



TODMORDEN TOWN COUNCIL

REPORT TO THE FULL COUNCIL

REPORT AUTHOR	Colin Hill – Town Clerk and Responsible Financial
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Date	25TH March 2020
SUBJECT	Handmade Parade

PURPOSE

1. To inform Members that as part of the due diligence requested of the Town Clerk, to consider further the request by Handmade Parade for the Town Council to act as the lead body in an Arts Council Grant application, the Town Clerk met with the Principal Director and it has mutually been agreed not to take this forward.
2. To advise Members that Handmade Parade will still be looking to take this forward with other potential partners, but, the Parade itself, is unlikely to take place until February 2021.
3. To inform Members that during this current period of uncertainty, and in a sector that is very fragile, Handmade Parade intends to continue applying for grants so that when restrictions are lifted, they are in a position to resurrect programmes as quickly as possible, in the knowledge then that funding is already in place.
4. To inform Members that Handmade Parade would welcome letters of support from the Town Council at some future stage and if possible, commitment given to future grant support at the time they submit their application. Handmade Parade would also, like to work closer in partnership with the Town Council in the future development of a coordinated approach to Arts/Cultural and Entertainment based activity.
5. To inform Members that part of the overall event is a discrete element of work that relates specifically to Todmorden. Whilst the main event parade side is postponed, this element could be competed as soon as restrictions are removed in respect of social distancing.
6. To inform Members that there were a number of areas of concern that the “due diligence “ process had thrown up and an overall conclusion that the Town Council should not act in an intermediary role as a lead applicant on any application for grant assistance unless it is the principal party involved in such activity.

BACKGROUND

7. Handmade Parade have delivered for several years, an exciting “lamplighter festival” parade of giant characters with active involvement of Todmorden based workshop activity in making these figures.
8. The Town Council has historically grant aided a sum towards the overall cost of the event, with most of the funding coming from the Arts Council.
9. Because of new criteria introduced by the Arts Council restricting to one current grant in place, Handmade Parade who already have a grant award in course, were unable to act as the lead body in submitting a further application for grant funding, and wished for the Town Council to submit the application as the Accountable Body.

RECOMMENDATION:

10. That Full Council notes the mutual agreement to withdraw from this proposal.
11. That Full Council adopts a Policy , that unless it is the responsible party for delivery of an activity and or an event, or by ownership of land is able to enter into a third party delivery arrangement, it does not act in any capacity as an intermediary body to apply for external grant funding where it would need to be the Accountable Body.

REASONS FOR RECOMMENDATION

12. To protect the Town Council from the potential of ultra vires activity, uninsurable liability and high financial risk through clawback arrangements.

SUMMARY OF KEY POINTS:

13. An assessment of this proposal, Appendix 1, indicates that there are several areas of concern that place too high a risk on the Town Council to become involved in proposals that are not of their own direction and control.

FINANCIAL IMPLICATIONS

14. None arising from this report

POLICY IMPLICATIONS:

15. To only apply for external Grants where the Town Council is directly involved through delivery of activity and or land ownership.

DETAILS OF CONSULTATION:

16. None

SUPPORTING PAPERS:

- Appendix 1 – Due Diligence Paper

FURTHER INFORMATION, PLEASE CONTACT: Colin Hill

Appendix 1 – Handmade Parade – Town Council Intermediary request for Arts Council Grant Application

1. BACKGROUND

- 1a Handmade Parade have delivered for several years, an exciting “lamplighter festival” parade of giant characters with active involvement of Todmorden based workshop activity in making these figures.
- 1b The Town Council has historically grant aided a sum towards the overall cost of the event, with most of the funding coming from the Arts Council.
- 1c Because of new criteria introduced by the Arts Council restricting to one current grant in place, Handmade Parade who already have a grant award in course, were unable to act as the lead body in submitting a further application for grant funding and wished for the Town Council to submit the application as the Accountable Body.
- 1d The extent of Grant Application – circa £50,000 warranted a review of risk involved and the Town Clerk was asked to undertake a due diligence exercise

2. AREAS TO BE CONSIDERED

2a The areas to be considered were as follows:-

- I. Compliance with Grant Application Criteria.
- II. Legality of purpose for Council – ultra vires or not.
- III. Event delivery
- IV. Public liability cover
- V. Financial Risk
- VI. Vat /PAYE implications
- VII. Administrative support
- VIII. Precedent for other
- IX. Reputational Risk

3. Compliance with Grant Application Criteria.

3a Reference was made to the Arts Council document entitled “Arts Council National lottery Project Grants – How to apply for over £15000”

[https://www.artscouncil.org.uk/sites/default/files/download-file/ACNLPG Over %C2%A315K 30May2019 0.pdf](https://www.artscouncil.org.uk/sites/default/files/download-file/ACNLPG%20Over%20%2415K%2030May2019%200.pdf)

and the “Standard Terms and conditions for Grants document dated September 2019”.

3b Within the 100 page “How to apply document”, there are a number of key statements that are relevant to whether the Town Council should be involved in this through an intermediary role.

- A group of people working towards a common goal with a governing document that covers the type of project being applied for – **The Town Council has no such document or any policy or strategy toward Arts or Culture.**
- If the application goes on to be successful, this organisation who applied for the grant would be accountable for the grant. **That would make the Town Council the Accountable Body and therefore legally responsible for delivery.**

- Compliance with Grant Application Criteria.
- Management Questions – “Tell us about your and your partners recent experience in managing similar types of projects”. **The Town Council has none.**

3c The Arts Council seeks local delivery and communities to become involved within these schemes as a means of growing the interest in Arts and Culture. They welcome applications from local authorities where their involvement is as part of a wider based strategy.

3d Handmade Parade confirmed that they have worked with other local authorities that have made applications in their own right, and then as part of that the local authority, have then sub contracted elements of the event delivery to themselves, but as part of a Local Authority lead wider Arts and Culture Strategy.

4. Legality of Purpose

4.1 The Town Council has no formal Arts and Culture delivery responsibility. It not a core function that covers our right to carry out functions i.e. tourism, entertainment. It would rely on Section 137 limitations.

4.2 Section 137 of the Local Government Act 1972 gives the Council the power to “incur expenditure which in their opinion is in the interests of and will bring direct benefit to their area or any part of it or all or some of its inhabitants”.

4.3 The Town Council does not currently have the General Power of Competency, and therefore power operates payments under S.137 but within an overall limit which is currently £95,696.

The Ministry of Housing, Communities and Local Government (MHCLG) has notified the National Association of Local Councils (NALC) that the appropriate sum for the purpose of section 137(4)(a) of the Local Government Act 1972 (the 1972 Act) for parish and town councils in England for 2020-21 is £8.32 **per elector**.

4.4 Given existing budgets amounting to circa £31,000, if responsibility was taken for this Grant application at a gross £90,000 and or net £50,000, we would soon find our ability to carry out business restricted.

4.5 Given we have no responsibility for such activity it is the opinion of the Town Clerk that this could be regarded as “ultra vires” and therefore not lawful.

5. Event Delivery

5.1 The event has been successfully delivered for several years and with the involvement of Calderdale licencing, there has been no review by the Town Clerk of their event safety plan, but an assumption made that this will be compliant.

5.2 However, the risk of non -delivery for other reasons i.e. financial capability to continue or possible loss of expertise in house to deliver is an aspect that the Town Council could not cover off.

6. Public Liability Insurance cover

6.1 Insurance cover in place for the Town Council where it is directly responsible for something. The Town Council cannot cover a third- party risk.

6.2 The Grant Terms and Conditions seek confirmation of Public liability cover from the lead applicant on the basis that they are legally responsible for delivery.

6.3 Whilst Handmade Parade have Public liability cover in place, in the event of a claim arising there is the very real possibility that any claimant will seek who is legally responsible for the event. If a local authority, experience indicates that the first port of call will be on the local authority.

6.4 In order to try to clarify this position the Town Clerk contacted insurers on this and from the response below, legal advice (at our expense) would be necessary to clarify this situation.

“Unfortunately our office is non-advisory due to the regulations we adhere to within Zurich. I have referred this to my underwriters who believe this query may need some legal counsel.

A legal advisor would be able to review the agreement between parties, the contract, and the grant application. The framework of all this may alter where the liabilities fall and therefore what is required of you and us.

Knowing where the liabilities fall will also dictate the level of risk management you should be undertaking. If you become legally responsible for the event via the contract then you would need oversee the third party managing and organising the event on your behalf.

Once you have sought legal advice and they have pinpointed your liabilities, we will be able to confirm whether or not cover is sufficient.

7. Financial Risk

7.1 The way that Arts Council Grants operate are that funds are drawn down in stages, with each stage requiring a report back before then the next stage is advanced- 50% then 40% then a final 10% that is held back until the final report is submitted after the event. .

7.2 In the event of non-delivery there is the risk that “claw back” will apply and as the Accountable Body we would be requested to return any funds advanced by way of grant to us.

7.3 Whilst the History indicates Handmade Parade can deliver the event successfully, external factors could occur that could for example make them financially unable to complete the event at which Stage we could then be requested to pay back £45,000 (assuming a £50,000 Grant less 10% end retention)

7.4 If this applied towards the end of the project there would be no means of seeking reimbursement back to reduce the Town Councils call.

7.5 Handmade Parade is a Community Interest Company and as such no personal liability passed on to the Principals. Liability is as a limited company with Directors in the management function, and therefore it is the underlying strength of balance sheet that would determine whether any counter indemnity would be worthwhile considering.

7.6 The latest set of unaudited accounts(they do not require audit compliance) do not indicate that the CIC has sufficient shareholders’ funds to be able to meet a counter indemnity of up to £45,000 if called upon to repay back to the Town Council. This was confirmed by the Director.

8 Vat /PAYE implications

- 8.1 At this stage no future investigations have been made in respect of vat implications. However, if the expenditure were regarded as unlawful the vat element claimed would also be unlawful and would have to be repaid back to HMRC.
- 8.2 The criteria laid down by the Arts Council places emphasis on paying people fairly and properly and expects the Grant applicant to comply with current HMRC legislation regarding whether direct employment and with its PAYE/NI implications or self-employed.
- 8.3 As the Accountable Body that should be responsible for these areas, we have no knowledge at all under the proposed arrangement and potentially therefore build up an unknown contingent liability.

9 Administrative support

- 9.1 Whilst Handmade Parade would prepare initially all the Application, given this is a request on behalf of the Town Council the content of the application would require agreement from Full Council, before being formally submitted under an ID established for the Council.
- 9.2 The proposal was to be for admin rights to be given to Handmade Parade to update the forms and reports. If that removed our rights of final say then this would not be acceptable.
- 9.3 If the application went forward as proposed, technically there should not be a lot of administrative support needed. However, if we were directly responsible, this would be an additional significant call on Officer time.

10 Precedent for others

- 10.1 If the Town Council were to agree to act as an “intermediary”, then this could open the doors to many other organisations and groups seeking to use as the Town Council as a means of trying to access grant funds.
- 10.2 We would not wish to be regarded as discriminatory, to any other group seeking to do the same, but in doing so, our financial exposure for clawback would increase substantially.

11 Reputational Risk

- 11.1 The Town Council takes risk as part of day to day business but within an environment that it understands the risk and has controls that it can implement to reduce such risk.
- 11.2 Anything the Town Council does, that is not delivered properly, will reflect badly on itself and where unable to control elements of activity, faces a greater risk of reputational damage.
- 11.3 In the proposal before us we would have no control over the event delivery and exposure to financial risk, both of which lead to an enhanced risk of reputational damage to the Town Council for an activity that is not part of its core function.
- 11.4 There is also the moral stance of whether the Town Council should be acting as an intermediary as a means by which to overcome Arts Council rules regarding only being able to submit one application at a time for Handmade Parade.