

## **Cabinet – 18 March 2015**

### **Walsall Adult and Community College Spin Out Project**

**Portfolio:** Councillor Hussain, Community, Leisure and Culture

**Related portfolios:** Councillor Cassidy, Children's Services and Education

**Service:** Neighbourhood Services

**Wards:** All

**Key decision:** No

**Forward plan:** No

#### **1. Summary**

- 1.1 Walsall Adult and Community College is a highly successful, Ofsted grade 1, community based college that provides outstanding and supportive learning opportunities for around 5000 people per year, many of whom have the highest needs in the borough. The College's community focused approach, combined with its strong record of tackling worklessness and raising learners' aspirations towards employment or further study, is highly beneficial to Walsall and the Black Country.
- 1.2 An independent Walsall Adult and Community College will be able to create significant and lasting positive benefits for the individuals and communities it serves. The College will be able to access additional funding enabling it to grow as an organisation, increase its support for neighbourhoods and focus more on employer led training.
- 1.3 Independence will enable the College to:
  - Have greater freedom and flexibility, enabling it to be more responsive to changing needs, more effective and more efficient.
  - Access additional sources of funding that are not currently available to the College such as the European Structural and Investment Fund.
  - When the Skills Funding Agency contract is transferred to the College then it will be able to access capital grants.
  - Secure the future of existing provision, increase learning opportunities in local communities, support more people towards work, continuing to reduce dependency on benefits.
  - Increase choice of learning opportunities in the borough.
- 1.4 At the cabinet meeting on 17 December 2014 approval was given for Walsall Adult and Community College to become a separate legal entity, a company

limited by guarantee with charitable status that is wholly owned by Walsall Council. To be affected by 1 August 2015.

- 1.5 In order to affect this decision, the new entity must be registered with Companies House and the Charities Commission.
- 1.6 In accordance with the Companies Act 2006 and the Charities Act 2011, registered companies must have in place Memorandum and Articles of Association.
- 1.7 This report seeks approval of the Memorandum and Articles of Association and Charitable Objects for the new entity.

## **2. Recommendations**

- 2.1 That the name of the new entity is registered as Walsall Adult and Community College, a company limited by guarantee and registered charity.
- 2.2 That in accordance with the Companies Act 2006 and Charities Act 2011, Cabinet approves the Memorandum and Articles of Association for the new entity.
- 2.3 That Walsall Council is listed in the Memorandum as the sole member of the new entity.
- 2.4 That the minimum number of directors shall be 3 and the maximum shall be 9 and that all of the directors are first approved by the Council.
- 2.5 That a person qualified to be appointed as a director shall be any elected member, officer or employee of Walsall Council, or any other suitably qualified and experienced person who is nominated to the Council by a resolution of the directors, who is willing to act and who is approved by the Council (or the Council's delegated representative).
- 2.6 That the Chairman and Vice-chair of the board of directors shall both be elected by the directors of the company at any meeting of its directors, provided that while the charity remains a wholly owned subsidiary of the Council the appointments of the Chairman and Vice-chair shall be subject to approval by the Council's Cabinet acting by its Executive Director of Regeneration.
- 2.7 That the Chairman and Vice-chair shall, once appointed, have a casting vote in the event of an equality of votes with regard to the any resolution which is voted on by the directors at a meeting of the directors.
- 2.8 That the current Walsall and Adult Community College board of governors are appointed as the directors of the new entity.
- 2.9 That the directors agree the constitution and standing orders of the new entity and pass those ordinary resolutions necessary so that the new entity is able to be fully operational and able to discharge all its duties by 1 August 2015.

- 2.10 That within 6 months of first registration the first annual general meeting is held as detailed in the Articles of Association..
- 2.11 That delegated authority is given to the Executive Director of Regeneration, or their nominated and authorised representative, in consultation with the Portfolio holder, to act as Walsall Council's representative at all general meetings of the new entity and in particular to (firstly) approve the appointment all new directors on the Council's behalf and (secondly) approve the appointment by the directors of the Chairman and Vice-chair of the board of directors.
- 2.12 That the charitable Objects of Walsall Adult and Community College are:
- a) The provision of suitable education and training to meet the reasonable needs of persons who live, work, visit or study in the borough of Walsall, who are either over compulsory school age but under 19 and persons who are aged 19 or over but under 25 who have a learning disability (as per Walsall Council's duty under section 15ZA of the Education Act).
  - b) The provision of suitable education and training to meet the reasonable needs of persons who are over compulsory school age but under 19 and are subject to youth detention in the borough of Walsall (as per Walsall Council's duty under section 15ZA of the Education Act).
  - c) The provision for the borough of Walsall of full time or part time education which is suitable to the requirements of persons from other areas who are over compulsory school age but who have not attained the age of 19 (as per Walsall Council's power under section 15(1ZA) of the Education Act).
  - d) The provision for the borough of Walsall of full time or part time education which is suitable to the requirements of persons who have attained the age of 19, including persons from other areas (as per Walsall Council's power under section 15B of the Education Act).
  - e) The provision and advancement (or assistance in the provision and advancement) of education, learning and skills (in the interests of promoting social welfare and wellbeing) for the benefit of members of the community aged 16 and above, the general public at large and employers, who live, work, visit, study in and otherwise engage in trade or business activities, in the administrative borough of Walsall and the surrounding geographical area comprising the West Midlands.
  - f) Such other charitable purposes which are beneficial to the education, learning and skills of the general public, members of the community aged 16 and above and employers, in the administrative borough of Walsall and the surrounding geographical area comprising the West Midlands, as are consistent with the objects stated above, as the directors shall in their absolute discretion, determine from time to time.
- 2.13 To note that a further report on the proposed Commercial Transfer Agreement will be presented to Cabinet for consideration and approval before 31 July 2015.

- 2.14 To note that the first annual financial and operational plans will be presented to Cabinet for approval prior to 31 July 2015, and annually thereafter whilst Walsall Adult and Community College is a wholly owned subsidiary of Walsall Council.

### **3. Report detail**

- 3.1 On 17 December 2014, Cabinet approved the spin out of Walsall Adult and Community College from the Council in two stages, firstly becoming a wholly owned subsidiary of the Council, followed by full spin out when the conditions are favourable.
- 3.2 The first step in creating the wholly owned subsidiary in order to transfer the staff, assets and contracts, is to register the new entity with Companies House and the Charity Commission.
- 3.3 In order to register the new entity a Memorandum and Articles of association are required and have to be submitted to Companies House along with the registration form, 'IN01'; that records organisational details such as the registered address of the new entity and the names of the first directors of the company.
- 3.4 The Memorandum of Association is a statement that the subscribers wish to form a company under the 2006 Act and have agreed to become members. Walsall Council will be the sole subscriber and the sole member of the company.
- 3.5 The Council's representative for the purposes of acting as the sole member of the new company will be its Executive Director of Regeneration or their nominated and authorised representative.
- 3.6 The name of the new entity will be Walsall Adult and Community College. It will be a company limited by guarantee and registered charity. As a charity with a charitable object of promoting education for public benefit, the new entity is exempt from using limited in its name.
- 3.7 The Articles of Association set out how the company is run, governed and owned. They will include the responsibilities and powers of the directors and the means by which the members exert control over the board of directors.
- 3.8 The full Articles of Association are attached at **Appendix A** and a summary of the key points are set out in the following paragraphs, 3.9 to 3.20. The Articles are based on the Charity Commission's model Articles for a charitable company limited by guarantee.
- 3.9 The minimum number of directors shall be three and the maximum shall be nine. In addition at least three of the directors shall be councillors of the Council while the Council remains the sole member of the new entity.
- 3.10 A the director shall be any elected member, officer, or employee of Walsall Council, or any other suitably qualified and experienced person who is nominated to the Council by a resolution of the directors and in each case who is willing to act and who is approved by the Council. Walsall Council shall also have an exclusive power (acting reasonably) to appoint and remove any director that it

has appointed, on notice in writing to the charity. These restrictions shall however cease to apply once the new College entity ceases to be solely owned by the Council.

- 3.11 When Walsall Adult and Community College fully spins out from council control the Council will cease to be a member of the charity and the maximum number of directors it can appoint or remove will be one (1).
- 3.12 The Chairman and Vice-chair of the board of directors shall both be elected by the directors at any meeting of the directors, provided that while the charity remains a wholly owned subsidiary of the Council their appointments shall be subject to approval by the Council's Cabinet acting by its Executive Director of Regeneration. The Chairman and Vice-chair, once appointed, shall have a casting vote in the event of an equality of votes with regard to the any resolution which is voted on by the directors at a meeting of the directors.
- 3.13 Regardless of how each director is appointed, the directors will have a legal duty to act in the best interests of the charity at all times. In addition directors must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have.
- 3.14 The charity's objects are defined in the Articles and are subject to approval by the Charity Commission. The objects must be for charitable purposes only which are for the public benefit. The proposed objects are stated in the Articles as being:
  - (i) The provision of suitable education and training to meet the reasonable needs of persons who live, work, visit or study in the borough of Walsall, who are either over compulsory school age but under 19 and persons who are aged 19 or over but under 25 who have a learning disability (as per Walsall Council's duty under section 15ZA of the Education Act).
  - (ii) The provision of suitable education and training to meet the reasonable needs of persons who are over compulsory school age but under 19 and are subject to youth detention in the borough of Walsall (as per Walsall Council's duty under section 15ZA of the Education Act).
  - (iii) The provision for the borough of Walsall of full time or part time education which is suitable to the requirements of persons from other areas who are over compulsory school age but who have not attained the age of 19 (as per Walsall Council's power under section 15(1ZA) of the Education Act).
  - (iv) The provision for the borough of Walsall of full time or part time education which is suitable to the requirements of persons who have attained the age of 19, including persons from other areas (as per Walsall Council's power under section 15B of the Education Act).
  - (v) The provision and advancement (or assistance in the provision and advancement) of education, learning and skills (in the interests of promoting social welfare and wellbeing) for the benefit of members of the community, aged 16 and above the general public at large and employers who live, work, visit, study in and otherwise engage in trade or business activities, in the

administrative borough of Walsall and the surrounding geographical area comprising the West Midlands.

- (vi) Such other charitable purposes which are beneficial to the education, learning and skills of the general public, members of the community aged 16 and above and employers in the administrative borough of Walsall and the surrounding geographical area comprising the West Midlands, as are consistent with the objects stated above, as the directors shall in their absolute discretion, determine from time to time.
- 3.15 While the charity remains a wholly owned subsidiary of Walsall Council, the objects of the charity cannot be varied without Cabinet's approval. This restriction is incorporated in the Articles.
  - 3.16 Whilst the charity is a wholly owned subsidiary of Walsall Council the Articles prescribe that at least 80% (in terms of turnover) of its activity must fall within the objects defined in (i) to (iv) stated above. Subject to this condition the charity has the power to do anything which is calculated to further its Objects or is conducive or incidental to doing so.
  - 3.17 A director will be entitled to be reimbursed from the property of the charity for reasonable expenses properly incurred by him/her when acting on behalf of the charity. However, no director or connected person may be employed by or receive any remuneration from the charity.
  - 3.18 The directors shall manage the business of the charity and may exercise all the powers of the charity unless they are subject to any restrictions imposed by the Companies Acts, the articles or any special resolution.
  - 3.19 It is proposed that the current Walsall Adult and Community College board of governors are appointed as the first directors of the charity.
  - 3.20 Within 6 months of the date of first registration an annual general meeting will be held, and as detailed in the articles of association all directors must retire from office and members duly elect a new board of directors. Previous Walsall Adult and Community College directors may stand for re-election.
  - 3.21 Within the limit of their powers granted by the articles of association, the first directors will agree the constitution and standing orders of the board going forward and pass those ordinary resolutions necessary so that the new entity is able to be fully operational by 1 August 2015.
  - 3.22 In particular an ordinary resolution will be passed to effect the admission of the new entity into the local government pension scheme. The resolution will set out the class of employee that will be eligible to join the pension scheme in addition to the staff that will transfer to the new entity from the Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") on 1 August 2015.
  - 3.23 A Commercial Transfer Agreement will need to be concluded between the Council and the new entity by 31 July 2015. This Agreement will document what equipment and other assets (excluding land and premises) will transfer to the

new entity from the Council's ownership. It will also record what current contracts which have been entered into by the Council (for the College) will transfer to the new entity. The Commercial Transfer Agreement will also list the staff whose employment is to transfer from the Council to the new college corporate entity under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

3.24 This Agreement will be presented to Cabinet for approval at a later date but prior to 31 July 2015.

3.25 The financial and operational plans of the new entity will be presented to Cabinet annually for approval. Progress reports will be submitted to the Council Management Team (CMT) at an agreed frequency.

#### **4. Council priorities**

4.1 Walsall Adult and Community College's established role in providing high quality learning and skills for the most disadvantaged in Walsall ensures that, post spin out, it would continue to make an important contribution to the following council corporate priorities:

- Creating Jobs and helping people get new skills – the college provides high quality (Ofsted grade 1) learning opportunities that give “line of sight to work” and improve the economic opportunities of learners through the completion of their learning programmes, the achievement of qualifications and the positive move towards work or further training.
- Promoting health and well-being – the increase in learners' sense of worth when they progress in their studies, many for the first time in their lives, and make a positive contribution to society through reduced dependence on the state. Many learners also increase their understanding of healthy lifestyles through their learning programmes and the advice and support received at college.
- Helping local high streets and communities – by working with learners to raise their aspirations; increase their likelihood of accessing work and reduce their dependency on benefits; increase their positive involvement with the diverse communities of Walsall through engagement in college activities; where relevant, improve parenting skills.

The college actively promotes sustainability of the environment and the development of skills for sustainable communities.

- Improving Educational Attainment – through the provision of outstanding education and training for young people in a supportive environment, that enables them to thrive and work towards economic independence.

4.2 It is of crucial importance to the achievement of the Council's strategic objectives that the most disadvantaged people of Walsall are able to access the supportive, local provision provided by Walsall Adult and Community College. This provision meets the needs of local communities and enables individuals and groups to

work towards and achieve appropriate qualifications, progress to employment and/or further training and make a positive contribution within the borough. These objectives are fully incorporated within the proposed Articles for the new College entity.

## **5. Risk management**

- 5.1 The key risk for Walsall Council is that the Memorandum and Articles of Association fail to give the council the required level of control over its wholly owned subsidiary company, both for Council accountability and Teckal exemption compliance with procurement rules.
- 5.2 There is a risk that the charitable objects do not serve the community of Walsall and are in conflict with the objectives of Walsall Council.
- 5.3 There is a risk that the Charities Commission do not consider the Objects to satisfy charitable purposes and that as a consequence Walsall Adult and Community College will not be able to benefit from the tax exemptions available to charities.
- 5.4 The key risk for Walsall Adult and Community College is that the Memorandum and Articles of Association grant too much control to Walsall Council, inhibiting the ability of Walsall Adult and Community College to serve its local community through representation on the board of directors.
- 5.5 There is a risk that the Skills Funding Agency contract cannot be transferred to Walsall Adult and Community College under the Teckal exemption if the constitution and charitable objects of Walsall Adult and Community College do not ensure compliance with the Teckal exemption and Public Contracts Directive.
- 5.6 These risks have been considered throughout the drafting of the Memorandum and Articles of Association by both Walsall Council and Walsall Adult and Community College and have informed the recommendations in this Cabinet report.

## **6. Financial implications**

- 6.1 In the Articles the liability of Walsall Council is limited to a sum not exceeding £10, being the amount the council undertakes to contribute to the assets of the charity in the event of its being wound up while they are a member or within one year after they cease to be a member.
- 6.2 The registration fee for registering the new entity with Companies House and the Charities Commission will be met from the reserves of Walsall Adult and Community College; this will be a nominal amount.
- 6.3 The main source of funding for the new entity is the Skills Funding Agency grant directly held by Walsall Council. Delivery of this contract's outcomes/outputs will be made via the new entity and will be monitored via regular reports to the Council Management Team (CMT).

## **7. Legal implications**

7.1 The main source of funding for the new entity is the Skills Funding Agency (SFA) grant. This will have to remain in the Council's name until such time as the SFA agrees to pay the grant direct to the new College entity and the new entity completes its full spin out from the Council. In the meantime, the Council will rely on the Teckal exemption in order to procure the services which the SFA grant is intended to fund from the College, in consideration of the payment of the SFA grant to the new College entity.

7.2 In the report that was presented to Cabinet in December 2014 it was highlighted that in order to ensure that the wholly owned subsidiary can benefit from the Teckal exemption and comply with provisions of the new Public Contracts Directive:

- There can be no private ownership or involvement and preferably no possibility of issuing shares to private sector participants at a later date
- The constitution of the wholly owned subsidiary must give "decisive influence" to the Council and this should include the ability to determine the strategic objectives and significant decisions of the company, with any proposal to move outside an agreed business plan to be referred back to the Council for approval.
- The Council must have an ability to appoint at least one representative to the board of the new entity.
- The constitution of the wholly owned subsidiary should include Objects which are clearly focused upon the public interest and there should be an appropriate limit on pursuing private sector commercial activity, or a complete prohibition.
- It must be clear that at least 80% of the business activities of the wholly owned subsidiary is for the Council.

7.3 All of the requirements which are listed above are built into the proposed Articles of Association for the new entity.

## **8. Property implications**

There are no property implications arising from the agreement of the Memorandum and Articles of Association.

## **9. Health and wellbeing implications**

9.1 The move to independence will enable the College to continue to support learners to progress, thereby increasing their sense of worth through achievement. In addition, the College enables many learners to reduce their

dependence on the state and become positive contributors to their local community.

- 9.2 Many learners also increase their understanding of healthy lifestyles through their learning programmes and the advice and support received at college.
- 9.3 The College is mindful that some staff, learners and other stakeholders may have concerns about the impact of the spin out. The College has therefore developed a Communications Strategy to ensure that all stakeholders are kept informed about the spin out process and its implications for them.

## **10. Staffing implications**

The Articles of Association will empower the new college entity to employ and remunerate the staff who transfer to it from the Council via TUPE with effect from 1 August 2015. Otherwise there are no staffing implications.

## **11. Equality implications**

- 11.1 Walsall Adult and Community College directly supports inclusion by targeting its learning programmes and support services to the most disadvantaged individuals and groups locally, including those with protected characteristics as defined by the Equality Act 2010.
- 11.2 Many of the College's learning programmes are designed to address worklessness and to reduce the number of local young people who are not accessing education, employment or training. The College also offers a wide range of community provision that encourages those who are not yet ready to access mainstream programmes to attend a local first-step course.
- 11.3 The College supports inclusion by promoting community cohesion and reducing inequalities through the delivery of targeted programmes across the borough via its nine community partners.
- 11.4 Equality Impact Assessments have been undertaken to ensure the proposed changes to the college will maintain the learning opportunities and support that are currently provided to the most disadvantaged groups and individuals in Walsall.

## **12. Consultation**

- 12.1 The Memorandum and Articles of Association have been drafted in consultation with Walsall Council legal services and Walsall Adult & Community College.

## **Background papers**

The report titled 'Walsall Adult and Community College (WACC) Spin Out Project – Delivering Differently, which was submitted to Cabinet on 17 December 2014.

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Jamie Morris  
Executive Director



9 March 2015

Councillor Hussain  
Portfolio Holder



9 March 2015

## COMPANY NOT HAVING A SHARE CAPITAL

### ARTICLES OF ASSOCIATION OF A CHARITABLE COMPANY

#### Articles of Association of

#### THE WALSALL ADULT & COMMUNITY COLLEGE

(1) **The Company's Name is:**

**WALSALL ADULT & COMMUNITY COLLEGE**

(and in this document is called the "charity").

#### Interpretation

(2) (a) In these articles:

**"address"** means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a telephone number for receiving text messages in each case registered with the charity;

**"the articles"** means the charity's articles of association;

**"the charity"** means the company intended to be regulated by these articles;

**"clear days"** in relation to the period of a notice means a period excluding:

- The day when the notice is given or deemed to be given; and
- The day for which it is given or on which it is to take effect;

**"the commission"** means the Charity Commission for England and Wales;

**"Companies Act"** means the Companies Acts (as defined in section 2 of the Companies Act 2006) insofar as they apply to the charity;

**"connected person"** means as defined in article 70

**"Council Director"** means any director who is appointed by the Council pursuant to article (31) or article (34)

**"the directors"** means the directors of the charity. The directors are charity trustees as defined by section 177 of the Charities Act 2011;

**"document"** includes, unless otherwise specified, any document sent or supplied in electronic form;

**"Education Act"** means the Education Act 1996 as amended or replaced from time to time;

**“electronic form”** has the meaning given in section 1168 of the Companies Act 2006;

**“Independent Director”** means any director of the charity (other than a Council Director) who is appointed from time to time otherwise than pursuant to articles (37) to (40);

**“the memorandum”** means the charity’s memorandum of association;

**“officers”** includes the directors and the secretary (if any);

**“Objects”** means the objects of the charity which are defined in article (4);

**“the seal”** means the common seal of the charity if it has one;

**“secretary”** means any person appointed to perform the duties of the secretary of the charity;

**“the United Kingdom”** means Great Britain and Northern Ireland;

**“Walsall Council”** means Walsall Metropolitan Borough Council; and

- (b) words importing one gender shall include all genders, and the singular includes the plural and vice versa.
- (c) Unless the context otherwise requires words or expressions contained in the articles have the same meaning as in the Companies Acts but excluding any statutory modification not in force when this constitution becomes binding on the charity.
- (d) Apart from the exception mentioned in sub-paragraph (3) of this article a reference to an Act of Parliament includes any statutory modification or re-enactment of it for the time being in force.

### **Liability of Members**

- (3) The Liability of the members is limited to a sum not exceeding £10, being the amount that each member undertakes to contribute to the assets of the charity in the event of its being wound up while he, she or it is a member or within one year after he, she or it ceases to be a member, for:
  - (a) payment of the charity’s debts and liabilities incurred before he, she or it ceases to be a member;
  - (b) payment of the costs, charges and expenses of winding up; and
  - (c) adjustment of the rights of the contributories among themselves.

## Objects

- (4) The charity's objects ("Objects") are specifically restricted to those stated on articles (4)(a) to (f) inclusive as follows (subject to article (5) below):
- (a) the provision of suitable education and training to meet the reasonable needs of persons who live, work, visit or study in the borough of Walsall, who are either over compulsory school age but under 19 and persons who are aged 19 or over but under 25 who have a learning disability (as per Walsall Council's duty under section 15ZA of the Education Act);
  - (b) the provision of suitable education and training to meet the reasonable needs of persons who are over compulsory school age but under 19 and are subject to youth detention in the borough of Walsall (as per Walsall Council's duty under section 15ZA of the Education Act);
  - (c) the provision for the borough of Walsall of full time or part time education which is suitable to the requirements of persons from other areas who are over compulsory school age but who have not attained the age of 19 (as per Walsall Council's power under section 15(1ZA) of the Education Act);
  - (d) the provision for the borough of Walsall of full time or part education which is suitable to the requirements of persons who have attained the age of 19, including persons from other areas (as per Walsall Council's power under section 15B of the Education Act);
  - (e) the provision and advancement (or assistance in the provision and advancement) of education, learning and skills (in the interests of promoting social welfare and wellbeing) for the benefit of members of the community who are aged 16 and over, the general public at large and employers, who live, work, visit, study in and otherwise engage in trade or business activities, in the administrative borough of Walsall and the surrounding geographical area comprising the West Midlands; and/or
  - (f) such other charitable purposes which are beneficial to the education, learning and skills of the general public and the community and employers in the administrative borough of Walsall and the surrounding geographical area comprising the West Midlands, as are consistent with the object stated above in this article 4, as the directors shall in their absolute discretion, determine from time to time.

- (5) The following provisions shall only apply in circumstances where the charity is wholly owned by Walsall Council, failing which they shall be void:
- (a) More than 80% of the activity of the charity (in terms of its turnover) shall at all times comprise activity which falls within the objects which are defined in articles (4)(a) to (d) inclusive above;
  - (b) No change shall be made to either (firstly) any of the Objects and (secondly) the wording of this article (5) and (thirdly) articles 30, 33 and 34, without first obtaining (in each case) the approval of the Cabinet of the Council (in its absolute discretion).

## **Powers**

- (6) The charity has power to do anything which is calculated to further its Object(s) or is conducive or incidental to doing so (subject however at all times to the restriction in Article (5) in so far as it is applicable and still subsisting). In particular, the charity has power:
- (a) to raise funds, provided that in doing so, the charity must not undertake any substantial taxable permanent trading activity and must comply with any relevant statutory regulations;
  - (b) to operate bank and other accounts in the name of the charity and issue cheques and other financial instruments;
  - (c) to invest the monies of the Charity not immediately required for the Objects in or upon such investments, securities or property as may be thought fit;
  - (d) to promote, establish, operate, support and manage centres providing facilities for education, training and skills pursuant to the Objects and for any other activities which are consistent with the Objects;
  - (e) to design, prepare, publish and distribute (gratuitously or otherwise) information packs, leaflets, newsletters, posters, other publications, audio and/or visual recordings and multi-media products in order to promote and publicise the activities of the charity and its Objects (including the creation and maintenance of a website);
  - (f) to engage such consultants and advisors as are considered appropriate from time to time;
  - (g) to liaise and cooperate with or enter into any arrangement with any organisation, government, local authority, voluntary sector body, or other body, for any purpose which may be advantageous for the purposes of the activities of the charity, or otherwise to promote or maximise the effectiveness of the charity in pursuing its Objects;

- (h) to buy, take or lease or in exchange, hire or otherwise acquire any property or rights and to maintain and equip it for use and insure the same to its full value;
- (i) to sell, lease or otherwise dispose of all or any part of the property and rights belonging to the charity, provided that in exercising this power, the charity must comply as appropriate with sections 117 and 122 of the Charities Act 2011.
- (j) to manage, develop, improve or otherwise deal with all or any part of the property and rights of the charity, including the construction, maintenance and alteration of any buildings or other structures and erections;
- (k) to borrow money and to charge the whole or any part of the property and rights belonging to the charity as security for repayment of the money borrowed or as security for a grant or the discharge of an obligation. The charity must comply as appropriate with sections 124-126 of the Charities Act 2011 if it wishes to mortgage land owned by the charity;
- (l) to lend money and give credit to, take security for such loans or credit from and to also guarantee and become or give security for the performance of contracts or obligations by any person or company as may be necessary or expedient to the work of the charity;
- (m) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- (n) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects;
- (o) to acquire, merge with or to enter into any partnership or joint venture arrangement with any other charity, or to make any charitable donation (in cash or assets) to another charity or other body in furtherance of the Objects;
- (p) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
- (q) to employ or hire and remunerate such staff as are necessary for carrying out the work of the charity, provided that the charity may only employ or remunerate a director to the extent that it is permitted to do so by article 7 and provided that it complies with the conditions in that article;
- (r) to, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000:
  - (i) deposit or invest funds;
  - (ii) employ a professional fund-manager; and

- (iii) arrange for the investments or other property of the charity to be held in the name of a nominee.
- (s) to effect insurance of all kinds, which may include:
  - (i) indemnity insurance for the directors in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011;
  - (ii) insurance to cover the officers, staff, voluntary workers and those of its members from and against all such risks incurred in the course of the performance of their duties.
- (t) to pay out of the funds of the charity the costs of forming and registering the charity both as a company and as a charity;
- (u) to issue appeals, hold public meetings, exhibitions, displays and lectures and take such other steps as may be required for the purpose of procuring contributions to the funds of the Charity (in the form of gifts, donations, subscriptions or otherwise) or to promote a greater understanding of the Objects of the charity;
- (v) to take and accept gifts, subscriptions, grants, donations, bequests and legacies of money or property (real or personal) or other assets (and accept and reasonable conditions attaching to them) and to take such consequential steps as may be deemed appropriate for the Objects, including the alteration, development, sale, leasing or disposal of any such property or assets
- (w) to carry on trade in so far as either the trade is exercised in the course of the actual carrying out of a primary object of the Charity, or such trade is temporary or ancillary to the carrying out of the Objects;
- (x) to change the name of the charity, subject to the prior written approval of the Charity Commission;
- (y) to carry on any other activity which may be appropriately carried on in connection with any of the Objects.

### **Holding of Assets and Application of income and property**

- (7) (a) The income, property and other assets of the charity (including, without limitation the bank account of the charity) shall:
  - (i) be held in the name of the charity and not (without limitation) in the names of one or more of either the directors or members of the charity;
  - (ii) be applied solely towards the promotion of the Objects;.

- (b) (i) A director is entitled to be reimbursed from the property of the charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity.
  - (ii) A director may benefit from trustee indemnity insurance cover purchased at the charity's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
  - (iii) A director may receive an indemnity from the charity in the circumstances specified in article 65.
  - (iv) A director may not receive any other benefit or payment unless it is authorised by article 8.
- (c) Subject to article 8, none of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the charity. This does not prevent a member who is not also a director from receiving:
- (i) a benefit from the charity in the capacity of a beneficiary of the charity;
  - (ii) reasonable and proper remuneration for any goods or services supplied to the charity.

## **Benefits and payments to charity directors and connected persons**

### **General Provisions**

- (8) (a) Except in circumstances where the payment in question is permitted by sub-clause (c) of this article, or authorised by the court or the Charity Commission no director or connected person may;
- (i) buy any goods or services from the charity on terms preferential to those applicable to members of the public;
  - (ii) sell goods, services, or any interest in land to the charity;
  - (iii) be appointed to any office of the charity which is paid salary or fees;
  - (iv) be employed by, or receive any remuneration from, the charity;
  - (v) receive any other financial benefit from the charity;
- (b) In this article a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

## **Scope and powers permitting directors' of connected persons' benefits**

- (c) (i) A director or connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that the benefit in question is available generally to the beneficiaries of the charity .
- (ii) A director or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the charity where that is permitted in accordance with, and subject to the conditions in, sections 185 and 186 of the Charities Act 2011.
- (iii) Subject to sub-clause (d) of this article a director or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by the director or connected person.
- (iv) A director or connected person may receive interests on money lent to the charity at a reasonable and proper rate which must be not more than the rate which is 2 per cent less than the Bank of England bank rate (also known as the base rate) provided that the amount of, and the terms of, the loan are fully and properly documented by the charity.
- (v) A director or connected person may receive rent for premises let by the director or connected person to the charity. The amount of the rent and the other terms of the lease must be reasonable and proper. The director concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (vi) A director or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public.
- (vii) The charity may make any payment of fees, remuneration or other benefit in money or money's worth to any company of which a director of the charity is also a member, provided that the payment is made in good faith and provided also that the director in question holds not more than 1/100<sup>th</sup> part of the issued capital of the company in question.

## **Payment for supply of goods only – controls**

- (d) The charity and its directors may only rely upon the authority provided by sub-clause (c)(iii) of this article if each of the following conditions is satisfied:

- (i) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the charity or its directors (as the case may be) and the director or connected person supplying the goods (“the supplier”) under which the supplier is to supply the goods in question to or on behalf of the charity.
  - (ii) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.
  - (iii) The other directors are satisfied that it is in the best interests of the charity to contract with the supplier rather than with someone who is not a director or connected person. In reaching that decision the directors must balance the advantage of contracting with a director or connected person against the disadvantages of doing so.
  - (iv) The supplier is absent from the part of any meeting at which there is discussion for the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity.
  - (v) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of directors is present at the meeting.
  - (vi) The reason for their decision is recorded by the directors in the minute book.
  - (vii) A majority of the directors then in office are not in receipt of remuneration or payments authorised by article 7.
- (e) In the interpretation of sub-clauses (c) and (d) of this article the word “charity” shall include any company in which the charity:
- (i) holds more than 50% of the shares; or
  - (ii) controls more than 50% of the voting rights attached to the shares; or
  - (iii) has the right to appoint one or more directors to the board of the company.

### **Declaration of Directors’ Interests**

- (9) (a) A director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not previously been declared.

- (b) A director must absent himself or herself from any discussions of the charity's directors in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal interest (including but not limited to any personal financial interest).

### **Conflict of Interests and Conflicts of Loyalties**

- (10) (a) If a conflict of interests arises for a director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the articles, the un-conflicted directors may authorise such a conflict of interests where the following conditions apply:
  - (i) The conflicted director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person;
  - (ii) The conflicted director does not vote on any such matter and is not to be counted when considering whether a quorum of directors is present at the meeting; and
  - (iii) The un-conflicted directors consider it is in the interests of the charity to authorise the conflict of interests in the circumstances applying.
- (b) In this article a conflict of interests arising because of a duty of loyalty owed to another organisation or person only refers to such a conflict which does not involve a direct or indirect benefit of any nature to a director or to a connected person.

### **Members**

- (11) (a) Walsall Council shall, as the sole subscriber to the memorandum, also be the first and sole member of the charity, until such time as the Council opts to give up its sole membership of the charity (acting reasonably).
- (b) Once Walsall Council cease to be the sole member of the charity, the membership shall be open to other individuals or organisations who:
  - (i) Apply to the charity in the form required by the directors; and
  - (ii) Are approved by the directors.
- (c) (i) The directors may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the charity to refuse the application.
- (ii) The directors must inform the applicant in writing of the reasons for the refusal within twenty-one days of the decision.

- (iii) The directors must consider any written representations the applicant may make about the decision. The directors' decision following any written representations must be notified to the applicant in writing but shall be final.
- (d) Membership is not transferable.
- (e) The directors must keep a register of names and addresses of the members and ensure that this kept up to date at all times.

### **Classes of Membership**

- (12) (a) The directors may establish classes of membership with different rights and obligations and shall record the rights and obligations in the register of members.
- (b) The directors may not directly or indirectly alter the rights or obligations attached to a class of membership.
- (c) The rights attached to a class of membership may only be varied if:
  - (i) Three-quarters of the members of that class consent in writing to the variation; or
  - (ii) A special resolution is passed at a separate general meeting of the members of that class agreeing to the variation.
- (d) The provisions in the articles about general meetings shall apply to any meeting relating to the variation of the rights of any class of members.

### **Termination of Membership**

- (13) Membership is terminated if:
  - (a) The member dies or, if it is an organisation, ceases to exist, or if the member in question ceases to be a director of the charity;
  - (b) The member resigns by written notice to the charity unless, after the resignation, there would be less than two members;
  - (c) Any sum due from the member to the charity is not paid in full within six months of it falling due;
  - (d) The member is removed from membership by a resolution of the directors that it is in the best interests of the charity that his or her or its membership is terminated (provided that this article shall not apply to Walsall Council while the Council is the sole member of the charity). A resolution to remove a member from membership may only be passed if:

- (i) The member has been given at least twenty-one days' notice in writing of the meeting of the directors at which the resolution will be proposed and the reasons why it is to be proposed;
- (ii) The member or, at the option of the member, the member's representative (who need not be a member of the charity) has been allowed to make representations to the meeting.

### **General Meetings**

- (14) (a) The charity must hold its first annual general meeting within eighteen months after the date of its incorporation.
  - (b) An annual general meeting must be held in each subsequent year and not more than fifteen months may elapse between successive annual general meetings.
- (15) The directors may call a general meeting at any time.

### **Notice of General Meetings**

- (16) (a) The minimum periods of notice required to hold a general meeting of the charity are:
    - (i) Twenty-one clear days for an annual general meeting or a general meeting called for the passing of a special resolution;
    - (ii) Fourteen clear days for all other general meetings.
  - (b) A general meeting may be called by shorter notice if it is so agreed by a majority in number of members having a right to attend and vote at the meeting, being a majority who together hold not less than 90 percent of the total voting rights.
  - (c) The notice must specify the date time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be an annual general meeting, the notice must say so. The notice must also contain a statement setting out the right of members to appoint a proxy under section 324 of the Companies Act 2006 and article 22.
  - (d) The notice must be given to all the members of the charity and to the directors and auditors.
- (17) The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the charity.

## Proceedings at General Meetings

- (18) (a) No business shall be transacted at any general meeting unless a quorum is present.
- (b) A quorum is either:
- (i) one (1) member present in person or by proxy and entitled to vote upon the business to be conducted at the meeting; or
  - (ii) One tenth of the total membership at the time (whichever is the greater).
- (c) The authorised representative of a member organisation shall be counted in the quorum.
- (19) (a) If either of the contingencies which are stated in the following sub-clauses occur, then the meeting in question shall be adjourned to such time and place as the directors shall determine:
- (i) A quorum is not present within half an hour from the time appointed for the meeting; or
  - (ii) During a meeting a quorum ceases to be present.
- (b) The directors must reconvene the meeting and must give at least seven clear days' notice of the reconvened meeting stating the date, time and place of the meeting.
- (c) if no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting the members present in person or by proxy at that time shall constitute the quorum for that meeting.
- (20) (a) General meetings shall be chaired by the person who has been appointed to chair meetings of the directors.
- (b) If there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting a director nominated by the directors shall chair the meeting (subject to article 33).
- (c) If there is only one director present and willing to act, he or she shall chair the meeting (subject to article 33).
- (d) If no director is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present in person or by proxy and entitled to vote must choose one of their number to chair the meeting (subject to article 33).

- (21) (a) The members present in person or by proxy at a meeting may resolve by ordinary resolution that the meeting shall be adjourned.
- (b) The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.
- (c) No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.
- (d) If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of meeting.
- (22) (a) Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded:
- (i) By the person chairing the meeting; or
- (ii) By at least two members present in person or by proxy and having the right to vote at the meeting; or
- (iii) By a member or members present in person or by proxy representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
- (b) (i) The declaration by the person who is chairing the meeting of the result of a vote shall be conclusive unless a poll is demanded.
- (ii) The result of the vote must be recorded in the minutes of the charity but the number or proportion of votes cast need not be recorded.
- (c) (i) A demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the person who is chairing the meeting.
- (ii) If the demand for a poll is withdrawn the demand shall not invalidate the result of a show of hands declared before the demand was made.
- (d) (i) A poll must be taken as the person who is chairing the meeting directs, who may appoint scrutineers (who need not be members) and who may fix a time and place for declaring the results of the poll.
- (ii) The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

- (e) (i) A poll demanded on the election of a person to chair a meeting or on a question of adjournment must be taken immediately.
- (ii) A poll demanded on any other question must be taken either immediately or at such time and place as the person who is chairing the meeting directs.
- (iii) The poll must be taken within thirty days after it has been demanded.
- (iv) If the poll is not taken immediately at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
- (v) If a poll is demanded the meeting may continue to deal with any other business that may be conducted at the meeting.

### **Content of Proxy Notices**

- (23) (a) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which -
  - (i) States the name and address of the member appointing the proxy;
  - (ii) Identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (iii) Is signed by or on behalf of the member appointing the proxy, or is authorised in such manner as the directors may determine; and
  - (iv) Is delivered to the charity in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (b) The charity may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (c) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (d) Unless a proxy notice indicates otherwise, it must be treated as -
  - (i) Allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - (ii) Appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

## **Delivery of Proxy Notices**

- (23A) (a) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the charity by or on behalf of that person.
- (b) An appointment under a proxy notice may be revoked by delivering to the charity a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (c) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (d) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

## **Written Resolutions**

- (24) (a) A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective provided that:
- (i) A copy of the proposed resolution has been sent to every eligible member;
- (ii) A simple majority (or in the case of a special resolution a majority of not less than 75%) of members has signified its agreement to the resolution; and
- (iii) It is contained in an authenticated document which has been received at the registered office within the period of twenty-eight (28) days beginning with the circulation date.
- (b) A resolution in writing may comprise several copies to which one or more members have signified their agreement.
- (c) In the case of a member that is an organisation, its authorised representative may signify its agreement.

## **Votes of Members**

- (25) Subject to article 12, every member, whether an individual or an organisation shall have one vote.

- (26) Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and the decision of the person who is chairing the meeting shall be final.
- (27) (a) Any organisation that is a member of the charity may nominate any person to act as its representative at any meeting of the charity.
- (b) The organisation must give written notice to the charity of the name of its representative. The representative shall not be entitled to represent the organisation at any meeting unless the notice has been received by the charity. The representative may continue to represent the organisation until written notice to the contrary is received by the charity.
- (c) Any notice given to the charity will be conclusive evidence that the representative is entitled to represent the organisation or that his or her authority has been revoked. The charity shall not be required to consider whether the representative has been properly appointed by the organisation.

## **Directors**

- (28) (a) A director must be a natural person aged sixteen years or older.
- (b) No one may be appointed a director if he or she would be disqualified from acting under the provision of article (44).
- (29) The minimum number of directors shall be three. .
- (30) The maximum number of directors shall be nine (9) all of whom shall be Council Directors (of which a minimum of three shall be elected members of Walsall Council while the Council is the sole member of the charity) provided that once the Council has ceased to be the sole member of the charity the maximum number of Council Directors shall then be one (1) and the remaining directors (in respect of which there shall then be no maximum number) shall be Independent Directors;
- (31) The first directors of the charity (all of whom shall be designated as Council Directors) shall be those persons who are approved by the Council's cabinet and who are notified to Companies House by the Council as the first directors of the charity.
- (32) A director may not appoint an alternate director or anyone to act on his or her behalf at meetings of the directors.

## **The Chairman and Vice-Chairman**

(33) The Chairman and Vice-Chairman of the Directors shall:

- (a) be elected at any meeting of the Directors, provided that while the Council remains the sole member of the charity the appointment of the chairman and vice-chairman of the Directors shall be subject to approval on behalf of the Council by its Executive Director of Regeneration (or such other officer to whom this responsibility has been delegated from time to time by the Council's Cabinet);
- (b) have a casting vote in the event of equality of votes at any meeting of the Directors.

## **Appointment and Removal of Council Directors by Walsall Council**

(34) Subject to articles 30 and 36, Walsall Council shall, so long as it remains the sole member of the charity, have an exclusive power (at its sole discretion, acting reasonably) by notice in writing signed on its behalf by an authorised officer and given to the charity, to:

- (a) appoint any elected member, officer or employee of Walsall Council who is willing to act, to be a director of the charity;
- (b) appoint any other suitably qualified and experienced person who is willing to act, and who is nominated to Walsall Council by a resolution of the Directors, to be a director of the charity;
- (c) remove from office as a director any Council Director that it has appointed pursuant to article (31) or article (34)(1) or (2).

(35) Any appointment or removal of a Council Director under article (34) shall have effect from the date on which the relevant notice is given to the charity by Walsall Council;

(36) The powers conferred by article (34) shall be deemed to be limited so that once the Council ceases to be the sole member of the charity, the Council shall only be able to exercise its power under article (34) to appoint one (1) Council Director at any one time.

## **Appointment of Directors who are Not Council Directors**

(37) Subject to article (34), the charity may by ordinary resolution:

- (a) Appoint a person who is willing to act to be an Independent Director; and
- (b) Determine the rotation in which any additional directors are to retire (subjects to articles (43) and (44)).

- (38) Subject to article (34), no person other than a director retiring by rotation may be appointed a director at any general meeting unless:
- (a) He or she is recommended for re-election by the directors; or
  - (b) Not less than fourteen nor more than thirty-five clear days before the date of the meeting, the charity is given a notice that:
    - (i) Is signed by a member entitled to vote at the meeting;
    - (ii) States the member's intention to propose the appointment of a person as a director;
    - (iii) Contains the details that, if the person were to be appointed, the charity would have to file at Companies House; and
    - (iv) Is signed by the person who is to be proposed to show his or her willingness to be appointed.
- (39) All members who are entitled to receive notice of a general meeting must be given not less than seven nor more than twenty-eight clear days' notice of any resolution to be put to the meeting to appoint a director other than a director who is to retire by rotation.
- (40) (a) Subject to article (34), the directors may appoint a person who is willing to act to be an Independent Director.
- (b) Any Independent Director who is appointed by a resolution of the other directors must retire at the next annual general meeting and must not be taken into account in determining the directors who are to retire by rotation.
- (41) The appointment of a director, whether by the charity in general meeting or by the other directors, or Walsall Council, must not cause the number of directors to exceed any number fixed as the maximum number of directors in article 30.

### **Powers of Directors**

- (42) (a) The directors shall manage the business of the charity and may exercise all the powers of the charity unless they are subject to any restrictions imposed by the Companies Acts, the articles, or any special resolution.
- (b) No alteration of the articles or any special resolution shall have retrospective effect to invalidate any prior act of the directors.
- (c) Any meeting of directors at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the directors.

## **Retirement of Directors**

- (43) Subject to Article (34), at the first annual general meeting all the directors must retire from office unless by the close of the meeting the members have failed to elect sufficient directors to hold a quorate meeting of the directors. At each subsequent annual general meeting one-third of the directors or, if their number is not three or a multiple of three, the number nearest to one-third, must retire from office. If there is only one director he or she must retire.
- (44) (a) The directors to retire by rotation shall be those who have been longest in office since their last appointment. If any directors became or were appointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (b) If a director is required to retire at an annual general meeting by a provision of the articles the retirement shall take effect upon the conclusion of the meeting.

## **Disqualified and Removal of Directors**

- (45) A director shall cease to hold office if he or she:
- (i) Ceases to be a director by virtue of any provision in the Companies Acts or is prohibited by law from being a director;
  - (ii) Is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of those provisions);
  - (iii) Ceases to be a member of the charity;
  - (iv) Becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
  - (v) Resigns as a director by notice to the charity (but only if at least two directors will remain in office when the notice of resignation is to take effect) ; or
  - (vi) Is absent without the permission of the directors from all their meetings held within a period of six consecutive months and the directors resolve that his or her office be vacated; or
  - (vii) Is removed by the Council in accordance with article 34(b).

## **Remuneration of Directors**

- (46) The directors must not be paid any remuneration unless it is authorised by article 8.

## **Conduct of Directors**

- (47) It is the duty of each director of the charity to take decisions (and exercise their powers and responsibilities as a director) in such a way as they consider, in good faith, will be most likely to promote the success of the charity in achieving the Objects and will be in the best interests of the company and, irrespective of any other body (in particular the Council) which may have an interest in the matter in question.
- (48) Without prejudice to the principle set out in article 47, each of the directors shall have a duty, in exercising functions as a charity trustee, to act in the best interests of the company, and, in particular must:
- (a) seek, in good faith, to ensure that the charity acts in a manner which is in accordance with its Objects;
  - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - (c) in circumstances giving rise to the possibility of a conflict of interest between the company and any party responsible for the appointment of that director:
    - (i) put the interests of the company before that of the other party;
    - (ii) where any other duty prevents them from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other directors with regard to the matter in question.

## **Proceedings of Directors**

- (49) (a) The directors may regulate their proceedings as they think fit, subject to the provisions of the articles.
- (b) Any director may call a meeting of the directors.
- (c) The secretary (if any) must call a meeting of the directors if requested to do so by a director.
- (d) Questions arising at a meeting shall be decided by a majority of votes.
- (e) In the case of an equality of votes, the person who is chairing the meeting shall have a second or casting vote.
- [ (f) A meeting may be held by suitable electronic means agreed by the directors in which each participant may communicate with all the other participants.]

## **Quorum**

- (50) (a) No decision may be made by a meeting of the directors unless a quorum is present at the time the decision is purported to be made. "Present" includes being present by suitable electronic means agreed by the directors in which a participant or participants may communicate with all the other participants.]
- (b) The quorum for meetings of the directors shall be three (3) or the number nearest to one-third of the total number of directors, whichever is the greater, or such larger number as may be decided from time to time by the directors.
- (c) A director shall not be counted in the quorum present when any decision is made about a matter upon which that director is not entitled to vote.
- (51) If the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.
- (52) (a) The directors shall appoint a director to chair their meetings and may at any time revoke such appointment, subject to article 33.
- (b) If no-one has been appointed to chair meetings of the directors or if the person appointed is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the directors present may appoint one of their number to chair that meeting, subject to article 33.
- (c) The person appointed to chair meetings of the directors shall have no functions or powers except those conferred by the articles or delegated to him or her by the directors.
- (53) (a) A resolution in writing or in electronic form agreed by all of the directors entitled to receive notice of a meeting of the directors and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.
- (b) The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more directors has signified their agreement.

## **Delegation**

- (54) (a) The directors may delegate any of their powers or functions to a committee of two or more directors but the terms of any delegation must be recorded in the minute book.

- (b) The directors may impose conditions when delegating, including the conditions that:
  - (i) The relevant powers are to be exercised exclusively by the committee to whom they delegate;
  - (ii) No expenditure may be incurred on behalf of the charity except in accordance with a budget previously agreed with the directors.
- (c) The directors may revoke or alter a delegation.
- (d) All acts and proceedings of any committees must be fully and promptly reported to the directors.

### **Validity of Directors' Decisions**

- (55) (a) Subject to article 54(b), all acts done by a meeting of directors, or of a committee of directors, shall be valid notwithstanding the participation in any vote of a director:
- (i) Who was disqualified from holding office;
  - (ii) Who had previously retired or who had been obliged by the constitution to vacate office;
  - (iii) Who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise;

If without:

- (iv) The vote of that director; and
  - (v) That director being counted in the quorum;
  - (vi) The decision has been made by a majority of the directors at a quorate meeting.
- (b) Article 55(a) does not permit a director or a connected person to keep any benefit that may be conferred upon him or her by a resolution of the directors or of a committee of directors if, but for article 55(a), the resolution would have been void, or if the director has not complied with article 9.

### **Seal**

- (56) If the charity has a seal it must only be used by the authority of the directors or of a committee of directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and

unless otherwise so determined it shall be signed by a director and by the secretary (if any) or by a second director.

### **Minutes**

(57) The directors must keep minutes of all:

- (a) Appointments of officers made by the directors;
- (b) Proceedings at meetings of the charity;
- (c) Meetings of the directors and committees of directors including:
  - (i) The names of the directors present at the meeting;
  - (ii) The decisions made at the meetings; and
  - (iii) Where appropriate the reasons for the decisions.

### **Accounts**

- (58) (a) The directors must prepare for each financial year accounts as required by the Companies Acts. The accounts must be prepared to show a true and fair view and follow accounting standards issued or adopted by the Accounting Standards Board or its successors and adhere to the recommendations of applicable Statement of Recommended Practice.
- (b) The directors must keep accounting records as required by the Companies Act.

### **Annual Report and Return and Register of Charities**

- (59) (a) The directors must comply with the requirements of the Charities Act 2011 with regard to the:
- (i) Keeping of accounting records for the charity;
  - (ii) Preparation of annual statements of account for the charity;
  - (iii) The auditing or independent examination of the statements of account for the charity;
  - (iv) Transmission of a copy of the statements of account to the Commission;
  - (v) Preparation of an Annual Report and the transmission of a copy of it to the Commission;

- (vi) Preparation of an Annual Return and its transmission to the Commission.
- (b) The directors must notify the Commission promptly of any changes to the charity's entry on the Central Register of Charities.

### **Means of Communication to be Used**

- (60) (a) Subject to the articles, anything sent or supplied by or to the charity under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the charity.
  - (b) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- (61) Any notice to be given to or by any person pursuant to the articles:
- (a) Must be in writing; or
  - (b) Must be given in electronic form.
- (62) (a) The charity may give any notice to a member either:
- (i) Personally; or
  - (ii) By sending it by post in a prepaid envelope addressed to the member at his or her address; or
  - (iii) By leaving it at the address of the member; or
  - (iv) By giving it in electronic form to the member's address;
  - (v) By placing the notice on a website and providing the person with a notification in writing or in electronic form of the presence of the notice on the website. The notification must state that it concerns a notice of a company meeting and must specify the place, date and time of the meeting.
- (b) A member who does not register an address with the charity or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the charity.
- (63) A member present in person at any meeting of the charity shall be deemed to have received notice of the meeting and of the purposes for which it was called.

- (64) (a) Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.
- (b) Proof that an electronic form of notice was given shall be conclusive where the company can demonstrate that it was properly addressed and sent, in accordance with section 1147 of the Companies Act 2006.
- (c) In accordance with section 1147 of the Companies Act 2006 notice shall be deemed to be given:
  - (i) Forty-eight hours after the envelope containing it was posted; or
  - (ii) In the case of an electronic form of communication, forty-eight hours after it was sent.

### **Indemnity**

- [ (65) (a) The charity may indemnify a relevant director against any liability incurred in that capacity, to the extent permitted by sections 232 to 234 of the Companies Act 2006.
- (b) In this article a “relevant director” means any director or former director of the charity.

### **[Optional**

- [ (66) The charity may indemnify an auditor against any liability incurred by him or her or it:
  - (b) In defending proceedings (whether civil or criminal) in which judgment is given in his or her or its favour or he or she or it is acquitted; or
  - (b) In connection with an application under Section 1157 of the Companies Act 2006 (power of Court to grant relief in case of honest and reasonable conduct) in which relief is granted to him or her or it by the Court.]

### **Rules**

- (67) (a) The directors may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the charity.
- (b) The bye laws may regulate the following matters but are not restricted to them:
  - (i) The admission of members of the charity (including the admission of organisations to membership) and the rights and privileges of such

members, and the entrance fees, subscriptions and other fees or payments to be made by members;

- (ii) The conduct of members of the charity in relation to one another, and to the charity's employees and volunteers;
  - (iii) The setting aside of the whole or any part or parts of the charity's premises at any particular time or times or for any particular purpose of purposes;
  - (iv) The procedure at general meetings and meetings of the directors in so far as such procedure is not regulated by the Companies Acts or by the articles;
  - (v) Generally, all such matters as are commonly the subject matter of company rules.
- (c) The charity in general meeting has the power to alter, add to or repeal the rules or bye laws.
- (d) The directors must adopt such means as they think sufficient to bring the rules and bye laws to the notice of members of the charity.
- (e) The rules or bye laws shall be binding on all members of the charity. No rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the articles.

## **Disputes**

- (68) If a dispute arises between members of the charity about the validity or propriety of anything done by the members of the charity under these articles, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

## **Dissolution**

- (69) (a) The members of the charity may at any time before, and in expectation of, its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the charity be applied or transferred in any of the following ways:
- (i) Directly for the Objects; or
  - (ii) By transfer to any charity or charities for purposes similar to the Objects; or
  - (iii) To any charity or charities for use for particular purposes that fall within the Objects.
- (b) Subject to any such resolution of the members of the charity under article 69(a), the directors of the charity may at any time before and in expectation of its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision made for them, shall on or before dissolution of the charity be applied or transferred:
- (i) Directly for the Objects; or
  - (ii) By transfer to any charity or charities for purposes similar to the Objects; or
  - (iii) To any charity or charities for use for particular purposes that fall within the Objects.
- (c) In no circumstances shall the net assets of the charity be paid to or distributed among the members of the charity (except to a member that is itself a charity) and if no resolution in accordance with article 69(a) is passed by the members or the directors the net assets of the charity shall be applied for charitable purposes as directed by the Court or the Commission.

## **Interpretation**

- (70) In articles 8, sub-clause (b) of article 10 and sub-clause (b) of article 55 the phrase “connected person” means:
- (a) A child, parent, grandchild, grandparent, brother or sister of the director;
  - (b) The spouse or civil partner of the director or of any person falling within sub-clause (a) above;\*

- (c) A person carrying on business in partnership with the director or with any person falling within sub-clause (a) or (b) above;
- (d) An institution which is controlled -
  - (i) By the director or any connected person falling within sub-clause (a), (b), or (c) above; or
  - (ii) By two or more persons falling within sub-clause 4(a), when taken together
- (e) A body corporate in which -
  - (i) The director or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
  - (ii) Two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.
  - (iii) Sections 350-352 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this article.