

BRIEFING NOTE			
MEETING OF THE:	COMMUNITY SAFETY AND PROTECTION COMMITTEE		
DATE:	12TH APRIL 2022		
PRESENTING OFFICER:	CHIEF FIRE OFFICER		
RESPONSIBLE OFFICER:	RIA GROVES	REPORT AUTHOR:	RIA GROVES
OFFICERS CONSULTED:	STRATEGIC LEADERSHIP TEAM		
TITLE OF REPORT:	FUTURE OF MERSEYSIDE FIRE AND RESCE HERITAGE AND EDUCATION TRUST		

APPENDICES:		
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Purpose of Report

1. To update Members on the operations of the Merseyside Fire and Rescue Heritage and Education Trust ('the Heritage Centre') and in doing so bring forward suggested ways to manage it moving forward, which negate any associated risk whilst demonstrating the ongoing benefits of maintaining the viability of the Heritage Centre.
2. The importance of maintaining the Authority's heritage for future generations has been recognised most recently when the Service received the 'Freedom of the City of Liverpool' on the 11th March 2022.

Recommendation

3. It is recommended that the Members;
 - a) note the current position of the Heritage Centre and implications for the Authority;
 - b) approve the proposal for the Authority to offer to take it over the day to day running of the Heritage Centre; and
 - c) approve, subject to the Heritage Centre's agreement, the incorporation of the Heritage Centre within the Authority.

Introduction and Background

4. Merseyside has a 180-year proud tradition of firefighting and has often been at the forefront of innovation and new technology during that time. Through the dedication and perseverance of its volunteers over the years the Heritage Centre

is a valuable local history resource and archive for pictures, documents and artefacts that chart the history of the fire service and demonstrate the contributions to the fire service has made to its community over the years.

5. In 2015, the Heritage Centre was registered at the Charity Commission with charity number 1161346. The Heritage Centre occupies the Authority's property under the terms of a licence dated 17 October 2012 entered into between the Charity's trustees ("Trustees") and the Authority ("Licence").
6. The Authority and the Heritage Centre also entered into a memorandum of understanding on 27 April 2017 which sets out the basis on which the Authority and the Charity collaborate ("MOU"). The MOU is not legally binding however it set out how both organisations could compliment one another's aims.
7. The Heritage Centre regularly receives visits from local history groups, serving and ex-members of the service and schools. A number of the ex-members who have visited have had dementia and have found their visits to be therapeutic by helping them to remember events from times past. Schools make use of the museum to support various topics of study including 'People Who Help Us', 'The Great Fire of London' and 'World War 2'.

The Heritage Centre's current status

8. The Heritage Centre is an unincorporated organisation which means that it has charitable status, but does not have its own legal identity. The Heritage Centre is run by the Trustees and volunteers. The Heritage Centre is reliant upon funding from the Authority and donations made from visitors to the museum and at events.
9. The Authority currently hold a budget of £8,850 for the Heritage Centre to call off which covers insurance, supplies, uniforms required each year. During the year budget is also allocated from other cost centres in relation to fuel costs and variable costs in relation to the FM Contractor. Any additional donations collected over the year may pay for additional items the Heritage Centre may seek to acquire.
10. The donations obtained by the Heritage annually cannot be solely relied upon to fund the requirements the Heritage Centre has in order to sustain its existence and continue to contribute to the community. The impact of Covid19 has only served to reinforce this issue with events being cancelled the museum closed for a substantial period.
11. The Authority has also contributed by assisting the Heritage Centre with the provision of ICT equipment and assistance with policies and procedures and advice.
12. The Trustees have acknowledged without the Authority's financial contribution and resources in kind the Heritage Centre could no longer continue to operate.

Risks involved for the authority with the current close connections to a charity

13. There are risks involved in the current relationship between the two organisations as the Heritage Centre is a charity with one of the main risks residing when the Authority is deemed to be acting as a trustee.

Control and management of the Charity

14. S.177 of the Charities Act 2011 defines a trustee as being “*the persons having the general control and management of the administration of a charity*”. This definition does not require such individuals to be registered with the Charity Commission as being a trustee.

Authority’s control and management of the Heritage Centre as a Charity

15. There is a concern that the Authority (or potentially certain individuals employed by the Authority) has “general control and management of the administration” of the Heritage Centre.
 - (a) the Heritage Centre occupies the Authority’s property under the terms of the Licence. The Licence can be terminated on three months’ notice which does not provide security of tenure to the Charity and gives the Authority control over where the Charity is based;
 - (b) the Authority was involved in setting up the Heritage Centre up as a charity;
 - (c) the Authority provides regular funding to the Heritage Centre as referenced in paragraph 8 above;
 - (d) the Heritage Centre uses the Authority’s assets including ICT equipment and intellectual property for branding;
 - (e) Some of the Trustees are connected to the Authority being ex-employees/Members;
 - (f) the Heritage Centre’s volunteers wear the Authority’s uniform, have incorporated the Authority’s policies, procedures and risk assessments and there are references to contacting fire control in the event of an RTC and adhering to MFRS core values and policies within a volunteering agreement;
 - (g) the Heritage Centre shares a website with the Authority.

16. The Heritage Centre does have a separate financial structure to the Authority and separate tax basis but it could be very difficult to argue that there is no control by the Authority.
17. The Heritage Centre as a general comment appears to lack autonomy, which may mean that the Authority is deemed to have “general control and management of the administration of the Charity”. This means that the Authority could be viewed as a trustee of the Heritage Centre, with all the obligations and duties such a position entails, for example requirements not to have a conflict of interest, to act in the Heritage Centre’s best interests, and ensure that the Heritage Centre is carrying out its purposes for the public benefit.
18. Consequences of the Authority being deemed a Trustee and any failure by the Authority when acting as a Trustee to comply with the duties of a charity trustee are:

If a trustee does not act in the best interests of a charity and this results in loss, serious risk of loss or other damage to the charity, the Commission expects the trustees to put things right, and to report it as a serious incident. If the trustees seriously breach their legal duties, resulting in serious harm or exposure for the charity, the Commission may:

- a) open a statutory inquiry; or
 - b) remove the charity from the register. This could result in financial liabilities.
 - c) legal consequences such as fines or penalties;
 - d) trustee liability if the charity suffers a loss because of a breach of trustee duty; or
 - e) HMRC investigation and penalties
19. The Heritage Centre is an unincorporated charity so trustees could face personal liability. This is unlimited. Trustees are usually protected from personal liability to a charity if they have made honest mistakes but can show that they have acted reasonably, with care and in good faith. This further complicates the matter if the trustees have acted on the basis of and in accordance with their policies or procedures which are in fact the Authorities.

Volunteers and employees

20. There is also a reputational risk to the Authority, particularly with the use of the Authority’s uniform by the Charity’s volunteers that to the public the actions of the volunteers (who could potentially even hold themselves out to be volunteers of the Authority if they are confused) are those actions endorsed by the Authority and in the event a volunteer of the Heritage Centre behaves inappropriately it may well impact on the Authority’s own brand as well as dealing with any fall out from any complaints.

Options for the future

Separation from the heritage centre

21. To mitigate the potential of the Authority being deemed a trustee of the Heritage Centre, the Authority should assert its separate identity from the Heritage Centre and reduce the level of assistance it provides to the Heritage Centre in its current form including:
 - (a) Separation of finances
 - (b) Establish terms pursuant to which the Heritage Centre is able to use the intellectual property of the Authority or prevent any such use
 - (c) Amend the website to ensure there is no confusion that the Heritage Centre is not part of the Authority
 - (d) The Licence should be reviewed and amended to reflect the actual current use of the premises particularly any shared facilities to separate the two entities.
 - (e) Separation of ICT infrastructure
 - (f) employees and representatives of the Authority should refrain from participating in decision making at all;
 - (g) The Heritage Centre drafting its own policies and procedures rather than using those already drafted by the Authority would be more suitable.
22. While this may reduce the risk to the Authority this option will fundamentally impact the Heritage Centre's ability to continue to remain viable as there is a lack of resource to support the Heritage Centre to be able to administratively function and access professional services.
23. Sadly, many small fire services museums have closed due to lack of support and separation from the Authority would present a real risk of the same happening to Merseyside's Heritage Centre. The Heritage Centre has benefited from support from the Authority and has in return preserved historical items and promoted the work of the Service to the community at large. The Heritage Centre have indicated they are keen to continue to work with the Authority to further enhance the educational aspects of the work.

Winding up the charity and the authority taking control of the centre

24. The alternative option is if the Heritage Centre should choose to do so it could wind up the charity and the Authority could take control of the Heritage Centre.
25. This option would allow the Heritage Centre to continue to contribute to the history of the fire service on Merseyside and beyond, connect to other areas of the community officers from the Authority may not ordinarily have access to, to deliver the Authority's visions and aims as well as help to disseminate and communicate significant fire safety and prevention strategies in order for the Authority to continue to help and protect its community.

26. The Authority taking control of the Heritage Centre would also permit the Heritage Centre to access all of the Authority's resource in terms of health and safety, equipment and professional advice. The volunteers would also become the Authority's volunteers amassing a broader base for the Heritage Centre to continue to thrive. It would also be recommended that greater governance of the Heritage Centre be put in place and updates reported back to Members.
27. The Authority taking control of the Heritage Centre also means it can control and manage the risks it is currently exposed to and it can ensure that the Heritage Centre has a long-term future in so doing.
28. The Authority can then explore ways in which the Heritage Centre can become an embedded part of the Service, not only to maintain the rich cultural heritage of the Service, but also to allow the Heritage Centre to further develop opportunities to engage with local communities in innovative ways that connect directly with the Authority's plans and strategies.
29. If Members were agreeable to take over the control of the Heritage Centre, the Trustees would then need to consider this proposal and any such decision to wind up the charity must be a decision of the members of the Charity only.

Equality and Diversity Implications

30. There are none directly relating to this report.

Staff Implications

31. Staff have already provided their time and resource to assist the Heritage Centre any further implications may relate to ensuring the Authority is in a better position as to the its level of risk

Legal Implications

32. The Authority may find itself liable for claims against the charity in event the charity's insurance fails or there is a subsequent claim by the insurers or even the individuals directly against the Authority.
33. The Authority may not be insured to cover any such claims relating to the Heritage Centre and as a result of the Authority's close relationship with them. Such claims may fall outside the current scope of the policy cover.
34. The remaining legal implications are contained within the report.

Financial Implications & Value for Money

35. The Authority currently allocate £8,850 to the Heritage Centre.

36. Any resulting claims (including the defence of such) would incur a financial cost.
37. If the Heritage Centre sought to wind up the charity and agree to the Authority taking control it would incur an increase in costs in tax as currently the locations the Heritage Centre is based on the Authority's premises.
38. the Heritage Centre and Crosby Fire Station currently attracts tax relief for those areas due to its charitable status/ as the Heritage Centre would no longer be a charity this would increase the business tax rates by £10,332.10 based on 2022/23 figures. The increased costs can be contained within the overall Authority business rates budget.
39. In the event the Heritage Centre was to be wound up as it could not sustain itself independently of the Authority, the Authority would incur these costs in any regard.

Risk Management, Health & Safety, and Environmental Implications

40. The risks are contained within the report.

Contribution to Our Vision: *To be the best Fire & Rescue Service in the UK.*

Our Purpose: *Here to serve, Here to protect, Here to keep you safe.*

Our Heritage is an incredibly important part of who we are and the impact that we have on our communities.

BACKGROUND PAPERS

CFO/111/11 If this report follows on from another, list the previous report(s)

GLOSSARY OF TERMS

ARA Any Relevant Acronyms used in the report or technical terminology