

**Private and Confidential****THE MACFARLANE TRUST****Minutes of the meeting held on Thursday 1<sup>st</sup> November 2018****967.18 Present:**

Alasdair Murray, Chair (AM)

Matt Gregory (MG)

GRO-A

(via teleconference)

Vanessa Martlew (VM)

(via teleconference)

Pat Spellman (PS)

**Attendees:**

Gill Edelman, Interim CEO (GE)

Victoria Prouse, Operations Director (VP)

**Apologies**

Apologies were received from Paul Biddle (PB) who has shared his views with GE to feed in to the meeting.

**968.18 Conflicts of Interest**

There were no noted conflicts of interest relating to items on the agenda

**969.18 Minutes of Previous Meeting**

The minutes of the meeting held on 23<sup>RD</sup> July 2018 previously circulated in draft form (Part A & B), were agreed as a correct record.

**970.18 Matters Arising**

**Former minute 957.18** – The Board received a final update regarding the one-off reserves grants scheme from the Director of Operations who reported that:

- In total 65 grants were agreed through the reserves scheme including those agreed by appeal subsequent to the meeting on 26 March 2018.
- Two grants were not taken up, one due to a beneficiary being unable to organise purchase, and one, due to beneficiary moving properties.
- As at 31 August the majority of grants had been claimed. In outstanding cases an update from beneficiaries had been sought and an extension of the deadline had been agreed for those with mitigating circumstances,
- As at 22 October 2018 there was one outstanding grant yet to be paid as the beneficiary had been very unwell and had been to organise and source the work and equipment awarded. An extension to use the grant had been provided in this case. VP noted that there were three outstanding grants and all payments would be made or any residual grant written off by end November.

- The total amount spent as at 22 October 2018 was £424,546 with £12,559.47 written off or unclaimed. The total expenditure was less than anticipated due to the two unclaimed grants, and some items/work had cost less than the sums estimated and therefore the full grant was not needed.
- The office had received many acknowledgments thanking the Trust for its support in awarding the grant and the way in which the process for payment was administered. VP shared a selection of these with Trustees.

Trustees congratulated VP on running an effective grants scheme despite very limited staff and asked her to expedite the final outstanding payment as set out, or write this off if this proved impossible.

**Action:** VP to seek to finalise outstanding loan payment no later than end November 2018.

**Former minute 958.18** – Trustees noted that JB had completed negotiations with the landlord and that the lease for Alliance House offices had been assigned to the Macfarlane Trust. The rent and service charge had been paid to the end of February 2019 in advance and a sum of £46k paid into the Solicitor's client account as surety against the cost of dilapidations. GE reported that this calculation was formula based rather than linked to a schedule of dilapidations and that she would be appointing a surveyor to negotiate and settle the final costs of dilapidations, hopefully at a lower level.

**Former minute 959.18** – Trustees noted the latest response from Nadhim Zahawi MP regarding an outstanding beneficiary loan. It was agreed that a response was needed to reiterate the context to the loan, to correct inaccuracies in the letter and to advise the process for finalising and communicating about the assignment of outstanding loans from MFT to another organisation.

**Action:** GE to draft letter for the Chair's signature.

## 971.18

### Current Financial Position

#### Management Accounts:

The Board received the management accounts to end Q2 (September 2018) prepared by the Interim Director of Finance which showed:

- A year to date operating deficit of £36.3k and a net total income and expenditure deficit of £36.1k;
- Total fixed assets of £41.4k, total debtors of £353.7k (£72.8k due from DH this year to cover ongoing rent and dilapidations and £280.7k of beneficiary loans due within more than one year) and creditors of £22.3k. NB Creditors have reduced by £455k since March 2018 due to paying down £436.3k of grant commitments held at the year-end;

- Cash at bank and debtors of £1,020,507 which will reduce to £998,159 following outstanding grant and creditor payments;
- Total reserves of £1,321,174 the majority of which are free reserves (£1,291,198).

GE reported that PB had reviewed the management accounts and had no queries or concerns.

The Board noted the financial report.

#### **Bank Mandates:**

Trustees approved and signed revised mandates to include the Interim CEO as a bank signatory.

#### **Honeycombe Fund:**

Following receipt of an unrestricted donation, Trustees had designated this fund to provide support to widows and bereaved partners without children to achieve social financial independence. Having undertaken several mailings since 2005 publicising this fund, and a final grants programme in January 2018 there was now an outstanding balance of £27k. Trustees decided to remove the designation on the remaining funds so that they could be added to the general reserves which would form part of the transfer of residual funds to a legacy organisation.

**Action:** Interim Director of Finance to un-designate the Honeycombe Fund and transfer remaining £27k to free reserves.

### **972.18**

#### **Closure Project Plan and Expenditure forecast**

The Interim CEO who gave a brief CV highlighting her experience as both a permanent and interim CEO of several national health related charities. She thanked VP for assisting her in her induction and enabling her to hit the ground running.

GE highlighted the key tasks and target dates in the closure project plan:

- End November for transfer of assets and funds to the Terence Higgins Trust (if approved by Trustees) and transfer of data to Skipton Fund;
- End January 2019 for closure of the office.

GE noted that closure would be achieved as fast as possible but that not all elements were within the Trust's control, and that this timetable therefore allowed for some slippage to the end of February 2019 when the lease actually ends. GE reminded Trustees that her contract would end February 7<sup>th</sup> 2019 and that alternative cover might need to be arranged for the remainder of February. GE also set out the latest expenditure forecast of £123k to end February 2019 and asked for authority to commit additional items of

expenditure up to £10K where necessary e.g. legal costs, as it was not possible to anticipate all costs at this stage.

In relation to the forecast PS asked whether he was still a Trustee of MSPT 1&2. VP advised that when MSPT 2 was reconstituted post the Archer Report, the original Trustees including PS were replaced by two companies the Directors of whom were Peter Stevens and Sue Phipps.

Trustees approved the closure plan and forecast, and delegated authority to the Interim CEO to authorise up to £10K variance against forecast expenditure lines.

**973.18**

#### **Future of Macfarlane Trust**

The Interim CEO presented a report setting out her understanding of discussions to date regarding the future of the Macfarlane Trust, action taken since the last Board meeting, and further information regarding the potential transfer of funds and assets to the Terence Higgins Trust.

Further legal advice had now clarified the basis on which funds and assets might be transferred to the Terence Higgins Trust (THT), and whether or not beneficiary personal data might be shared with this organisation if necessary. It was now clear that:

- Trustees would be able to make a decision to transfer funds and assets to THT prior to the closure of the Macfarlane Trust subject to a restriction that the funds and assets transferred should only be expended in line with the objects in Macfarlane Trust's Deed and Scheme amendments i.e. for the beneficiaries and purposes as defined in the Scheme;
- A Deed of Gift relating to the transfer of funds and assets including a Deed of Assignment for outstanding beneficiary loans would need to be agreed/signed by both MFT and THT;
- The transfer of beneficiary personal data to support MFT's assignment of outstanding loans to THT would be covered under merger/takeover provisions in GPDR. In this scenario data subjects would not have a right to object but would need to be informed individually of such assignment;
- In relation to the transfer of funds to THT, it would be the responsibility of THT to determine how they would comply with the restrictions in the Deed of Gift. Unless there were justifiable reasons why THT had to have the data to manage the grant there would be no need for Macfarlane Trust to transfer any beneficiary personal data e.g. Services to support MFT beneficiaries could be provided on an open access basis and/or Macfarlane beneficiaries could access services by self-declaration and/or production of evidence that they were Macfarlane beneficiaries. If however, there were a need for THT to have some beneficiary personal data, then MFT could pass beneficiary data *sufficient to support the transfer of operations* without

beneficiary consent under merger and takeover provisions in GDPR as long as the purposes for which THT would use this data were the same as the purposes for which beneficiaries originally registered with MFT.

VM sought final legal confirmation that sharing of identifiable MFT beneficiary data was permitted under GDPR, as she noted that there are restrictions in health legislation regarding the sharing of information regarding a patient's HIV status in relation to NHS services. Trustees discussed this point, noting that it was NHS specific, but agreed that GE should seek formal confirmation that this legislation did not apply.

**Action:** GE to seek final legal confirmation re handling of beneficiary personal data and notify Trustees between meetings.

GE updated the Trustees on the initial exploratory discussions between JB and [GRO-A] THT's CEO and the progress in her more recent conversations with him taking into account the recent legal advice. She highlighted:

- The positive tone and tenor of these conversations;
- The clear synergy between MFT's objects and THT's mission and strategy i.e. THT's beneficiaries were described as people 'living with HIV' and people 'affected by HIV'; and THT's strategy was focused on ending the transmission of HIV in the UK; empowering and supporting people living with HIV to lead healthy lives; amplifying the voices of those affected by HIV across public and political arenas to eradicate stigma and discrimination; and enabling all people to enjoy good sexual health.
- Real enthusiasm in THT's leadership to develop the charity's support services for people with haemophilia living with HIV through infection from contaminated blood products and their partners/spouses and dependents.
- THT's *acceptance of the restrictions placed on any funds transferred from MFT and confirmation that THT will not need access to MFT beneficiary data to comply with these restrictions.* (GE reported that THT had given a lot of thought to how they would engage with and consult with Macfarlane beneficiaries, including reaching out to those who have not registered with Macfarlane at the point of transfer of operations, and that they had had early discussions with their lawyers about how they would provide assurance on accounting for expenditure against MFT funds).
- THT had been proactive in developing very positive proposals for development of their already extensive support services to support people living with HIV through contaminated blood. These proposals include:
  - Appointment of an Engagement and Consultation Officer specifically for MFT beneficiaries to enable THT to better understand their needs;

- Provision of support services which would specifically target MFT beneficiaries including a counselling service for beneficiaries impacted by the Public Inquiry;
- Further development of existing services to ensure that they are both accessible and relevant to MFT beneficiaries.
- THT had also expressed willingness to take over management of the outstanding beneficiary loans subject to due diligence on the loan book. GE reported that MFT had already shared anonymised summary data to enable an early appraisal to take place, with a view to sharing more detail if both organisations agree in principle to the transfer.
- THT's management and governance appeared to be robust and proactive, and that THT was in a good financial position having undertaken a significant transformation programme following a significant reduction in contract income and voluntary income, and had had an extremely successful year in terms of increasing its reach and impact and receiving recognition for the quality of its work (See THT Annual Report and Accounts 2017-18).

Trustees discussed the legal advice received and the proposals received from THT. Trustees were reassured by the legal advice which set out the basis for any transfer of funds and assets, the handling of beneficiary personal data and the communication with beneficiaries in respect of the outstanding loans. Trustees confirmed their support to proceed on the basis outlined in relation to beneficiary loans subject to final confirmation from lawyers that the restrictions relating to sharing of identifiable personal data in the NHS raised by VM did not apply in this context.

Trustees expressed satisfaction at the proposal from THT which they felt:

- would enable THT to develop its services to support MFT beneficiaries' needs, and extend and develop the support provided by MFT over the last 30 years;
- would enable THT to manage the outstanding individual loans so that when these were repaid these funds would be available to support services for all MFT beneficiaries;
- should be communicated positively to MFT beneficiaries and other relevant stakeholders.

GE reported that PB had also stated that he was happy with the THT proposal and planned transfer of assets and funds.

It was agreed that the final legal agreement with THT would need to take the form of a Deed of Gift and would need to include both the transfer of funds, the assignment of the loans and a communication statement agreed by both MFT and THT. Beneficiary loans would need to be assigned from MFT to THT individually and where relevant, any charges at the Land Registry transferred from MFT into their name.



On this basis, Trustees approved further action by the Interim CEO to finalise legal agreements to support the planned transfer of funds and assignment of loans to THT for subsequent Trustee approval.

**Action:** GE to finalise drafting of legal agreements to support the planned transfer of funds and assignment of loans with Russell Cooke and in consultation THT.

AM thanked GE for the rapid progress made in progressing this matter and resolving outstanding legal issues.

#### **974.18 Department of Health – Letter from Minister**

Trustees noted the letter to the Chair of MFT from the Minister dated 24<sup>TH</sup> October 2018 in which she expressed disappointment at not receiving clarification regarding the management of outstanding loans.

Trustees noted the concern of the Minister and at least one MP about the future of outstanding beneficiary loans. Trustees agreed that it was essential that they communicate promptly and clearly with beneficiaries, the Minister and MP as soon as they had reached formal agreement with THT to assign the loans but that they could not do so in advance of any such agreement being in place. Trustees also agreed that they would notify the Minister and MP via email at the same time as letters are sent to beneficiaries by post.

Trustees agreed that:

- The Chair should write to the Minister explaining the process and time-scales involved in reassigning the loans and closing the Trust, and confirming as per his previous letter that this information would be shared as soon as final decisions had been made and this process had been completed;
- GE should offer to meet with civil servants if they needed any further clarification on the timescale and process;
- Formal communication with beneficiaries would be via letter and with the Minister and MP via email as soon as a formal agreement with THT is signed.

**Action:** GE to draft letter for Chair's signature and email civil servants.

#### **975.18 Public Inquiry**

The Interim CEO reported on contact with the Inquiry to date which included:

- A Rule 9 request 2<sup>nd</sup> August 2018 for information on records held by MFT: responded to in a letter from JB on 22<sup>nd</sup> August 2018 citing paper records held by MFT relating to Board and Committee meetings, finances and beneficiaries;
- A visit from Thomas Powell, Inquiry lawyer to MFT offices on 11<sup>th</sup> October 2018 to meet with JB and view the records ;

- A witness statement from JB: sent by JB 12<sup>th</sup> October 2018 prior to stepping down as CEO and circulated with Board papers for Trustees information;
- A letter on 16<sup>th</sup> October 2018 and subsequent Rule 9 request dated 29<sup>th</sup> October 2018 to enable a further visit by the Inquiry team on 30<sup>th</sup> October 2018 to attend the offices to review MFT records.

GE noted that Thomas Powell had expressed surprise that JB had not advised him that she would be leaving the Trust on the 12<sup>th</sup> October 2018 and had requested contact details for her. GE had not been able to locate her personnel file in the office but had forwarded contact details provided by JB.

GE advised Trustees that the Trust should also disclose electronic records held to the Inquiry team although it was anticipated that anything of substance was probably duplicated in paper records.

Trustees reviewed the statement submitted by JB. GE advised that the Inquiry team may wish to follow up with JB and that the Trust may be asked to provide contact information. She noted that she could not locate a personnel file for JB but advised that contact details were held on payroll.

GE reported that a further Rule 9 request had been requested by the Charity to enable removal and copying of records selected by the Inquiry team (mainly board and committee papers, correspondence with DH, finance papers and records re beneficiary loans). (Post meeting note: This was received on 5<sup>th</sup> November 2018 and the team attended on 6<sup>th</sup> November.)

GE advised that there had been a discussion regarding the status of recent board meeting papers as minutes had not yet been approved, and/or the meetings had not yet taken place, and these contained legal advice (i.e. legally privileged information) and information on sensitive issues on which decisions had not yet been made. Trustees agreed that GE should ask that these board papers might be held back until final decisions made and minutes formally agreed, and that we should not seek to withhold these papers on the basis of legal privilege.

GE also advised that Thomas Powell had indicated that it was unlikely that the Inquiry team would need to come back to the Trust for further information before the New Year. On this basis GE had asked whether there would be any problem with the Trust transferring records to the Skipton Fund before Xmas and he had confirmed that this would not be a problem for the Inquiry Team. GE advised that the Data Transfer Deed



with Skipton Fund had now been finalised on this basis with an effective Date of November 26<sup>th</sup> (but able to be varied by GE if necessary). Trustees discussed the timing of transfer and agreed that AM and PS should sign the Data Transfer Deed on their behalf.

There was also discussion about the Inquiry process and the fact that the team are gathering witness statements as well as reviewing documentation. Trustees expressed concern that the team might hear only from the vocal minority of beneficiaries who were unhappy with MFT and that they would not hear from the large number of beneficiaries who were very satisfied with the support that they had received from the Trust. MG and [GRO-A] both MFT beneficiaries as well as Trustees, suggested that they would be happy to be interviewed by the Inquiry Team as this might result in a more balanced appraisal.

**Actions:** Data Transfer Deed with Skipton Fund to be signed by AM and PS with Nov 26<sup>th</sup> as the effective date.

GE to confirm with Thomas Powell the agreed timing of release of recent Board papers to the Inquiry, and to advise that [GRO-A] and MG are happy to be give witness statements.

#### **976.18 Communication with Key Stakeholders**

Trustees reviewed a draft communications statement and Q&A to be used reactively in relation to any enquiries.

The Interim CEO highlighted a query re the level of information to be shared in relation to outstanding beneficiary loans. As information about the value of outstanding loans is in the public domain in the Trust's report and accounts it was agreed that this should be included.

Trustees approved the communications statement and Q&A with this amendment.

Action: GE to finalise communications statement as discussed.

There was discussion about updating the statement and Q&A as the project plan progressed towards closure. It was agreed that this would be done when final decisions were made and that a communications plan would be agreed to ensure beneficiaries and other relevant stakeholders are advised promptly re: MFT closure plans, the transfer of fund and assets to THT and the planned service developments to support MFT beneficiaries in the future. It was agreed that beneficiaries with outstanding loans which would be assigned to THT would need additional individualised information.

MG suggested groups to be added to a list of relevant stakeholders.

Action: GE to update communications plan and list of stakeholders as project plan progresses.

**977.18 Manpower Issues**

(See confidential minute circulated separately to Trustees)

**978.18 Date of Future Board Meetings**

Dates of Board meetings were discussed to coincide with key decision points in project plan. The following dates were identified for Board meetings:

- Tuesday 20<sup>th</sup> November 2018 11.30 – 1.30 (confirmed)
- Thursday January 2019 11.30-1.30 (to be confirmed).

**Close of Meeting**