

REPORT OF THE MAYOR**LIQUIDATION OF THE LEARNING TRUST AND TRANSFER OF SURPLUS MONIES TO THE COUNCIL****9 December 2013****CLASSIFICATION:****Open****If exempt, the reason will be listed in the main body of this report.****WARD(S) AFFECTED****All Wards****CABINET MEMBER****Cllr Sophie Linden****Deputy Mayor****KEY DECISION****No****CORPORATE DIRECTOR****Gifty Edila, Corporate Director of Legal HR and Regulatory Services**

1. SUMMARY

- 1.1** This report requests the Mayor to agree to proposed amendment to the Learning Trust's (TLT) Articles of Association in order that the surplus monies remaining in the TLT's accounts, before TLT is voluntarily liquidated, can be distributed to the Council to carry out its educational functions. This report therefore records that the Council has been consulted in this regard as required by TLT's Memorandum of Association.

2. RECOMMENDATION

- 2.1** **The Mayor is asked to agree to the proposal from the Learning Trust's Board to amend the Learning Trust's Articles of Association, as proposed in their letter dated 19th November 2013, attached as Appendix 1. This is to allow the surplus funds held in the Learning Trust's accounts to be ultimately transferred to the London Borough of Hackney to discharge its statutory educational functions.**

3. BACKGROUND

- 3.1** TLT is a private company which is limited by guarantee and which is exempt from the usual legal requirement of the Companies Act 2006 to use the word "limited." This is because TLT's objects are the promotion of education and its Articles require its income to be applied in promoting these objects and prohibit the payment of dividends to its Members.
- 3.2** The current position of TLT Company is that the Council is the sole Member of TLT and the Council's Chief Executive, Corporate Director of Finance and Resources and Corporate Director of Children and Young People are the three Directors of TLT.
- 3.3** According to the latest TLT accounts, there are currently surplus funds in the Company in excess of one million pounds and Grant Thornton, the appointed liquidators, are able to prepare liquidation documents for the Company to be wound up. The Board of Directors of TLT have agreed that any surplus monies, upon TLT's dissolution, should be transferred to the Council as it is now discharging the statutory educational functions of the borough.
- 3.4** Currently TLT's Company constitution prevents such a distribution of monies to the Council as Clause 8 of TLT's Memorandum of Association provides that any surplus, "*shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other body or bodies, having objects similar to the Objects, chosen by the Secretary of State for Education and Skills in consultation with the Council at or before the time of dissolution and if that cannot be done then to some other charitable object.*" As the sole Member of the Company, therefore, the Council is currently unable to be distributed these surplus monies.

- 3.5** TLT's Board has therefore agreed in principle that the Articles of Association of TLT should be changed so that the Council is no longer the sole Member. Article 2 currently states, "The sole Member shall be Hackney Borough Council." Following advice from the liquidators and Legal Services, it has been provisionally agreed by the Board of TLT that this Article 2 should be replaced by the following wording, *"All Directors are automatically admitted as Members, and no person who is not a Director may be a Member. Upon a person ceasing to be a Director, that person shall automatically cease to be a Member. On the date these Articles come into force, any person who is a Director (but not a Member) shall be automatically admitted as a Member and any person who is a Member (but not a Director) shall be automatically removed as a Member."* The letter attached at appendix 1 demonstrates the Board's intentions and seeks the Council's agreement to this.
- 3.6** The effect of the amendment proposed above is that the Council would cease to be a Member upon the adoption of the new Articles and the three Directors would automatically become the three Members of the Company enabling the surplus monies to be transferred to the Council.
- 3.7** Clause 9 of the Memorandum of Association states that, "...No change may be made to the Memorandum or Articles of Association without the prior written consent of the Secretary of State for Education and Skills and without consultation with the Council."
- 3.8** While the Secretary of State has agreed in principle to approve the transfer of funds to the Council (in a letter from him to TLT dated 30th October 2013) he has stated that he cannot do this while the Company's Memorandum of Association prohibits this. The proposed amendment to the Articles will lift this prohibition.
- 3.9** Once this report has been agreed by the Mayor, the Secretary of State for Education will be informed of the proposed way forward in order to obtain his written consent to amend the Articles (as required by the Memorandum). After obtaining this consent the amendment will be formally approved by TLT's Board of Directors.

4. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES

- 4.1** As set out in this report the latest accounts of the TLT which have been updated in readiness for formal liquidation of the company show that there is a surplus to be distributed of circa £1.3m (subject to any remaining corporation tax liability).
- 4.2** It is intended that upon liquidation this sum is transferred to the Council as the body that now provides the educational services of the Borough and therefore having objectives similar to that of the TLT, in line with the Memorandum of Association for the TLT and agreed in principle with the Secretary of State.

4.3 Any costs associated with the changes required and the formal liquidation of the company have already been provided for within the Company's accounts with such provisions for liabilities already transferred to the Council.

5. COMMENTS OF THE CORPORATE DIRECTOR OF LEGAL, HR AND REGULATORY SERVICES

5.1 The legal comments are contained within the main body of this report.

APPENDICES

Appendix 1 – Letter from the Board of Directors of TLT to Ms Gifty Edila

Report Author	Graham White 020 8356 6234 Graham.White@Hackney.gov.uk
Comments of the Corporate Director of Finance and Resources	Michael Honeysett 020 8356 3332 Michael.honeysett@hackney.gov.uk
Comments of the Corporate Director of Legal, HR and Regulatory Services	Sean Eratt 020 8356 6012 Sean.Eratt@Hackney.gov.uk

Signed by the Mayor of Hackney:

Date: