

Report to:	TRUST AND CHARITIES COMMITTEE	<i>Exempt information paragraph number – if private report:</i>
Report of:	Strategic Director – Finance and Legal Services	
Date of Decision:	20 July 2016	
SUBJECT:	BIRMINGHAM MUNICIPAL CHARITY – REVISED MECHANICS OF FUNDING	
Key Decision: Yes / No	Relevant Forward Plan Ref: No	
If not in the Forward Plan: (please "X" box)	Chief Executive approved	<input type="checkbox"/>
	O&S Chairman approved	<input type="checkbox"/>
Relevant Cabinet Member(s):	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	All	

1. Purpose of report:
1.1 For Committee to approve amendments to the Birmingham Municipal Charity (“BMC”) Mechanics of Funding as set out within this Report.

2. Decision(s) recommended:
2.1 That Committee approves the revisions to the Mechanics of Funding

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3. Consultation
Consultation should include those that have an interest in the decisions recommended
3.1 <u>Internal</u>
The Chairman of the Committee has been consulted in the preparation of this report as have officers who support the Committee, from Legal Services, Strategic Director of Finance and Legal Services, (Joint) Acting City Solicitor and Monitoring Officer Birmingham Property Services.

3.2 External

Paragraph 3.19 of the charity's Trust Deed provides the Council as Trustee with authority "*To do anything else within the law which promotes or helps to promote the Objects.*" The revised Mechanics of Funding are intended to widen the existing Grants process and increase the sums the Charity is empowered to award. On that basis, no external consultation with the beneficiaries of the charity is deemed necessary at this point, subject to the views of the Members of the Committee.

4. **Compliance Issues:**

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

Notwithstanding the legal separation of functions, duties, and responsibilities as between Birmingham City Council and the Council in its capacity as Sole Corporate Trustee, the objects/purposes of the Council's charitable trusts, all have a commonality, namely for the benefit of the citizens of Birmingham. This is consistent with the Council's Policies, Plans and Strategies which are focused on "fair, democratic and prosperous Birmingham."

4.2 Financial Implications (Will decisions be carried out within existing finance and Resources?) See below under paragraph 5.5

4.3 Legal Implications

Management and governance arrangements for Charitable Trusts are set out in the Constitution under which they were established. Charity Trustees must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, failing which this will give rise to a breach of trust. Legal sanction can follow from either the beneficiaries of the charitable trust and/or Charity Commission. Decisions made by the charity must be expedient in the interests of the charity at all times. The Committee has empowered officers within the Council to discharge certain functions on its behalf as Council as Trustee.

4.4 Public Sector Equality Duty (see separate guidance note) None. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

5. Relevant background/chronology of key events:

- 5.1 The "BMC" Trust was established in 2011 by consolidating small and dormant charitable trusts within the Council which resulted in an endowment of £0.353m. The Trust has general charitable objectives for the benefit of the citizens of Birmingham.
- 5.3 The trust has a grants process whereby the Grants Panel (made up of three Members of the Committee) initially approve grant applications in principal. These recommendations are subsequently ratified by your Committee.

5.4 Committee approved the following amendments to Mechanics of Funding at its meeting in November 2015 - Appendix 2.

- To increase the maximum award per successful application from £500.00 to £10,000.00, subject to the available unrestricted balances in any one financial year;
- Revise the way funds are transferred into the “BMC” from other charities so that Committee will have greater flexibility in determining how funds are appropriated into which of its funds (unrestricted or restricted) on a case by case basis, so that a larger proportion, as determined by Committee, can be used for grants awards from its unrestricted balances.
- Annually transfer £0.050m from trust’s endowment fund to the unrestricted funds to meet charitable objectives, (with trust investments currently under-performing, the fund’s endowment could be extinguished within a short period of time if these are not funds are not replenished with no income/fundraising donations .)
- In the event of the annual allocation not being disbursed the amount shall be netted off against the following year’s allocation to be transferred from the trusts permanent endowment.
- Charitable donations of below £0.005m to be appropriated to unrestricted funds to meet charitable objectives.

It is recommended that the following proposals are added to the charity’s “Mechanics of funding” to ensure successful grant applications are released earlier:

- a) The Grants Panel is given the authority to approve grant applications up to a value of £5,000 per application without the need to ratify the decision by your Committee;
- b) Applications over £5,000 are to be presented to Trusts and Charities Committee for approval.
- c) At the end of each financial year a Report will be presented to this Committee detailing the award of grants.

The above recommendations have the approval of the Strategic Director – Finance and Legal Services.

6. Evaluation of alternative option(s):

6.1 To continue with the existing arrangements could result in both regulatory and reputational harm to the Council as Trustee, if the Trust does not undertake sufficient charitable activity or provide public benefit in accordance with its Constitution. Against this, is the legal duty of prudence which can be summarised as follows:

“You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity’s assets are only used to support or carry out its purposes
- avoid exposing the charity’s assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.”

7. Reasons for Decision(s):

7.1 For Committee to approve the amendments to the Trusts Mechanics of Funding.

Signatures	<u>Date</u>
Strategic Director of Finance & Legal Services
Chairman

List of Background Documents used to compile this Report:

None

List of Appendices accompanying this Report (if any):

Appendix 1 – Trust Deed – BMC
Appendix 2 - Existing Mechanics of Funding