

Healthwatch Oxfordshire Board of Directors

Date of Meeting: 26 th January 2016	Paper No: 3
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Title of Presentation: Business Manager’s Paper

This paper is for	Discussion	x	Decision	x	Information	x
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Purpose and Executive Summary (if paper longer than 3 pages):
 This paper presents an update on the:

- proposed charity conversion process
- Presents the draft articles for consideration
- Board membership and structure

Financial Implications of Paper:

None

Action Required:

The Board is asked to:

1. Note the update on the proposed Charity Conversion
2. Agree the Draft Articles
3. Note the Board meeting update
4. Agree to a Board Development session on 26th April to discuss
 - Board structure and development
 - Board membership
 - Board groups
5. Agree to review the Directors Role Description

Author: Carol Ball

1. Update on Conversion to a Charity

Tessa Hennessy (solicitor) has been engaged to support Healthwatch Oxfordshire with its move towards converting from a Community Interest Company to Charity.

New draft Articles of Association (*appendix 1*) have been prepared in a form that are based on the Charity Law Association Model. These can be found at the end of this document along with an accompanying report (*appendix 2*) prepared for the Directors by Tessa Hennessy.

The Directors are asked to consider the draft articles paying particular attention to:

1. Agree the Objects
2. Agree the powers and any additional powers that the Directors agree.
3. Agree the Trustees - should there be provision for an AGM?
4. Agree the Proceedings - the current quorate is three Directors, should this remain as three?
5. Agree the Trustees Powers
6. Agree the Benefits and Conflicts
7. Agree the Records and Accounts
8. Membership - agree the membership
9. Agree the Meetings/General meeting and Membership - paying particular attention to 9.3/9.8 and 9.10.
10. Dissolution - noting the removal of ORCC.

Next steps

Once the Draft Articles have been agreed by the Board, the Charity Commission will be asked to issue a statement that in their [Charity Commissions] opinion, if the proposed Articles are adopted, the company will be able to fully convert to a charity in England and Wales.

It should be noted that through the work of the Business Manager with the support of Tessa Hennessy, HWO is putting everything in place to enable a smooth conversion to a charity. At its meeting on the 22nd November 2015 the Board agreed “*in principle*” to convert to a charity and can at any time choose to delay this process.

The Board is recommended to consider what further information it will need to inform its decision making on whether or not to convert to a charity.

2. Board Update

The Healthwatch Oxfordshire Board is made up of volunteers who give their time freely to the organisation and receive no remuneration. Currently the Board provide strategic leadership to the organisation and the staff team deliver operationally, given that the organisation is faced with delivering its service with a reduced cut in funding of £100k in

the financial year 2016/17 the Directors will need to consider how they will work in the new operating environment.

2.1 Meetings

Historically the Board met on a monthly basis between 2-4pm, however, in November 2014 the Board agreed to meet on a bi-monthly basis. Board meetings are supplemented with a Board workshop held on alternate months between 2-4pm. In July 2015 the Board agreed to amend the time of Board meetings and to hold Board meetings in public to ensure the work of Healthwatch Oxfordshire is fully transparent and to enable the public to engage directly with the Board of Healthwatch Oxfordshire.

Currently Board meetings are held in public (P) , bi-monthly on a rotational basis across the County, with the time varying between 2-4pm, 4-6pm and 7-9pm. The table at *figure 1.1* represents the statistics to date.

Location	Time	No of Board members (n=13)	Members of the Public in attendance
Oxford	2-4pm	12	n/a
Oxford	2-4pm	9	n/a
Oxford	2-4pm	8	n/a
Banbury (P)	7-9pm	9	7
Henley-on-Thames (P)	2-4pm	7 (n=11)	1
Abingdon (P)	4-6pm	6 (n=11)	4

Figure 1.1

Moving the meetings around the county has made HWO more transparent and accessible to the public. However, moving the timing of the meeting has proved problematic to some Directors and has led to some confusion about times. The meeting venues and times for the meetings in March and May are set and it is proposed that a full evaluation of the meeting in public process is carried out and reported back to the Board at its meeting in July.

Board workshops are held on the 4th Tuesday of the month between 2-4pm.

2.2 Directors

In March 2014 eight volunteer Directors joined the Healthwatch Oxfordshire Board bringing the total number of Directors to thirteen. The Directors terms of office are two years with an option for Directors to be reappointed at the end of their two year term to a maximum of six years. Currently the Board comprises eleven Directors of whom Jacqueline Pearce-Gervis announced that she will not be standing for reappointment in May 2016 and Jane Manley has informed the Board that she will be stepping down for personal reasons from the end of March 2016. Their contribution to Healthwatch Oxfordshire has been invaluable and we wish them well.

The Board is asked to consider whether in light of its reduced size it needs to recruit to its number. It is recommended that the Board uses the next workshop on April 26th to evaluate the current skills of the Board this will enable the Directors to identify if there are any gaps in order to inform decision making on the whether or not to recruit or co-opt new Directors.

2.3 Board Groups

Currently the work of the Board is underpinned by three groups, the HR Group, Marketing and Communications Group and the Strategy Planning and Finance Group. As the number of Directors reduces there will be an impact on the membership of these groups and it is anticipated that all three of the groups will need an additional Director to join their membership to ensure that the Groups stay within their terms of reference.

Given the voluntary role of the Directors and their current time commitments to Healthwatch Oxfordshire it is recommended that the Board use their session on April 26th to:

- Discuss the current Board structure - does it meet the needs of both the organisation and the Directors if not:
 - Agree a structure for the future
- Recruit Directors to any Groups as needed if applicable
- Review the Directors role description (*appendix 3*)

Companies Act 2006

Company limited by guarantee

Draft ARTICLES OF ASSOCIATION

OF

HEALTHWATCH OXFORDSHIRE

1. Objects

The Objects of the Charity are for the public benefit the advancement of health and the relief of those in need including by reason of youth, age, ill-health, disability or financial hardship by:

- (A) providing information and advice to the general public about local health and social care services;
- (B) making the views and experiences of members of the general public known to health and social care providers
- (C) enabling local people to have a voice in the development, delivery and equality of access to local health and care services and facilities; and
- (D) providing training and the development of skills for volunteers and the wider community in understanding, scrutinising, reviewing and monitoring local health and social care services and facilities.

The Objects may be amended by special resolution but only with the prior written consent of the Commission.

2. Powers

The Charity has the following powers, which may be exercised only in promoting the Objects:

- 2.1 to provide services including but not limited to, training, advice, support, and information;
- 2.2 to provide grants, loans and donations;
- 2.3 to accept gifts and to raise funds (but not by means of taxable trading);
- 2.4 to promote or carry out research and to disseminate the results;
- 2.5 to raise awareness of and to publicise issues concerning local health and social care;
- 2.6 to hold exhibitions, open days, meetings, conferences, lectures and seminars;
- 2.7 to co-operate with other bodies;
- 2.8 to support, administer or set up other charities;
- 2.9 to borrow money;
- 2.10 to give security for loans or other obligations (but only in accordance with the restrictions imposed by the Charities Act);
- 2.11 to acquire, lease, licence or hire property of any kind;
- 2.12 to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act);
- 2.13 to set aside funds for special purposes or as reserves against future expenditure;

- 2.14 to deposit or invest its funds in any manner (but to invest only after obtaining such advice from a financial expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification);
- 2.15 to delegate the management of investments to a financial expert, but only on terms that:
- (1) the investment policy is set down in writing for the financial expert by the Trustees;
 - (2) timely reports of all transactions are provided to the Trustees;
 - (3) the performance of the investments is reviewed regularly with the Trustees;
 - (4) the Trustees are entitled to cancel the delegation arrangement at any time;
 - (5) the investment policy and the delegation arrangement are reviewed at least once a year;
 - (6) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
 - (7) the financial expert must not do anything outside the powers of the Charity;
- 2.16 to arrange for investments or other property of the Charity to be held in the name of a nominee company acting under the direction of the Trustees or controlled by a financial expert acting under their instructions, and to pay any reasonable fee required;
- 2.17 to deposit documents and physical assets with any company registered or having a place of business in England or Wales as custodian, and to pay any reasonable fee required;
- 2.18 to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required;
- 2.19 to employ or engage paid or unpaid agents, volunteers, staff or advisors, and to make provision for the payment of pensions. The Charity may employ or pay a Trustee only to the extent permitted in article 6.3 and provided it complies with the conditions of that article;

- 2.20 to enter into contracts to provide services to or on behalf of other bodies;
- 2.21 to establish or acquire subsidiary companies;
- 2.22 to amalgamate, affiliate or merge with any other charitable body having the same or similar objects to the Charity;
- 2.23 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).
- 2.24 to do anything else within the law which promotes or helps to promote the Objects.

3. The Trustees

- 3.1 The Trustees as charity trustees have control of the Charity and its property and funds.
- 3.2 The subscribers to the Memorandum (being the first Members) are also the first Trustees. Subsequent Trustees are elected by the Members or co-opted by the Trustees.
- 3.3 The Trustees when complete consist of at least three all of whom are over the age of 18, all of whom must support the Objects.
- 3.4 A Trustee may not act as a Trustee unless he/she
 - (1) is a Member;
 - (2) is a natural person; and
 - (3) has signed a written declaration of willingness to act as a charity trustee of the Charity.
- 3.5 The Trustees must retire at the end of their term of office but may be appointed for a further term of office. The term of office for Trustees is two years. A retiring Trustee may be re-appointed for up to two additional terms of office but in any event a Trustee who has served for a period of six years must retire and cannot be re-appointed as a Trustee for a period of at least one year.
- 3.6 A Trustee's term of office automatically terminates if he/she:
 - (1) is disqualified under sections 178-180 of the Charities Act from acting as a charity trustee; or

- (2) dies; or
- (3) in the written opinion, given to the Charity, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a Trustee and may remain so for more than three months; or
- (4) is removed by a majority vote passed by the other Trustees; or
- (5) is absent without good reason from [three] consecutive meetings of the Trustees and is asked by a majority of the other Trustees to resign; or
- (6) resigns by written notice to the Trustees (but only if at least two Trustees will remain in office); or
- (7) ceases to be a Member.

3.7 The Trustees may at any time co-opt any individual who is eligible under Article 3.4 as a Trustee to fill a vacancy in their number or as an additional Trustee [but a co-opted Trustee holds office only until the next AGM].

3.8 No Trustee shall be entitled to appoint any person as an alternate Trustee.

3.9 A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

3.10 A Trustee whose term of office terminates and who is not re-appointed as a Trustee automatically ceases to be a Member of the Charity.

4. Trustees' proceedings

4.1 The Trustees must hold at least [three] meetings each year.

4.2 A quorum at a meeting of the Trustees is three or one third of the Trustees (if greater).

- 4.3 A meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants but at least one meeting in each year must be held in person.
- 4.4 The Trustees shall from time to time elect a Chairperson to chair their meetings. The Chairperson will hold office for two years and on retiring shall be eligible for re-election.
- 4.5 The Chairperson or (if the Chairperson is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting.
- 4.6 Any issue may be determined by a simple majority of the votes cast at a meeting, but a resolution in writing agreed by all the Trustees (other than any Conflicted Trustee who has not been authorised to vote) is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document.
- 4.7 Every Trustee has one vote on each issue but, in case of equality of votes, the chairperson of the meeting has a second or casting vote.
- 4.8 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

5. Trustees' powers

The Trustees have the following powers in the administration of the Charity in their capacity as Trustees:

- 5.1 To appoint (and remove) any person (who may be a Trustee) to act as Secretary in accordance with the Companies Act.
- 5.2 To appoint a Chairperson, a Treasurer and other honorary officers from among their number.
- 5.3 To delegate any of their functions to committees consisting of two or more individuals appointed by them. At least one member of every committee must be a Trustee and all proceedings of committees must be reported promptly to the Trustees.

- 5.4 To employ someone to manage the affairs of the Charity on a day to day basis and to supervise such person as they think fit;
- 5.5 To open and operate a bank account(s);
- 5.6 To make standing orders consistent with the Articles and the Companies Act to govern proceedings at general meetings.
- 5.7 To make regulations consistent with the Articles and the Companies Act to govern their proceedings and proceedings of committees.
- 5.8 To make regulations consistent with the Articles and the Companies Act to govern the administration of the Charity and the use of its seal (if any).
- 5.9 To establish procedures to assist the resolution of disputes or differences within the Charity.
- 5.10 To exercise any powers of the Charity which are not reserved to the Members.

6. Benefits and Conflicts

6.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the Members but:

(1) Members who are not Trustees or Connected Persons may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied;

subject to compliance with Article 6.4:

(2) Members, Trustees and Connected Persons may be paid interest at a reasonable rate on money lent to the Charity;

(3) Members, Trustees and Connected Persons may be paid a reasonable rent or hiring fee for property let or hired to the Charity; and

(4) Members, Trustees and Connected Persons may receive charitable benefits on the same terms as any other beneficiaries of the Charity.

- 6.2 A Trustee must not receive any payment of money or other material benefit (whether directly or indirectly) from the Charity except:
- (1) as mentioned in Articles 6.1 or 6.3;
 - (2) reimbursement of reasonable out-of-pocket expenses (including accommodation and travel costs) actually incurred in running the Charity;
 - (3) the benefit of indemnity insurance as permitted by the Charities Act;
 - (4) an indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings);
 - (5) In exceptional cases, other payments or benefits (but only with the written consent of the Commission in advance and where required by the Companies Act the approval or affirmation of the Members).
- 6.3 A Trustee or Connected Person may enter into a written contract with the Charity, as permitted by the Charities Act, to supply goods or services in return for a payment or other material benefit but only if:
- (1) the goods or services are actually required by the Charity, and the Trustees decide that it is in the best interests of the Charity to enter into such a contract;
 - (2) the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Article 6.4; and
 - (3) no more than half of the Trustees are subject to such a contract in any financial year.
- 6.4 Subject to Clause 6.5, any Trustee who becomes a Conflicted Trustee in relation to any matter must:
- (1) declare the nature and extent of his or her interest before discussion begins on the matter;
 - (2) withdraw from the meeting for that item after providing any information requested by the Trustees;
 - (3) not be counted in the quorum for that part of the meeting; and

(4) be absent during the vote and have no vote on the matter.

6.5 When any Trustee is a Conflicted Trustee, the Trustees who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interests of the Charity to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee, to:

(1) continue to participate in discussions leading to the making of a decision and/or to vote, or

(2) disclose to a third party information confidential to the Charity, or

(3) take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit from the Charity or

(4) refrain from taking any step required to remove the conflict.

6.6 This article may be amended by special resolution but, where the result would be to permit any material benefit to a Trustee or Connected Person, only with the prior written consent of the Commission.

7. Records and Accounts

7.1 The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping records, the audit or independent examination of accounts and the preparation and transmission to the Registrar of Companies and the Commission of information required by law including:

(1) annual returns;

(2) annual reports; and

(3) annual statements of account.

7.2 The Trustees must also keep records of:

- (1) all proceedings at meetings of the Trustees;
- (2) all resolutions in writing;
- (3) all reports of committees; and
- (4) all professional advice obtained.

7.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours and may be made available for inspection by Members who are not Trustees if the Trustees so decide.

7.4 A copy of the Charity's Articles of Association (and any special resolutions relating to them) and latest available statement of account must be supplied on request to any Trustee. Copies of the latest accounts must also be supplied in accordance with the Charities Act to any other person who makes a written request and pays the Charity's reasonable costs.

8. Membership

8.1 Membership is open to any person or organisation interested in furthering the Objects and approved by the Trustees.

8.2 The form and the procedure for applying for Membership is to be prescribed by the Trustees.

8.3 Membership is not transferable.

8.4 The Trustees may establish different classes of Members (including associate or non-voting members) and recognise one or more classes of supporters who are not Members (but who may nevertheless be termed 'members') and set out their respective rights and obligations.

8.5 A Member which is an organisation may appoint any individual it considers appropriate to act as an authorized representative and to exercise all rights of membership on behalf of the Member organization at a general meeting of the Charity. Any such appointment shall be made, or revoked, by written notice to the Secretary, if there is one, or if not, to the Charity.

8.6 The Charity must maintain a register of Members.

9. General Meetings

9.1 Members are entitled to attend general meetings in person (or through their authorised representatives) or by proxy (but only if the appointment of a proxy is in writing and notified to the Charity before the commencement of the meeting).

9.2 General meetings are called on at least 14 clear days' written notice indicating the business to be discussed and (if a special resolution is to be proposed) at least 21 clear days' written notice setting out the terms of the proposed special resolution.

9.3 There is a quorum at a general meeting if the number of Members present in person (or through an authorised representative) or by proxy is at least three or one-third of the membership, whichever the greater.

9.4 The chairperson at a general meeting shall be the chair of Trustees or (if the chair is absent or unwilling to act) some other Trustee chosen by Members present.

9.5 Except where otherwise provided by the Articles or the Companies Act, every issue is decided by ordinary resolution.

9.6 Every Member present in person (or through its authorised representative) or by proxy has one vote on each issue.

9.7 Except where otherwise provided by the Articles or the Companies Act, a written resolution (whether an ordinary or a special resolution) is as valid as an equivalent resolution passed at a general meeting. For this purpose the written resolution may be set out in more than one document.

9.8 [Except at first, the Charity must hold an AGM in every year. The first AGM must be held no more than 18 months after the incorporation of the Charity.

9.9 Members must annually at the AGM:

- (1) receive the accounts of the Charity for the previous financial year;
- (2) receive a written report on the Charity's activities;
- (3) be informed of the retirement of those Trustees who wish to retire or who are retiring by rotation;
- (4) elect Trustees to fill the vacancies arising;
- (5) appoint reporting accountants or auditors for the Charity];

9.10 Members may also appoint (and remove) from time to time any individual as a patron, president, vice-president or honorary friend of the Charity and on such terms as they think fit. A person so appointed shall not be a Member or Trustee but shall have the right to attend and speak (but not vote) at any general meeting of the Charity and to be given notice of it as if a Member and shall also have the right to receive accounts of the Charity when available to Members.

9.11 Members may also from time to time discuss and determine any issues of policy or deal with any other business put before them by the Trustees.

9.12 A general meeting may be called by the Trustees at any time and must be called within 21 days of a written request from at least 10% of the Membership or (where no general meeting has been held within the last year) at least 5% of the Membership.

9.13 A technical defect in the appointment of a Member of which the Members are unaware at the time does not invalidate a decision taken at a general meeting or by a Written Resolution.

10. Termination of Membership

10.1 Membership is terminated if:

- (1) the Member being an individual dies or if an organisation ceases to

exist;

- (2) the Member resigns by written notice to the Charity;
- (3) any subscription due from the Member to the Charity is not paid within six months of it falling due:
- (4) the Member is removed from membership by an ordinary resolution of the Charity in general meeting that it is in the best interests of the Charity that its membership is terminated. A resolution to remove a member from membership may only be passed if:
 - (a) the Member has been given at least twenty one days' notice in writing of the general meeting of the Charity at which the resolution will be proposed and the reasons why it is proposed: and
 - (b) the Member (or a representative of the Member) has been allowed to make representations to the meeting.

For the avoidance of doubt, the membership of a Trustee who retires in accordance with any provision in these Articles automatically terminates.

11. Limited Liability

The liability of Members is limited.

12. Guarantee

Every Member promises, if the Charity is dissolved while he/she/it remains a Member or within one year after he/she/it ceases to be a member, to pay up to £1 towards:

12.1 payment of those debts and liabilities of the Charity incurred before he/she/it ceased to be a member;

12.2 payment of the costs, charges and expenses of winding up; and

12.3 the adjustment of rights of contributors among themselves.

13. Indemnity

The Charity shall indemnify every Trustee or other officer or auditor of the Charity against any liability incurred in successfully defending legal proceedings in that capacity, or in connection with any application in which relief is granted by the Court from liability for negligence, default, or breach of duty or breach of trust in relation to the Charity.

14. Communications

14.1 Notices and other documents to be served on Members or Trustees under the Articles or the Companies Act may be served:

- (1) by hand;
- (2) by post;
- (3) by suitable electronic means; or
- (4) through publication in the Charity's newsletter or on the Charity's website.

14.2 The only address at which a Member is entitled to receive notices sent by post is an address in the U.K. shown in the register of Members.

14.3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received:

- (1) 24 hours after being sent by electronic means, posted on the Charity's website or delivered by hand to the relevant address;
- (2) two clear days after being sent by first class post to that address;
- (3) three clear days after being sent by second class or overseas post to that address;
- (4) immediately on being handed to the recipient personally;
or, if earlier,
- (5) as soon as the recipient acknowledges actual receipt.

14.4 A technical defect in service of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

15. Dissolution

15.1 If the Charity is dissolved, the assets (if any) remaining after providing for all its liabilities must be applied in one or more of the following ways:

(1) by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects;

(2) directly for the Objects or for charitable purposes which are within or similar to the Objects;

(3) in such other manner consistent with charitable status as the Commission approves in writing in advance.

15.2 A final report and statement of account must be sent to the Commission.

15.3 This provision may be amended by special resolution but only with the prior written consent of the Commission.

16. Interpretation

16.1 The Articles are to be interpreted without reference to the model articles under the Companies Act, which do not apply to the Charity.

16.2 In the Articles, unless the context indicates another meaning:

['AGM' means an annual general meeting of the Charity];

'the Articles' means the Charity's Articles of Association and 'Article' refers to a particular Article;

'Chairperson' means the chairperson of the Trustees;

'the Charity' means the company governed by the Articles;

'the Charities Act' means the Charities Acts 1992 to 2011;

'charity trustee' has the meaning prescribed by the Charities Act;

'clear day' does not include the day on which notice is given or the day of the meeting or other event;

'the Commission' means the Charity Commission for England and Wales or any body which replaces it;

'the Companies Act' means the Companies Acts 1985 to 2006;

'Conflicted Trustee' means a Trustee in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Trustee or a Connected Person is receiving or stands to receive a benefit (other than payment of a premium for indemnity insurance) from the Charity, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Charity;

'Connected Person' means, in relation to a Trustee, a person with whom the Trustee shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Trustee's family or household or a person or body who is a business associate of the Trustee, and (for the avoidance of doubt) does not include a company with which the Trustee's only connection is an interest consisting of no more than 1% of the voting rights;

'constitution' means the Articles and any special resolutions relating to them;

'custodian' means a person or body who undertakes safe custody of assets or of documents or records relating to them;

‘electronic means’ refers to communications addressed to specified individuals by telephone, fax or email or, in relation to meetings, by telephone conference call or video conference;

‘financial expert’ means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

‘financial year’ means the Charity’s financial year;

‘firm’ includes a limited liability partnership;

‘indemnity insurance’ means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the act or omission amounts to a criminal offence or the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty;

‘material benefit’ means a benefit, direct or indirect, which may not be financial but has a monetary value;

‘Member’ and ‘Membership’ refer to company Membership of the Charity;

‘month’ means calendar month;

‘nominee company’ means a corporate body registered or having an established place of business in England and Wales which holds title to property for another;

‘ordinary resolution’ means a resolution agreed by a simple majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold a simple majority of the voting power;

‘the Objects’ means the Objects of the Charity as defined in Article 1;

‘Resolution in writing’ means a written resolution of the Trustees;

‘Secretary’ means a company secretary;

‘special resolution’ means a resolution of which at least 28 days’ notice has been given and agreed by a 75% majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold 75% of the voting power;

‘taxable trading’ means carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax;

‘Trustee’ means a director of the Charity and ‘Trustees’ means the directors;

‘written’ or ‘in writing’ refers to a legible document on paper or a document sent by electronic means which is capable of being printed out on paper;

‘written resolution’ refers to an ordinary or a special resolution which is in writing; ‘year’ means calendar year.

16.3 Expressions not otherwise defined which are defined in the Companies Act have the same meaning.

16.4 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

Report for directors of Healthwatch Oxfordshire CIC on new charitable Articles of Association

GENERAL

These articles of association are based on the Charity Law Association model approved by the Charity Commission for England and Wales whereas the current articles are based on one of the models provided by the CIC Regulator and they would not be acceptable to the Charity Commission. The word CIC has been removed from the company name in anticipation (this will involve a company change of name). I have not included commentary on every article and only mention those articles which I consider are particularly significant or which require further explanation. There is a comprehensive interpretation clause at the end of the articles.

SPECIFIC ARTICLES

1. OBJECTS

I have based these on the objects of those Healthwatch organisations which are registered with the Charity Commission. The objects must be exclusively charitable and based on the purposes set out in the Charities Act 2011. Unless you have any particular objections to the wording (or they include things your organisation doesn't do) I would recommend leaving them as written as they are likely to be acceptable to the Commission in this form.

2. POWERS

This article includes a wide range of powers, some of which may not be needed at the moment but it's generally better to include them than not just in case they are needed in the future. I have included some more specific powers near the beginning which I hope cover what the company does. Please let me know whether you would like additional powers included. You will see reference in 2.3 to taxable trading, which is to be avoided. This term is defined as "carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax".

The charity would not have to pay tax on the profits generated by *primary purpose* trading (which is where a charity trades to further its objects) as long as the profits were applied towards the charity's objects. Primary purpose trading in this context would cover charging say for training events or attendance at conferences. The tax regime for charities is more favorable than that for community interest companies and you will need to notify HMRC of the change to a charity when this is approved in order to be eligible for tax breaks available to charities. I suggest you talk to your accountants about this.

3. THE TRUSTEES

This Article deals with the trustees, i.e. the people who are the directors of the company and also the charity trustees once the company is approved by the Charity Commission as a

charity. As with your current articles trustees must also be members of the company. A trustee must be and at least 18 years of age and be a real (natural) person, not a corporate body.

I have included in this article your current governance requirements, such as trustees serving for two year terms then being eligible for appointment for up to two more terms of office up to a maximum of six years. As the company has been operational for a few years it is likely that directors have joined the board at different times so their retirement may well be staggered (avoiding the situation where all the trustees retire at the same time). The trustees have the option of co-opting an additional trustee at any point.

At article 3.6, the circumstances in which a trustee's term of office automatically terminates are set out. I have included as many scenarios as possible here and have added a provision which would allow a trustee to be removed by a majority vote passed by the other trustees (something which is only likely to be used *in extremis*).

You will see later that there is the option of holding an AGM, which is when trustees would usually retire/be re-appointed. However there is no longer a legal requirement for holding an AGM and I note that your current articles don't include this. While many charities choose to have an AGM as a matter of good practice this is not essential. As your current articles don't include the requirement for an AGM, you may already have in place an alternative procedure for the retirement/re-appointment of trustees, adopting the directors' report and accounts. **Please let me know whether you wish to include the requirement for an AGM; if not, I will remove reference to this where it appears in the articles.**

Once the company becomes a charity there will be the additional requirement of informing the Charity Commission of a change of trustee as well as notifying Companies House of the appointment or retirement of a director. This is usually done by the secretary to the board.

I have included a requirement at article 3.10 that a departing trustee relinquishes membership of the company.

4. TRUSTEES' PROCEEDINGS

This Article deals with the proceedings of the Trustees and contains a number of requirements such as holding a certain number of trustee meetings each year (I have stated a minimum of three but this can be changed). **I have stated that the quorum for trustee meetings is three as per your existing articles.** While trustee meetings can be held electronically least one meeting a year must be face to face.

5. TRUSTEES' POWERS

This article gives wide ranging powers to the Trustees to include appointing someone to manage the day to day running of the charity, delegating to sub-committees, making standing orders governing proceedings of company meetings, and the general administration of the charity. While company law no longer requires a company to have a secretary, it is generally

considered desirable for a charitable company to appoint one. This could be a trustee or one of the company's employees.

6. BENEFITS AND CONFLICTS

This clause sets out the circumstances in which payments and benefits can accrue to the members and/or trustees and reflects provisions introduced in the Charities Act 2006 (now contained in the Charities Act 2011). These provisions are far more detailed than those in your current articles as charity law is very stringent in this regard. By way of example directors of a CIC can be paid; while trustees cannot be paid for acting as such (at least not without the express permission of the Charity Commission). The occasions on which a Trustee may benefit from the charity are also restricted, and there are detailed provisions concerning the avoidance or management of actual or potential conflicts of interest and duty.

6.1 Benefits to Members and Trustees

This provision reflects the legal principle that the Trustees as charity trustees (and to a lesser extent the Members, who also have fiduciary obligations to the charity) must not benefit from the charity except so far as expressly permitted by the articles. Trustees and those connected with them must not receive any benefit from the charity, whether direct or indirect, unless there is an express provision in the articles or specific authority from the court or the Charity Commission.

6.2 Permitted Trustee Benefits

This provision permits certain payments or benefits to be made to Trustees, including payment of reasonable out of pocket expenses and indemnity insurance provided by the company.

6.3 Contracts with Trustees

I have included here the statutory provisions in the Charities Act 2011. The statutory power does not apply to the employment of a trustee by the charity (the term "trustee" includes someone closely connected with a trustee such as a spouse or business partner), and is subject to strict safeguards contained in sub paragraphs 1, 2 and 3. A trustee or connected person could only be employed by the charity with the prior permission of the Charity Commission (which is a standard provision in most charity governing documents).

6.4 & 6.5 Managing conflicts

These provisions allow the trustees to authorise a "conflicted trustee" to continue to act as a trustee even if he or she is affected by a conflict of loyalties or even a potential personal interest, or allow him or her to breach confidentiality. There are two conditions: (i) the Trustee receives no benefit as a result of the decision (or any benefit received is authorised under article 6.2), and (ii) the trustees are satisfied that the conflicted trustee's continued participation in the decision-making, or allowing him or her to breach confidentiality, is in the charity's best interests.

7. RECORDS AND ACCOUNTS

This article sets out how the trustees should comply with the requirements of the Companies and Charities Acts in terms of record-keeping, preparing accounts and filing documents. Becoming a charity will result in some additional red tape in terms of keeping the Charity Commission as well as Companies House informed of certain events, such as changes in directors/trustees, and filing an annual return and accounts with both regulators. There is likely to be some additional expense as a consequence. I would recommend an early discussion with your accountants to discuss the changes so that you have advance knowledge of these.

8 - 10. MEMBERSHIP, GENERAL MEETINGS AND TERMINATION OF MEMBERSHIP

Article 8 sets out the principles of company membership and how someone becomes a member. I appreciate that it is unlikely that you will have a membership beyond the trustees; however these articles would allow for a wider membership if desired and the creation of different classes of members such as associate or non-voting members (article 8.4).

9.2 Notice periods

The minimum notice period for calling a general meeting is 14 days (or 21 days if a special resolution is proposed).

9.3 Quorum at meetings

I have kept the quorum for general meetings as three members (in practice these will be trustees) or one-third of the company membership, if greater. If you have plans to widen membership I would recommend lowering the fraction (one-third) required for a quorum

9.8 AGM

This can be removed if you prefer (see my comments earlier), in which case holding an AGM would be optional and other arrangements would need to be continued for the business conducted at article 9.9 (such as receiving the trustees' annual report and accounts, re-electing trustees, appointing accountants/auditors).

9.10 Appointment of Patron, President or Vice-President

This is not constitutionally necessary and can be removed if you prefer. Such positions have no specific responsibilities, but if appointed a patron or president could be invited to address the members or represent the charity on formal occasions or when the charity is seeking public support.

10 Termination of Membership

The provisions here are more likely to be relevant if you decide to open up membership to people beyond the board of trustees.

11 - 13. INDEMNITY, MEMBERS' GUARANTEE AND INDEMNITY

These articles are self-explanatory and are very similar to provisions in your current articles. It goes without saying that trustees who act recklessly or irresponsibly can still be held personally liable for losses which the charity suffers on account of being in breach of trust. In practice it is rare for trustees to be made personally liable particularly if they can show that their actions were reasonable.

14. COMMUNICATIONS

Reference is made to the giving of notices in various places in the Articles. This provision deals with the practical questions which could otherwise arise as to the date on which a document or notice was served. I have included the option of communicating electronically with members; and placing a notice to members in a newsletter or on the charity's website (which may not be relevant now or in the future).

15. DISSOLUTION

The wording here differs to that in your current articles as charities must pass on their remaining assets on winding up to a charity with the same or similar objects. **On this basis reference to ORCC as the nominated body has been removed.**

CONCLUSION

While the new articles of association are similar in many ways to the existing ones, there are some marked differences due to the fact that the company is to change from a CIC to a charity and must therefore include specific provisions which the Charity Commission would expect to see. The company will also come under the regulation of the Commission and need to follow its guidance on specific areas of governance as well as comply with the requirements of the Charities Acts; there may be times when the Commission's permission will be needed to proposed changes or actions. While you already have this to some extent with the CIC Regulator the regulation for CICs is far more "light touch".

The existing directors will become trustees when the company becomes a charity and I would urge them to read the Commission's guidance on being a trustee. This can be downloaded at: <https://www.gov.uk/guidance/charity-trustee-whats-involved>

www.tessahennessy.co.uk

Director Job Description

THE ROLE

Members of the Board will have ultimate responsibility, under the leadership of the Chair, for the governance of Healthwatch Oxfordshire. The Board's central role is to direct and control the work of organisation.

That is:

- To determine strategic direction and policies;
- To establish and oversee control and risk management arrangements;
- To ensure that Healthwatch Oxfordshire achieves its aims and objectives.

'Operational Management' - that is the implementation of Board policies - will be delegated to the Chief Executive and the staff team on a day-to-day basis.

The key responsibilities and accountabilities of Directors are as follows:

Leadership and direction

- Define the vision and values of Healthwatch Oxfordshire and ensure that these are realised and upheld.
- Define the direction of the organisation's business, services and activities.
- Ensure clear accountabilities and communication within the organisation and monitor the activities of Healthwatch Oxfordshire.
- Maintain a clear public, patient, service user, carer and wider community focus.
- Create a positive environment which fosters constructive challenge to assumptions about the organisation.
- Review Board composition, performance and succession planning regularly.
- Appoint (and if necessary, remove) the Independent Chair.

Strategic development

- Review the key strategic aims and determine the strategic objectives and outcomes required.
- Drive the development of the strategic plan, providing constructive challenge and ensuring its effectiveness.
- Approve an annual operational plan, budgets for both revenue and capital expenditure and financial arrangements that support the achievement of the strategic and operational plans.

- Establish a framework for approving and regularly reviewing policies and plans to achieve the objectives of the organisation.
- Ensure that all assets are managed efficiently and effectively, and that capacity is properly utilised, so as to maintain long term viability and sustainability of Healthwatch Oxfordshire and its assets.

Risk management

- Oversee a framework for the identification, management and review of risks.
- Contribute to the review and evaluation of strategic risks and receive regular reports on these and emergent risks.
- Ensure that a positive culture of managing opportunities, threats and uncertainties is embedded throughout the organisation.
- Determine policies and decisions on all matters that might create a significant financial or other risk to Healthwatch Oxfordshire, or which raise material matters of principle.

Internal controls framework

- Establish and oversee a framework of delegation and systems of internal controls.
- Draw up a schedule of significant matters specifically reserved for the Board's decision.
- Obtain systematic information that provides assurance on the effectiveness of internal controls.

Performance monitoring

- Regularly review and monitor performance and quality in relation to plans, budgets, controls and decisions.
- Obtain and consider performance and quality information in relation to public, patient, service user and carer feedback and benchmark against comparable organisations and activities.

Probity and integrity

- Approve each year's accounts prior to publication.
- Obtain assurance that Healthwatch Oxfordshire's affairs are conducted lawfully and in accordance with generally accepted and specific standards of reporting, performance and probity.
- Ensure that Healthwatch Oxfordshire complies with all relevant regulatory and statutory requirements.

Transparency and openness

- Review regularly Healthwatch Oxfordshire's openness arrangements, taking account of good practice developments.
- Publish Annual Report and Accounts each year, highlighting priorities, progress & key issues.
- Establish policy for communicating with, and involving, public, patients, service users, carers, partners and other stakeholders about its work and performance.

Representing Healthwatch Oxfordshire

- Promote the organisation at key events and other meetings, and establish constructive, high quality relationships, with key current and potential partners and stakeholders, internal and external, as required.
- Monitor, safeguard and enhance the reputation of Healthwatch Oxfordshire.

Executive and management arrangements

- Appoint (and if necessary, dismiss) the Chief Executive and approve his/ her salary, benefits and terms of employment.
 - Ensure there are appropriate policies and systems in place to recruit, develop, retain and remunerate staff.
 - Nominate a representative to sit on the Oxfordshire Health and Wellbeing Board and other partnership boards and bodies as required.
 - Ensure that meetings of the Board (and any committees) are open to the public to attend, promoted in advance and held in appropriate venues. Matters of a confidential nature are noted as such and will be considered at closed meetings of the Board.
 - A minimum of four meetings of the Board will be held each year.
 - Set and review the Board's Regulatory Documents, including voting rights and quorum.
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