

<b>Report to:</b>	<b>TRUST AND CHARITIES COMMITTEE</b>	<i>Exempt information paragraph number – if private report:</i>
<b>Report of:</b> <b>Date of Decision:</b>	<b>Director of Finance</b> <b>12<sup>th</sup> November 2015</b>	
<b>SUBJECT:</b>	<b>BIRMINGHAM MUNICIPAL CHARITY – REVISED MECHANICS OF FUNDING</b>	
<b>Key Decision: Yes / No</b>	<b>Relevant Forward Plan Ref: No</b>	
<b>If not in the Forward Plan: (please "X" box)</b>	<b>Chief Executive approved</b> <input type="checkbox"/> <b>O&amp;S Chairman approved</b> <input type="checkbox"/>	
<b>Relevant Cabinet Member(s):</b>	<b>N/A</b>	
<b>Relevant O&amp;S Chairman:</b>	<b>N/A</b>	
<b>Wards affected:</b>	<b>All</b>	

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

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

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<b>3. Consultation</b>
<p>Consultation should include those that have an interest in the decisions recommended</p> <p>3.1 <u>Internal</u></p> <p>The Chairman of the Committee has been consulted in the preparation of this report as have officers who support the Committee, from Legal Services, Director of Finance and BPS.</p>

### 3.2 External

Paragraph 3.19 of the 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 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 trust which had an endowment of £0.353m. The Trust has general charitable objectives for the benefit of the citizens of Birmingham.
- 5.2 The latest position of the trusts permanent endowment for the first half year which has been received from CCLA (the Trust's appointed fund manager) is that the funds have decreased in value from £0.362m to £0.343m a fall in £0.019m. The Trust's unrestricted balance is £0.012m. Any interest earned from the trusts investments is transferred to the Trusts unrestricted balances.
- 5.3 The trust has a grants process whereby the Grants Panel (make up of Members of the Committee) approves grants in principal which are then formally ratified by Committee. The disbursement of grants has been fairly sporadic and ad hoc. To increase the levels of charitable activity there needs to be a greater awareness that funds are available.

The Trust's constitution is set out within the executed Trust Deed dated the 9<sup>th</sup> June 2012 (See Appendix 1). At paragraph 2.3 the Trustees are permitted to use both the income and capital from the Charity's finances to promote the objects and purposes of the charity. Paragraph 3.10 specifically provides the power to "to make grants and loans of money and give guarantees." Awarding grants in this manner would therefore be within the charity's constitution.

5.4 In order to increase the level of charitable grants the Trust awards, it is proposed that officers supporting the Charity:

1. Procure a dedicated resource from within existing finances for the Trust to deal with the administration of the Trust, principally around grants administration, this may be possible by reviewing the basis that other charities currently deal with administration, and establish the feasibility of expanding the service to include one or more other charities;
2. To obtain advice on the ability to enhance the unrestricted balance, (and therefore the principle source of grants awards) from either fund raising, or inter account transfers from the established permanent endowment, in accordance with statutory power to spend permanent endowment within sections 281 to 291 of the Charities Act 2011.

5.5 The existing Mechanics of Funding are set out at Appendix 2. Subject to the above, the following amendments are set out for the Committee's approval:

- 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.

There are potentially 3 custodian Trusts that may consolidate with "BMC" which based upon their current balances could see £0.026m transferred to the unrestricted fund and £0.156m transferred to the permanent endowment. If the above recommendation is approved, Committee may decide that a greater proportion of funds need to be transferred to "BMC" unrestricted funds, to increase the award of grants or vice versa.

- Annually transfer £0.050m from trust's endowment fund to the unrestricted funds to meet charitable objectives. In addition, with trust investments currently under-performing the funds endowment would be spent possibly within a short period of time.
- 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.

<b>6.</b>	<b>Evaluation of alternative option(s):</b>
6.1	<p>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:</p> <p>“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:</p> <ul style="list-style-type: none"> <li>•make sure the charity’s assets are only used to support or carry out its purposes</li> <li>•avoid exposing the charity’s assets, beneficiaries or reputation to undue risk</li> <li>•not over-commit the charity</li> <li>•take special care when investing or borrowing</li> <li>•comply with any restrictions on spending funds or selling land</li> </ul> <p>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.”</p>
<b>7.</b>	<b>Reasons for Decision(s):</b>
7.1	For Committee to approve the amendments to the Trusts Mechanics of Funding.

Signatures	<u>Date</u>
Director of Finance .....	
Chairman .....	

<b>List of Background Documents used to compile this Report:</b>
None

<b>List of Appendices accompanying this Report (if any):</b>
Appendix 1 – Trust Deed – BMC
Appendix 2 - Existing Mechanics of Funding