

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Culture, Recreation and Countryside
Date:	16 September 2014
Title:	Delegation of Duties to Hampshire Cultural Trust for the Red House Museum and Art Gallery and the Allen and Curtis Foundation
Reference:	6068
Report From:	Director of Culture, Communities and Business Services

Contact name: John Tickle

Tel: 01962 846000

Email: John.tickle@hants.gov.uk

1. Executive Summary

- 1.1. On 3 July 2014 the Executive Member for Culture, Recreation and Countryside approved the transfer of the Arts and Museums Service to the Hampshire Cultural Trust (HCT) and on 24 July the Executive Member Policy and Resources approved the final actions required to complete the transfer. These decisions authorise the removal of the Arts and Museums Service from the County Council and places delivery of the Service into the stewardship of an independent charitable trust. The County Council will hand over direct control of service delivery in October 2014. It will retain freehold responsibility for key assets including relevant properties and collections.
- 1.2. This report seeks approval to a delegation of Hampshire County Council's duties as sole Trustee of the Red House Museum and Art Gallery (Red House) and the Allen and Curtis Foundation (Allen and Curtis) to the Hampshire Cultural Trust, subject to the formal acceptance of the delegation by the HCT Board at its Board meeting on 23 September 2014.

2. Background

- 2.1 Hampshire County Council (the Council) wishes to delegate its duties in relation to the operation of Red House and Allen and Curtis (the Museums) to the Hampshire Cultural Trust. The Council is currently the sole Trustee of both Museums, pursuant to Schemes made under the Charities Act 1960.

- 2.2 The Council's preferred option is for the Hampshire Cultural Trust to operate the Museums in the same way that it operates the other museums and galleries transferring to the Trust. This will include taking the same responsibilities for the maintenance of the buildings occupied by the Museums as proposed under the generic lease for the other Council museum premises and employing those staff members (currently employed by the Council) who operate the Museums.

3. Delegation of the operation of the Museums

- 3.1. In order to complete the transfer of the operation of the Red House and Allen and Curtis, the Council wishes to put in place a form of delegation by the Council of its duties as trustee of the Museums (or certain of those duties) to the Hampshire Cultural Trust. Whilst the Council would be delegating certain duties to HCT it would still remain liable for those duties as trustee of the Museums and would remain responsible for submitting all returns to the Charity Commission.
- 3.2 The Council has sought specialist legal advice from Dentons on how this may be achieved. In the case of the Red House, this may be achieved through the operation of Section 11(3) of the Trustee Act 2000. This provision allows the Council to delegate the functions of the Red House.
- 3.3 The Allen and Curtis Scheme contains a specific power of delegation, which is subject to the condition that the Executor of William Herbert Allen or his/her successor is represented on the body formed to manage the delegated trust's activities. This power of delegation, rather than Section 11(3) of the Trustee Act 2000, continues to apply. It will be necessary for the Council to contact the successor to the Executor of WH Allen to ascertain whether the successor wishes to be involved in the management of the Allen and Curtis and to obtain consent to this arrangement proceeding. The successor to the Executor of WH Allen is currently a member of the Alton Museums Partnership and that group has been closely briefed on the development of the Hampshire Cultural Trust proposals.
- 3.4 Specialist legal advice has been obtained in relation to the risks associated with a delegation by the Council of its duties in respect of these Museums and a summary of the advice received is set out in the exempt Appendix C.

4. Funding for the Museums post-delegation

- 4.1 The Council will wish to ensure that in delegating its duties to the Hampshire Cultural Trust that the grant money received from the Council is allocated appropriately in respect of the Red House and Allen Curtis for the operation of these Museums to fulfil the delegated duties. The Management and Funding Agreement will provide the funding to HCT for the operation of the Museums, in the same way that it receives money to

operate the other galleries and museums which are to be transferred from the Council.

4.2 There are two potential solutions to ensure this:

a) Provide the money to the Hampshire Cultural Trust under the Management and Funding Agreement without ring-fencing the payments for Red House and Allen and Curtis, but place the Trust under a fiduciary duty in relation to the Red House and Allen and Curtis Trusts, such that it will be obliged to have regard to their interests and not place those before their own well being.

b) Have separate ring fenced payments for both of Red House and Allen and Curtis which specifies that the Trust may only use such grant money in accordance with the objects of each respective charity. The Trust would need to provide annual accounts to the Council showing it had applied the ring fenced payment for each of the Red House and Allen and Curtis and how it had done so.

(The exempt Appendix C contains a summary of the specialist legal advice received in relation to the funding options.)

4.3 Either option a) or option b) is considered to satisfactorily meet the duties of the Council as sole Trustee, but our recommended option is a) as this will be the simpler to administer and to deliver.

4.4 It is recommended at this time that, as the Council is the sole Trustee of both Trusts, the Council continues to manage the investments for the Red House and Allen and Curtis Trusts with the income from those investments continuing to support the funding of the Hampshire Cultural Trust for the respective Museums.

5. Conclusion

5.1 The County Council has confidence that Hampshire Cultural Trust will support and manage the Museums referred to in this report very effectively. However, due to the fact that these Museums operate as charities under pertinent legislation it is important to regularise these arrangements accordingly. The recommendation set out in this report seeks to secure these arrangements in a suitable fashion.

5.2 The proposals are subject to the requirements set out in this report and to the Board of the Hampshire Cultural Trust accepting the delegation of the fiduciary duty (option a.). The Trust Executive officer will recommend that the Trust Board accepts the delegation subject to the continued provision of funding to support the Red House by Hampshire County Council, Dorset County Council and Christchurch Borough Council and by Hampshire County Council to support the Allen and Curtis Foundation to enable the Trust to exercise its functions.

6. Recommendation

- 6.1 That the Executive Member for Culture, Recreation and Countryside agrees to the delegation of duties of the County Council as sole Trustee of the Red House and Allen & Curtis to the Hampshire Cultural Trust, subject to the Trust Board accepting the fiduciary duty in relation to the Red House and Allen and Curtis Trusts under option a) outlined in section 4.2 of this report.

Integral Appendix A

**CORPORATE OR LEGAL INFORMATION:
Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Improvement plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Renaissance SE Hub		17/07/2008
Renaissance SE	920	10/09/2009
Hampshire Arts and Museums Service – Planning for the Future	1637	08/07/2010
Hampshire Arts and Museums Service – Planning for the Future	2154	17/11/2010
Hampshire Arts and Museums Service – Planning for the Future		28/01/2011
Hampshire Arts and Museums Service – Planning for the Future		08/03/2011
Hampshire Arts and Museums Service – Planning for the Future	2994	08/07/2011
Hampshire Arts and Museums Service – Planning for the Future	3374	04/11/2011
Hampshire Arts and Museums Service – Planning for the Future	3374	20/01/2012
Hampshire Arts and Museums Service – Update on the Fully Integrated Merger (FIM) Project (Towards a Hampshire Solent Cultural Trust)	4414	21/01/2013
Hampshire Arts and Museums Service – Towards a Fully Integrated Merger with Winchester City Council (museums), establishing a Hampshire Solent Cultural Trust	3637	25/09/2013
Hampshire Arts and Museums Service - Fully Integrated Merger establishing a Hampshire Solent Cultural Trust – Estates and Property management proposal	5358	12/12/2013

Update on the Hampshire Solent Cultural Trust	5630	06/03/2014
Transfer of the Arts and Museum Service to the Hampshire Cultural Trust	5859	03/07/2014
Transfer of the Arts and Museum Service to the Hampshire Cultural Trust	5860	24/07/2014
Direct links to specific legislation or Government Directives		
<u>Title</u>		<u>Date</u>

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

Integral Appendix B

IMPACT ASSESSMENTS

1. Equalities Impact Assessment:

Impact for staff transferring to the Trust:

Staff from both Councils have been involved in the development of the Trust. During the implementation phase staff and union representatives have been kept informed and consulted throughout with regular staff briefings and communications. These have covered the formal TUPE consultation and Trust management structure. Staff feedback has been responded to in the design of the management structure and during the implementation the staff from both Councils have been involved where possible in workshops and discussion planning for the future, including visioning sessions.

No staff are being made redundant. All the current staff working within the arts and museums service will transfer to the Trust under their existing terms and conditions and within their current roles. The transferring staff are able to remain within the Local Government Pension Scheme. The Winchester City Council staff will join the headquarters base at Chilcomb but no other staff are asked to change their work location as part of the transfer.

Impact for the public:

There are no plans to reduce opening hours, close venues, or bring in charges to public arts, museums and heritage venues in Hampshire (currently operated by the two founding partner authorities) as part of the transfer arrangements. Therefore there are no known negative impacts perceived on the public and stakeholders associated with this proposal. While current service provision levels cannot be guaranteed in perpetuity there are no proposals to reduce them in this decision and the judgment taken is that the Trust model will offer the best opportunity to sustain them when further significant local authority budget savings are required. Positive impacts to groups of people are likely as a result of the Trust being established. For example, it may be possible to provide events and exhibitions that appeal to a small section of the community, such as a small geographical area, young people, older persons, people with disabilities and to provide better access to cultural services by minority groups.

Charities have a legal duty to comply with the Equality Act 2010 and the Trust will be required to adopt an appropriate equalities policy. It will also be subject to the requirements of grant giving organizations in relation to Equalities.

The establishment of a charitable trust secures the greatest opportunity for resilience of Hampshire arts and heritage services for the long term. The Trust will bring together the two organisations including staff, collections and buildings. The establishment of an independent trust to manage and develop arts, museums and heritage services will attract external investment and develop an organisation with a strong regional and national profile. It is hoped that the Trust will raise the profile of the Hampshire region arts and heritage services and increase audiences through improved quality of public programmes, marketing and the digital offer. Any surplus revenue funding will be reinvested into front line delivery of services. In the long term the Trust will deliver savings to the founding local authorities.

2. Impact on Crime and Disorder:

The County Council has a legal obligation under Section 17 of the Crime & Disorder Act 1998 to consider the impact of all the decisions it makes on the prevention of crime. The proposals in this report have no impact on crime and disorder.

3. Climate Change:

- i. How does what is being proposed impact on our carbon footprint / energy consumption? Not applicable

- ii. How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? Not applicable

Delegation of duties to Hampshire Cultural Trust for the Red House Museum and Art Gallery and the Allen and Curtis Foundation

Reasons this Appendix is not for publication

Appendix C is not for publication as it contains exempt information within Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 being Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. Further, it is considered that, in all the circumstances, the public interest in maintaining this exemption outweighs the public interest in disclosing this information. While there may be a public interest in disclosing this information, namely that it would provide information on the legal advice received by the County Council, it is felt that on balance this is outweighed by other factors in favour of maintaining the exemption, namely disclosure of the advice would be prejudicial to the free and frank provision of legal advice to the County Council.