

CABINET

7 JULY 2015

PHILIP WILLIAM FARROW TRUST

Portfolio Holder: Councillor David Brake, Adult Services

Report from: Ian Sutherland, Deputy Director of Children & Adults Services

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Summary

The Philip William Farrow Trust was established to provide relief for elderly person's resident at Nelson Court, Shaws Wood and Robert Bean Lodge. This report considers the Council's position as corporate Trustee and recommends the appointment of another suitable Trustee.

1. Budget and Policy Framework

- 1.1 The Philip William Farrow Trust does not form part of the Council's revenue or capital budget and it cannot be used to fund core service delivery. It therefore must sit outside of the Council's budget and policy framework.
- 1.2 The Council's trustee function is a Cabinet function and therefore Cabinet approval to the retirement and appointment is required.

2. Background

- 2.1 The Philip William Farrow Trust was established to provide relief for elderly person's resident at Nelson Court, Shaws Wood and Robert Bean Lodge. Relief constituted the promotion of health and/or relieving of ill health or infirmity of the residents of these specified homes. The funds were used to provide social activities for the residents.
- 2.2 Responsibility for the management of the Trust Fund transferred to Medway Council in 1998 on its inception from Kent County Council. In the initial years following transfer, named officers of the Council were Trustees. Since these named officers left Council the Charities Commission were notified that Medway Council would operate as the corporate Trustee.

- 2.3 The fund, which comprises two separate investments, is currently in excess of over £100,000. It remains invested and will continue to accrue interest (see paragraph 3.2 for further details).
- 2.4 In recent years, two of the homes have transferred in to the operation of an independent provider, Agincare, who continue to operate Nelson's Court and Robert Bean Lodge as care homes. At the time of transfer it was deemed that the Council should now consider alternative arrangements for the discharge of the functions of the Trust.
- 2.5 In this context legal advice has been obtained from Counsel. The council cannot delegate its responsibilities as a Trustee to a third party, but it can retire as Trustee provided that it first seeks to appoint another suitable Trustee to replace it.
- 2.6 The Charity Commission provides guidance on finding appropriate persons or organisations to act as charity Trustees. Suitable persons should understand the nature and extent of their powers and duties, and preferably should have specialist skills and experience in areas such as fundraising or finance, and should also understand the needs of the people the charity helps.
- 2.7 In identifying suitable persons or organisations as potential appointees the Council should give careful consideration to any potential conflict of interest in terms of the roles and duties of a charity trustee.
- 2.8 Preliminary discussions have taken place with Agincare who have become the council appointed operators for two of these identified care homes, regarding the potential of their appointment as Trustees for the fund.
- 2.9 The Council has also separately had an approach from the Kent Community Foundation, seeking consideration of a proposal to be considered as appointees for the Philip William Farrow Trust with a view to widening the charitable objects of the trust for the more general benefit of older citizens in Medway, as well as meeting the original charitable objects.

3. Legal, financial and risk implications

3.1 Legal Implications

The legal advice from Counsel makes it clear that the fund can and should be applied for the promotion of the health and well-being of the residents of the care homes formerly known as Robert Bean Lodge and Nelson's Court.

3.2 Financial Implications

Whilst the value of the investment generating the trust fund's revenues is circa £137,000 and the accumulated income in the trust's bank account is over £107,000, the Philip William Farrow Trust Fund sits outside of the Council's budget and policy framework, does not form part of the Council's revenue or capital budget and cannot be used to fund core service delivery.

On that basis there are no financial implications for the Council in transferring responsibility for the trust fund to the relevant provider organisations.

3.3 Risk Implications

If appropriate arrangements are not in place to effectively operate the Trust fund the Council could be deemed to be in breach of its duties and responsibilities in relation to the charitable trust.

4. Recommendations

4.1 To note the contents of this report.

4.2 To delegate authority to the Deputy Director of Children & Adults Services, in consultation with the Assistant Director Legal and Corporate Services, to:

- (a) pursue formal discussions with Agincare and Kent Community Foundation and to assess their suitability either separately or jointly to become appointed Trustees for the Philip William Farrow Trust.
- (b) produce draft documentation for Medway Council to appoint new trustees for the Philip William Farrow Trust.
- (c) produce draft documentation for Medway Council to retire as the trustees for the Philip William Farrow Trust.
- (d) liaise as necessary with the Charity Commission to fully consider the obligations under the Trust document and implement recommendations 4.2 (a) to (c).

4.3 To delegate authority to the Deputy Director of Children & Adults Services, in consultation with the Assistant Director Legal and Corporate Services and the Portfolio Holder for Adult Services to proceed with appointment of a new Trustee (or Trustees as appropriate) for the Trust and to proceed with the retirement of the Council from that role.

5. Suggested Reasons for Decisions

5.1 Appropriate arrangements need to be in place to effectively operate the Trust fund.

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Appendices:

None

Background Papers: The “scheme” governing the Philip William Farrow Trust Fund, as issued by the Charity Commission for England and Wales, under the power given by the Charities Act 1993.