to the funds, this would mean not distributing the funds as set out in the charitable objects. This would put the Council at small risk of challenge for not distributing the funds but more particularly would fail to

gain the benefit of the funds available. The Council would continue to be responsible for undertaking Charity Commission returns with the associated costs.

11. Option a) in relation to the Moribund and Ineffective Trust Funds is recommended as it would reduce Council administrative costs and offer the best chance to increase the funds available for the residents of Darlington.

### **Active Funds where the Council is Sole Trustee**

12. These funds are proving increasingly difficult to allocate and would benefit from linkage to other Darlington grant giving. The total asset value of these funds is approximately £150,000
13. There are two options to consider here:
  - (a) To continue to administer these funds that are granting their annual allocation. These funds are costly for the Council to administer and the cash yield on investment of the assets is only 0.45% per annum.
  - (b) To transfer the trusteeship of these unregistered trust funds to County Durham Community Foundation. This would reduce the Councils operating costs and potentially increase investment returns as it could be a ring-fenced allocation within a larger Darlington Fund.
14. By transferring to CDCF this yield could be significantly improved upon and the Council could reduce administrative costs and also have more funds to allocate to the residents of Darlington. The link to a well known local grant making body and a Darlington Fund could also raise the awareness some funds with potential applicants helping them to be used for their stated purpose more effectively.
15. It is recommended that option b) is taken forward as it would be the best option to improve financial yield of this fund and to advertise it more widely whilst reducing financial liabilities on the Council.

### **Active Funds where the Council is administrator for Lay Trustees**

16. Darlington Educational Charities support the majority of schools in Darlington and whilst the fund is active, with an asset value of about £188,000 in cash and a total value of £861,384 including assets. These funds support a number of young people but if the fund could draw down matched funding and achieve a better return the income available to support young people would be greatly increased.
17. Before bringing this paper to Cabinet investigations took place to clarify the principles that needed to be met before agreeing how to take work on these Educational trust funds forward. These principles are set out below:
  - (a) Ring fence money for Darlington residents
  - (b) Obtain matched funding from central government
  - (c) Ensure sustainability for the future

- (d) Continue to maintain local autonomy
  - (e) Ensure all children and young people have the opportunity to benefit from the fund
  - (f) Ensure Charity Commission requirements are met.
18. There are three options to be considered when trying to ensure maximum benefit from these funds by the young people of Darlington. These are set out below:
- (a) To continue as currently where the Council administers this fund.  
The Council has liability for the financial costs of administering these funds.
  - (b) To invite the common lay trustees to take over the trusteeship and administration themselves.  
This option would require the trustees to take over the administration of the funds and ensure that all schools in Darlington had equal opportunity to obtain grant as they could face challenge if the charity objects were not met.
  - (c) To recommend to the common lay trustees that they transfer the trusteeship of their respective trust to the County Durham Community Foundation (CDCF) for use in Darlington and against the principles set out earlier in this report.  
The common lay trustees would then become an advisory panel to CDCF and the Council would have no liability for administration. This option would also allow for matched funding to be released
19. Option c) is the recommended option as it would increase income available for grant through release of matched funding available through CDCF. Council representatives have had discussions with County Durham Community Foundation (CDCF) who had access to expertise in this field from the Community Foundation Network. The expertise is such that the individual sits on the Charity Commissions working group to release moribund funds.
20. The current arrangements would continue until the trustees agree otherwise but in the new arrangements the existing panel could continue to recommend the funding allocations against criteria but the final decision would be through the CDCF trustees board. There are a number of Darlington representatives on this board including Council representatives.
21. A detailed report setting out all of the issues and options is attached at Appendix 1. This report has been written by County Durham Community Foundation and set out the technical issues for transfer of funds.
22. Initial discussions have been held with the 11-19 Partnership in relation to the potential transfer of the Darlington Educational charities and the trustees are meeting shortly to formally discuss the issue and make a decision. A number of key questions were asked by group and these have been resolved. The questions were largely about the need to ensure funds remained in Darlington and that they continued to be focussed on the children and young people of the Borough.
23. For agreement to be reached it will be important that the final criteria agreed for distribution of the funds are developed with the existing trustees and are based

upon existing criteria but include children and young people from those schools and colleges not currently covered by the existing opportunities.

24. It is proposed that the value of all assets held in the form of capital (endowment) within the Darlington Fund will incur an annual management charge of 1.5% (taken quarterly) off the market value of the Fund.
25. This charge covers the costs of providing investment management and Trustees of CDCF to meet on a quarterly basis to evaluate performance and review investment policy in the light of Fund performance. The fee also covers financial management, accounting, independent auditing and preparation of annual returns to the Charity Commission.
26. The fee for the management and administration of the distribution element of the Fund will incur a fee of 10% on all new income received into the Fund (i.e., not income derived from the endowment fund). We believe that this cost compares favourably with the administrative and other resources the Council currently uses to manage the existing service provision.
27. The work undertaken by the Foundation includes:
  - (a) Managing the promotion of the Fund to potential beneficiaries and grant recipients
  - (b) Provision of advice and support to individuals and groups in completing applications
  - (c) Undertaking all administration involved in assessing applications and ensuring due diligence requirements are met
  - (d) Servicing the local grants panel potentially two/three times per annum.
  - (e) Responding to unsuccessful applicants and drawing up grant terms and conditions for successful applicants.
  - (f) Making payments to the successful applicants in line with the agreed Fund criteria.
  - (g) Providing regular statements of the Fund including details of amounts applied for and grants awarded, projects supported, numbers benefiting, nature of the applicants, breakdown of geographical areas etc.
  - (h) Obtaining monitoring information from successful applicants and evaluating same to ensure accurate and meaningful annual Impact Reporting.
28. Trustees need to formally agree and sign up to the transfer process and it also needs to be signed off by the Charity Commission who need to be assured that the criteria are aligned to the original objects of the trusts where this is possible, Agreement in principal has already been obtained from the Charity Commission

who are encouraging better use of funds available to support the voluntary and community sector.



Report from CDCF for Darlington Borough Council

ACTIVE, MORIBUND AND INEFFECTIVE TRUST FUNDS

**BACKGROUND**

- 1) The Council manages a number of trust funds in their capacity as sole trustee and administers a number of trust funds for and on behalf of lay trustees. These trust funds have been received by the Council over many years following bequests and investments made to and for various issues and causes across the Borough. In some cases the trust funds are relatively active and fulfilling their objects, in other cases they have become moribund or ineffective as the original intentions or objects within the governing documents of the funds in scope are proving to be increasingly difficult to fulfil or are out of date.
- 2) Currently the Council absorbs significant costs in managing and administering these trust funds, a factor which has been taken into account in the recommendations on future treatment of the trust funds in scope and commented upon later in this report.
- 3) The trust funds in scope represent:
  - a) **17** moribund and ineffective unregistered trust funds where the Council is appointed sole trustee, asset value circa **£73,000**
  - b) **2** active trust unregistered trust funds where the Council is appointed sole trustee, asset value circa **£150,000**
  - c) **8** active trust funds where the Council administers the trust funds on behalf of common lay trustees, asset value circa **£188,000**

More background information (where available) about these trust funds is set out in **Appendix 2**.

- 4) Action needs to be taken to make the 12 moribund and ineffective trust funds and their attaching assets effective again. However, this is not Council money and it can never be absorbed into mainstream budgets. These trust funds were transferred to the Council by the County Council under Local Authority reorganisation in 1996 and little background information is known in relation to their purpose or objects. As a consequence it has become increasingly difficult to make effective grant awards from annual income resulting in them becoming moribund and ineffective for in excess of 5 years. These funds appear to represent bequests left in perpetuity by donors wishing to support a wide variety of objects and the criteria of the proposed Darlington Fund has been designed to embrace the perceived objects of the moribund and ineffective trust funds in scope.
- 5) It is proposed to close down these trust funds, through due process with the Charity Commission for England and Wales and combine their total assets of circa £73,000, to be held in the form of capital within the Darlington Fund, with annual

income used to support grant applications for purposes broadly in line with the trust funds' original objects, thereby satisfying Charity Law.

- 6) Consideration should be given to removing the costs and legal obligations upon the Council in managing the 2 active trust funds in scope, where the Council are appointed sole trustee, namely the Stainsby Murray Fund (provision of comforts for aged persons on Darlington) and the E M Corner Bequest (provision of Arts by the Darlington Library). Both these trust funds have specific objects which would continue to be honoured with the funds 'maintained in their current form but under the umbrella of the Darlington Fund.
- 7) An opportunity also exists to remove the costs and legal obligations upon the Council associated with the 8 registered active trust funds which the Council administers for and on behalf of common lay trustees and where historically no contribution to costs have been obtained. Existing trustees who represent educational establishments across the Borough, would need to be convinced of the significant benefits to agreeing that their individual trust funds be transferred and maintained under the umbrella of the proposed Darlington Fund and a formal meeting with the body of trustees would be set up, by the Foundation, to facilitate this discussion.

## **RELEASE OF MORIBUND AND INEFFECTIVE FUNDS AND THEIR ATTACHING ASSETS**

- 8) The Charity Commission is keen to see the release of the many moribund and ineffective trust funds locked into Local Authorities around the country and the Commission particularly supports the release of these funds to leading charitable bodies.
- 9) Following informal consultation with the Charity Commission it is apparent that the most effective use of these moribund and ineffective funds and their attaching assets would be to transfer them to a charitable body. This body will act as trustee and manage the assets, with annual income earned from the capital sum used to support a new small grants scheme namely the distribution element of the Darlington Fund, for charitable distribution to eligible individuals and organisations across the Borough, broadly in line with the trust funds' original objectives.

## **TRANSFER OF ACTIVE TRUST FUNDS AND THEIR ATTACHING ASSETS**

- 10) The Charity Commission has already provided an 'in principle' verbal sanction to the transfer of the 2 Active Trust Funds where the Council acts as sole trustee on the strict proviso that the current objects are preserved and that the existing area of benefit is also honoured. Details of these trust funds can be found in **Appendix 2**.
- 11) The Charity Commission has also been approached and provided an 'in principle' verbal sanction to the transfer of the 8 active trust funds which the Council administers on behalf of lay trustees, common to all the trust funds in scope, under

the umbrella of the Darlington Fund. **Appendix 2** contains details of the trust funds which broadly support grants to young persons in education up to 25 years of age.

- 12) The trust funds have individual objects which, over time, are proving difficult to satisfy and over the past 5 years only 40% of annual income has been spent which suggests that unless corrective action is taken then, over time, these trust funds will become ineffective.
- 13) A formal presentation is proposed to be undertaken by the Foundation to the 'common' lay trustees appointed to manage these trust funds on behalf of educational establishments across the Borough which will highlight a number of significant benefits which would be available to them if they are agreeable to the transfer.
- 14) It is anticipated that the Foundation will be able to offer 50% match funding (to a maximum of circa £65,000) under the Office for Civil Societies Community First Programme, subject to the annual income from the capital sum and matched element being used to increase the focus on funding social action at a community level, through projects and initiatives supported outside of those provided for within statutory provision. Due to the values involved, the expansion of the criteria would not preclude the fund from continuing to support current activities as well.

## **COUNTY DURHAM COMMUNITY FOUNDATION**

- 15) The Foundation has been identified as a possible organisation to manage these trust funds and their attaching assets. Based on a model of philanthropic giving started in the USA nearly 100 years ago, Community Foundations are now well established and recognised parts of the UK voluntary sector. They have been established to cover specific geographical areas and to support their local communities at grass roots level. They are set up as charitable trusts to enable many donors to collaborate in creating a capital fund for the benefit of defined local areas. This will generate income for grant making that will be available for the long term, responding to local needs and issues at that time.
- 16) The Foundation is a much respected charity which operates and is effective primarily across County Durham and Darlington, whose board members include senior representatives from the business, law, charitable and public sectors. The Foundation is an administrator and distributor of charitable funds and manages a number of corporate and statutory grant programmes which directly benefit the Borough. Since it was established in 1995 the Foundation has distributed in excess £20 million of grants to support over 9,000 individuals, groups and projects working to meet a diverse range of needs.
- 17) Over the past year the Foundation has supported 81 groups and individuals, based within the Borough, with grant assistance to a value of £331,845, meeting a range of needs including support of children and young people, the arts, older people, disabled people, life-long learning, conservation and the environment. The Foundation is quality accredited by the Community Foundation Network to standards endorsed by the Charity Commission and manages a Capital

Endowment Fund in excess of £6.5 million, utilizing the services of professional fund investment managers.

- 18) The Foundation is being assisted by an advisor from the Community Foundation Network who has completed a similar transfer process with 31 Local Authorities across the United Kingdom. Community Foundations across the UK have successfully assumed responsibility from Local Authorities for in excess of £26 million of active, moribund and ineffective trust assets creating in excess of £1.5 million per annum increased capacity for grant making to individuals and grass roots community groups. This person also acts as the Community Foundation's representative on the Charity Commission's working group to liberate moribund and ineffective trust funds.
- 19) Given the governance arrangements of the Foundation, its experience of managing community funds and small grants schemes and its reasonable and justifiable administration charges I feel able to confidently recommend the Foundation as the body to administer the proposed Darlington Fund. No other locally based organisation has been identified which has the relevant experience or expertise to deal with the transfer of assets relating to active, moribund and ineffective trust funds and their attaching assets and to deliver the resulting benefits.
- 20) Transfer of the funds in scope will require the absolute agreement of the Charity Commission linked to a transfer and donor management agreement between the Council and the Foundation.
- 21) The Board of Trustees of the Foundation will be the Trustees of the proposed Darlington Fund. If the transfer takes place in totality the Council will no longer hold any of the funds or their assets where they are currently appointed sole trustee nor will they be responsible for their distribution. The agreement of the Charity Commission and the transfer and donor agreement between the Council and the Foundation will set out the charitable purposes of the Fund.
- 22) The assets attaching to those moribund and ineffective trust funds referred to in **Appendix 2** where the Council acts as sole trustee amounts to circa £73,000 and subject to Cabinet approval they will be closed down through due process and with the express permission of the Charity Commission. Their combined assets will be held in the form of capital, in perpetuity, with annual income used to support applications to the Darlington Fund small grants programme broadly in line with their original objects. It is proposed that an amount of up to 10% (representing accrued income) be top sliced from the total amount transferring. This amount will be used to pump prime grant making for the first year from the launch date. The Charity Commission has informally approved this proposed treatment.
- 23) The active trust funds where the Council is appointed sole trustee, namely the Stainsby Murray Fund and the E M Cooper Bequest will simply transfer 'as is', under the umbrella of the Darlington Fund with the current objects continuing to be fulfilled. Of major benefit to the Council in agreeing to this recommendation will be the reduction in costs associated in fulfilling the legal and financial obligations in managing these trust funds and an anticipated improvement in annual returns on

the assets which are currently invested in cash and receiving an annual return of circa 0.45%. The Charity Commission has informally approved this treatment subject to Cabinet approval.

- 24) The active trust funds referred to in **Appendix 2** which the Council administers for and on behalf of lay trustees will be subject to formal discussion with the lay trustees in due course. It is anticipated that subject to formal agreement between all parties that the trust funds will retain their titles and will continue to fulfil their current objects as stated. Recommendations will be proposed by the Foundation for consideration by the current trustees to widen the existing objects sufficiently to ensure that annual income can consistently be used to support grant applications. However there will be no requirement for the trust funds to remain registered with the Charity Commission and subject to formal approval will revert to being 'named funds' fulfilling their objects under the umbrella of the Darlington Fund. Transfer will be dependant upon the formal agreement of the existing trustees and subject to the absolute sanction of the Charity Commission.
- 25) In establishing the Darlington Fund the Foundation and the Council will agree specific Fund Criteria based upon funding themes that are complementary to the Council's Community Support Strategy, to include (subject to confirmation from the Council):
  - a) Safety, including crime and disorder
  - b) Sustainable neighbourhoods including the environment and housing
  - c) Prosperity, skills and jobs
  - d) Lifelong learning including early school years, outside of that provided under statutory provision
  - e) Transport
  - f) Health and healthy living
  - g) Culture, arts and sports
  - h) Community cohesion including issues of race and disability
  - i) Improving the lives of people with limited resources
  - j) General charitable purposes which align to the Foundation's ethos of inspiring local giving.
- 26) For individuals a maximum grant award of £750 is proposed and for groups undertaking initiatives and projects, only activity that is itself charitable would be funded. Proposals are to provide a minimum £250 to a maximum grant of £2,000.
  - a) The Foundation will publish guidelines and eligibility criteria for the Darlington Fund. Applications will be restricted to applicants residing within the Borough and in accordance with the Foundation's respected custom and practice.
  - b) A grants panel comprising Council officers and members, existing trustees of active trust funds and local people with community links will be formed to review applications and make grant recommendations.
  - c) The trustees of the Foundation (as the accountable body) will ultimately ratify all decisions made by the grants panel.

- d) Applications which do not meet the criteria of the Darlington Fund will, wherever possible, be signposted to alternative donor funds administered by the Foundation, as will occur if the Darlington Fund is overbid. This will assist in reducing the risk of applicants being disappointed.
- e) When the Darlington Fund is established, information about the Fund and application process will be circulated to all members, publicised on the Council and the Foundation's respective websites, and promoted in the local media and by appropriate community support networks.

## **THE DARLINGTON FUND - ADMINISTRATION**

- 27) A one-off management fee is to be negotiated with the Council to represent the direct costs aligned to the work undertaken by the Foundation to establish the Darlington Fund. This fee will also include the work to transfer the active trust funds in scope and to liberate, through the Charity Commission, the moribund and ineffective trust funds in scope and their attaching assets.
- 28) Initial set up costs can be deducted from the transferring assets at the time of transfer. The Charity Commission has ratified this position subject to the fee being fully transparent, justified and acceptable to the Council.
- 29) The value of all assets held in the form of capital (endowment) within the Fund will incur an annual management charge of 1.5% (taken quarterly) of the market value of the Fund.
- 30) The management and administration of the distribution element of the fund will not incur any additional charges (over and above those indicated in 7.2 above). However, any additional one-off donations direct into the distribution fund will be subject to a top-sliced fee of 10%.

## **OPTIONS**

**Options for the 12 Moribund and Ineffective Trust Funds in Scope, value circa £73,000, where the Council are appointed as sole trustee - there are three options to consider:**

- 31) **Option 1:** To close down and transfer the moribund and ineffective trust funds in scope and their attaching assets to a body that will act as trustee and manage a new trust fund, the proposed Darlington Fund, with annual income earned from the capital sum held in the form of endowment and the annual income from capital converted into a new small grants scheme for charitable distribution broadly in line with the contributory funds' original objects.
- 32) **Option 2:** To seek new arrangements with the Charity Commission to close down the individual moribund and ineffective trust funds, launch a new fund, develop new criteria embracing the transferring funds' original objects and recommence grant making. However, any new Fund would have to be a charity in its own right, and the Council would still have to act as sole trustee accountable to the Charity Commission for its management.

33) **Option 3:** Continue to do nothing and remain negligent in charity.

### **Appraisals**

34) **Option 1:** would result in the trust funds and their attaching assets being used to meet the needs of local people through an independent organisation regulated by the Charity Commission which would also be best placed to grow the size of the funds by attracting resources that are not available to the Council.

35) **Option 2:** would result in the Council re-invigorating the trust funds but continue to act in the role of sole trustee and grant maker with the inherent costs associated with these responsibilities.

36) **Option 3:** would fail to enhance the present situation, whereby the Council would continue to sustain all costs (at a time of austerity) in continuing to support the moribund and ineffective trust funds and risk becoming 'knowingly' negligent in charity where the trust funds and their assets continue to fail to meet the needs of local people as envisaged by the original donors.

**Options for the 2 Active Trust Funds where the Council acts as sole trustee -** there are two options to consider:

37) **Option 1:** Continue as at present administering two trust funds which although spending annual income, remain costly to manage and where investment returns on assets (all held in the form of cash yielding circa 0.45% per annum) should be significantly improved upon.

38) **Option 2:** Transfer trusteeship of the unregistered trust funds to the Foundation for the benefit of operating in the future under the umbrella of the Darlington Fund.

### **Appraisal**

39) **Option 2:** would align the assets of the Stainsby Murray Fund to other assets with similar objectives and lead to greater awareness of the Fund with potential applicants. There remains the potential to substantially improve investment returns and the existing objects and area of benefit will be preserved in the future.

**Options for the 8 Active Trust Funds where the Council administers the funds on behalf of common lay trustees**

40) **Option 1:** To continue as at present administering a number of active trust funds and absorbing all the costs connected in supporting the common lay trustees at a time of severe austerity.

41) **Option 2:** To invite the common lay trustees of the active trust funds to take over trusteeship themselves but this option may not be acceptable to the Council as the objects of the active trust funds in scope apply to **all** educational establishments across the Borough and the common trustees might find themselves in a compromised situation.

- 42) **Option 3:** To formally recommend and endorse the Foundation's representations to the common trustee body of the trust funds in scope to transfer trusteeship of their respective trust funds to the Foundation under the umbrella of the Darlington Fund. The existing common trustees will be invited to retain an advisory role to the Foundation in providing continuity, knowledge and support in evaluating grant applications and encouraged to combine with others to agree grant awards on a democratic basis.

### **Appraisal**

- 43) Option (c) would result in the active trust funds operating under the umbrella of the Darlington Fund. They would retain their title and fulfil their existing objects, with the benefit of applicants completing one generic application form for consideration by the grants panel. Young persons up to the age of 25 and educational establishments across the Borough will be pro-actively encouraged to apply to the fund for grant assistance.

### **FINANCIAL IMPLICATIONS**

- 44) There are no balance sheet implications for the Council in respect of the trust assets in scope. The Council is either sole trustee or provides administration and support to lay trustees and is accountable for the management of attaching assets. However the money can never be absorbed into Council mainstream budgets.
- 45) Significant cost savings would be achieved by the Council, if it were able to responsibly divest itself of fulfilling the non-core function of supporting and managing trust funds where in some cases, no community benefit is currently being delivered.
- 46) The transfer of the trust funds in scope and their attaching assets will require the formal agreement of the Charity Commission following an application by the Foundation on behalf of the Council using relevant sections of the Charities Act 1993 as amended by the Charities Act 2006 and consolidated within the Charities Act 2011.
- 47) The Charity Commission has been informally consulted regarding the possible transfer and has given its verbal 'in principle' support.
- 48) The trust funds were originally established to fulfil a wide range of objectives. The establishment of the Darlington Fund will enable the transferring assets to be used for these purposes into the future.
- 49) The Foundation has an equal opportunities policy and will take a proactive approach to ensure that, in conjunction with members of the grants panels, grants are targeted at applicants in greatest need across the Borough.
- 50) To note the information about the trust funds in scope and their attaching assets; the work currently undertaken by the Council in managing these trust funds in its



role as sole trustee; the administrative support it undertakes for and on behalf of lay trustees; the benefits of aligning all trust funds into the proposed Darlington Fund.

- 51) To agree that, subject to the full support of the Charity Commission, the moribund and ineffective trust funds where the Council is appointed sole trustee are closed down under due process with the assets then transferring to the proposed Darlington Fund to be managed by and to become the legal responsibility of the trustees of the County Durham Community Foundation.
- 52) To agree to the transfer of the two active trust funds where the Council acts as sole trustee to the trusteeship of the Foundation which will operate them under the umbrella of the Darlington Fund ensuring that their current objects and area of benefit are fulfilled in the future.
- 53) To endorse the recommendation to allow the Foundation to approach the trustees of the active trust funds where the Council is currently providing administrative services.
- 54) To actively encourage the common lay trustees to consider transferring the trust funds in scope to the trusteeship of the Foundation, to be managed under the umbrella of the Darlington Fund in return for an invitation to fulfil an advisory or support role in considering future grant applications and making grant awards.
- 55) To enter into the required donor management/fund agreement with the Foundation.

## Appendix 2

## **Background Documents as referred to in the main report**

- **Appendix 2** – Details of all active, moribund and ineffective Trust Funds and their attaching assets in scope