

**CHARITABLE TRUSTS, BEQUESTS AND TRUST FUNDS – DISTRIBUTION
ARRANGEMENTS**

1.0 EXECUTIVE SUMMARY

- 1.1 The Mid Argyll, Kintyre and the Islands Area Committee are Trustees for a number of Charitable Trusts, Bequests and Trust Funds. Officers continually seek to simplify and update processes where possible to ensure ongoing compliance with the original terms of the bequests and to reduce the administrative burden of the management and distribution. However, there remains a number of challenges, a number of the funds were established many years ago, and as a consequence of changes in society over time the intended beneficiaries of the bequests are no longer easily identified.
- 1.2 This paper invites the Trustees of the Campbell Bequest, the McNeil Bequest, the Macalister Mortification and the Fisher Bequest to consider distribution arrangements for each of these funds.

2.0 RECOMMENDATIONS

- 2.1 The Mid Argyll, Kintyre and the Islands Area Committee are asked to:
1. agree the proposals for distribution arrangements for the Campbell Bequest and the McNeil Bequest outlined within this report,
 2. note that a review of the updated distribution arrangements for the aforementioned funds will be undertaken and reported to the Area Committee following the first 12 months of operation;
 3. agree that applications be invited from suitable organisation for a one off project that would meet the terms of the Fisher Bequest and that on submission this proposal will be subject to consideration by the Area Committee; and
 4. note that officers are working towards preparing distribution arrangements for the Macalister Mortification for later consideration by members.

ARGYLL AND BUTE COUNCIL

**MID ARGYLL, KINTYRE AND THE
ISLANDS AREA COMMITTEE**

LEGAL & REGULATORY SUPPORT

6 March 2024

CHARITABLE TRUSTS, BEQUESTS AND TRUST FUNDS – DISTRIBUTION ARRANGEMENT

3.0 INTRODUCTION

3.1 The Mid Argyll, Kintyre and the Islands Area Committee are Trustees of 19 Charitable Trusts, Bequests and Trust Funds with an estimated unrestricted balance of around £139K. This report invites Trustees to consider distribution arrangements for 4 of these funds.

4.0 RECOMMENDATIONS

4.1 The Mid Argyll, Kintyre and the Islands Area Committee are asked to:

1. agree the proposals for distribution arrangements for the Campbell Bequest and the McNeil Bequest outlined within this report,
2. note that a review of the updated distribution arrangements for the aforementioned funds will be undertaken and reported to the Area Committee following the first 12 months of operation;
3. agree that applications be invited from suitable organisation for a one off project that would meet the terms of the Fisher Bequest and that on submission this proposal will be subject to consideration by the Area Committee; and
4. note that officers are working towards preparing distribution arrangements for the Macalister Mortification for later consideration by members.

5.0 BACKGROUND

5.1 Due to the restrictive nature of some funds, specifically the Campbell Bequest, McNeil Bequest, the Macalister Mortification and The Fisher Bequest, difficulties had been faced in establishing suitable distribution arrangements. Consequently, Officers from Legal and Regulatory Support had been in dialogue with both The Scottish Charity Regulator (OSCR) and Lord Advocates Office in an attempt to

establish appropriate methods of distributing these funds, specifically using provisions within the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 and The Public Trusts (Reorganisation) (Scotland) (No.2) Regulations to transfer the resources to charities and trusts that are better placed to meet the terms of each of the funds.

- 5.2 Largely as a consequence of the lack of associated documentation of the funds, despite making all reasonable enquiries, very little progress had been made in this regard. Consequently officers are of the opinion that progress can only now be made by preparing bespoke, council administered, distribution models for the aforementioned funds. These arrangements have draw upon existing models of distribution, which have been working well in other localities, to ensure maximum community benefit.

6.0 CAMPBELL & MCNEIL BEQUESTS

- 6.1 The Campbell and McNeil Bequests were both established to benefit the poor of the Parish of Kildalton and Oa. At the time of the original bequests the benefactors would have been clear about who the intended beneficiaries would be. This is however, rather more difficult to quantify today, and it may be useful for trustees to refer to appendix 1, which offers some guidance and definitions of poverty which can be broader than simply a lack of funds.
- 6.2 Given the similarities of the Bequests in terms of the intended beneficiaries and the defined locality it is suggested that a single application process is used, this will serve to lessen the administrative burden. While a single application form would be used it will be clear that the form relates to both Bequests. Applications will be considered by Trustees on a quarterly basis, as required, with recipients receiving awards via bank transfer thereafter.
- 6.3 For the avoidance of doubt the parish of Kildalton and Oa is separated from Kilarrow by an irregular line running from Laggan to Proag and follows the windings of several small streams, forms the south east portion and about one-third of the island of Islay, terminating at the Mull of Islay or of Oe [Oa], applicants must live within these boundaries. The map of the parish can be found at appendix 2.
- 6.4 On the basis that Trustees wish to manage the resources of the Funds, Trustees should establish eligibility criteria that must be met before applications will be considered.
- 6.5 Care needs to be taken by the Trustees to ensure that the Funds are not unintentionally depleted by broad acceptance criteria. It is proposed that applying 'is in receipt of means tested benefits' as the eligibility criteria would be likely to have the effect of increasing both the number of applications and the overall burden on the Fund and therefore more detailed specification is proposed.
- 6.6 Consequently, it is proposed that the application be invited from where the income of the household is below £250 per resident in the household per week.

- 6.7 It is proposed that the same eligibility criteria be applied to those seeking an award from both Bequests. This would ensure that the Bequests are only accessible by those individuals and families on a low income. However, the application form will ask for specific details as to why they are facing financial hardship at the time of submitting the application.
- 6.8 It is further proposed that in order to be considered eligible applicants must be over the age of 16.
- 6.9 It is proposed that awards are set at £50 for individuals and £100 for families. It is also recommended that applicants receive a maximum of a single award each calendar year.
- 6.10 As of 30/03/2023 the balance of the Campbell Bequest stands at £2941 which comprises of £50 restricted funds and £2891 non-restricted, the McNeil Bequests comprises of £100 in restricted funds and £4141 in non-restricted. Combined the total amount available to benefit the Parish of Kildalton and Oa stand at over £7k.
- 6.11 It should be noted that the level of interest gained by the Fund is low, however there is a significant amount available in the unrestricted funds. It is recommended that there should be no limit to the amount which can be awarded in each calendar year providing that it does not exceed the amount available in the unrestricted funds. This would be reviewed annually and reported to the Area Committee.

7.0 Macalister Mortification

- 7.1 The Macalister Mortification was bequeathed in around 1897 and was to be invested in heritable security for the poor of the parish of Killean and Kilchenzie. As of 30/03/2023 the balance of the Macalister Mortification stands at £4723 which comprises of £1100 restricted funds and £3623 non-restricted.
- 7.2 Officers are currently working towards drafting distribution arrangements for this for later consideration by members.

8.0 The Fisher Bequest

- 8.1 The Fisher Bequest was established to support the poor of Inveraray. As of 30/03/2023 the balance of the Fisher Bequest stands at £398 which comprises of £50 restricted funds and £348 non-restricted. As this amount is considerably less than the other funds contained within this report the distribution arrangements outlined above would not be suitable in this instance as only a small number of awards could be made before the fund was exhausted.
- 8.2 Having taken cognisance of the limited amount of resources available within this fund it is suggested that Trustees invite suitable organisations to submit a proposal for a one off project that would seek to support the poor of Inveraray and that this be subject to consideration by the Area Committee.
- 8.3 The scope of the project and those that could benefit from it would be limited to the boundaries of the Parish of Inveraray of which the northern and larger portion

is traversed by the valleys of Glenshira and Glenaray, which converge towards the south. The map of the Parish can be found at appendix 3.

- 8.4 The total amount available would be no more than £348, if the project meets the expectations of the Trustees the full £348 would be made available with a moratorium thereafter placed on the fund. To ensure that funds have been used to meet the terms of the Bequest the successful applicant would be expected to submit an end of project monitoring form.

9.0 CONCLUSION

- 9.1 This report has outlined the current position in terms of financial and distribution arrangements of funds held in trust by the Area Committees. On approving the recommendations they will provide a clear community benefit while meeting our obligation of ensuring transparent and effective governance.
- 9.2 Each of the funds have been inactive for a number of years, this report seeks to address this and ensure that it provides a clear community benefit while meeting our obligation of ensuring transparent and effective governance.

10.0 IMPLICATIONS

- 10.1 **Policy** - Consideration of the questions raised will ensure that the intentions of the original bequests are honoured.
- 10.2 **Financial** - None, the Council acts as trustee for the Funds, it does not represent assets of the Council. However, there is a risk that the Council would have to repay each fund if an objection was raised as to the award/use of the funds.
- 10.3 **Legal** - Area Committees, as Trustees, must ensure that the distribution arrangements comply with the terms of each fund, failure to do so would result in the Council being liable.
- 10.4 **HR** - To proceed with reorganisation, in terms of section 10 or 11 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 would require the allocation of Officer time.
- 10.5 **Fairer Scotland Duty** - None
- 10.5.1 **Equalities – protected characteristics** – None
- 10.5.2 **Socio-Economic Duty** – None
- 10.5.3 **Islands** – None
- 10.6 **Climate Change** – None
- 10.7 **Risk** – Recent changes to the benefit system, and low interest rates may result in an oversubscription to the bequest. If there was an objection raised as to the use of the funds in a particular way, there is a risk that the Council could have to pay

the costs themselves and repay the Trust the costs. The level of risk is considered to be acceptable.

10.8 **Customer Service** – None

10.9 **The Rights of the Child (UNCRC)** – None

Douglas Hendry

Executive Director with responsibility for Legal & Regulatory Support

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Policy Lead - Councillor Alastair Redman

For further information contact: Stuart McLean, Committee Manager, 01436 658717,
stuart.mclean@argyll-bute.gov.uk

Appendices

Appendix 1 – Definitions of Poverty

Appendix 2 – Parish of Kildalton and Oa

Appendix 3 – Parish of Inverary