

Report subject	Funding Agreement to support Russell-Cotes Art Gallery & Museum to become an Independent Trust
Meeting date	7 February 2024
Status	Public Report
Executive summary	<p>In January 2023, Council voted to apply to the Charity Commission for the transfer of sole trusteeship from the Council to a new corporate entity, a Company Limited by Guarantee (CLG) to operate and manage the charity under Section 73 of the Charities Act 2011.</p> <p>This report details the significant progress made in respect of identifying a mutually acceptable financial settlement between BCP Council as the existing Trustee and the new Trustee, subject to the Charity Commission scheme and Parliamentary Order of State.</p>
Recommendations	<p>It is RECOMMENDED that Cabinet approves:</p> <ul style="list-style-type: none"> A. An upfront grant of £2million to enable the Russell-Cotes to establish themselves as an independent organisation B. Asset Transfer of the study centre, Exeter Road storage to the Charity (estimated value £500,000), subject to appropriate overage clause. C. A one-off grant of £250,000 for building maintenance D. Transfer of earmarked reserves (currently £299,000 but subject to change prior to vesting date) E. To delegate authority to the Director of Customer, Arts and Property to conclude the details of the transfer in consultation with the Director of Finance, Director of Law and Governance and Portfolio Holder for Customer, Culture and Communications.
Reason for recommendations	To make financial provision to ensure that the governance change of the Russell-Cotes is financially and organisationally sustainable
Portfolio Holder(s):	Cllr Andy Martin, Portfolio Holder Customer, Culture, Communications
Corporate Director	Jess Gibbons, Chief Operations Officer
Report Authors	Matti Raudsepp, Director of Customer, Arts & Property
Wards	Bournemouth Town Centre Ward
Classification	For Decision

Background

The Significance of the Russell-Cotes

1. The Russell-Cotes is a unique and exceptional place. The building and its contents were gifted to the people of Bournemouth and opened as a museum in 1922. The collections have been retained complete and in context. The house (Listed II*) is the sole example in Bournemouth of a bourgeois Victorian residence surviving with original contents, room fittings and décor. The relationship between the collection, the house and garden make the Russell-Cotes not just an iconic heritage asset in Bournemouth but of exceptional international significance and arguably unique in the UK.
2. The 40,000 item collection includes oil paintings, objects d'art and world cultures. It is one of the few southwest museums to hold a nationally significant collection of fine art, notably Victorian and Pre-Raphaelite. The world cultures collection is unique in retaining its authenticity by remaining part of the East Cliff Hall.
3. The Museum attracts 50,000 paying visitors per year and is one of the most significant all-year visitor attractions in Bournemouth (Number 2 on Trip Advisor (after the beach)). It is also the most significant arts and heritage provision for residents in Bournemouth, and its sustainable future contributes directly to the **Council's 'Vision and Ambitions'** of **'Our Place and Environment'** by providing a sustainable, distinctive and iconic heritage site in the centre of Bournemouth. It contributes to the key theme of 'high quality of life for all' within the **'Our People and Communities'** strand by providing opportunities for access to culture for inspiration, education, wellbeing and social interaction and cohesion for residents.

Governance

4. The Russell-Cotes Art Gallery and Museum has a unique governance arrangement as a charity (no 306288) for which BCP Council is sole trustee. This arrangement dates back to 1908 when the charity was established by Deed of Gift. It was codified in the 1985 Bournemouth Borough Council Act, but has been little altered in the intervening 100 years and does not meet the standards required of a modern charity. It impacts negatively on its operations, accreditation and ability to raise much needed funding and therefore impedes its legal requirement to deliver its charitable objectives.
5. As a result of concerns from Arts Council England (the museum's accrediting body) and the Charity Commission, the governance arrangements have been the subject of detailed and focussed reviews (funded by Arts Council England and the National Lottery Heritage Fund) since 2018. In 2019 the Russell-Cotes Management Committee recommended to Bournemouth Council that the charity be fully externalised and the process has been continuing since.
6. In August 2022, the Charity Commission invited BCP Council, as Trustee, to request a change of sole trusteeship under Section 73 of the Charities Act 2011. At their meeting of 10 January 2023, BCP Council voted to make the request and this has now been formally submitted to the Charity Commission. The full reasoning for the decision is articulated at length in the Council report of 10 January 2023.

Principles of a Financial Settlement

7. A new Company Limited by Guarantee (CLG) with a Board of Directors would be established as the dedicated corporate trustee. It will assume total responsibility for the charity and its assets and BCP Council would relinquish all liabilities:

Asset	Current Status	Future Status
Collection of Fine and Decorative Arts	Held in permanent endowment of the Russell Cotes Art Gallery & Museum registered charity but with the Council as sole trustee and “administrator”.	Held in permanent endowment of the RCAGM charity with the new CLG as sole trustee
Historic house and freehold land	Held as permanent endowment of the Russell Cotes Art Gallery & Museum registered charity but with the Council as sole trustee and “administrator”.	Held in permanent endowment of the RCAGM charity with the new CLG as sole trustee
Study Centre (Exeter Road building)	Freehold owned by BCP Council and used by the Museum since the 1990s	Transferred to the new CLG as sole trustee
Staff	TUPE arrangements would be made according to legal requirements	Transferred to the new CLG as sole trustee

8. A draft Business Plan has been drawn up for the new CLG Trustee, with a budget to cover the next 10 years and proposing an application to the National Lottery Heritage Fund for a major capital grant to renew the historic house and redevelop the modern wing to provide greater opportunity to generate income and become financially sustainable. The proposal suggests that all functions would be managed by the new CLG either in house or by using external contractors, but not BCP Council. A NLHF funding bid is anticipated to be well received and it is considered that there is a strong probability of CLG securing substantial funds to address the museum’s condition and the opportunities that exist for its future success.
9. In 2023/24, BCP Council provides £530,000 of funding directly to the Russell-Cotes with an additional £100,000 provided through central and support costs (for building maintenance, energy costs, HR, payroll etc).
10. As a new CLG, the Trustee needs to receive a financial settlement that will enable it to succeed and thrive recognising that it will:
 - have no reserves or endowments.
 - take on very significant risks, due to the poor state of the building etc.
 - take time for the new organisation to embed itself and generate additional funds through fundraising and income generation.
 - need to feel confident that it can take on the liabilities and risks and be able to recruit a Board of Directors on that basis.
 - need to attract funders who will need to be assured of its financial probity and medium term liquidity.
11. The Council has a duty to provide a reasonable level of funding:
 - The CLG will be taking on the Council’s historic liabilities.
 - the Council must be seen to be acting in the best interests of the Charity, even whilst facing its own financial challenges.
 - If the new organisation fails, the Council will likely face reputational risk given its role and responsibilities in the museum history.

Funding Agreement

12. To meet the requirements set out in Paras 10 and 11 above, the Agreement proposes the following:
- A one-off £2,000,000 up-front grant to enable the Russell-Cotes to establish itself as an independent organisation.
 - A grant of £250,000 for building maintenance.
 - The Study Centre (value £500,000) is transferred to the new Trustee.
 - The transfer of specific Russell-Cotes restricted reserves held by the Council at their vesting day valued (£299,000 as at December 2023)

Upfront Grant of £2million to enable the Russell-Cotes to become independent

13. This grant replaces the annual budget of £530,000 excluding central support services (as at 2023/24), but allows the new CLG to taper its use according to need, spending more initially when the need is greater and then reduce as other funding becomes available through increased income generation or fundraising. Furthermore, it:
- Provides necessary cashflow provision.
 - Enables the museum to utilize any interest to the benefit of the museum.
 - Provides match-funding for further grants which will enable the museum to leverage further funding.
 - Provides complete financial transparency which will appeal to potential funders.

Grant for Building Maintenance

14. This recognises the poor state of the building and one of the drivers for externalisation is to invest in the building and use any funding to leverage further support. An update on the Specialist Building Condition Survey of 2020 outlines the required work estimated to cost £4million. This budget helps in the short term, whilst in the medium term the Russell-Cotes anticipates embarking on a major capital project to restore the house and renew the ancillary services and visitor provision to deal with longer term and systemic issues and generate income.
15. In the longer term, the Council is relieved of its very significant responsibilities to maintain the historic house and collection.

Study Centre

16. The Study Centre is a separate building to the museum, situated on Exeter Road. This is well-located but in very poor condition and needs maintenance work. There is a potential buyer interested in the site, however, the complexity and cost of relocating the museum collection currently in storage at the site would be significant and time consuming. By transferring this asset to the new CLG, this allows the Charity to find a solution which is suitable for its needs and time frame and releases the Council from a very major project in finding and funding the relocation of a very significant collection.

Restricted Funds

17. These funds currently stand at £299,000 and represent some historic funding pots as well as more recent accumulations of reserves and as yet unspent grants. These funds will change over time and the restrictions related to their spend will be monitored and maintained.

Timeline for Delivery

18. The Commission will now draw up a scheme outlining the new arrangements for the Charity, to be agreed with the new and old Trustee, and publicised locally. It will be agreed with parliamentary drafters and then will require an Order of State to be drafted and for the Scheme to be laid before Parliament.
19. The Russell-Cotes has been advised by the Charity Commission to expect the process to take between 18 months and 2 years ie suggesting a likely vesting day of 1 October 2025 or 1 April 2026. Whilst every effort within the council's control will be made to expedite things, the vesting date will ultimately be determined by the parliamentary aspect of the process.
20. A timeline to deliver the transition from Council service to a fully independent trust is scheduled to take up to a year, including TUPE, establishment of new ICT systems etc. The budgeted costs of this transition are covered by a grant from the NLHF (£96,000) and reserves (£20,000).
21. However, this proposal requires the support of the Charity Commission, DCMS and Parliament. Whilst they have all offered their support for this governance change, the timeline for the drafting of the Scheme and the laying of the Order of State in Parliament are outside the control of the Council and the Charity Commission and lie within the remit of Parliament and its drafters and schedulers. This is further complicated by the unknown timing of a General Election which will pause business for a number of months.
22. A proposed vesting date of 1 October 2025 is being targeted by the Council and Russell-Cotes, but it could change. Nevertheless, both the Council and new Trustee are motivated to progress externalisation as quickly as possible, subject to the constraints that exist.

Summary of financial implications

23. The recommendations transfer all Russell Cotes responsibilities including financial from the council to the new Company Limited by Guarantee (CLG).
24. To aid the orderly transfer to independence the council is being asked to provide a funding package as follows:
 - a. A £2m of one-off funding to support the Russell Cotes in establishing themselves as an independent organisation. Grant to be made at vesting date or earlier as agreed with Section 151 officer.
 - b. The transfer of the study centre asset for nil consideration. This is effectively a £500k donation to the CLG, although consideration will be given to an appropriate 'overage' clause, to be agreed with the Section 151 officer.
 - c. A grant of £250,000 for building maintenance.
25. Additionally, the Council would transfer the vesting day balance of any specifically earmarked Russell Cotes reserves to the CLG. The value of these as at December 2023 currently stands at £299k.
26. Following independence, Russell Cotes will be responsible for its own operations and specifically expenditure the council would have undertaken previously on the charity's behalf, including but not limited to, banking, insurance, maintenance, accounting and tax affairs including VAT, as well as any pension liabilities and cost implications arising from staff transferring due to TUPE.
27. As a result of Russell-Cotes becoming independent, the council can remove the £530k net annual budget used to directly support the Russell-Cotes from its medium term financial plan (MTFP).
28. Furthermore, annual savings of £96k can be realised from associated indirect support services such as insurance.

29. Additional annual benefits of £46k may be able to be realised from associated indirect support services, however these will not be cashable savings as these resources would be redeployed to other council needs.
30. From a VAT point of view, the one-off funding together with a transfer of reserves will not be treated as a consideration for any supply and VAT will not be included within the transferred sums.
31. Furthermore, no stamp duty land tax (SDLT) should be payable on the transfer of the study centre as charitable relief under the Schedule 8 to the Finance Act 2003 should apply, providing the property will be used for qualifying charitable purposes.
32. Russell Cotes has factored into its business plan the continued costs of borrowing that will remain in the Council after independence. Effectively Russell-Cotes will pay the Council an annual fee to cover these costs until the debt has been fully repaid.

Summary of legal implications

33. The legal implications are referred to in the report.

Summary of human resources implications

34. The Russell-Cotes has ten full-time and four part-time permanent staff and nine zero hours staff, totalling 17 FTE. It is envisaged that all will transfer to the new entity.
35. The staff would be subject to TUPE regulations and as such would transfer with their existing terms and conditions across to the new entity. There is a legally defined process that would begin once any decision had been made, supported by BCP Council HR teams.
36. A detailed review of the pension options for existing and new staff would be made during the Transition period.

Summary of sustainability impact

37. None - See 10 January 2023 Council Report.

Summary of public health implications

38. There are no public health implications anticipated as a result of this report.

Summary of equality implications

39. None anticipated as this is a governance change. The proposal to externalise the museum was subject to the council's EIA Panel scrutiny on 13 December 2022

Summary of risk assessment

40. The key risks currently identified are around the robustness of the transition funding from NLHF, and the outlined financial package in the context of the uncertainty caused by high levels of inflation, additional costs particularly associated with the building and the extended time frame for externalisation. These issues are the subject of ongoing monitoring and development and a focus on the need for fundraising.
41. There is a concern around officer capacity to support the work involved in externalisation – financial, property, HR etc at this time.
42. The extended time frame for transition to externalisation will result in potentially two years where the Council remains Trustee and therefore retains legal responsibility

for the Russell-Cotes and the new CLG may be established but will be limited in the scope of its activities. This period will need to be carefully managed to ensure sustained Council support and legal advice will be sought to identify the scope of the new CLG to ensure that this period is used positively.

43. A full risk register is being maintained and monitored through the Externalisation Steering Group and Russell-Cotes Management Committee.

Background papers

RCAGM Agenda and Papers **29 March 2019**

RCAGM Agenda and Papers **22 January 2020**

RCAGM Agenda and Papers **8 January 2021 (Restricted)**

RCAGM Agenda and Papers **22 October 2021**

RCAGM Agenda and Papers **4 May 2022 (Restricted)**

RCAGM Agenda and Papers **24 October 2022 (Restricted)**

BCP Council Agenda and Papers **10 January 2023**

Appendices

Appendix 1 – Russell-Cotes Externalisation Timescale