

**THE MACFARLANE TRUST  
TRANSITION AND CLOSURE ISSUES**

**Background:**

The Macfarlane Trust is a charitable trust governed by a consolidated Deed of Trust the objects of which require the application of its funds for the relief of persons suffering from haemophilia as a result of receiving infected blood products in the United Kingdom who are suffering from AIDS and who are in need of assistance or their spouse etc.

There is a power of dissolution in the Deed of Trust which requires the approval of two thirds votes of Trustees present and voting.

The dissolution provisions are in a fairly normal form in that they require any remaining funds to be applied to one or more bodies established for charitable purposes within the same or similar objects or in direct furtherance of the objects. The unusual feature is that an application in those ways at dissolution requires the consent of the Founder which is the Secretary of State for Health acting through the Health Protection Division of the Department of Health.

It should be noted is that this provision requiring Founder consent applies in the event of dissolution and therefore in the period prior to a formal dissolution the Trustees are not required to get the Founder consent for the application of those funds provided the way they are using them directly or indirectly advances the objects of the Trust.

**Alternatives following the end of Department of Health funding:**

The Department of Health has indicated that it will cease to make the regular payments for distribution by the Macfarlane Trust. However that will leave the Trust with substantial reserves and it needs to be considered how best, in the absence of future funding from the Department of Health, to use their reserves to promote their objects. A number of possible routes forward exist:

**1. Distribution to beneficiaries:**

The funds of the charity could simply be distributed to the beneficiaries in a way that Trustees felt best met their needs.

An alternative to this would be to create a programme addressing particular needs which Trustees felt were not being addressed through the regular Department of Health funding and disperse the money through that programme.

Any programme of funding would be likely to require some administration and the charity would have a number of alternatives. It could seek to retain any staff who did not wish to transfer to Newcastle to carry out the programme funding or it could contract the programme funding to one of a number of existing charities who undertake this sort of work. Typically such a charity would agree with the Trustees of the Macfarlane Trust the nature and scope of the distribution and then charge a fee for their work in administering that distribution. The Trust would normally receive regular reports on the

distribution process and would wind up at the completion of the programme. Distribution of any small balance left would require the "Founder" consent.

2. Distribution to beneficiaries using a third party:

An alternative would be to find a charity whose objects were compatible with those of the Macfarlane Trust and provide a grant to that charity as restricted funds on the basis that it was distributed by that charity to the beneficiaries of the Macfarlane Trust on an agreed basis. It is also likely that a commercial organisation could be found to undertake the same function. However in our experience charities generally feel more comfortable with entrusting such work to a charity that is regulated by the Charity Commission.

If a charitable or non-charitable partner was to take the funding that partner could under the terms of the agreement be required to provide other assistance for example store any documents the Trustees might need access to over say a six year post closure.

3. Re-focusing the Macfarlane Trust work on a short or longer term basis:

Trustees could take the view that the best way to assist the beneficiaries would be to continue the Trust. They could treat the reserves in effect as an endowment fund and use the income from the fund and perhaps its capital over a period of time to fund a range of projects or individuals in a way that benefitted the beneficiaries. The Macfarlane Trust would become a grant making trust with a particular specialist focus.

4. Merger:

Many charities facing a radical change in the basis of their funding such as this, feel that merging with another appropriately focused charity is the best way to go forward. As part of the terms of such a merger a number of provisions could be put in place for example allowing members of the Macfarlane Board to join the board of the merged entity or ring fencing funds for particular purposes.

Merger could be achieved without dissolving the Trust, for example by the Trust becoming a subsidiary of the proposed merger partner. If the Trust was not dissolved the merger would not require Founder consent.

**Assets:**

The assets of the Macfarlane Trust consist not only of cash and investments but the right to the eventual repayment of a number of loans to beneficiaries. This right to repayment is a valuable asset and could be treated in the same way as the other assets of the Trust. The difficulty however arises that in looking at the options open to Trustees since the funds will not be available until the due repayment date on the loan they are not therefore available for immediate distribution Option 1 would not effectively deal with this. If Options 2, 3 or 4 were pursued either the right to repayment under the loan could be assigned which would be the case if Option 2 was preferred, or the right to repayment could remain within the Trust under Option 3 or 4 and be dealt with once repayment became available.

**Summary:**

If the Macfarlane Trust resolves to dissolve itself then it can only dispose of its monies in ways approved by the founder. If however it disposes of its assets or utilises its assets prior to dissolving then it will only require the founder's consent for the disposal of whatever small sums remain after the projects undertaken have been achieved.

**Further advice:**

This report summarises some alternatives which could be developed or amended. Trustees may find a meeting helpful to explore the issues more fully.

**James Sinclair Taylor**  
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