

ISLE OF ANGLESEY COUNTY COUNCIL	
<b>Report to:</b>	ISLE OF ANGLESEY CHARITABLE TRUST
<b>Date:</b>	22 SEPTMBER 2015
<b>Title of Report:</b>	PROPOSED VARIATION OF THE TRUST DEED
<b>Purpose of Report:</b>	TO CONSIDER THE RECOMMENDATION OF THE TRUST'S OFFICERS TO MAKE AN AMENDMENT TO THE TRUST DEED
<b>Report Author:</b>	TRUST SECRETARY
<b>Action:</b>	TO RESOLVE TO ACCEPT THE RECOMMENDATION AND TO MAKE THE VARIATION PROPOSED TO THE TRUST DEED

1 Amendment of Trust Deed

- (1) The question was previously raised whether it would be open to the Trustee to execute a deed of variation to amend the Trust Deed dated 5 June 1990 (the **Trust Deed**) in order to replace references in the Charitable Purposes to the former Borough of Anglesey with references to the Isle of Anglesey including Holy Island (the **Isle**). The area of the former Borough (the **Borough**) is co-terminous with the geographical area of the Isle.
- (2) The reason for the question was the possibility that the area of the County Council as local authority would be enlarged in the future and it was feared that this might affect the legal area of operation of the Trust. It was therefore felt desirable to alter the terminology used in the Trust Deed in order to confine the Trust's area of operation to the Isle.

## 2 Legal Advice

Written advice has been obtained from Weightmans LPP and from Francesca Quint, barrister of Radcliffe Chambers and is as follows:

- (1) A change in the Trustee's name and/or area of administrative responsibility as local authority will not automatically have the effect of altering the Trust's area of operation.
- (2) However, any possible confusion about the extent of the Trust's area of operation would be avoided if the terms of Schedule B to the Trust Deed (which defines the Charitable Purposes including the area of operation) were altered to refer to the Isle instead of referring to the Borough.
- (3) The Trust Deed (a copy of which is appended to this report – Appendix A) contains in clause 8 a power for the Trustee to vary the terms of the Trust Deed provided that this does not affect the Charitable Purposes or cause the Trust to cease to be a Charitable Trust.
- (4) The method of effecting such an amendment as prescribed by clause 8 is a Deed of Variation executed by the Trustee. Such a Deed of Variation was executed on 10 October 1996 in order to confer on the Trustee a power to dispose of land belonging to the Trust (copy appended to this report – Appendix B).
- (5) The proposed amendment would not 'affect' the Charitable Purposes because the area of operation is already the Isle, which is co-terminous with the Borough and would in no way cause the Trust to cease to be a Charitable Trust. It is therefore open to the Trustee to effect the proposed amendment.
- (6) The Charity Commission for England and Wales has already confirmed this position to Weightmans LLP – see appended e-mail from Weightmans to the then Trust Secretary dated 29 April 2015 (Appendix C).

## 3 Draft Deed of Variation

A draft Deed of Variation has been prepared and is appended to this report (Appendix D).

#### 4 Recommendation

Officers recommend that the Trustee resolve as follows:

(1) That the Trust Deed be varied by the substitution in Schedule B of the Trust Deed dated 5 June 1990 of the words 'the Isle of Anglesey (including Holy Island)' for the words 'the Borough' wherever they occur.

(2) The Council's Head of Function (Council Business) and Monitoring Officer be authorised and instructed to execute in the name and on behalf of the Trustee a Deed of Variation in the attached form.

(3) The original Deed of Variation be kept with the Trustees' records relating to the Trust and a certified copy of the executed Deed of Variation be sent promptly to the Charity Commission for England and Wales.

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TRUST DEED



Date

5th June

1990

Party

YNYS MON/THE ISLE OF ANGLESEY BOROUGH COUNCIL of Council Offices, Llangefni, Anglesey LL77 7TW ("the Council").

Recitals

- (A) The Council wishes to establish the Trust (as defined in clause 2.5) and will act as the original trustee thereof.
- (B) The Council will, from the date of this deed, hold the assets specified in Schedule A hereto upon the trusts declared herein and it is apprehended that further money assets or property may be transferred to the Trustees (as defined in clause 2.6) to be held upon such trusts.

Operative Part

1. Name

The trust hereby constituted shall be called The Isle of Anglesey Charitable Trust.

2. Definitions

In this deed the following expressions shall have the following meanings:-

- 2.1 "the Borough" shall mean the Borough of the Isle of Anglesey;
- 2.2 "Charitable" shall mean charitable according to the law of England and Wales;

- 2.3 "the Charitable Assets" shall have the meaning ascribed to it in paragraph 3 of Schedule C to this deed;
- 2.4 "the Charitable Purposes" shall mean the charitable purposes which are set out in Schedule B to this deed;
- 2.5 "the Trust" shall mean the trust constituted by this deed;
- 2.6 "the Trustees" shall mean the Council and any other person or persons for the time being holding office as a trustee of the Trust and the expression "a Trustee" shall mean any one of the Trustees; and
- 2.7 "the Trust Fund" shall mean the said assets specified in Schedule A to this deed together with all other money assets or property which may at any time after the date of this deed become vested in the Trustees upon the trusts of this deed (including accumulations of income) and the investments from time to time representing the same respectively.

3. Income and capital to be applied for charitable purposes

- 3.1 The Trustees shall hold the income of the Trust Fund in trust to pay or apply it from time to time in promotion of the Charitable Purposes in such manner as the Trustees think fit (but with power to accumulate income as provided in clause 4 below).
- 3.2 Notwithstanding the foregoing trust of income, the Trustees may at any time or times at their discretion pay or apply the whole or any part or parts of the capital of the Trust Fund in promotion of the Charitable Purposes in such manner as the Trustees think fit.

3.3 In applying income or capital at any time or times under clauses 3.1 and 3.2, the Trustees may, instead of applying it directly for the Charitable Purposes, pay or transfer it to any other trust, company, association, foundation or other body (corporate or unincorporate) established for purposes which are exclusively Charitable, if the Trustees in their absolute discretion consider that such a payment or transfer will promote the Charitable Purposes. In any such case, the receipt of the person professing to be the treasurer or other proper officer of the recipient body shall be a full discharge to the Trustees who shall not be required to see to the proper payment or application of the property paid or transferred.

4. Power for Trustees to accumulate income for 21 years

The Trustees shall have power, during the period of 21 years (or such other longer period as may be allowed by law) from the date of this deed, to accumulate any income of the Trust Fund not immediately required for the Charitable Purposes, to invest such accumulations as part of the Trust Fund and, if they think fit, to apply the same from time to time during the said period of 21 years (or such other period) as if such accumulations were income of the Trust Fund arising in the year in which such application is made, provided that the Trustees may at any time in writing under their hands revoke the power of accumulation conferred on them by this clause.

5. Council and non-charitable purposes excluded from benefit

Notwithstanding anything to the contrary expressed or implied in this deed, no discretion or power conferred hereunder on the Trustees or any other person shall be exercised and no provision of this deed shall operate so as to cause any part of the income or capital of the Trust

Fund to become payable to or applicable directly or indirectly for the benefit of the Council or for any purpose which is not Charitable.

6. Appointment of Trustees and power to act by majority

6.1 The power of appointing new or additional trustees of this deed shall be vested in the Trustees.

6.2 If at any time the Trustees are three or more in number, any question to be decided by the Trustees shall be decided by a majority of the Trustees, provided that Trustees dissenting from any such lawful decision taken as aforesaid shall nevertheless concur in executing all such instruments and performing all such acts as shall be necessary for the purposes of giving effect to such decision.

7. Accounts, records and minutes

7.1 The Trustees shall keep proper accounts and records showing all receipts and payments and containing all such information as may be appropriate to the administration of the Trust.

7.2 The Trustees shall cause proper minutes to be made of all decisions taken by them and any such minutes, if purporting to be signed by all the Trustees (or all the Trustees attending a meeting at which a decision is taken), shall be sufficient evidence without any further proof of the facts therein stated.

8. Power to amend or add to the provisions of this deed

The Trustees shall have power by deed or deeds revocable or irrevocable to supplement or alter or amend any of the



provisions of this deed, provided that no such supplementation, alteration or amendment shall

8.1 affect the Charitable Purposes hereby declared or

8.2 cause the Trust to cease to be Charitable.

9. Administration

The administrative and other powers, directions and provisions set out in Schedules C and D to this deed shall have effect as part of this deed and any power or discretion or entitlement therein contained shall (unless the contrary is expressly stated) be conferred on the Trustees.

10. Headings

The tables of contents annexed to this deed and the headings to the clauses and paragraphs of this deed are inserted for reference purposes only and shall not affect the interpretation of any provision hereof.

IN WITNESS whereof this deed has been duly executed on the date first mentioned above.

SCHEDULE A

The Initial Trust Fund

£250,000	Exchequer	9 <sup>3</sup> / <sub>4</sub> %	1998
£246,375	Treasury	10%	2001 'A'
£270,000	Treasury	8%	02/06
£165,000	Treasury	13 <sup>1</sup> / <sub>2</sub> %	2004/08

10,000	RTZ Corporation	£0.10
5,000	Glaxo Holdings	£0.50
10,000	Ladbroke Group	£0.10
4,500	Imperial Chemical Industries	£1.00
6,000	BAT Industries	£0.25
10,000	Lonrho	£0.25

£4,982,000      Overnight Investments  
£ nil              Cash

*km*  
*M*  
*DA*



SCHEDULE B

The Charitable Purposes

The Charitable Purposes of the Trust shall be the general public benefit of persons resident in the Borough in such manner as may be Charitable and, in particular but not so as to limit the generality of the foregoing:-

1. ~~The provision of amenities and facilities for the general public benefit of persons resident in the Borough and, without limiting the generality of the foregoing, such amenities and facilities may include:-~~

- 1.1 public and village halls and community centres and other community facilities, including such centres and facilities for persons resident in the Borough who are in particular age groups or who are unemployed, sick or disabled;
- 1.2 facilities to train persons resident in the Borough for skilled and semi-skilled employments, trades and professions;
- 1.3 facilities for the relief of sick persons resident in the Borough;
- 1.4 societies and voluntary organisations providing sporting, recreational or leisure time facilities which are available to the generality of persons resident in the Borough;
- 1.5 schools, playgroups, churches and chapels serving persons resident in the Borough; and
- 1.6 arts festivals, arts centres, art galleries, museums, theatres and libraries situated within the Borough.

2. The preservation for the general public benefit of persons resident in the Borough of buildings of aesthetic, historical, architectural, constructional or scientific interest or importance.
3. The conservation and protection of land or other property within the Borough which is of aesthetic, historic or scientific value.
4. The protection and safeguarding of the environment and countryside and the control and reduction of pollution within the Borough.
5. The sponsoring of publications and educational research projects the contents or results (as the case may be) of which are likely to be of educational benefit to members of the public resident in the Borough.

SCHEDULE C

Powers of the Trustees

The Trustees shall have the following powers :-

1. Power to retain property and investments

To retain any property or investment from time to time comprised in the Trust Fund in its existing state or condition so long as the Trustees think fit, with power at any time at their discretion to sell the same or any part thereof.

2. Wide investment powers

To invest or lay out the net proceeds of any such sale and any other capital monies comprised in the Trust Fund upon loan at interest or in the purchase or upon the security of such stocks, funds, shares, securities or property of whatsoever nature and wheresoever situate and whether involving liability or not and whether producing income or not and whether jointly held with other persons or not (including the repair, maintenance and development of any freehold, leasehold or any other property comprised in the Trust Fund) as the Trustees shall in their absolute discretion think fit, to the intent that the Trustees shall have the same full and unrestricted powers of investing and transposing investments as if they were entitled thereto beneficially.

3. Power to acquire assets including freehold and leasehold properties for use in specie

From time to time to acquire by purchase, lease, exchange or otherwise any assets, equipment,

chattels, personal property or any freehold or leasehold land and premises, whether or not involving liability and whether or not producing income, ("the Charitable Assets") to be used or occupied for the Charitable Purposes and any rights or privileges which the Trustees may think necessary or beneficial for the promotion of the Charitable Purposes and to erect insure (in full value and against any risk), repair, decorate, alter, extend or equip (as the case may be) the Charitable Assets and any buildings used or occupied or intended to be used or occupied for the Charitable Purposes.

4. Power to dispose of properties

If for any reason the whole of or any part of the Charitable Assets from time to time used or occupied for the Charitable Purposes should, in the opinion of the Trustees, become unsuitable or not be required for the Charitable Purposes, or if the Trustees should consider it necessary or beneficial to do so, to sell, exchange or lease, mortgage or turn to account the same, with such consents (if any) as are by law required.

5. Power to replace properties

To apply the proceeds of sale of the Charitable Assets and the rents and profits thereof in the purchase of other assets, equipment, chattels, personal property or any freehold or leasehold land and premises to be used or occupied for the Charitable Purposes and to erect, repair, decorate, alter, extend or equip (as the case may be) the same for the Charitable Purposes or to apply such proceeds of sale or rents and profits for the Charitable Purposes.

6. Power to regulate management of properties

To make regulations for the management of any property which may be acquired.

7. Power to borrow

To borrow money on the security of the Trust Fund or any part thereof and to pay or apply the money so raised in any manner in which the Trust Fund may be paid or applied, subject to such consents (if any) as may be required by law.

8. Power to open a bank account

From time to time to open and maintain a bank account or bank accounts in the names of the Trust at such bank or banks as the Trustees shall from time to time decide and at any time to pay any monies forming part of the Trust Fund to the credit of any such account or accounts or place the same on deposit with any bank or banker.

9. Power for Trustees to delegate investment management

To employ as a professional investment manager any person who is entitled to carry on investment business under the provisions of the Financial Services Act 1986 and to delegate to any such manager ("the Manager") the exercise of all or any of their powers of investment on such terms and at such reasonable remuneration as the Trustees may think fit but subject always to the following conditions:-

9.1 the delegated powers shall be exercisable only within clear policy guidelines drawn up in

advance by the Trustees and within the powers of investment conferred by this deed;

9.2 every transaction carried out by the Manager under delegated powers shall be reported to the Trustees within 14 days;

9.3 the Trustees shall be entitled at any time and without notice to review revoke or alter the delegation or the terms thereof; and

9.4 the Trustees shall be bound to review the arrangements for delegation at least once in every 12 months.

10. Power for the Council to delegate to its members its authority in general and its specific power to sign cheques

(While the Council is the sole trustee of the Trust) to delegate to such members of the Council (being at least three in number or two in the case of the signing of cheques or the withdrawal or transfer of sums from bank accounts) as the Council shall think fit such of its powers and discretions relating to the management and administration of the Trust as it may think fit, including in particular (but without prejudice to the generality of the foregoing power to delegate as aforesaid) the authority to sign such cheques as the Council may permit and the authority to withdraw or transfer sums from such account or accounts as aforesaid and in that behalf the Council shall be entitled to make the necessary arrangements with a bank or banks and a copy (certified on behalf of the Council) a resolution of the Council purporting to effect any such delegation shall be conclusive evidence in favour of a bank that the person or persons named in such resolution has or



have the authority stated therein, provided that all decisions and action under the delegated powers stated herein must be reported to the Council as soon as possible.

11. Power to make rules relating to the management and administration of the Trust

To make such rules and regulations for the management and efficient administration of the Trust as the Trustees may think fit, so far as such provisions relate only to administration and management and such rules and regulations are authorised by law and are consistent with the terms of this deed.

12. Power to employ and pay

To employ and pay any person or persons (not being a Trustee) to supervise, organise and carry on the work authorised by the Trustees and, as employers of staff, to make all reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees and their widows and other dependants.

13. Power to raise funds

To raise funds and invite and receive contributions from any person or persons whatsoever by way of loan, covenant, legacy, subscription, donation and otherwise for the furtherance of the Charitable Purposes, provided that the Trustees shall not undertake any permanent trading activities in raising such funds.

14. Power to arrange meetings

To arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures, seminars and training courses.

15. Power to appoint nominees

To cause the whole or any part of the Trust Fund to be held in the name of a company as nominee on behalf of the Trustees and to pay any proper expenses in connection therewith out of the capital or income of the Trust Fund.

16. Power to further charitable purposes

To do all such other lawful things as are necessary for the promotion of the Charitable Purposes.

SCHEDULE D

Directions to the Trustees and other  
Administrative Provisions

1. Duty to insure

The Trustees shall take all reasonable and necessary steps to insure to its full value the trust property of whatever nature held by them, such expenditure to be defrayed out of the capital or income of the Trust Fund.

2. Indemnity for Trustees acting in good faith

In the execution of the trusts hereof, no Trustee shall be liable for any loss to the property of the Trust arising by reason of any improper investment made in good faith (so long as he shall have sought professional advice before making such investment) or for the negligence or fraud, wrongdoing or wrongful omission of any agent employed by him or by any other of the Trustees (provided reasonable supervision shall have been exercised), although the employment of such agent was strictly not necessary, or by reason of any mistake or omission made in good faith by a Trustee or by reason of any other matter or thing other than wilful and individual fraud, wrongdoing or wrongful omission on the part of the Trustee who is sought to be made liable.

3. Trustees not to be reimbursed except as mentioned

Subject to the provisions of paragraph 4 of this schedule, no Trustee shall be paid any salary or fees or receive any remuneration or other benefit in money or money's worth from the Trust, provided that, notwithstanding clause 5 of this deed, nothing herein contained shall prevent any payment in good faith by the Trust:-

3.1 of reasonable and proper open market rent certified to the Trustees by a valuer for premises demised or let to the Trust by the Council; or

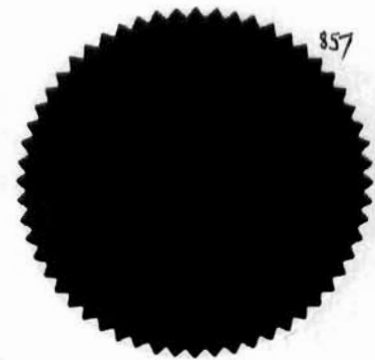
3.2 of reasonable out-of-pocket expenses incurred by any of the Trustees.

4. Professional trustees including trust corporation to be allowed to charge for their services

4.1 Any Trustee for the time being hereof (other than the Council), being a solicitor or other person engaged in any profession, shall be entitled to charge and be paid all usual professional or other charges for work done by him or his firm when instructed so to act in that capacity by his co-trustees on behalf of the Trust.

4.2 A trust corporation may be appointed as a Trustee or as a custodian trustee upon such published scales as shall from time to time apply.

THE COMMON SEAL of the YNYS )  
MON/THE ISLE OF ANGLESEY )  
BOROUGH COUNCIL was hereunto )  
affixed in the presence:- )



Chief Executive ..... *[Signature]* .....  
Two Members of the Council ..... *[Signature]* .....  
..... *[Signature]* .....

**THIS DEED OF VARIATION** is made the 10th day of October

One thousand nine hundred and ninety six by CYNGOR SIR YNYS MÓN/ISLE OF ANGLESEY COUNTY COUNCIL ("the Trustee") of Council Offices Llangefni Ynys Môn

**WHEREAS**

(1) This Deed is supplemental to the Isle of Anglesey Charitable Trust Deed ("the Trust Deed") dated 5th June 1990 whereby the Isle of Anglesey Charitable Trust ("the Trust") was constituted

(2) Under and by virtue of s49 of the Local Government (Wales) Act 1994 the Trustee is the Trustee of the Trust as successor Authority to Ynys Mon - Isle of Anglesey Borough Council

(3) The Trustee is desirous of amending the terms of the Trust Deed as hereinafter set out

**NOW THIS DEED WITNESSETH AS FOLLOWS:-**

1. In pursuance of its powers under clause 8 of the Trust Deed and all other powers it enabling the Trustee hereby amends clause 4 of Schedule C of the Trust Deed so that the same shall be henceforth read and construed as set out in the Schedule hereto in substitution for clause 4 of Schedule C in the Trust Deed
2. The Trustees hereby declare that the amendment hereby effected does not affect the Charitable Purposes declared in the Trust Deed and that the amendment does not cause the Trust to cease to be Charitable
3. Subject as herein contained the Trust Deed shall remain unaltered and in full force and effect

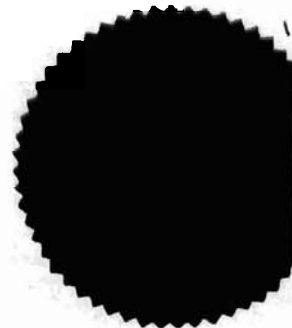
**TRUST**

THE SCHEDULE

Power to dispose of properties

If for any reason the whole of or any part of the Charitable Assets from time to time used or occupied for the Charitable Purposes should, in the opinion of the Trustees, become unsuitable or not be required for the Charitable Purposes, or if the Trustees should consider it necessary or beneficial to do so, to sell, exchange, mortgage, turn to account or lease the same or grant an option, easement or other property right in respect of the same, with such consents (if any) as are by law required

THE COMMON SEAL of )  
Cyngor Sir Ynys Môn/Isle )  
of Anglesey County Council )  
was hereunto affixed in the  
presence of



*[Handwritten signature]*

*Trust Secretary*

TRUST

From: Philip Heath [mailto:Philip.Heath@Weightmans.com]

Sent: 29 April 2015 11:43

To: Richard P. Jones

Cc: June Williams

Subject: Isle of Anglesey Charitable Trust (Weightmans Ref:380473/8)

Dear Mr Parry Jones,

I am pleased to report that I have now heard back from the Charity Commission and firstly they responded that having checked their records they can confirm that the Commission was aware that the charity made an amendment to its Trust Deed by Deed of Variation dated 10 October 1996.

Secondly, and more importantly, they have confirmed that they have no objection to the proposals to amend the trust deed to remove reference to the area of the council from the deed and make reference to the area of benefit as the Isle of Anglesey.

The next stage is to draft the deed of variation to record the changes together with a covering report for the trustees to approve.

Kind regards,

Philip Heath

Partner

Corporate Birmingham

Weightmans LLP

Tel: 0121 632 6100 / EXT 108134

DDI 0121 200 8134

[philip.heath@weightmans.com](mailto:philip.heath@weightmans.com)

[www.weightmans.com](http://www.weightmans.com)

THIS DEED OF VARIATION made the [date] by CYNGOR SIR YNYS MÔN/ISLE OF ANGLESEY COUNTY COUNCIL (the Trustee) of Council Offices Llangefni Ynys Mon

WITNESSES AS FOLLOWS

Background

- (1) The Isle of Anglesey Charitable Trust, a registered charity, was established by a Trust Deed dated 5 June 1990 (the Trust Deed)
- (2) This Deed is supplemental to
  - (i) the Trust Deed and
  - (ii) a Deed of Variation dated 10 October 1996 (the 1996 Deed)
- (3) The Trust Deed contains in clause 8 a power of variation subject to specified restrictions
- (4) The Trustee wishes to amend Schedule B to the Trust Deed in the manner following
- (5) The Trustee has been advised that the proposed amendment will not affect the Charitable Purposes of the Trust as set out in the said Schedule B and is therefore within the scope of the said power of variation

Operative Part

- 1 All references to 'the Borough' in Schedule B to the Trust Deed shall henceforth be references to the Isle of Anglesey (including Holy Island).
- 2 In all other respects the provisions of the Trust Deed as affected by the 1996 Deed remain unchanged.

Executed as a deed by Cyngor Sir Ynys Môn/Isle of Anglesey County Council