

# Public Document Pack



8 September 2016

To: Ms K Burrell, Non-Executive Director  
Dr M Davis, Non-Executive Director  
Mr G Molyneux, Non-Executive Director  
Ms M Whyham, Non-Executive Director  
Mr E Jackson, Non-Executive Director

The above Directors are requested to attend the:

## **HEALTHWATCH BOARD MEETING**

Thursday, 15 September 2016 at 3.00 pm  
at Empowerment Office, 333 Bispham Road, Blackpool FY2 0HH

### **A G E N D A**

#### **1 DECLARATIONS OF INTEREST**

Board Members are asked to declare any interests in the items under consideration and in doing so state the nature and extent of the interest.

If any Board member requires advice on declarations of interests, they are advised to contact the Company Secretary in advance of the meeting.

#### **2 MINUTES OF THE LAST MEETING HELD ON 12 JULY 2016**

(Pages 1 - 8)

To agree the minutes of the last meeting held on 12 July 2016 as a true and correct record.

#### **3 MATTERS ARISING FROM THE MINUTES OF THE LAST MEETING**

3a **DECISIONS BETWEEN MEETINGS DISCUSSION**

This was discussed during August, via the email titled “Accountability and HW Communication – Mental Health Listening Report”

In addition, the Board agreed the following at its meeting on 17 May 2016:

That future review/ consultation reports would be submitted to a Board meeting for approval, subject to timing. If outside the cycle of meetings, the reports would be circulated to Members, by email, for comments and finally approved by the Chairman. The reports would then be presented to the next Board meeting for ratification.

**4 PERFORMANCE INDICATORS AND THE ROLE OF THE COMMISSIONING TEAM**

**5 OPERATIONAL LEADS' REPORT** (Pages 9 - 20)

**6 FEEDBACK FROM VARIOUS BODIES**

To receive verbal updates from the appointees on the Health and Wellbeing Board, Blackpool Clinical Commissioning Group (CCG) Governing Body and the Primary Care Commissioning Committee and other bodies.

**7 FINANCE REPORT** (Pages 21 - 24)

To receive an update on the current Financial position.

**8 ADDITIONAL REVENUE** (Pages 25 - 96)

**9 PROCESS AND QUALITY ASSURANCE** (Pages 97 - 100)

**10 ANY OTHER BUSINESS**

**11 DATE OF FUTURE BOARD MEETINGS**

The Board is asked to note the date of the next meeting as Tuesday 15 November 2016.

**Healthwatch Blackpool**

**Registered Office:**  
Empowerment offices  
333 Bispham Road  
Blackpool, FY2 0HH.

Company Number: 8584258

**MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF  
HEALTHWATCH BLACKPOOL  
HELD AT THE EMPOWERMENT OFFICE, BISPHAM ROAD, BLACKPOOL  
ON TUESDAY 12 JULY 2016 AT 3.00PM**

**Present:** Ms K Burrell, non-Executive Director  
Dr M Davis, non-Executive Director  
Mr E Jackson, non-Executive Director  
Ms M Whyham, non-Executive Director (Chairman)

**In attendance:** Mr S Garner, Healthwatch Blackpool Manager, Empowerment  
Ms M Smith, Chief Executive, Empowerment  
Mr M Towers, Company Secretary (Co Sec)  
Miss Y Burnett, Company Secretary Support.

		Action
<b>1.</b>	<p><b>Apologies and Introductions</b></p> <p>Apologies on behalf of Mr Molyneux, non-Executive Director were submitted.</p> <p>The Chairman welcomed Ms Smith to the meeting and around the table introductions were provided.</p>	
<b>2.</b>	<p><b>Declarations of Interest</b></p> <p>None.</p>	
<b>3.</b>	<p><b>Minutes of the Last Board Meeting held on 17 May 2016</b></p> <p><b>The Board agreed:</b> To approve the minutes of the Board meeting held on 17 May 2016 as a correct record.</p>	
<b>4.</b>	<p><b>Matters Arising from the Minutes of the Last Meeting</b></p> <p>i. <u>Articles of Association</u> – Mr Towers confirmed that the Council had agreed the revised Articles and they had been subsequently lodged with Companies House.</p> <p>ii. <u>Articles of Association (Public Meetings)</u> – The Board was advised that the meeting had been publically advertised using Social Media and it was agreed that an alternative venue should be sought prior to the Board meeting in September 2016 to facilitate public engagement. It was suggested that the City Learning Centre, Dinmore Avenue could be a potential venue.</p> <p>iii. <u>Performance Review 2015/ 2016 and Business Plan 2016/ 2017</u> – It was reported that Mr Garner would be working full time for Empowerment</p>	<b>SG</b>

		Action
	<p>from 18 July 2016. The Board thanked Empowerment and viewed this as a vote of confidence for Healthwatch Blackpool.</p> <p>iv. <u>Any Other Business (Board Membership)</u> – Mr Towers advised the Board that he had received an expression of interest from a person with a Health and Social Care background and was in the process of establishing the Appointments and Remuneration Committee to progress the matter. It was agreed that increasing the Board membership to six, would be sufficient at this time.</p> <p>v. <u>Any Other Business (Medically Related Charities)</u> – Following on from Dr Davis suggestion to include representation from medically related Charities in the Strategy, it was agreed not to pursue the matter at this stage, but reconsider the option at a future date.</p>	
<b>5.</b>	<p><b>Empowerment Managerial Changes</b></p> <p>Ms Smith explained that she was the Chief Executive Officer of Blackpool Carers Centre and had been in negotiations with Empowerment over the last six months with a view to bringing together the Third Sector organisations, the Health Sector and Social Care tendered services with the intention of sharing resources across the organisations and reduce costs. She advised that this was the start of an interesting journey and aimed to provide a shared leadership and develop a sustainable future for Empowerment. The Board was advised that negotiations were on going with other organisations to develop a shared resources function.</p> <p>The Chairman reported that she had been undertaking the Line Manager role for Mr Garner, meeting regularly to set objectives and reviewing performance, which was acknowledged as being important in the short term, but asked about Empowerments long-term goals. Ms Smith reported that the recruitment of a Service Manager was being considered. Mr Jackson asked for visibility of an organisation chart and terms of reference and expressed his interest in understanding how the organisation operated from the ground up. Mr Towers added that Empowerment were accountable for the contract with the Council and for the delivery of Healthwatch Blackpool and for providing a support mechanism to the Board.</p>	<b>MS</b>
<b>6.</b>	<p><b>Feedback from Various Bodies</b></p> <p>The Board was advised that due to prior commitments Dr Davis had been unable to attend the recent meeting of the Primary Care Commissioning Committee.</p> <p>In Mr Molyneux’s absence, the Chairman provided feedback from the recent Blackpool Clinical Commissioning Group (CCG) Governing Body meeting he had attended.</p>	

	Action
<p>She reported on the following points:</p> <ul style="list-style-type: none"> <li>• Blackpool Clinical Commissioning Group (CCG) AGM to be held on 29 September 2016. There was an opportunity for Healthwatch Blackpool to provide an information stall at the event. The Board agreed this would be beneficial.</li> <li>• Grange Park Health Centre had been placed in special measures by the Care Quality Commission with specified areas of improvement within the next six months.</li> <li>• A reference was made in the Blackpool CCG Performance Summary relating to Patient satisfaction. There was no indication as to how this had been measured and it was questioned whether Healthwatch Blackpool should have visibility of this information.</li> <li>• Health and Wellbeing Strategy – there was a lack of reference to Mental Health and concerns were raised that the consultation process had been a ‘tick box’ exercise and the suggestions raised by Healthwatch Blackpool had not been included.</li> </ul> <p>Following a discussion, it was agreed that Healthwatch Blackpool should be actively pursuing for the issue of Mental Health to be included in the Health and Wellbeing Strategy. It was agreed that Mr Garner would contact Mr Butterfield to raise the Boards’ concerns and provide evidence from past Healthwatch Blackpool consultations and Joint Strategic Needs Assessment (JSNA) statistics. It was acknowledged that there was a real need for a review of psychiatric and paediatric services and in particular the referral/ access process between Child and Adolescent Mental Health Services and Adult Mental Health Services.</p> <p>The Chairman and Mr Garner agreed to meet outside of the Board meeting to discuss on how and what information would be presented to Mr Butterfield.</p> <p>The Chairman provided the Board with updates on a number of meetings and events she had attended since the last Board meeting.</p> <p><u>Blackpool Clinical Commissioning Group (CCG)</u> – It was reported that quarterly meetings had been scheduled with Helen Skerritt, lead nurse within acute secondary care sector with a lead commissioning role focusing on safeguarding and quality. The Chairman advised that Mr Garner would be attending future meetings with the view to developing a good working relationship with the CCG.</p> <p><u>Blackpool Victoria Hospital</u> – Meeting scheduled with the Chairman and the Chief Executive Officer on 2 August 2016.</p> <p><u>Health Summit</u> – PAN Lancashire Health and Wellbeing Summit to be held on 26 July 2016.</p>	<p style="text-align: center;"><b>SG/ MW</b></p>

		Action
7.	<p><u>Health and Wellbeing Board for Blackpool</u> – At the meeting held on 8 June 2016 the option of a Combined Authority was discussed, with the exception of Wyre Borough Council, fourteen Local Authorities were in agreement with the concept. The alcohol strategy was also discussed, but the effectiveness of the previous strategy was unclear. The Lancashire and South Cumbria Sustainability and Transformation Plan, looking at the alignment of health and social care programmes was discussed.</p> <p><b>The Board agreed:</b> To note the updates.</p> <p><b>Feedback from the Healthwatch Annual Conference</b></p> <p>Mr Garner provided a comprehensive report to the Board detailing various sessions Steven Robinson, Mary Whyham and himself had attended over the two-day event. He reported that it had been a fantastic opportunity to meet other Local Healthwatch organisations, view their methods of working and share good practice.</p> <p>He highlighted the following points:</p> <p><u>Working with Mental Health Services</u> – opportunity to speak with Lancashire MIND ahead of Healthwatch Blackpool’s Mental Health review.</p> <p><u>Sustainability</u> – Sources for income generation, such as the Better Care Fund and Public Health.</p> <p><u>Patient Experience</u> – Consensus was that services were not always receptive to patient feedback when developing services, the cause of which was unknown. Dr Davis suggested that if this was a national trend then it should be progressed with senior figures.</p> <p><u>Using Enter and View with Residential Care Homes</u> – A tool for positive change not an audit or an inspection. Healthwatch Blackpool was just embarking on this and had not to use its Enter and View powers to date.</p> <p><u>Young Healthwatch</u> – Blackpool had already taken steps to brand and create a Youth Healthwatch.</p> <p>Additional resource material from other Healthwatch providers was circulated at the meeting for Board Members information.</p> <p>The Chairman reported she had discussed with other Healthwatch Chairmen, ideas around long-term sustainability and had been made aware that Healthwatch England would fund option appraisals to assist with the correct direction of travel for Healthwatch Blackpool. Ms Smith suggested that Mr Paul Jebb (NHS England Patient Experience Lead), who was a member of the</p>	<p></p> <p><b>Co Sec</b></p>

		Action
8.	<p>Blackpool Carers Centre Board could be invited to attend a future meeting.</p> <p>Ms Burrell referred to the fact that 25 percent of the UK population were aged 25 or under and suggested that themed days could be held at colleges, other educational facilities and on the hospital children's wards at Blackpool Victoria Hospital to encourage young people's participation in the development of the Young Healthwatch. She suggested that the Children's Experience Officer at Victoria's Voice could provide assistance.</p> <p><b>Written Resolution – Final Accounts</b></p> <p>Mr Towers reported that the report had been circulated for information and update as the written resolution had been agreed by Board Members on 7 June 2016. He confirmed that the final accounts had been lodged with Companies House prior to the 15 June 2016 deadline.</p> <p><b>The Board agreed:</b> To note the report.</p>	SG
9.	<p><b>Business Plan 2016/ 2017 and Strategy 2016/ 2018</b></p> <p>The Chairman presented the draft Business Plan and Strategy for consideration by the Board and welcomed comments and suggestions.</p> <p>Mr Garner explained that the work plan for Healthwatch Blackpool for the next 12 months would focus on five in depth studies of services to build relationships and co-operation and increase the organisations influence and the public voice from ground floor level. Mr Jackson asked if the impact of Healthwatch Blackpool could be demonstrated in the Business Plan and asked what actions were taken from unresponsive services. The Chairman advised that she liaised with the Chief Executive Officers or Senior Personnel from those services.</p> <p>Mr Garner reported that the Key Performance Indicators (KPI's) had yet to be agreed with Blackpool Council, but the Board was of the opinion that Healthwatch Blackpool should suggest possible KPI's and not just accept those the commissioner felt relevant. It also suggested that the agreed KPI's should be both qualitative and quantitative. Ms Smith suggested, to assist with the reporting process to the Council, the operational plan should be included in the Business Plan.</p> <p>Ms Smith offered to assist with the development of a meaningful financial overview for inclusion in the Business Plan.</p> <p><b>The Board agreed:</b> To adopt the draft Business Plan and Strategy, subject to the agreed amendments.</p>	MS

		Action
<p><b>10.</b></p>	<p><b>Operational Leads' Report</b></p> <p>Mr Steven Garner, Healthwatch Blackpool Manager presented his report to the Board, which included information about a number of reports that had been prepared following Healthwatch Blackpool reviews and consultations. He explained that a response to the Substance Misuse report was still outstanding despite the 11 July deadline, but a response to the Dentistry report had been received and would be forward to Board Members separately. The Board was advised that the reviews of the Brooklands Care Home and The ARC (Rehabilitation Centre) were being finalised and would be forwarded to Board Members and the service provider shortly.</p> <p>The Board was informed of the first Listening Event, focusing on Mental Health and involving professionals and service users and carer to look at short and long-term changes to improve mental health services. Mr Garner explained that the event was not representative, but had provided learning opportunities and a draft report had been produced for the Board's consideration.</p> <p>Included in the agenda was the Priorities Public Consultation report, with the top five responses being GP Surgeries, Emergency Services, Adult Mental Health, Blackpool Hospitals and Care Homes. Mr Garner explained that those priorities would form the proposed work plan for Healthwatch Blackpool with reviews being undertaken as follows:</p> <p>July and August 2016: Care Homes  September and October 2016: Blackpool Teaching Hospitals  November and December 2016: Adult Mental Health Services  January and February 2017: GP Surgeries  March and April 2017: Emergency Services</p> <p>Dr Davis offered to provide guidance to Mr Garner in the planning stages of the reviews to ensure comprehensive data was collected to enable the impact of any recommendations/ suggestions to be effectively reviewed at a future date. It was suggested that past reviews should be revisited to assess the impact of Healthwatch Blackpool on service providers.</p> <p>Mr Garner reported that the Lancashire Care Foundation Trust (LCFT) Adult Mental Health Services was due to be inspected by the Care Quality Commission in September 2016 and it was felt that Healthwatch Blackpool could assist with any resulting action plan to provide the public voice.</p> <p>The Board was advised that a meeting to discuss a Memorandum of Understanding with Healthwatch Lancashire and Blackburn with Darwen had been arranged, following The Harbour review and this would be shared with the Board at a future meeting.</p>	<p>SG</p>



		Action
<p><b>11.</b></p>	<p><b>The Board agreed:</b></p> <ol style="list-style-type: none"> <li>1. To adopted the proposed work plan.</li> <li>2. To approve the Annual Report 2015/ 2016.</li> <li>3. To note the Operational Leads' report.</li> </ol> <p><b>Finance Report</b></p> <p>It was reported that the provisional balance brought forward as at 31 March 2016 was £3,563.81, but it had subsequently become known that the June salaries had not been included, despite this omission the organisation had not exceeded its budget.</p> <p>In response to a question, it was confirmed that £68,000 had been ring fenced for Healthwatch activities, but how the funding was calculated was unclear. It was believed that other Healthwatch organisations had considerably higher budgets and it was suggested that the Commissioning Manager be invited to attend a future meeting to explain how the budget had been set. Mr Towers commented that he believed that the amount received from Central Government was allocated for Healthwatch use.</p> <p>The Board was advised that the operational costs had been higher than usual due to the associated cost of attending the Healthwatch Annual Conference. It was suggested that this cost should be identified in future budgets as it had proven to be a valuable resource and there should be a separate training budget for future development of staff.</p> <p>In response to a question regarding additional funding, Ms Smith advised that Empowerment could act as a conduit to secure additional funding.</p> <p><b>The Board agreed:</b> To note the report.</p>	<p><b>Co Sec</b></p>
<p><b>12.</b></p>	<p><b>Roles of the Board and Empowerment</b></p> <p>Mr Towers advised the Board that the purpose of the report was to define the relationship and roles of the Board and that of Empowerment to assist each in undertaking their duties.</p> <p><b>The Board agreed:</b></p> <ol style="list-style-type: none"> <li>1. To adopt the draft outline of the roles and relationships between the two bodies.</li> <li>2. To consider, at the next meeting, the commissioning relationship between Empowerment and the Council in relation to the delivery of local Healthwatch.</li> </ol>	

		Action
<b>13.</b>	<p><b>Any other Business</b></p> <p>None.</p>	
<b>14.</b>	<p><b>Dates of Future Board Meetings</b></p> <p><b>The Board agreed:</b> To note the dates of future meetings for 2016 as follows:</p> <ul style="list-style-type: none"> <li>• Thursday 15 September</li> <li>• Tuesday 15 November</li> </ul>	

The meeting ended at 4.38pm

**Signed by the Chairman**

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**Mrs M Whyham, 15 September 2016**

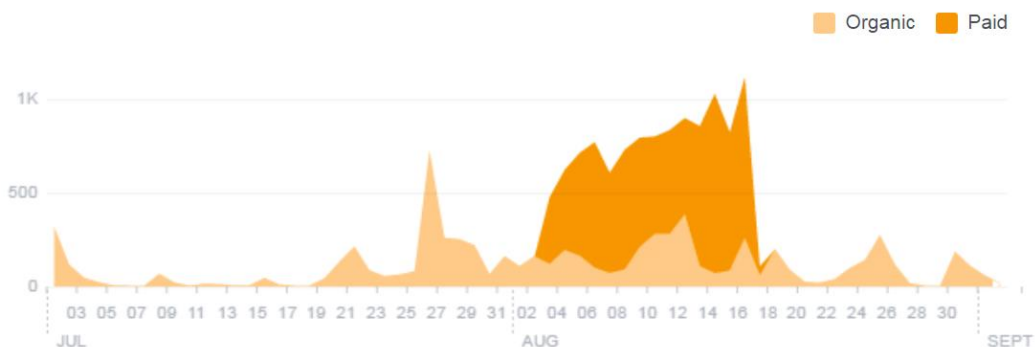
<b>Report to:</b>	<b>HEALTHWATCH BLACKPOOL</b>
<b>Relevant Officer:</b>	Steven Garner, Healthwatch Blackpool Manager
<b>Date of Meeting</b>	15 September 2016


## OPERATIONAL LEADS' REPORT

### 1.0 Social Media and Website Engagement for Quarter Two:

#### 1.1 Facebook

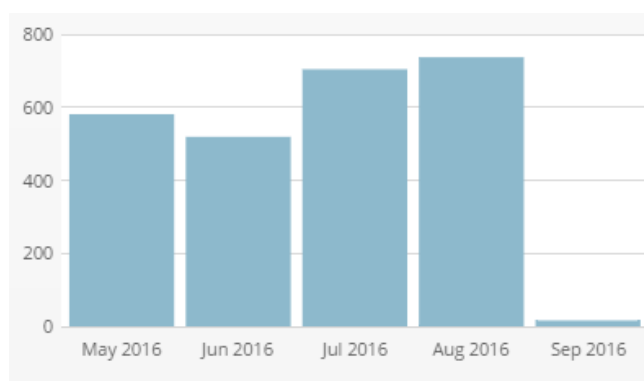
We have undertaken some paid online engagement. A cost of £15 to promote the carers survey over 14 days, and £6.95 to promote the Healthwatch Blackpool Page for seven days. The graph and table below demonstrate the growth in reach and engagement online. It has resulted in 40 new followers over August. I believe this was a successful venture and we may be able to use this methodology again selectively to reach the public on other specific consultation drives.



Recent Promotions on Healthwatch Blackpool		<a href="#">+ Create New Promotion</a>		
	<b>Page Promotion</b> Completed Independent champion for the views of local re... Promoted by Steven Garner on 08/03/2016	<b>732</b> People Reached	<b>24</b> Page Likes	<b>£6.95</b> Spent at £1.00 per day
	<b>Boosted Post</b> Completed Local unpaid #Carers can WIN free days out in... Promoted by Steven Garner on 08/03/2016	<b>4,816</b> People Reached	<b>203</b> Post Engagements	<b>£15.00</b> Spent of £15.00 <a href="#">Boost Again</a>

#### Website

Graph two shows an increase in visit rates over the promotional period, making August the second highest month for webpage visits (after August 2015 initial website launch).



## Twitter

The below figures demonstrate a consistent rise in engagement and followers.

### July 2016 Summary

Tweets: 24

Tweet impressions: 9,800

Profile visits: 507

Mentions: 5

New followers: 24

### August 2016 Summary

Tweets: 30

Tweet impressions: 11.4K

Profile visits: 519

Mentions: 6

New followers: 27

**Current total:** 1370 followers

## 2.0 **Reviews**

### 2.1 Care Home Reviews

Following the 2016/2017 workplan we have visited all 13 care homes, which had at least one “Requiring Improvement” note on the latest CQC inspections. We also visited Links Lodge, as it is the first home in Blackpool to have been awarded an overall “Outstanding” rating.

- Acorn Lodge Residential Care Home
- Amber Banks
- Avonbloom Retirement Home
- Bronswick House
- Chesterfield Lodge
- Glenroyd
- Highbury House
- Horncliffe House
- Jah-Jireh Charity Homes Blackpool
- Links Lodge
- Sandycroft Nursing Home
- The Highcroft
- The Sylvester Care Centre

- Westfield Rest Home

The reports for these homes will be written up through September and passed by the Board.

2.2 Initial thematic findings from residents include:

- Overall positive experiences including safety and care
- Positive views of staff ability and compassion, some occasional poor individual staff findings.
- Frequent poor food choice and varying quality
- Where access to the community is granted, this is gratefully received however it is not on generally on resident's terms

2.3 Healthwatch staff and volunteer findings include:

- Poor person centred activities. Whilst activities are organised, many do not take part and are able to do their own thing, which often means sitting in a chair or in their room.
- Some smoking/ odour concerns including residents who lack capacity inhaling second hand smoke and being close to where residents were smoking.
- All homes also displayed our flyers.

2.4 All care homes we visited have rolling training policies and are utilising different forms of media and methods to train staff. Such as DVD's, the internet and participating in Blackpool councils training programmes.

2.5 All homes we went to were aware of Healthwatch Blackpool and were very open and receptive to our visits.

2.6 EMSA (Eliminating Mixed Sex Accommodation) reviews

It is the duty of the CCG to ensure that Blackpool Teaching Hospitals have conducted reviews to prevent potential breaches relating to privacy and dignity on wards. We were approached by Blackpool and Fylde and Wyre CCG quality leads to undertake this review with Healthwatch Lancashire, with Blackpool leading the review.

2.7 The questionnaires were pre-set from 2015, and so volunteers and staff were trained by Healthwatch Blackpool and four wards were reviewed, undertaking observations, patient and staff questionnaires. A report is to be written to be approved, before being sent to the CCG's

2.8 Ward managers and sisters told us that wards have EMSA champions (similar to Learning disability and mental health champions), although they did not always know who this was. All staff said they felt they could report/ discuss breaches if they saw one. Junior staff (such as Healthcare Assistants) said they were unaware of the policy specifically and assumed it was just part of daily routine. There was some discrepancy with some staff telling us they had EMSA training and others said it was incorporated into mandatory training. There is no EMSA standalone training

available to the staff so this potentially identified a need of separate training.

- 2.9 There was a breach of privacy and dignity during our visit. As we were conducting our visit, a curtain was not pulled across and a man was exposed to the entire bay. Upon addressing this with the ward manager, we were told that they would speak to the staff involved. This was also forwarded to the Patient experience lead Eleanor Walsh.

### **3.0 Consultations**

#### **3.1 Carers Consultation**

To inform the recommissioning of Blackpool carers services, the tripartite (Healthwatch Blackpool, Blackpool Council and CCG) consultation is underway and so far has attracted just over 120 responses, 99 adults and 24 young people. The consultation will continue throughout September and we have met with young carers co-ordinators and discussed the possibility of getting the survey into schools, as well as hosting our own young carers group. A prize draw will be taking place in early October, and the report will be produced.

### **4.0 Work plan for September/October**

#### **4.1 Blackpool Victoria Hospital**

[The Healthwatch Priorities Report](#) found that residents believed that appointments and communication at Blackpool Victoria Hospital were an issue. Appointments included waiting times, and cancellations. Communication included speaking to parents instead of young people, communication with patients on wards, as well as communication between hospital departments. The other biggest concerns were car parking, discharge and aftercare, and the Gastroenterology department.

- 4.2 We have met with Interim Chief Executive Wendy Swift to discuss potential options for reviewing the Outpatients redesign which is due to be finished at the end of September.

- 4.3 Healthwatch Blackpool is also meeting with patient Experience Lead Andrew Heath to discuss how we can understand the issues further before undertaking a review. This may be in the form of questionnaires asking patients specifically about appointments and communication, as well as public consultation around the highlighted issues.

### **5.0 Identified Additional Revenue**

- 5.1 The devising of a trading arm to receive additional income is in development, addressed in the Additional Revenue report, included in the agenda. However, some additional sources of income have been identified.

## **6.0 Sustainability and Transformation Plan (STP) - Pan Lancashire and Cumbria Healthwatch Transformation Programme Collaborative**

6.1 The STP “footprint” comprises of five local areas with Local Development Plans (LDPs). Four local Healthwatch fall within the local STP “Footprint” and collaboratively are meeting and writing to the Lancashire and South Cumbria Programme Board with a proposal to undertake some public consultation for the STP. The proposal is yet to be considered by the Board, but a discussion has been held with Roger Baker, the NHS England engagement lead for the STP. Further discussion between local Healthwatch is required to co-ordinate how this engagement will take place with current resources.

## **7.0 The Lancashire Public Health Commissioning Team (PHCT)**

7.1 The PHCT is looking to do some work around community screening and immunisation, in order to increase uptake of screening in identified community groups (Offenders in Lancashire prisons, Travellers, people with learning disabilities and BME groups). In particular these relate to Cervical Screening for women aged 30 to 49 years of age and Seasonal Influenza Immunisation for Under 65’s in clinical risk groups. More details around this will emerge from a meeting with Healthwatch Lancashire and Blackburn with Darwen.

## **8.0 Lancashire Pharmaceutical Committee**

8.1 The Committee would like to fund some training followed by engagement in community pharmacies around dispensing health equality. More details around this will emerge from a meeting with Healthwatch Lancashire and Blackburn with Darwen.

## **9.0 Care Homes**

9.1 We received an e-mail from a care home requesting Healthwatch Blackpool to undertake a review, following a 2014 review and a change in management staff. An email has been sent to the home with a suggestion of funding for this work as it falls outside of our 2016/ 2017 work plan. Discussions around this potential work to take place at the Board meeting.

## **10.0 Staffing**

10.1 A restructure at Empowerment has led to Healthwatch Blackpool gaining an apprentice for 37.5hrs per week, to undertake many of the Information Officer and administrative duties.

A three-month secondment of a part-time services manager from Blackpool Carers means that more oversight, performance management and development can be provided to the Healthwatch team.

## **11.0 Key Performance Indicators (KPIs)**

- 11.1 The 2016/ 2017 KPI' have now been agreed between Healthwatch and Blackpool Council, to be reported on quarterly. They set out the need for Healthwatch Blackpool to demonstrate influence (practical and strategic) in the positive change of health and social care in order to best exemplify the work it does and provide value for money. This provides a focus for Healthwatch Blackpool to generate positive change as a measure of success.
- 11.2 An agreement, in principle, has been made with commissioners that Healthwatch Blackpool may undertake additional paid work outside of the council funding, but within the core hours in order to develop sustainability opportunities.

## **12.0 Volunteering**

- 12.1 In the past two months, we have had interest from six people and three volunteers sign up being processed. We have also had one volunteer leave the organisation. This takes us to nine volunteers currently.
- 12.2 Volunteer roles have been redrafted and the website will be updated imminently with the rebranding of roles and Healthwatch Blackpool branded clothing has been quoted and will be ordered as a priority.
- 12.3 As part of a volunteering drive in September and October, we will be in Blackpool Sixth Form college speaking to health and social care students, as well as the joint Blackpool and Fylde and Wyre CCG AGM
- 12.4 We have also attended young people's groups who have expressed a keen interest to be involved as part of a Youth Healthwatch.

## **13.0 Lancashire Healthwatch Network Memorandum of Understanding (MoU)**

- 13.1 Operational Leads from Healthwatch Blackpool, Lancashire and Blackburn with Darwen met following some joint projects. This included The Harbour and a piece of Learning Disability work with MacMillan Cancer Support.
- 13.2 These reviews faced some operational complications around resource and clear communication between all Healthwatch. It was felt that a MoU and operational guide setting out a basic principle of representation and lead organisation role and functions would allow for better clearer practice.
- 13.3 The Lancashire Healthwatch Network MoU (Appendix 5(a) and Appendix to the MoU (Appendix 5(b)) are attached for consideration by the Board.



## LANCASHIRE HEALTHWATCH NETWORK

### Memorandum of Understanding

This MoU creates a framework in which local Healthwatch organisations in Lancashire will work together

#### Ownership:

This Policy belongs to the Lancashire Healthwatch Network

Sign off by all participating members of the Lancashire Healthwatch Network

#### Implementation & Quality Assurance

Implementation is from July 2016 and this MoU is a working operational document until any alterations are formally agreed by all three local Lancashire Healthwatch.

The MoU is to be reviewed annually **and** in the light of experience, best practice or significant change where deemed necessary.

***The Lancashire Healthwatch Network is committed to developing a model of practical cooperation to ensure public engagement in Health & Social care in Lancashire.***

This MoU is between the 3 local Healthwatch organisations in Lancashire.

The partners to the agreement are:

- Healthwatch Blackpool
- Healthwatch Blackburn with Darwen
- Healthwatch Lancashire

#### Purpose

This MoU describes the intentions of local Healthwatch in Lancashire in regards to their future cooperation and collaborative working.

The MoU suggests how local Healthwatch (the partners) will work together to ensure, and secure, true patient and public involvement in developments in health and social care.

The MoU responds to the specific challenges faced in the current health and social care landscape across Lancashire.



### **Declarations**

*We agree that positive change to the health and social care system is needed and that increased involvement of the public, patients, consumers and service users' representation is needed in order to ensure that services are focussed on meeting the needs of the communities they serve.*

*We agree that the Lancashire wide transition programme in health and social care presents unprecedented opportunities to create a more person centred health and care economy. We also agree that ensuring the public are properly engaged with the process demands new mechanisms and appropriate resourcing.*

*We accept that by working together local Healthwatch can demonstrate a clear and significant mandate and capability with regards to public engagement.*

*We accept that by working together we can add more value to the Lancashire Change Programme and ensure citizens from all the communities of Lancashire have equal opportunities to get involved and make their views known.*

*In order to mitigate against under resourcing and reduce inequalities in provision of Healthwatch services, we commit to exploring all practical options for continued collaborative working.*

*We recognise that Lancashire Change programme may have implications for neighbouring (outside Lancashire) Healthwatch organisations. We will work with Healthwatch England and collaborate with them appropriately.*

*We recognise that they are not the only way to achieve effective community representation and will encourage and support work with voluntary, community and other local organisations and local residents.*

### **Guiding Principles**

We acknowledge that;

- Legislation fixes Local Healthwatch organisations to a Local Authority footprint and representation of Locality based communities.
- Local Healthwatch organisations know their local communities well, have close and strong relationships with individual service users, expert patient's groups, communities of interest, health champions, campaigners and the wider voluntary and community sector, and as such are best placed to advise on reaching their local populations.
- Local Healthwatch organisation are best placed (and in some cases statutorily obliged) to engage with the local health and care system and to contribute to local strategies including JSNA, Health and Wellbeing Strategy and Locality Plans.
- Local Healthwatch work within their own individualised governance, management and operational frameworks and are as such free to retain their independence and manage their affairs as they see fit.

- In order to adequately represent the interests of all patients we will increasingly be required to provide coordinated approaches.
- We need to develop and agree consistent, effective and efficient approaches to cross-border, sector-based and city-wide issues, initiatives and services.
- We will use Healthwatch England's Quality Statements as an opportunity to raise standards and ensure an equitable Healthwatch offer is available to engage the public effectively and represent them in joint work.
- Within the constraints of our current resourcing we can achieve more through the sharing of skills, knowledge and capabilities.

### 1) Representation

The Lancashire Healthwatch Network believe that at a strategic level they can be effectively represented by a single (or small number of) representatives.

- Suitable representatives will be nominated by the Lancashire Healthwatch Network and will report to its respective local Healthwatch partners.

### 2) Lead Agency Principle

The Lancashire Healthwatch Network will appoint one of the partners as 'lead Healthwatch' when undertaking collaborative projects to:

- Progress specific developmental activities
- Co-ordinate operational projects / activities
- Act as the 'accountable organisation' for contractual purposes.

Refer to [Appendix 1: Collaboration checklist](#) (for operational activity)

**Agreement Signatories**

Signed for and on behalf of the Lancashire Healthwatch Network

Healthwatch Blackburn with Darwen

Name .....

Position .....

Signature .....

Date .....

Healthwatch Blackpool

Name .....

Position .....

Signature .....

Date .....

Healthwatch Lancashire

Name .....

Position .....

Signature .....

Date .....

## MEMORANDUM OF UNDERSTANDING

## Collaboration between local Healthwatch in Blackburn with Darwen, Blackpool and Lancashire

<b>Healthwatch organisations working together (tick)</b>	Blackburn with Darwen	
	Blackpool	
	Lancashire	
<b>Date of checklist</b>		
<b>Name of collaborate project</b>		
<b>Lead Healthwatch</b>	Healthwatch:  Lead Officer:	
<b>PROJECT PLANNING</b>		
<b>Activity</b>	<b>Tick and comments</b>	
Lead to Inform Chief Officer / Manager at relevant local Healthwatch		
Lead Officer to organise planning / briefing session		
At the project planning meeting: <ul style="list-style-type: none"> <li>Identify main operational contact for each Healthwatch involved</li> <li>Agree rationale for project</li> <li>Allocate and confirm specific roles and responsibilities*</li> <li>Confirm numbers of staff and volunteers required</li> <li>Agree date and time for project</li> </ul>		
<b>Administration/process:</b> <ul style="list-style-type: none"> <li>Notify provider (if appropriate) *</li> <li>Display poster at venue where project to take place (if appropriate) *</li> <li>Create risk assessment for own Healthwatch *</li> <li>Lead Officer to create materials for activity (questionnaires /posters etc)</li> <li>Main contacts at each participating Local Healthwatch responsible for identifying and briefing volunteers and staff who are to be involved in the project activity</li> </ul>		
<b>Mutual considerations:</b> <ul style="list-style-type: none"> <li>Logos of all participating Local Healthwatch will be displayed on all materials</li> <li>Ensure that when planning projects and reporting – all timescales are achievable</li> <li>Letter to accompany report to be created and agreed with Chief Officer / Manager from each local Healthwatch</li> <li>All representatives to adhere to Healthwatch core values and conduct of behaviour</li> <li>Local Healthwatch will not take significant decisions without the prior consent of the other local Healthwatch in relation to collaborative projects</li> <li>Local Healthwatch working collaboratively will not share or distribute reports without prior approval from participating Local Healthwatch</li> </ul>		

<p>Day of project activity:</p> <ul style="list-style-type: none"> <li>• Lead to hold a 10 minute briefing directly before project activity and distribute materials</li> <li>• Undertake activity</li> <li>• Lead to hold a 10 minute debriefing post activity</li> </ul>	
<p>Report:</p> <ul style="list-style-type: none"> <li>• Lead organisation to collate and create draft report <b>within 10 working days</b></li> <li>• Cascade to participating Healthwatch – for comment and factual accuracy and to be returned to lead Healthwatch <b>within 5 working days</b></li> <li>• Lead Healthwatch to amend report <b>within 2 working days</b></li> <li>• Lead Healthwatch to confirm amends to participating Healthwatch and send final draft</li> <li>• Lead Officer to send report and accompanying letter to provider(s) etc for comment and factual accuracy, requesting provider responds <b>within 20 working days</b></li> <li>• Lead Officer to chase provider for report response</li> <li>• Lead Officer to cascade response to main operational contact at participating Healthwatch <b>within 2 working days of receipt</b></li> <li>• Participating Healthwatch to respond <b>within 2 working days</b></li> <li>• Lead Officer to prepare and share press release with Communications Officer/Manager at participating Healthwatch <b>within 3 working days</b></li> <li>• Participating Healthwatch Communications Manager/Officer to agree press release <b>within 2 working days</b></li> <li>• Lead Officer to progress press release</li> <li>• Communications Manager/Officer at participating to cascade report to relevant stakeholders</li> <li>• Communications Manager/Officer to upload report onto local Healthwatch website</li> </ul>	
<p>Post activity evaluation: Chief Officer/Manager to meet after each collaborative activity to share:</p> <ul style="list-style-type: none"> <li>• share with each other feedback from their own stakeholder networks</li> <li>• consider lessons learnt</li> <li>• Agree actions (where necessary)</li> </ul>	

<b>Report to:</b>	<b>HEALTHWATCH BLACKPOOL</b>
<b>Relevant Officer:</b>	Steven Garner, Healthwatch Blackpool Manager
<b>Date of Meeting</b>	12 June 2016

## FINANCE REPORT

### 1.0 Income and Expenditure Accounts

- 1.1 The five month Healthwatch Accounts Breakdown (Appendix 7(a)) shows the organisational costs for the financial year so far.
- 1.2 The report notes a small surplus, to be added to the balance carried forward at the end of the 2015/ 2016 financial year.
- 1.3 Spending on expenses has seen an increase following the Annual Conference, which required more petrol, accommodation and rail travel cost than was required the previous year. This will be built into 2017/ 2018 finances as the Conference is again being held in Nottingham.
- 1.4 There has been an increase in promotional costs as we have placed a sign on the car park monolith at Empowerment offices to increase Healthwatch Blackpool visibility and the registered offices sign has been placed at the door of the building.
- 1.5 Printing costs (in particular colour printing) remain high, although lower so far than 2015/ 2016 and an emphasis of cost on this front has been noted.

### 2.0 Expected expenditure

- 2.1 Future high expenditure will include the imminent ordering of clothing ahead of the volunteering drive. Quotes have been given, however we are currently negotiating cost ahead of placing an order for branded polo shirts and fleeces.
- 2.2 Online advertising has proved to be successful on a specific wide carers consultation and so this method may be replicated on similar area-wide consultations.

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**Healthwatch Blackpool**  
**Income and Expenditure Accounts**  
**Five month period from 1 April 2016 – 31 August 2016**

<b>Contract Income</b>	£	24,165.00
<b>Expenditure</b>		
Salary costs	£	18,480.00
Travel/volunteer expenses	£	757.00
Training	£	30.00
Event costs	£	60.00
Advertising and promotion	£	144.00
Contribution to office costs (15%) 1	£	3,625.00
Printing, postage and stationary	£	435.00
Refreshments	£	10.00
IT support expenditure	£	6.00
DBS checks	£	72.00
	<u>£</u>	<u>23,619.00</u>
Surplus for 5 month period	<u>£</u>	<u>546.00</u>



Note 1: Contribution to office costs relates to office space, telephone, utilities, IT, finance, audit etc.

Healthwatch Blackpool  
 c/o Empowerment  
 33 Bisham Road, FY2 0HH  
 Tel 01253 477959 (option 6)

Healthwatch Blackpool is a service delivered by



Registered Charity Number: 1155897

In 2015/16 accounts, these were itemised separately but at a higher cost.  
15% appears to be a fair contribution.

<b>Report to:</b>	<b>HEALTHWATCH BLACKPOOL</b>
<b>Relevant Officer:</b>	Steven Garner, Healthwatch Blackpool Manager
<b>Date of Meeting</b>	15 September 2016

## ADDITIONAL REVENUE

### 1.0 Current Climate

#### 1.2 Healthwatch Blackpool Funding

2015/ 2016: £63,000  
 2016/ 2017: £66,173  
 2017/ 2018: £66,173

The reason for the increase is to fund a full time management position from an 18-hour post.

#### 1.3 Blackpool Council Savings

2015/ 2016: £25.2m  
 2016/ 2017: £9m savings to council services with another £11m to be found from corporate measures.

The Medium Term Financial Strategy estimates that the Council will need to make savings of £58m over this three-year period (2015/ 2018), of which £20m needs to be made in the 2016/ 2017 financial year.

1.4 Healthwatch Blackpool is a statutory organisation and must be funded by the local authority, though the amount to which it is funded is not set.

1.5 With a potential reduction of future funding for Healthwatch Blackpool, it is necessary to discover additional sources of revenue outside of core local authority funding in order to remain sustainable.

1.6 An agreement, in principle, has been made with commissioners that Healthwatch Blackpool may undertake additional paid work outside of the council funding but within the core hours in order to develop sustainability opportunities.

### 2.0 Adaption of Organisational Structure

2.1 As a Company limited by guarantee, Healthwatch Blackpool face limited ability to bid for tender opportunities, including those listed in "The Chest", North West's Local Authority Procurement Portal. A move to a Charitable Incorporated Organisation (CIO) or other charitable status could allow Healthwatch Blackpool to bid for a wider

range of projects in relation to health or social care information and advice, or other consulting pieces of work felt appropriate.

2.2 Healthwatch Milton Keynes is becoming an independent Charitable Incorporated Organisation (CIO), but their current situation is that they are still a hosted Healthwatch (by Age UK Milton Keynes). In taking the decision to become a CIO, they were guided by the Healthwatch England (HWE) Tool (Appendix 8(a) and by the Association Model Constitution guidance by the Charity Commission (Appendix 8(b), which their Management Board went through, assisted by a solicitor with experience in the charity field. They adopted the Association model, rather than the Foundation model, because they felt that it was more transparent and more in keeping with the relationship that they have built up with their members.

2.3 They had assistance from HWE, which was mainly for institution building, and continued on their own once they had decided on a preferred form of governance, with assistance from a local organisation (the Social Business Alliance) in registering the CIO.

### **3.0 Research from other local Healthwatch**

3.1 The Healthwatch Annual Conference encouraged sustainability discussions between local Healthwatch, with a session looking specifically at Unique Selling Proposition (USP):

- Independent
- Good community links, reach and local knowledge
- Volunteer led
- Existing brand and design
- Links to CQC

3.2 Healthwatch Devon has developed a “Rethinking Engagement” pack for professionals, providing a clear bespoke paid service for organisations to gain service user feedback. They offer three main engagement opportunities:

- Free services such as reach through bulletins, consumer reports, Healthwatch representation on engagement groups, and promotion.
- Off the shelf services, include snapshot reports, data trawls of existing evidence, training on how to get the best from service users, and training for representatives on how to be effective and constructive influencers.
- Bespoke services offer targeted connections to key audiences, shaping and refining engagement approaches, and specialist engagement skills – facilitation of meetings, focus groups and widespread outreach.

3.3 In addition to core local authority funding and some CCG funding, other local North West Healthwatch have found external funding through health related agencies such as community pharmacies, public health as well as charities such as MacMillan Cancer Support.

#### **4.0 Internal Skills Audit**

- 4.1 An assessment of the skills of the Healthwatch Blackpool core staff team and volunteers will enable it to develop potentially unique training or consultation with other health and social care and Third sector organisations, drawing on backgrounds in advocacy, supported living, human rights, and marketing.

#### **5.0 Care Home Reviews**

- 5.1 We have been approached by a care home and asked to undertake a review. This follows a review conducted in 2014 by the previous contracted holders for Healthwatch.
- 5.2 In December 2015 and August 2016, Healthwatch Blackpool has visited roughly a third of all care homes in Blackpool. The December 2015 reviews yielded positive change for residents including improved and extended food rotas, the employment of activities coordinators and other changes to improved resident choice.
- 5.3 On the back of this success and the visiting of the worst performing care homes in Blackpool, this may open up the opportunity to undertake paid work to visit and review care homes.
- 5.4 A robust policy of independence, focus on service user voice and organisational risk assessment will have to be completed in order to safeguard Healthwatch Blackpool from any potential scrutiny or legal action in the event of a care home failing after it was positively reviewed.

#### **6.0 Joint working with other local Healthwatch**

- 6.1 Pan-Lancashire work allows local Healthwatch to work together on projects and economically share resource.
- 6.2 The Sustainability and Transformation Plan (STP) “footprint” may allow local Healthwatch to form a collective in order to secure some funding to undertake public engagement.
- 6.3 Healthwatch Lancashire has been in talks with The Lancashire Public Health Commissioning Team (PHCT), and Lancashire Pharmaceutical Committee, who may be wishing to fund projects as outlines in the Lead Operational Report.

#### **7.0 Focus**

- 7.1 By considering the adaptation of organisational structure, joint local Healthwatch working, commissions from other agencies and paid services, Healthwatch Blackpool has a number of options to gain additional income.
- 7.2 Sustainability and resource will play a heavy role in the deciding of the future focus for each of these avenues and the Board is invited to comment on this.

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2015

# Local Healthwatch Legal Entities

A decision making tool to support local Healthwatch determine the most appropriate legal entity for their social enterprise

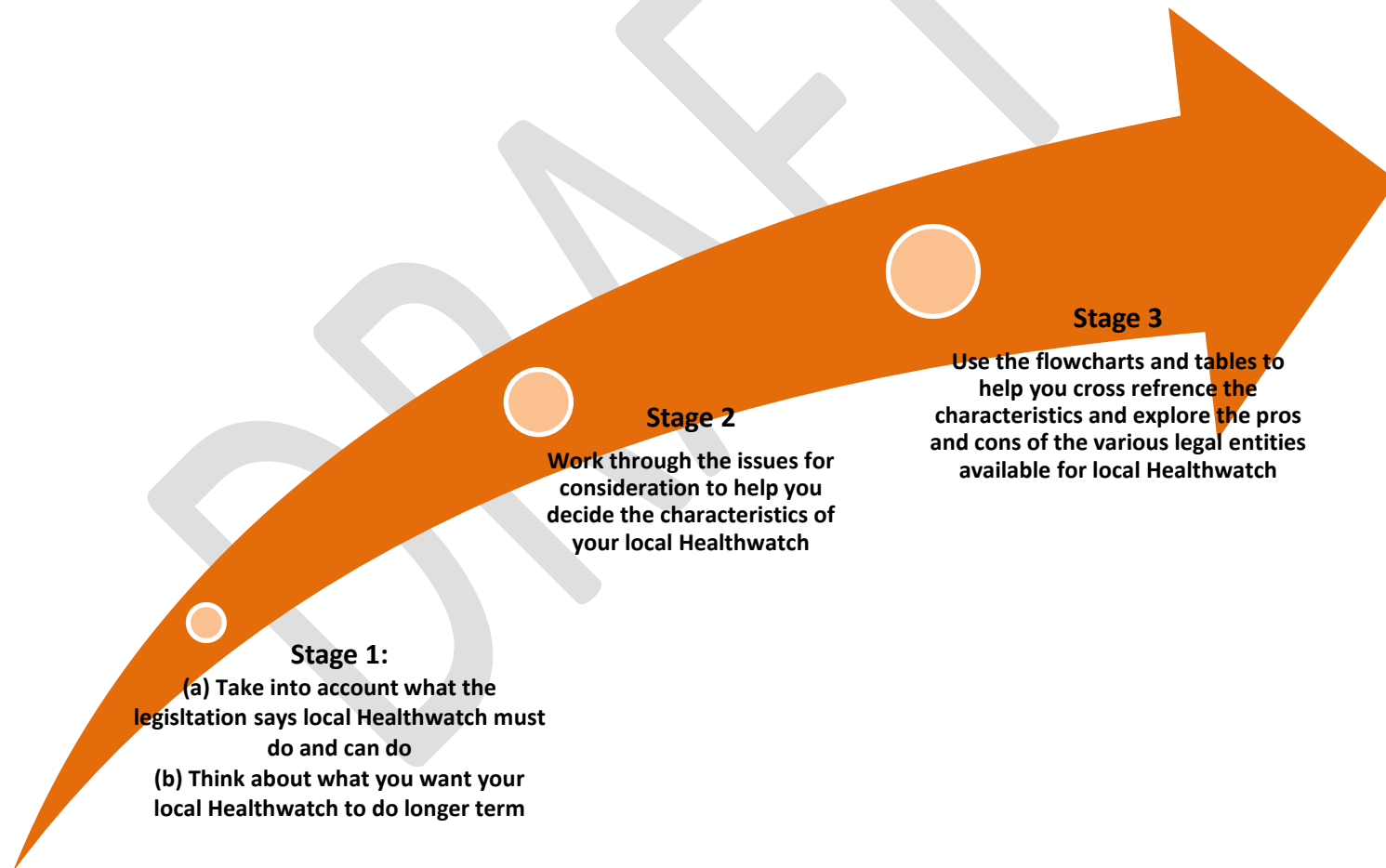
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## How to use this decision making tool

This decision making tool has been designed to support local Healthwatch thinking of changing their legal structure determine the most appropriate legal entity for their organisation. It will do this by supporting you through three stages (see below) during which you will have the opportunity to think through what you want your organisation to achieve now and in the longer term, and then use that knowledge to consider the pros and cons of the different legal structures available to you. This will help you make a decision about which legal structure is best suited for your local Healthwatch.

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### Disclaimer

This tool gives you a general overview of some of the major considerations when choosing the legal structure for your enterprise. It is not intended as a form of legal advice. You should always seek professional advice, including legal advice if you are not certain as to what legal structure is appropriate for your local Healthwatch. This is important to get right from the beginning, since it can be both complex and expensive to change from some legal forms to another later down the road.<sup>1</sup>

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<sup>1</sup> <https://unltd.org.uk/socialentrepreneurshiptoolkit/>

## Glossary

Term	Definition
<b>Articles of Association or “The Articles”</b>	The rules of a company which set out the internal management structure and procedures, such as the role of members and directors, procedures for appointment and removal, conduct of meetings and so on.
<b>Asset Lock</b>	Rules about the way in which the assets of the company can be distributed.
<b>Board of Directors/Trustees</b>	People responsible for determining policy, supervising the management of the company’s business and exercising the powers of the company. Directors/Trustees generally carry out these functions collectively as a board.
<b>Body corporate</b>	A legal entity entirely separate from the individuals comprising its membership.
<b>Business Rates</b>	A tax on the occupation of non-domestic property.
<b>Capital Gains Tax</b>	A tax levied on profit from the sale of property or an investment.
<b>Charity Commission</b>	The body that registers and regulates charities in England and Wales.
<b>Companies Act</b>	The Companies Act 2006.
<b>Companies House</b>	The registry for companies in England and Wales.
<b>Constitution</b>	A contract setting out how the company/body will run i.e. the rules.
<b>Corporation Tax</b>	A tax levied on companies' profits.
<b>Guarantors</b>	The members of a company limited by guarantee whose liability is limited to a specified amount.
<b>Dividends</b>	The distribution of a portion of the company’s assets (usually cash) to its members.
<b>HMRC</b>	HM Revenue and Customs.
<b>Management Committee</b>	People responsible for determining policy, supervising the management of the company’s business and exercising the powers of the society.
<b>Members</b>	The company’s owners.

<b>Memorandum of Association</b>	A constitutional document comprising the subscriber clauses required for the incorporation of company
<b>PAYE</b>	Pay As You Earn and is a scheme that HMRC use to collect income tax and national insurance contributions from employees as they earn it.
<b>Profit</b>	A financial benefit that is realised when the amount of revenue gained from a business activity exceeds the expenses, costs and taxes needed to sustain the activity.
<b>Registrar of Companies</b>	The official responsible for maintaining the company records filed under the requirements of the Companies Act
<b>CIC Regulator</b>	The Community Interest Company Regulator.
<b>Shareholders</b>	A person or body owning a unit(s) of the company.
<b>Social enterprise</b>	In respect of local Healthwatch an organisation is considered to be a social enterprise if a person might reasonably consider that it acts for the benefit of the community in England; <sup>2</sup> and it satisfies the criteria in the local Healthwatch regulations, including that lay people and volunteers are involved in governance.
<b>Value Added Tax (VAT)</b>	An indirect tax on the domestic consumption of goods and services, except those that are zero-rated

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<sup>2</sup> Section 222 (2) and (8) of The Local Government and Public Involvement in Health Act 2007 (as amended by Section 184 Health and Social Care Act 2012).

## Stage 1: Local Healthwatch and the Legislative Framework

The Local Government and Public Involvement in Health Act (2007) requires local Healthwatch to undertake certain activities. It also provides local Healthwatch with the power to undertake other activities at its own discretion.

A full overview of the legal requirements of local Healthwatch has been produced by Healthwatch England.<sup>3</sup>

A brief summary of the mandatory and discretionary activities are as follows:

### ***What does the legislation say local Healthwatch must do?:<sup>4</sup>***

1. Promoting and supporting the involvement of local people in the commissioning, the provision and scrutiny of local care services
2. Enabling local people to monitor the standard of provision of local care services and whether and how local care services could and ought to be improved
3. Obtaining the views of local people regarding their needs for, and experiences of, local care services and importantly to make these views known
4. Making reports and recommendations about how local care services could or ought to be improved. These should be directed to commissioners and providers of care services, and people responsible for managing or scrutinising local care services and shared with Healthwatch England
5. Providing advice and information about access to local care services so choices can be made about local care services
6. Formulating views on the standard of provision and whether and how the local care services could and ought to be improved; and sharing these views with Healthwatch England
7. Making recommendations to Healthwatch England to advise the Care Quality Commission to conduct special reviews or investigations (or, where the circumstances justify doing so, making such recommendations direct to the CQC); and to make recommendations to Healthwatch England to publish reports about particular issues
8. Providing Healthwatch England with the intelligence and insight it needs to enable it to perform effectively.

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<sup>3</sup> Healthwatch England. Understanding the Legislation: An overview of the legal requirements for local Healthwatch. Revised August 2013.

<sup>4</sup> Section 221 (2) of The Local Government and Public Involvement in Health Act 2007

## ***What does the legislation say local Healthwatch can do?***

1. May involve persons or organisations (other than the local authority) to help carry out some (but not all) of its activities<sup>5</sup>
2. Ask providers for information which they must make available<sup>6</sup>
3. Refer matters relating to social care services to an overview and scrutiny committee of a local authority<sup>7</sup>
4. Enter and View providers' places of work so it can observe matters relating to health and social care services (these powers do not extend to services relating to local authorities' social service's functions for people under the age of 18).<sup>8</sup>

### ***Action:***

Take into account what the legislation says local Healthwatch must do and can do, and use this to inform your discussions about what you want your local Healthwatch to do in the longer term.

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<sup>5</sup> Section 222 of The Local Government and Public Involvement in Health Act 2007

<sup>6</sup> Section 224 of The Local Government and Public Involvement in Health Act 2007

<sup>7</sup> Section 226 of The Local Government and Public Involvement in Health Act 2007

<sup>8</sup> The Local Authorities (Public Health Functions and entry to Premises by Local Healthwatch Representatives) Regulations 2013 (18 February 2013). The arrangements to be made by Relevant Bodies in respect of Local Healthwatch Regulation 2013 (28 March 2013).

## Stage 2: Issues for Consideration

According to government regulations a local Healthwatch must be **a body corporate which is a social enterprise**. Although there is no legal definition for what constitutes a social enterprise, for the purposes of section 222(8)(b) of the 2007 Act (Local Healthwatch: social enterprises) the criteria prescribed are that the constitution of the body must—

- a) state, or contain provisions which ensure, that not less than 50 per cent of its distributable profits in each financial year will be used or applied for the purpose of the activities of that body;
- b) contain a statement or condition that the body is carrying on its activities for the benefit of the community in England; and
- c) where appropriate, contain provisions relating to the distribution of assets which take effect when that body is dissolved or wound up, as follows:
  - require that the residual assets of the body be distributed to those members of the body (if any) who are entitled to share in any distribution of assets on the dissolution or winding up of that body according to those members' rights and interests in that body;
  - in the case of a company not limited by guarantee and registered as a charity in England and Wales, provide that no member shall receive an amount which exceeds the paid up value of the shares which the member holds in the company; and
  - designate another social enterprise (within the meaning of section 222(8) of the 2007 Act) to which any remaining residual assets of the body will be distributed after any distribution to members of the body.

### ***Form Follows Function***

The phrase of “form follows function” generally refers to the design principle that the shape of a building or structure should be determined by its function or purpose. When applied to the design or composition of organisations, the term states in essence that an organisation’s function (its primary purpose, goals, strategy) should determine its form or structure.<sup>9</sup> So before moving onto decide the “form” of your local Healthwatch it would be prudent to consider its “function”. While there is considerable scope for choosing from a number of different legal forms, there are **two fundamental principles** used to determine whether or not an organisation is seen as a social enterprise:

1. It is not the legal structure that makes an organisation a social enterprise – it is its activities
2. The structures you choose can have a major impact on how you are able to respond to immediate and future funding and income generating opportunities.<sup>10</sup>

The rest of this stage will support you to think about these fundamental principles as applied to local Healthwatch.

<sup>9</sup> <http://www.strategicleadershipinstitute.net/news/let-form-follow-function-for-more-effective-change1/>

<sup>10</sup> <https://unltd.org.uk/socialentrepreneurshiptoolkit/>

## ***Your Activities - how do you want the organisation to be managed and run?***

### **Governance**

As we have seen the activities that local Healthwatch must do and can do are determined by legislation. Within this context the decisions you make about how your organisation is managed and run will determine what activities your local Healthwatch engages in.

All social enterprises need a person or group of people to set the strategy (long term plans), make sure that the strategy is put into action, and make sure that the organisation works within the law and meets its legal obligations. Depending on the legal structure chosen this role is carried out by either the:

- **Board of Directors/Trustees (company limited by shares/guarantee/registered charity which is a company limited by guarantee/CIC/CIO)** – a shareholder or guarantor is also known as a member. Members may or may not be directors of the company. Members have the right to elect directors to manage the company on their behalf. The directors are accountable to the members and can be removed by the members. Limited companies are only required to have one member and one director (who may be the same person). However, as most social enterprises claim to be operating for the good of stakeholders, the community or society in general it is good practice to have least three directors and five or more members.
- **Management Committee (industrial and provident society)** - can be all the members or a smaller management committee provided that the managers are appointed by the members and can also be removed by them.

Grant funders are more attracted to organisations with a wider membership. A greater number of board members will increase the level of oversight. However, the more board members the more difficult and time consuming the organisational decision making will be.

#### ***Action:***

Think about the balance in terms of enabling a diversity of viewpoints whilst maintaining quick and decisive decision making. Think about the regulations in relation to local Healthwatch and in particular the need to involve lay people and volunteers in the governance of the organisation.<sup>11</sup> Each local authority will enter into bespoke arrangements with its own local Healthwatch and the issue of lay and volunteer involvement will be covered in these contracts.

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<sup>11</sup> Regulation 38, The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

## ***Future funding and income generation opportunities – things to consider***

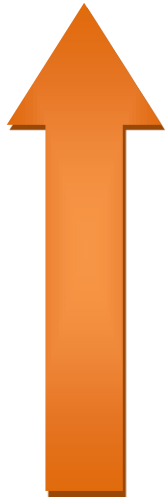
### **Personal liability**

Legislation has determined that local Healthwatch **must be corporate bodies** (i.e. an independent legal entity) **providing limited liability** to the members/guarantors/owners.<sup>12</sup> Having a legal structure that separates the members/guarantors/owners from the enterprise will limit their personal liability if the enterprise suffers financial loss, or if financial loss is caused by the enterprise (this immunity is not valid if the members/guarantors/owners have acted negligently or fraudulently).<sup>13</sup>

### **Ownership – who do you want to be in ultimate control of the organisation?**

Listed below are the ranges of legal entities available to social enterprises in order of structures that afford greater control to a smaller number of people, to those in which ownership is shared among the many.<sup>14</sup>

#### ***Ownership by few***



- **Company limited by shares or Charitable Incorporated Organisation** – the shareholders have outright ownership of the company. The more shares you own the more votes and influence you have over the strategy, management and operation of the enterprise. Any profit made by the enterprise is usually distributed to the shareholders by means of a dividend. The founders will usually be the directors and are paid for their employment. The management board may be supplemented through the appointment of non executive directors. A community interest company may be limited by shares, but dividends are usually limited.
- **Company limited by guarantee or Charitable Incorporated Organisation** – there are no shareholders, instead the company has a number of guarantors. The liability of the guarantor is determined by the amount of the guarantee they have committed to. There is no legal minimum or maximum guarantee amount. If each person guarantees the same amount they will usually have one vote each. Profits can be distributed. Social enterprises with this structure may also embed within their constitution (Articles of Association) that profits will not be distributed but will be reinvested in the company, to charities of the community they serve. The Articles will also govern the distribution of assets if the company closes down. Assets may be distributed to other companies undertaking similar work, or to the guarantors.
- **Industrial & Provident Society (co-operative model)** – Ownership is shared with other members of the co-operative. In order to be considered a co-operative each member will usually have only one vote, however much they invest in the co-operative. The maximum investment by any one individual is restricted to £20,000. Investors may receive dividends.

#### ***Ownership by many***

<sup>12</sup> Section 221 (2) of The Local Government and Public Involvement in Health Act 2007

<sup>13</sup> <https://unltd.org.uk/socialentrepreneurshiptoolkit/>

<sup>14</sup> <https://unltd.org.uk/socialentrepreneurshiptoolkit/>



## **Funding, both short and long term – how do you intend to generate income?**

This is a question of crucial importance as the legal structure of the social enterprise will determine the kinds of funding that the company is able to access. Grant making trusts will only fund companies that do not distribute profits or their assets if they close down. However, choosing a structure that allows you to receive grants in the short term may prevent you from accessing investment when you want to scale up later down the line. There are a number of different Industrial and Provident Societies and most cannot access grant funding, the exception being a co-op established for the Benefit of the Community (which is also an unregistered charity). All types of social enterprises can access loans.<sup>15</sup>

If your organisation generates income through charging a fee for its services – classed as “trading” – this may affect your ability to benefit from charitable status. To be a registered charity, an organisation must be established for charitable purposes only, although some trading is permitted within these rules. If charities undertake trading activities, they need to take care that they stay within the rules on trading or set up appropriate forms for the trading activities.<sup>16</sup>

### ***Action:***

It would be wise to agree, in the first instance, what the most likely form of long term funding will be for your local Healthwatch and either choose a legal structure that enables you to access it, or have a strategy for adapting your legal structure as and when it becomes necessary. As local Healthwatch is required to be a social enterprise, there is some expectation that it will provide services in return for a fee.

## **Profit distribution – what will you do with any profits you make?**

By definition a social enterprise should be generating “profits”, or surpluses. How the profits are used is determined by the legal structure:

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<sup>15</sup> <https://unltd.org.uk/socialentrepreneurshiptoolkit/>

<sup>16</sup> Sayer Vincent. Trading Issues made Simple. Charity Finance Director's Group & Sayer Vincent, 2008.

### ***Profits distributed***



- **A company limited by shares** will normally distribute the profits (pay a dividend) to the shareholders and so are attractive to investors
- **A CIC limited by shares** may distribute profits (pay a dividend) if agreed by a resolution of its members. Dividends payable to private shareholders (non asset locked bodies) will be subject to a dividend cap <sup>17</sup>
- **A company limited by guarantee** will tend to re-invest the profits within the company to grow the company and increase its social impact
- **Registered charities and co-ops** that are charitable in nature are not permitted to distribute profits so they usually re-invest them in the business

### ***Profits re-invested***

#### ***Implications for local Healthwatch:***

If the local Healthwatch is not a company limited by guarantee and a registered charity, or is not a CIC registered as a company limited by guarantee, or is not a CIO then its constitution/memorandum and articles of association must contain a statement to the effect that the local Healthwatch is carrying on its activities for the benefit of the community in England. The constitution/memorandum and articles of association must also ensure that not less than 50% of its distributable profits in each financial year will be used for the purpose of its activities and contain an 'asset lock'.<sup>18</sup>

### **Taxation liability - what are the tax implications?<sup>19</sup>**

One of the main benefits of charitable status is the tax relief available to charities. Organisations with charitable status are exempt from corporation tax, income tax and capital gains tax on income used for charitable purposes. They are entitled to 80% mandatory relief on business rates and a further 20% at the discretion of the local authority. They are also exempt from stamp duty on land transactions. For these reasons, most organisations engaged in activities which might fall under the definition "charitable" will be keen to obtain charitable status. Being a charity would be the default option, unless the organisation engages in substantial non-charitable trading activity, is primarily a campaigning organisation<sup>20</sup>, or wishes to distribute its profits to shareholders.

<sup>17</sup> The cap is currently 20% of the paid up value of a share in the company and a maximum aggregated dividend of 35% of the distributable profits. Unused dividend capacity can be carried forwards for 5 years. There is also a cap on performance-related interest of 10% of the average amount of debt or the sum outstanding under debentures issued by the company. (Unltd tool kit)

<sup>18</sup> For a full explanation of the 'asset lock' see Healthwatch England 'What are the requirements relating to being a social enterprise' in Understanding the Legislation: An overview of the legal requirements for local Healthwatch. Revised August 2013.

<sup>19</sup> The following information about tax liabilities are based on current (March 15) legislation and case law which may change over time.

<sup>20</sup> See Regulation 36, The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

The table below provides a summary of the tax implications for the different forms of legal entity available to social enterprises.

Legal structure	Corporation Tax	Income Tax	Other taxes
<b>Company Ltd by Guarantee</b>	<ul style="list-style-type: none"> <li>• Must register for Corporation Tax and complete an annual Corporation Tax return CT600</li> <li>• Any surplus is liable to Corporation Tax, unless the organisation can prove the income was not generated through trading</li> </ul>	<ul style="list-style-type: none"> <li>• No reliefs available</li> </ul>	<p>CLGs pay:</p> <ul style="list-style-type: none"> <li>• VAT on purchases (but if they are doing something that qualifies as a VATable supply, they can offset this against the VAT they must charge)</li> <li>• Stamp duty</li> <li>• Capital gains tax</li> <li>• Tax on dividends from UK companies</li> <li>• Business rates</li> </ul>
<b>Registered Charity (company Ltd by guarantee)</b>	<ul style="list-style-type: none"> <li>• Income from charitable activities is exempt from Corporation Tax</li> <li>• Tax reliefs are not automatic. The charity must first apply to HMRC on form CHA1 for recognition as a charity for tax purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• Can reclaim income tax on donations (Gift Aid), gifts of land or shares and bank interest.</li> </ul>	<p>Charities pay tax on:</p> <ul style="list-style-type: none"> <li>• Dividends from UK companies</li> <li>• Profits from developing land or property</li> <li>• Purchases (VAT)</li> <li>• Charities are exempt from capital gains tax, provided they apply the gains for charitable purposes</li> <li>• Charities can claim an 80% mandatory discount on business rates, plus 20% discretionary relief</li> <li>• Charities do not pay stamp duty if the building is purchased for charitable purposes</li> </ul>
<b>Company Ltd by Shares</b>	<ul style="list-style-type: none"> <li>• Must register for Corporation Tax and complete an annual Corporation Tax return CT600</li> <li>• Any surplus is liable to Corporation Tax</li> </ul>	<ul style="list-style-type: none"> <li>• No reliefs available</li> </ul>	<p>Companies limited by shares pay:</p> <ul style="list-style-type: none"> <li>• VAT on purchases (but if they are doing something that qualifies as a VAT-able supply, they can offset this against the VAT they must charge)</li> <li>• Stamp duty</li> <li>• Capital gains tax</li> <li>• Tax on dividends from UK companies</li> <li>• Business rates</li> </ul>
<b>Industrial &amp; Provident Society (Community Benefit)</b>	<ul style="list-style-type: none"> <li>• Charitable IPS community benefit societies (Bencom) are classed as exempt charities and do not pay Corporation Tax.</li> <li>• Community benefit I&amp;Ps must</li> </ul>	<ul style="list-style-type: none"> <li>• Can reclaim income tax on donations (Gift Aid), gifts of land or shares and bank interest.</li> </ul>	<p>Pay tax on:</p> <ul style="list-style-type: none"> <li>○ Dividends from UK companies</li> <li>○ Profits from developing land or property</li> <li>○ Purchases (VAT)</li> </ul>

	<p>register with the Charity Commission if they wish to receive charitable tax breaks.</p>		<ul style="list-style-type: none"> <li>• Exempt from capital gains tax, provided they apply the gains for charitable purposes</li> <li>• Can claim an 80% mandatory discount on business rates, plus 20% discretionary relief</li> <li>• Do not pay stamp duty if the building is purchased for charitable purposes</li> </ul>
<b>Community Interest Company (Limited by shares)</b>	<ul style="list-style-type: none"> <li>• Must register for Corporation Tax and complete an annual Corporation Tax return CT600</li> <li>• Any surplus is liable to Corporation Tax</li> </ul>	<ul style="list-style-type: none"> <li>• No reliefs available</li> </ul>	<p>CICs limited by shares pay:</p> <ul style="list-style-type: none"> <li>• VAT on purchases (but if they are doing something that qualifies as a VAT-able supply, they can offset this against the VAT they must charge)</li> <li>• Stamp duty</li> <li>• Capital gains tax</li> <li>• Tax on dividends from UK companies</li> <li>• Business rates</li> </ul>
<b>Community Interest Company (Limited by Guarantee)</b>	<ul style="list-style-type: none"> <li>• Must register for Corporation Tax and complete an annual Corporation Tax return CT600</li> <li>• Any surplus is liable to Corporation Tax</li> </ul>	<ul style="list-style-type: none"> <li>• No reliefs available</li> </ul>	<p>CICs limited by guarantee pay:</p> <ul style="list-style-type: none"> <li>• VAT on purchases (but if they are doing something that qualifies as a VAT-able supply, they can offset this against the VAT they must charge)</li> <li>• Stamp duty</li> <li>• Capital gains tax</li> <li>• Tax on dividends from UK companies</li> <li>• Business rates</li> </ul>
<b>Charitable Incorporated Organisation (CIO)</b>	<ul style="list-style-type: none"> <li>• Income from charitable activities is exempt from Corporation Tax</li> <li>• Tax reliefs are not automatic. The CIO must first apply to HMRC for recognition as a charitable organisation for tax purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• Can reclaim income tax on donations (Gift Aid), gifts of land or shares and bank interest.</li> </ul>	<p>Pay tax on:</p> <ul style="list-style-type: none"> <li>○ Dividends from UK companies</li> <li>○ Profits from developing land or property</li> <li>○ Purchases (VAT)</li> <li>• Exempt from capital gains tax, provided they apply the gains for charitable purposes</li> <li>• Can claim an 80% mandatory discount on business rates, plus 20% discretionary relief</li> <li>• Do not pay stamp duty if the building is purchased for charitable purposes</li> </ul>

**Summary of Issues for Consideration in relation to your chosen legal entity**

<b>Your chosen legal entity must:</b>	<b>Things that are for you to decide</b>
<b>Be a corporate body</b>	<b>Who owns the organisation</b>
<b>Be a social enterprise</b>	<b>How to generate income for the benefit of the community in England</b>
<b>Must have rules about how any profits are distributed (an asset lock)</b>	<b>Whether to take advantage of the tax relief that is available to registered charities</b>
<b>Must carry out activities for the benefit of the community in England</b>	
<b>Must include volunteers and lay people in the governance of the organisation</b>	

## Stage 3: Possible Legal Structures

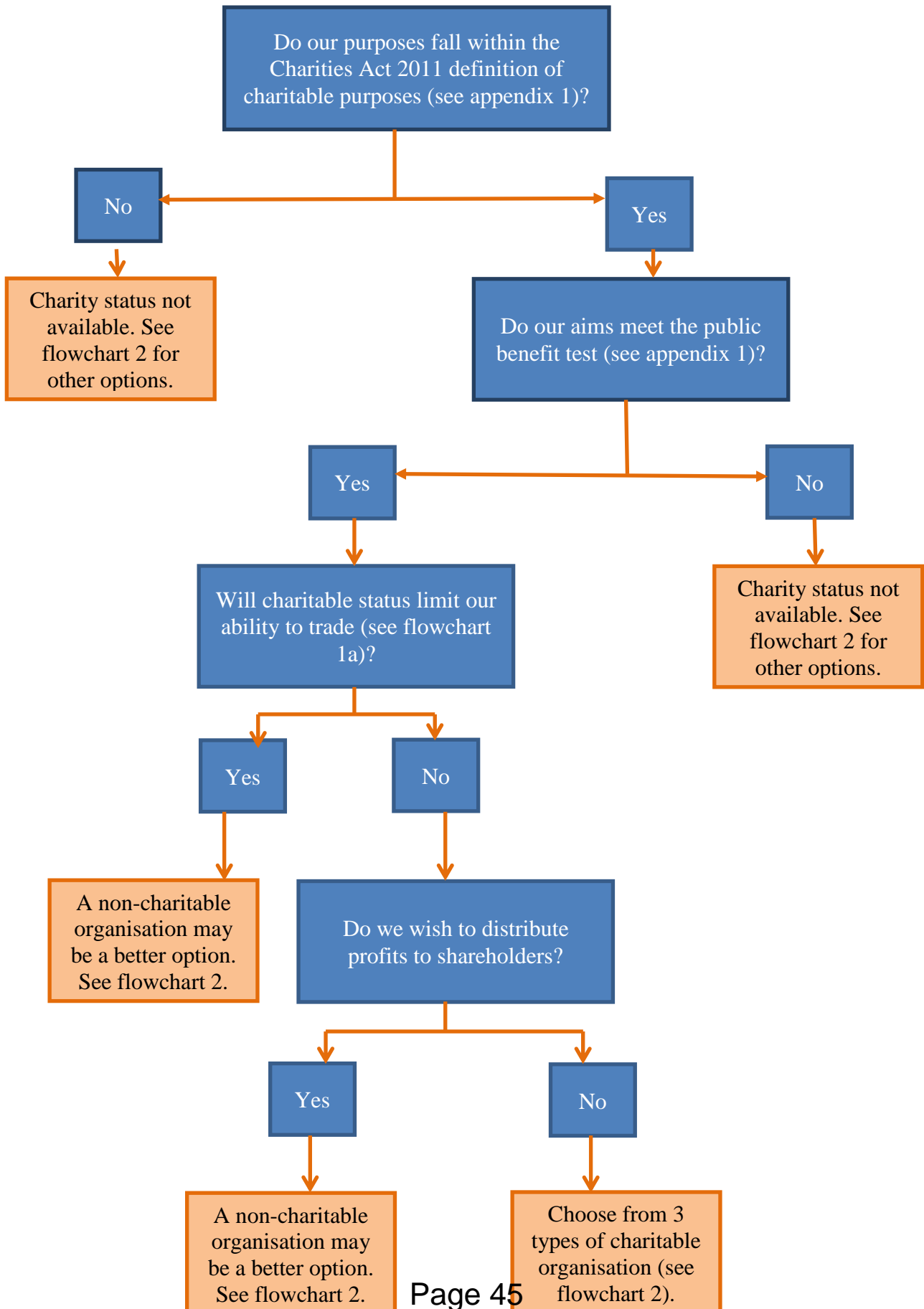
Having thought about the “function” of your local Healthwatch you are now, hopefully, in a better position to think about the appropriate legal entity, or “form” of your local Healthwatch.

The following flowcharts will help you consider the next three main questions before you can decide on an appropriate legal form.

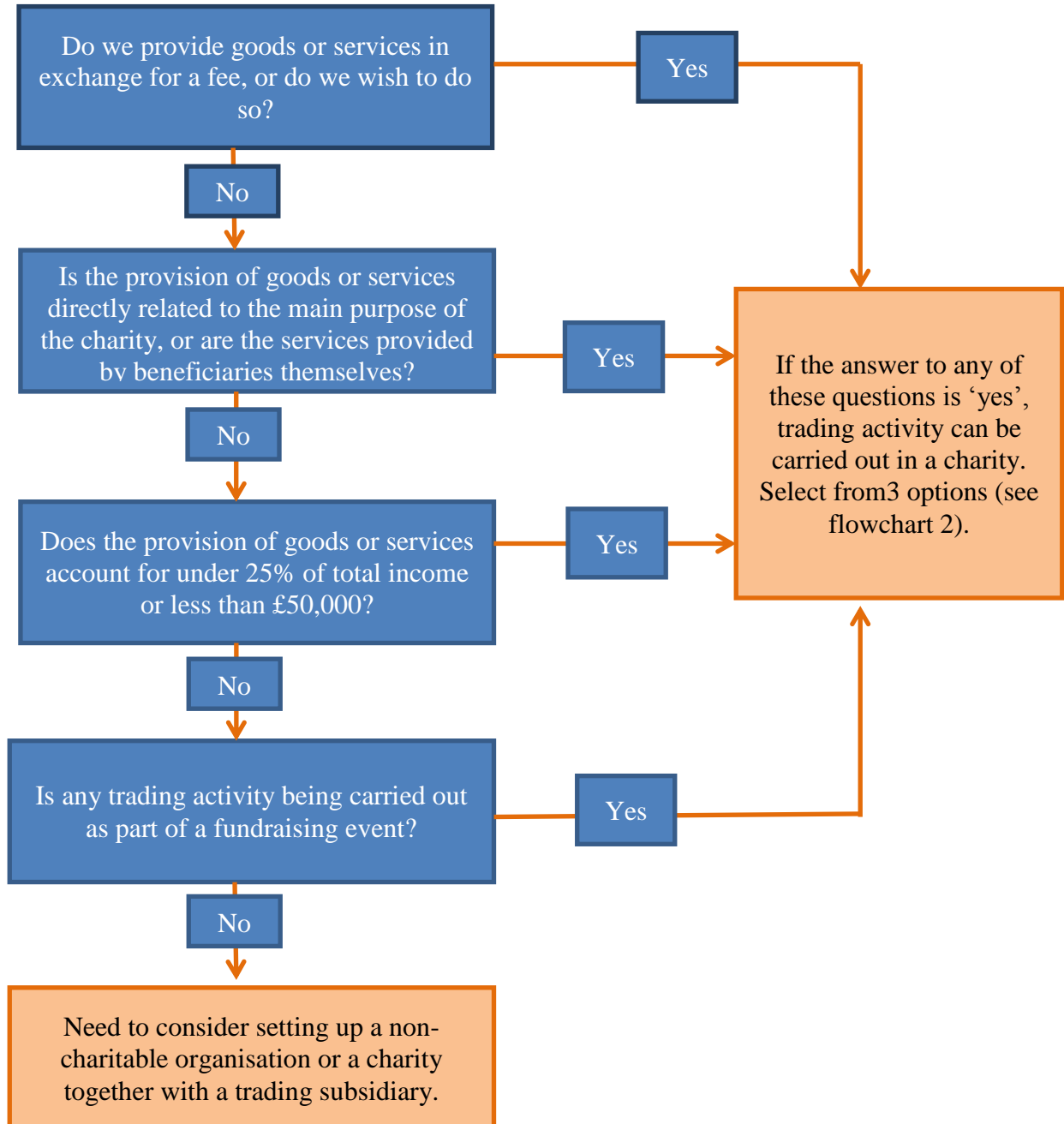
They are:

- Decision 1: Should we seek charitable status? (see flowchart 1)
- Decision 2: Can we carry out any trading activity within a charity? (see flowchart 1a)
- Decision 3: What is the best legal form for our organisation? (see flowchart 2)

## Flowchart 1: Should we seek charitable status?

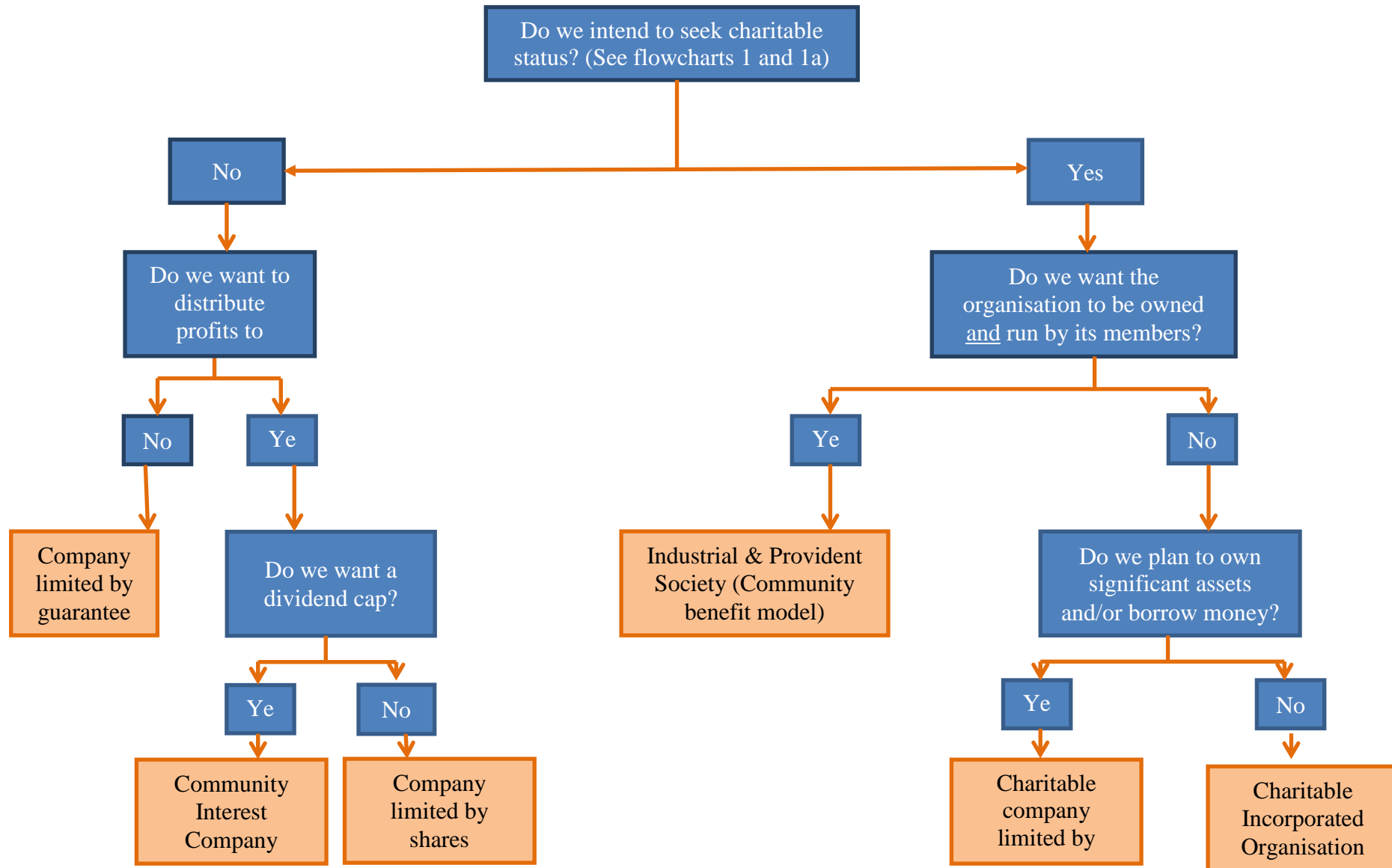


## Flowchart 1a: Can we carry out trading activity within a charity?





## Flowchart 2: What is the best legal form for our organisation?



## Legal Structures for Social Enterprises

Hopefully you will now be at a point where you have narrowed down your options. The following table provides a summary of the key features of the range of legal structures available to social enterprises. It also summarises the “pros” and “cons” of those entities with particular reference to local Healthwatch.

Legal structure	Regulator	Ownership	Governance	Profit distribution	Pros (including in relation to local Healthwatch)	Cons (including in relation to local Healthwatch)
<b>Company Ltd by Guarantee</b>	Companies House	Members (a company limited by guarantee can have a single member)	Board of Directors	Yes	<ul style="list-style-type: none"> <li>• This is the most popular form of incorporated legal entity among social enterprises and is easily recognisable to funders and partners</li> <li>• Limited liability for members</li> <li>• Directors can be paid</li> <li>• Can apply for grant funding (if profits not distributed to members)</li> <li>• Can apply for loans, hold contracts and own property</li> <li>• Members of the Company (with voting rights) can be few in number or many</li> <li>• Offers flexibility for local Healthwatch to trade (for example, by offering consultancy on a fee paying basis) and retain profits within the organisation</li> </ul>	<ul style="list-style-type: none"> <li>• May be difficult to raise investment (if profits not distributed)</li> <li>• Assets are not protected with an asset lock</li> <li>• If the company does not also have charitable status, it may be difficult for a local Healthwatch to access some forms of funding.</li> <li>• The organisation may be in danger of being neither a commercial entity nor a charity, reaping the benefits of neither.</li> </ul>
<b>Registered Charity (company Ltd by guarantee)</b>	Companies House and Charity Commission. The activities must fall within one or more of 12 pre-	Members	Board of Trustees (must be volunteers)	No	<ul style="list-style-type: none"> <li>• Limited liability for Members</li> <li>• Volunteers are central to the governance of the organisation</li> <li>• Can make it easier to raise funds from trusts and companies</li> <li>• Can own property and hold contracts</li> <li>• May qualify for a number of tax benefits</li> <li>• A good choice for a Healthwatch</li> </ul>	<ul style="list-style-type: none"> <li>• More active regulation in return for tax benefits</li> <li>• Must comply with both Companies House regulations and Charity Commission guidelines and administrative requirements</li> <li>• Trustees cannot be paid</li> <li>• Charitable rules may impact on entrepreneurial aims. For example, if a local Healthwatch wishes to</li> </ul>

Legal structure	Regulator	Ownership	Governance	Profit distribution	Pros (including in relation to local Healthwatch)	Cons (including in relation to local Healthwatch)
	defined charitable objects which are of benefit to the community.				whose income will come primarily from charitable activities, with little income from trading	ensure its future sustainability by issuing community shares and/or developing products and activities which can be sold for a fee, then being a charity may not be the best option.
<b>Company Ltd by Shares</b>	Companies House	Shareholders (can have a single member/shareholder)	Board of Directors	Yes - unlimited	<ul style="list-style-type: none"> <li>Limited liability for shareholders/Directors</li> <li>Good model for attracting private investors</li> <li>Embeds entrepreneurial drive as shareholders benefit from the company's success</li> <li>Directors can be paid</li> <li>Can own property and enter into contracts in its own right</li> <li>Suitable for a Healthwatch that wishes to operate as an entirely commercial entity</li> </ul>	<ul style="list-style-type: none"> <li>Not attractive to grant funders/philanthropic donations so need to be entirely self-financing or financed through private investment</li> <li>Assets are not protected with an asset lock</li> <li>Probably not suitable for most local Healthwatch organisations, whose core activities could be classed as charitable and whose income is most likely to come from funders rather than investors seeking a return.</li> </ul>
<b>Industrial &amp; Provident Society (co-operative model)</b>	Financial Services Authority (FSA). The aims of the Society and governance must comply with FSA conditions.	Co-operatives are run and owned by their members, operating for the benefit of the community as well as the members. Must have at least three members.	Management Committee	No profit distribution	<ul style="list-style-type: none"> <li>Limited liability for Members</li> <li>Good model for promoting democratic ownership and control and wide community of benefit</li> <li>Can own property, enter into contracts, issue shares and take out loans</li> <li>Attractive for a local Healthwatch that has a wide and active membership base</li> </ul>	<ul style="list-style-type: none"> <li>Not attractive to grant funders, which may mean options for raising income are limited</li> <li>FSA regulation entails a wide range of administrative requirements, which may be onerous for a smaller local Healthwatch</li> </ul>
<b>Community Interest Company</b>	Companies House and CIC	Owned by the shareholders/members They can adopt the co-	Board of Directors	Yes - related to ownership	<ul style="list-style-type: none"> <li>Distinct brand for social enterprises</li> <li>Combines freedom of</li> </ul>	<ul style="list-style-type: none"> <li>CIC (limited by shares) not attractive to grant makers, therefore it may be difficult for a</li> </ul>

Legal structure	Regulator	Ownership	Governance	Profit distribution	Pros (including in relation to local Healthwatch)	Cons (including in relation to local Healthwatch)
<b>(CIC)</b>	Regulator Must satisfy community interest test <sup>21</sup> Must adopt certain clauses in its constitution <sup>22</sup> Must deliver annual report	operative, not for profit or general commercial model.		structure. Can be company limited by shares or by guarantee <sup>23</sup>	entrepreneurial activity with protection of asset lock <ul style="list-style-type: none"> <li>• Directors can be paid</li> <li>• Light touch CIC regulator</li> <li>• Can own property and enter into contracts in its own right</li> </ul>	Healthwatch to raise philanthropic donations and grant aid <ul style="list-style-type: none"> <li>• Dual regulation (Companies House and CIC Regulator) may be time consuming</li> <li>• Cap on dividends (asset lock) could depress demand from investors</li> <li>• Most suitable for a local Healthwatch that will have substantial fee income – for example from consultancy contracts – and members who are willing to invest</li> </ul>
<b>Charitable Incorporated Organisation (CIO)</b>	Charity Commission	Two types: 'Foundation' style CIO, where trustees are the only members and 'Association' style, where there is a body of members	Board of Trustees	CIOs will not be allowed to distribute profits and will have their assets 'locked' (as with CICs)	<ul style="list-style-type: none"> <li>• Main purpose is to reduce the burden of regulation by enabling an organisation that is both charitable and incorporated to be regulated by the Charity Commission alone</li> </ul>	<ul style="list-style-type: none"> <li>• It is slightly more difficult for a CIO than for a company limited by guarantee with charitable status to enter into contracts for substantial sums or to borrow money. This is because loan charges can be registered with Companies House for limited companies.</li> <li>• Only available to organisations that meet the criteria for charitable status.</li> <li>• A good option for a local Healthwatch that has charitable aims and will not undertake substantial trading or borrowing.</li> </ul>

## Sources of useful information and support

<sup>21</sup> Looks at what the underlying motivation of the company in terms of what it will do, who it will help and how, if it makes a profit, or surplus, what the company will do with it.

<sup>22</sup> Relating to the asset lock and preventing the CIC falling under control of non members

<sup>23</sup> A CIC limited by shares may pay a dividend, if agreed by a resolution of its members but dividends payable to private shareholders (non-asset locked bodies) will be subject to a dividend cap. A CIC limited by guarantee cannot distribute profits.

### **Social Enterprises UK**

The national body for social enterprise supporting its members and helping to grow the social enterprise movement.

<http://www.socialenterprise.org.uk>

### **UnLtd.**

A Comprehensive Guide to Developing Your Social Enterprise. This toolkit offers practical guidance and working models for every stage of social entrepreneurship from initial idea, setup and piloting, on to longer term sustainability, growth and replication. The toolkit is not meant to be a formal textbook; instead it aims to present the authors' experiences of supporting social entrepreneurs and the challenges and opportunities of social entrepreneurship in a structured way. The toolkit is divided into sections, each focusing on one stage of this journey. There are 3 different ways to view the toolkit, each designed to help you find what you need fast.

<https://unltd.org.uk/socialentrepreneurshiptoolkit/>

### **Co-operatives UK**

The national body that campaigns for co-operation and works to promote, develop and unite co-operative enterprises.

<http://www.uk.coop/>

### **Charity Commission for England and Wales**

The Charity Commission for England and Wales is the non-ministerial government department that regulates registered charities in England and Wales.

<https://www.gov.uk/government/organisations/charity-commission>

### **Guide to legal forms for social enterprise**

<https://www.gov.uk/government/publications/legal-forms-for-social-enterprise-a-guide>

### **Trading Issues Made Simple**

[http://www.sayervincent.co.uk/Asp/uploadedFiles/File/Publications/MadeSimpleGuides/Trading\\_Issues\\_Made\\_Simple.pdf](http://www.sayervincent.co.uk/Asp/uploadedFiles/File/Publications/MadeSimpleGuides/Trading_Issues_Made_Simple.pdf)

### **Keeping it Legal – legal forms for social enterprises**

<https://unltd.org.uk/wp-content/uploads/2012/11/keeping-it-Legal.pdf>

## Appendix One: Charitable status summary of issues for consideration

If an organisation has a turnover of more than £5,000 per year and meets the criteria for charitable status, it is **obliged** to register with the Charity Commission. This does not apply to 'exempt' and 'excepted' organisations. Exempt charities are organisations that have charitable purposes, but are considered to be adequately regulated by some other body. Examples include some universities, other educational institutions and national museums. Excepted charities are those which do not have to register with the Charity Commission, for example because their income is too low, but whose activities would otherwise fall under the jurisdiction of the Commission.

To qualify for charitable status, an organisation must have a charitable purpose or 'aims' that are for the public benefit. Charitable purposes (or aims) are those that fall within the various descriptions of charitable purposes in the Charities Act 2006, summarised below:

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
- other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

From 1 April 2008, all organisations wishing to be recognised as charities must demonstrate, explicitly, that their aims are for the public benefit. Previously the law presumed this to be the case for charities that advance education or religion or relieve poverty. There are two key principles of public benefit and, within each principle there are some important factors that must be considered in all cases. These are:

### **Principle 1: There must be an identifiable benefit or benefits**

- Principle 1a: it must be clear what the benefits are
- Principle 1b: the benefits must be related to the aims
- Principle 1c: benefits must be balanced against any detriment or harm

## **Principle 2: Benefit must be to the public, or to a section of the public**

- Principle 2a: the beneficiaries must be appropriate to the aims
- Principle 2b: where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
  - by geographical or other restrictions; or
  - by ability to pay any fees charged
- Principle 2c: people in poverty must not be excluded from the opportunity to benefit
- Principle 2d: any private benefits must be incidental

The principles of public benefit apply to all charities, whatever their aims. Each charity must be able to demonstrate that its aims are for the public benefit. The Charity Commission will assess whether the aims of all organisations applying to register as charities are for the public benefit.

### **Advantages of being a charity**

The principal advantages of being a registered charity are:

- Charities do not normally have to pay income/corporation tax (in the case of some types of income), capital gains tax, or stamp duty, and gifts to charities are free of inheritance tax.
- Charities pay no more than 20% of normal business rates on the buildings which they use and occupy to further their charitable aims.
- Charities can get special VAT treatment in some circumstances.
- Charities are usually able to raise funds from the public, grant-making trusts and local government more easily than non-charitable bodies.
- Charities can formally represent and help to meet the needs of the community.
- Charities are able to give the public the assurance that they are being monitored and advised by the Charity Commission

### **Possible disadvantages of being a charity**

A charity must have exclusively charitable aims. Some organisations may carry out their aims by a range of activities, some of them charitable, some of them not. To become a charity, this type of organisation would have to stop its non-charitable activities. (The non-charitable activities can, of course, continue if carried on by a separate non-charitable organisation.) There are limits to the extent of political or campaigning activities which a charity can take on.

Trading by charities is restricted. While charities may trade more or less freely in pursuit of their charitable objectives, there are restrictions on engaging in trades when the objective is to generate funds for the charity. In particular, charities may not engage in such commercially-oriented trades where a significant risk to their assets would be involved. Where this is the case, trading it must be undertaken by a trading subsidiary.

Trustees are not allowed to receive financial benefits from the charity which they manage unless this is specifically authorised by the governing document of the charity or by the Charity Commission. Financial benefits include salaries, services, or the awarding of business contracts to a trustee's own business from the charity. This is sometimes a problem for charities that need to attract trustees with specific commercial experience.

## Application process and estimated timescale

Broadly, the process of applying to become a charity is as follows<sup>24</sup>:

- An organisation needs at least three trustees to form a charity. The new trustees will need to agree the objects of the new organisation. It is a good idea to obtain specialist legal advice on the drafting of objects, since it is important, for example, that the wording does not unintentionally restrict the charity's activities or prevent it from being a charity altogether.
- A governing document will need to be drafted. This should include the objects of the organisation and its 'rules of engagement', for example on election of Board members. The type of governing document required will be determined by the proposed legal status of the new organisation; for example if the organisation's corporate status is to be company limited by guarantee, its governing document will be a memorandum and articles of association. The Charity Commission has model governing documents, which may be adapted to suit the needs of the organisation, but, again, legal advice is recommended.
- The trustees will need to complete an application for registration with the Charity Commission, available on the Commission's website, and submit this together with the governing document and evidence of income, for example a letter of intention to fund.

Typically, from receipt of application to registration takes around 40 days. The process will be quicker if the organisation uses a model governing document approved by the Charity Commission.

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<sup>24</sup> For further detail see Charity Commission guidance document CC21 *Registering a Charity*



**Constitution  
of a Charitable  
Incorporated  
Organisation with  
voting members  
other than its  
charity trustees**



## The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are over 160,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

## Charitable Incorporated Organisation: Model Constitution for a CIO with a voting membership (in addition to the charity trustees)

### (‘Association’ model constitution)

This document is a Charity Commission model constitution for a Charitable Incorporated Organisation (CIO). If you want to set up a CIO, you will find it easiest to use one of our model constitutions.

This guidance briefly explains:

- What a CIO is
- How to decide whether the CIO is the right form for your charity
- How to choose the right model constitution
- How to complete the model constitution and register as a charity
- Where to get more information and advice

There are notes explaining key points about each clause in the model constitution, to help you decide how to complete it.

We also have more detailed guidance on CIOs available on our website.

### What is a Charitable Incorporated Organisation?

The Charitable Incorporated Organisation (CIO) is a new legal form for a charity. It has been created in response to requests from the charitable sector. It is a new incorporated form of charity which is not a limited company or subject to company regulation.

The Charities Act 2011 creates the basic legal framework for the CIO. This framework is completed by regulations:

- the Charitable Incorporated Organisations (General) Regulations 2012 (‘General Regulations’); and
- the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (‘Dissolution Regulations’).

### Is the CIO the right structure for our charity?

Choosing the right legal structure and governing document is one of the first and most important decisions that the founders of a charity need to make. It will affect:

- how easy it will be to set up and run the charity
- how easy it will be to make changes in the future

- whether the charity can have a voting membership
- whether the charity can itself own premises, employ staff or enter contracts, or whether the trustees will have to do this personally.

With the introduction of the CIO, there are four main legal forms that charities may take. We produce model governing documents for each of these forms:

- Trust (governing document: trust deed; could also be created by a will)
- Unincorporated association (governing document: constitution or rules)
- Company limited by guarantee (governing document: memorandum and articles of association for company formed before September 2009; articles of association for company formed since then)
- CIO (governing document: constitution)

An incorporated form, CIO or company limited by guarantee, may be more suitable for a charity that will:

- own land in its own name
- control substantial funds or assets
- enter into contracts, for example by employing staff, or
- engage in charitable activities involving financial risks

Some points to note about CIOs:

- A CIO is a corporate body (like a company) that can own property, employ staff and enter into other contracts in its own name (rather than in the names of the trustees).
- Members of a company limited by guarantee have limited liability for its debts if it winds up (they only have to pay a fixed amount). Members of a CIO may either have no liability at all or (like a company) limited liability for its debts.
- Because they have additional legal protection, members of a corporate body (company or CIO) must comply with extra regulations.
- Unlike companies, CIOs do not have to register with Companies House.
- Unlike companies, CIOs will not be fined for administrative errors like late filing of accounts, but some breaches of the CIO Regulations are legal offences.
- All CIOs must register with the Commission, regardless of their income. This means that an exempt charity cannot be a CIO, and CIO may be unsuitable for other types of charity that don't have to register. (See our [guidance on types of charity that don't have to register](#).)

- CIOs must produce accounts under charity law, not company law. This allows smaller CIOs (income below £250,000) to produce simpler receipts and payments accounts.
- To simplify the CIO framework, there is currently no provision for CIOs to issue debentures, or for a register of charges (mortgages etc) over CIO property.

For more information on other legal forms, see our guidance on *choosing your charity's governing document*. Another useful source of advice is the

Get Legal website and online decision tool ([www.getlegal.org.uk](http://www.getlegal.org.uk)).

### Why are there two different model constitutions for a CIO?

Like companies (which must have both members and company directors) all CIOs must have members and charity trustees. Some CIOs may want the only members to be the charity trustees; others may want a wider membership open to other people.

We have produced two model constitutions for CIOs:

- the '**foundation**' model is for charities whose *only* voting members will be the charity trustees
- the '**association**' model (this model) is for charities that will have a wider membership, including voting members other than the charity trustees

In practice a CIO using the 'foundation' model will be like an incorporated charitable trust, run by a small group of people (the charity trustees) who make all key decisions. Charity trustees may be appointed for an unlimited time and they will probably appoint new charity trustees.

A CIO using the 'association' model will have a wider voting membership who must make certain decisions (such as amending the constitution), will usually appoint some or all of the charity trustees (who will serve for fixed terms), and may be involved in the work of the CIO.

There are not two different forms of CIO. A CIO with the 'foundation' model could change to the 'association' model if it wanted a wider voting membership. (This could also happen the other way around, but members who were not trustees would be giving up their membership.) Some of the changes would need our approval.

### Why use one of the Commission's model CIO constitutions?

A CIO's constitution **must** be in the form to be specified by Commission regulations (or as near to that form as the circumstances allow). These regulations will specify that the constitution should be in the form of one of our model constitutions. This still allows some flexibility, as explained in the guidance notes on the model. The constitution **must** be in English if the CIO's principal office is in England, but may be in English or Welsh if the principal office is in Wales.

A CIO's constitution **must** include certain provisions to comply with the Charities Act 2011 (the 2011 Act) and the General Regulations. However the 2011 Act and General Regulations do not prescribe an exact wording.

There are other provisions that **must** be included **if** they apply to a particular CIO. If they do not fully apply, the constitution **must** explain to what extent or how they apply.

We have included other provisions in this model constitution because:

- they reflect good practice that we recommend
- they remind the trustees about a legal requirement
- the constitution would not work properly without them, or
- charities have said that it would be a useful option and it would be helpful to have standard wording

Using one of the Commission's models will help to ensure that you include all of the constitutional provisions that your CIO will need:

- to meet the requirements of the law
- to comply with good practice, and
- to be practical and workable

The guidance notes will prompt you to think about whether you may need to include particular powers.

The 2011 Act and the General Regulations don't require you to use a particular wording, but the wording in our models has been carefully considered and also informed by specialists in the charity sector. Using one of our models will also mean that there will be fewer questions for us to ask and consider when you apply for charity registration.

### **How do we become a CIO?**

#### *i) New charities*

To set up and register a new CIO, follow the procedure set out below under *Next steps*.

#### *ii) Existing charitable trusts and unincorporated associations*

An existing unincorporated charity can only change to a CIO by:

- setting up and registering a new CIO (in the same way as for a new charity), then
- transferring its property and operations to the CIO.

You should check whether your charity can transfer its property in this way, or whether you need authorisation from the Commission. Once the transfer is complete, the original charity can normally be wound up and removed from the register, but different arrangements may apply to charities with permanent endowment (see below).

*iii) Existing charities with permanent endowment*

Some charitable trusts have property (land or investments) that cannot be expended as income. Property restricted in this way is called permanent endowment. This may include land that must be used in a particular way for the purposes of the charity.

- Often, these charities have no power to wind up or transfer their permanent endowment.
- CIOs cannot hold permanent endowment as part of their own (corporate) property.

The General Regulations make special provision to enable charities with permanent endowment to transfer to a CIO. The trustees of the permanently endowed charity need to:

- set up and register a new CIO with the Commission, then
- make a vesting declaration under section 310 of the 2011 Act (as amended by the General Regulations), transferring all property of the original charity to the new CIO.

The vesting declaration will:

- transfer expendable property to the CIO as part of its corporate property
- vest legal title to the permanent endowment in the CIO, to be held on its original trusts
- appoint the CIO as trustee for the permanent endowment trust and give it the powers of a trust corporation for that trust
- mean that the CIO and the permanent endowment trust are treated as a single charity for registration and accounting purposes (they won't need to register separately or produce separate accounts).

If charities use a vesting declaration to carry out a merger, they must record it in the [Register of Mergers](#). Vesting declarations are legal documents, so you may need advice from a solicitor or other professional.

There are circumstances in which permanent endowment can be spent; it is not absolutely protected.

For further information see our general guidance on CIOs.

*iv) Existing charitable companies and industrial and provident societies*

Once all of the provisions are in force, it will also be possible for an existing charitable company or charitable industrial and provident society to convert directly into a CIO; there are specific procedures for this.

To manage demand, the Commission is phasing in the introduction of the CIO and not all of these options will be available immediately. Please see our general guidance on CIOs for details.

### **What guidance should we consider before we begin?**

- There is comprehensive guidance on [setting up and registering a charity](#) on our website.
- We also have more detailed **guidance on CIOs**.
- *The Essential Trustee* sets out the basics that all charity trustees need to know.

### **Next steps**

#### 1. Completing the constitution

Please note – we are publishing the model constitutions in this format (PDF) to help charities and their professional advisers to prepare for the implementation of the CIO. We are currently looking into more flexible and user-friendly formats that will make it easier for promoters to complete the constitution.

Once you have decided to apply to register a CIO and have chosen the correct model constitution, please read the constitution and accompanying guidance notes carefully. In the guidance notes we say that something ‘**must**’ be included in the constitution if it is a legal requirement in the 2011 Act or the Regulations. We say that something ‘**should**’ be included if we consider it to be minimum good practice. We ‘recommend’ that you include other provisions to help ensure the smooth running of the CIO in future.

There are guidance notes on each clause explaining what it is for, and whether you **must** or **should** include (all or part of) it, and whether it **may** or **should** be amended to fit the circumstances. Even where clauses are completely optional, however, we advise you to follow the model provisions or suggested alternatives unless there is a particular need, in the interests of your charity, to do otherwise.

Some clauses contain options for you to choose from and blank spaces that you will need to fill in.



If you want to add any special or complex provisions that you have drafted yourself, you may need advice from a solicitor or other adviser. We may need more time to look at any specialist changes. Please make clear what changes you make, and why they are necessary. This will help us to consider your application as quickly as possible. We cannot guarantee to accept every organisation which uses one of our models as charitable. We must consider each case separately.

When you have finished, please check that you have:

- filled in all the blanks,
- deleted any clauses which you don't need; and
- numbered the remaining clauses (and sub-clauses) in sequence (including cross-references).

### 2. Applying to register

To register a new charity, [apply online](#). If you cannot apply online, please contact Charity Commission Direct. The best way to contact us is by [email](#). If you need to speak to someone over the phone you can call our contact centre on 0845 300 0218.

### 3. How long will it take?

We can normally make a decision in 40 working days if an organisation:

- can use our model wording for its objects ([Example charitable objects](#) on our website);
- shows that its activities are or will be consistent with the objects;
- shows that any private benefit is only incidental and is properly managed; and
- uses our model governing document.

Other applications will need closer consideration and so will take longer.

## Notes

These explanatory notes are for advice and reference only and do not form part of the text of the constitution.

Inserting the date of the constitution is good practice, and helps to ensure everyone is working from the same document.

Clause 1 - Name – You must include the name of the CIO in the constitution. In general, the Commission can accept any charity name unless it would be misleading, offensive or too similar to the name of an existing charity (unless the CIO is replacing that charity). The Commission has powers to require a charity to change its name if this happens. Further information on this is provided in our publication *Registering as a Charity (CC21)* and in our Operational Guidance (*OG18 - 'Names'*), which are available on our website. There are also legal restrictions on using the same name as an existing company (unless it is a charitable company that is converting to a CIO) or as a former company or CIO that underwent insolvent liquidation – if in doubt seek professional advice.

Clause 2 - Principal office – The constitution must state whether the CIO's principal office is in England or Wales.

Clause 3 – Objects – The CIO must have exclusively charitable objects which you must set out in the constitution. Guidance on appropriate wording for objects is available on our website. The key elements to include are:

- the purpose or purposes for which the CIO is being established;
- the people who can benefit; and if appropriate
- any geographic limits defining the area of benefit. *If you include an area of benefit, it is common to define it by reference to a local government area: this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished. If this happens in future, contact the Commission for advice on amending the objects.*

NB. If you cannot fit your objects in the space provided, please include them on a separate piece of paper and submit this with the constitution

If the CIO needs to be recognised as a charity in Scotland and/or Northern Ireland you will need to include the

## Constitution of a Charitable Incorporated Organisation with voting members other than its charity trustees

### ('Association' Model Constitution)

Date of constitution (last amended):

9<sup>th</sup> March 2016

#### 1. Name

The name of the Charitable Incorporated Organisation ("the CIO") is  
**Healthwatch Milton Keynes CIO**

#### 2. National location of principal office

The CIO must have a principal office in England or Wales. The principal office of the CIO is in England

#### 3. Object[s]

The objects of the CIO are:

The advancement of health and the relief of those in need 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, scrutinizing, reviewing and monitoring local health and care services and facilities.

Nothing in this constitution shall authorise an application of the property of the CIO for the purposes which are not charitable in accordance with [section 7 of the Charities and Trustee Investment (Scotland) Act 2005] and [section 2 of the Charities Act (Northern Ireland) 2008]

#### 4. Powers

The CIO has power to do anything which is calculated to further its object[s] or is conducive or incidental to doing so. In particular, the CIO's powers include power to:

- (1) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 and 125 of the Charities Act 2011 if it wishes to mortgage land;
- (2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (3) sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;

## Notes

relevant parts of the wording in square brackets to meet the requirements of charity law in those countries

Clause 4 - Powers – The Charities Act 2011 gives a CIO power to do ‘anything which is calculated to further its purposes or is conducive or incidental to doing so’. Strictly speaking, this is the only power a CIO needs. It can, however, be helpful to state certain powers explicitly in the constitution. In particular, a stated power to borrow [(1)] may reassure potential lenders. For this reason we recommend that you include the example powers set out in the model (these include powers to buy, sell and lease property, employ staff and delegate investment management to a professional fund-manager). You may add other express powers here if you wish to.

You may include a constitutional provision restricting the general power in the 2011 Act. You must only include such a restriction if it is in the CIO’s interests. You must not restrict the CIO’s powers in a way that prevents it from disposing of its property. Restrictions on the powers are not provided for in this model and we recommend that you seek appropriate advice if you are considering this.

Clause 5 – Application of income and property – we recommend that you include this clause.

5(1) reflects the statutory provisions in the Charities Act 2011 about a CIO charity trustee’s entitlement to reasonable expenses and that they may benefit from trustee indemnity insurance. We recommend that you include it in the constitution, to inform people involved with the charity.

5(2) reflects charity law requirements that the income and property of a CIO must be applied solely to further its objects and not to benefit the members or charity trustees (except as permitted by the governing document (see clause 6) or other express power). The trustees have a duty to ensure that the funds are correctly applied in accordance with this principle.

Clause 6 - Benefits and payments to charity trustees and connected persons – Charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the constitution). This restriction extends to people closely connected to a trustee (‘connected persons’ – this term is defined in the interpretation clause). You should include this clause so that charity trustees are clear about the restrictions that apply

- (4) employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 6 (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of those clauses;
- (5) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, 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;

## 5. Application of income and property

- (1) The income and property of the CIO must be applied solely towards the promotion of the objects.
  - (a) A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.
  - (b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO’s expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (2) None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO. This does not prevent a member who is not also a charity trustee receiving:
  - (a) a benefit from the CIO as a beneficiary of the CIO;
  - (b) reasonable and proper remuneration for any goods or services supplied to the CIO.
- (3) Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 6.

## 6. Benefits and payments to charity trustees and connected persons

### (1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the CIO;
- (c) be employed by, or receive any remuneration from, the CIO;

## Notes

to them; and unless you include it, the default legal position will apply. Even where trustees are allowed to benefit from the CIO, this must only happen where the benefit is in the interests of the CIO. Our guidance *Trustee expenses and payments (CC11)* provides more information about trustee benefits.

The model clause permits a minority of the charity trustees or connected persons to receive payments and other benefits in certain instances (such as for goods and services they supply to the CIO), subject to the stated controls. The option also allows other types of trustee benefit, subject to the Commission's prior consent.

You may restrict the benefits that the charity trustees will be allowed receive by altering these clauses, but if you later need to undo any of the restrictions it will require the Commission's consent to do so. Trustees do not have to use these powers just because they have them – we suggest you may find it simpler to keep to the model wording.

None of these options allows the trustees to receive payment for acting as a trustee.

(2)(a) If all of the trustees will benefit from the activities of the CIO (for example, by using facilities available to all inhabitants of the area, such as a community centre), you may wish to substitute the following wording: "A charity trustee or connected person may receive a benefit from the CIO as a beneficiary provided that it is available generally to the beneficiaries of the CIO."

2(d) The CIO should document the amount of, and the terms of, the trustee's or connected person's loan.

- (b) receive any other financial benefit from the CIO;

unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the Charity Commission ("the Commission"). In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

### **(2) Scope and powers permitting trustees' or connected persons' benefits**

- (a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that a majority of the trustees do not benefit in this way.
- (b) A charity trustee 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 CIO where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with services provided to the CIO by the charity trustee or connected person.
- (d) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.

### **(3) Payment for supply of goods only – controls**

The CIO and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the CIO and the charity trustee or connected person supplying the goods ("the supplier").

- (b) 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.
  - (c) The other charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.
  - (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the CIO.
  - (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
  - (f) The reason for their decision is recorded by the charity trustees in the minute book.
  - (g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6.
- (4) In sub-clauses (2) and (3) of this clause:
- (a) “the CIO” includes any company in which the CIO:
    - (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;
  - (b) “connected person” includes any person within the definition set out in clause 30 (Interpretation);

Clause 7 – Conflicts of interest and conflicts of loyalty – The General Regulations provide that a charity trustee of a CIO must not take part in any decision from which they would directly or indirectly benefit personally, unless they cannot reasonably be regarded as having a conflict of interest. This clause reminds the trustees of this requirement and also reflects wider good practice on managing conflicts of interest and conflicts of loyalty. We recommend that you include it.

## 7. Conflicts of interest and conflicts of loyalty

A charity trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and

Clause 8 – Liability of members -  
The constitution must state whether members of the CIO *either*:

- (a) have no liability to contribute to the assets of the CIO if it is wound up [option 1] *or*:
- (b) will be liable to contribute up to a maximum amount each if the CIO cannot meet its financial obligations when it is wound up [option 2].

Choose one option and delete the other. There is no preference or requirement in the legal framework for members to be liable to contribute anything.

If you choose option 2, you must insert the maximum amount (normally a nominal sum such as £1 or £10) for which members will be individually liable.

Clause 9 – Membership of the CIO – A CIO must have one or more members.

If all of the CIO's voting members will also be trustees and there will be no other voting members, you should use the Foundation Model Constitution.

(1)(a) and (b) You must state in the constitution who is eligible to be a member and how someone becomes a member.

It is possible to include more restrictive membership provisions (for example requiring members to be 'approved' by the charity trustees); in that case the membership refusal provisions (clause 9(1)(b)(iii)) would also need to be changed. Membership must not be unreasonably restricted if the members are also the beneficiaries of the CIO as that would affect public benefit.

(1)(a) Normally, the members of a charity are individuals, but corporate bodies (eg companies) can also be members. In a few cases, charities say they also have unincorporated bodies (eg local associations that are part of a national federation) as members. Legal experts disagree about this, but charities asked us not to prevent it by default. If a CIO

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

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

## 8. Liability of members to contribute to the assets of the CIO if it is wound up

If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

## 9. Membership of the CIO

### (1) Admission of new members

#### (a) Eligibility

Membership of the CIO is open to anyone who is interested in furthering its purposes, and who, by applying for membership, has indicated his, her or its agreement to become a member and acceptance of the duty of members set out in sub-clause (3) of this clause.

A member may be an individual, a corporate body, or individual or corporate body representing] an organisation which is not incorporated.

## Notes

will have unincorporated members, they should either be represented by a person they nominate (keep the words in square brackets) or act as members in their own right (delete the words in square brackets). The CIO will need to make rules to govern how any unincorporated members exercise their rights and duties as members, for example, attending meetings and voting, or meeting any liability to contribute funds in the event of the CIO winding up.

(2) We recommend you include this provision, otherwise the charity's membership records could become unworkable and the charity would lose control over membership. Include the words in square brackets if the membership includes representatives of unincorporated organisations (see clause 9(1)(a)); otherwise remove them.

(3) This is the legal duty of each member of the CIO as set out in the Charities Act 2011. You may find it helpful to set this out in the constitution. The constitution cannot change the members' legal duty.

(4) The General Regulations state that the constitution must contain provision for retirement and termination of membership. The suggestions here are based on experience and good practice.

## (b) Admission procedure

The charity trustees:

- (i) may require applications for membership to be made in any reasonable way that they decide;
- (ii) shall, if they approve an application for membership, notify the applicant of their decision within 21 days
- (iii) may refuse an application for membership if they believe that it is in the best interests of the CIO for them to do so;
- (iv) shall, if they decide to refuse an application for membership, give the applicant their reasons for doing so, within 21 days of the decision being taken, and give the applicant the opportunity to appeal against the refusal; and
- (v) shall give fair consideration to any such appeal, and shall inform the applicant of their decision, but any decision to confirm refusal of the application for membership shall be final.

## (2) Transfer of membership

Membership of the CIO cannot be transferred to anyone else [except in the case of an individual or corporate body representing an organisation which is not incorporated, whose membership may be transferred by the unincorporated organisation to a new representative. Such transfer of membership does not take effect until the CIO has received written notification of the transfer].

## (3) Duty of members

It is the duty of each member of the CIO to exercise his or her powers as a member of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO.

## (4) Termination of membership

- (a) Membership of the CIO comes to an end if:
  - (i) the member dies, or, in the case of an organisation (or the representative of an organisation) that organisation ceases to exist; or
  - (ii) the member sends a notice of resignation to the charity trustees; or
  - (iii) any sum of money owed by the member to the CIO is not paid in full within six months of its falling due; or

(5) Charities have discretion to set and charge membership fees, but it may be advisable to state this in the constitution to avoid any misunderstanding.

Classes of membership – Some charities have different categories or classes of members with different voting rights. The General Regulations require that if this applies to the CIO, the different categories of members and their voting rights must be set out in the constitution. We are unable to provide a model clause for this as it will need to be drafted to reflect the CIO's particular circumstances. You may need professional advice on a suitable wording.

We do not advise CIOs to have different classes of membership, but it is permissible where the trustees consider it to be in the interests of the CIO.

(6) Power to create informal or associate membership - We advise CIOs to include this power if they will have or may consider having an informal (associate) membership. Membership of this kind does not count as membership for legal purposes, for example in terms of voting rights, legal obligations to act in the interests of the charity or any liability to contribute to the assets of the CIO on dissolution.

Details of any informal members should not be included in the Register of Members.

(iv) the charity trustees decide that it is in the best interests of the CIO that the member in question should be removed from membership, and pass a resolution to that effect.

(b) Before the charity trustees take any decision to remove someone from membership of the CIO they must:

(i) inform the member of the reasons why it is proposed to remove him, her or it from membership;

(ii) give the member at least 21 clear days notice in which to make representations to the charity trustees as to why he, she or it should not be removed from membership;

(iii) at a duly constituted meeting of the charity trustees, consider whether or not the member should be removed from membership;

(iv) consider at that meeting any representations which the member makes as to why the member should not be removed; and

(v) allow the member, or the member's representative, to make those representations in person at that meeting, if the member so chooses.

### **(5) Membership fees**

The CIO may require members to pay reasonable membership fees to the CIO.

### **(6) Informal or associate (non-voting) membership**

(a) The charity trustees may create associate or other classes of non-voting membership, and may determine the rights and obligations of any such members (including payment of membership fees), and the conditions for admission to, and termination of membership of any such class of members.

(b) Other references in this constitution to "members" and "membership" do not apply to non-voting members, and non-voting members do not qualify as members for any purpose under the Charities Acts, General Regulations or Dissolution Regulations.]



## Notes

### Clause 10—Members' decisions—

These provisions reflect provisions in the General Regulations that govern decision-making by members. We recommend they are included in the constitution for clarity.

(2) This clause describes the usual mechanism for making decisions at general meetings. We recommend that it is included in the constitution to reduce the possibility of disagreements about decision-making by members.

(3) This power (to take decisions other than by resolution at a general meeting) is optional, but if the CIO intends to use it, it must be included in the constitution.

(4) This clause highlights when special provisions apply to a decision, and we recommend you include it. Only include (a) if you are including the corresponding optional power to remove charity trustees.

A CIO may include further restrictions in its constitution controlling how particular decisions must be taken (this is called 'a provision for entrenchment'). CIOs considering this should seek professional advice.

## 10. Members' decisions

### (1) General provisions

Except for those decisions that must be taken in a particular way as indicated in sub-clause (4) of this clause, decisions of the members of the CIO may be taken either by vote at a general meeting as provided in sub-clause (2) of this clause or by written resolution as provided in sub-clause (3) of this clause.

### (2) Taking ordinary decisions by vote

Subject to sub-clause (4) of this clause, any decision of the members of the CIO may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a simple majority of votes cast at the meeting (including votes cast by postal or email ballot, and proxy votes).

### (3) Taking ordinary decisions by written resolution without a general meeting

- (a) Subject to sub-clause (4) of this clause, a resolution in writing agreed by a simple majority of all 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 all the members eligible to vote; and
  - (ii) a simple majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature (or in the case of an organisation which is a member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.
- (b) The resolution in writing may comprise several copies to which one or more members has signified their agreement.
- (c) Eligibility to vote on the resolution is limited to members who are members of the CIO on the date when the proposal is first circulated in accordance with paragraph (a) above.
- (d) Not less than 10% of the members of the CIO may request the charity trustees to make a proposal for decision by the members.

Clause 11 – General Meetings of members – The General Regulations state that the constitution must include provisions about the holding and calling of general meetings, including: procedure at general meetings; the appointment of a Chair; the minimum number of members who can form a quorum; whether members can demand a poll; and the procedure for conducting a poll. Whilst it is not a legal requirement, we strongly recommend that CIOs with a wider voting membership include provisions along these lines and do not include provisions allowing them to opt out of holding general meetings including an annual general meeting. Certain decisions (such as amendments to the constitution) must be made by the members rather than the trustees, and general meetings are the usual way that membership-based charities make such decisions. Members' meetings are also an important method both of communicating with members and being accountable to them.

Except where indicated as legal or regulatory requirements, the provisions in this clause are examples based on recommended good practice.

- (e) The charity trustees must within 21 days of receiving such a request comply with it if:
  - (i) The proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;
  - (ii) The proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and
  - (iii) Effect can lawfully be given to the proposal if it is so agreed.
- (f) Sub-clauses (a) to (c) of this clause apply to a proposal made at the request of members.

#### **(4) Decisions that must be taken in a particular way**

- (a) Any decision to remove a trustee must be taken in accordance with clause 15(2)
- (b) Any decision to amend this constitution must be taken in accordance with clause [28] of this constitution (Amendment of Constitution).
- (c) Any decision to wind up or dissolve the CIO must be taken in accordance with clause [29] of this constitution (Voluntary winding up or dissolution). Any decision to amalgamate or transfer the undertaking of the CIO to one or more other CIOs must be taken in accordance with the provisions of the Charities Act 2011.

## **11. General meetings of members**

### **(1) Types of general meeting**

There must be an annual general meeting (AGM) of the members of the CIO. The first AGM must be held within 18 months of the registration of the CIO, and subsequent AGMs must be held at intervals of not more than 15 months. The AGM must receive the annual statement of accounts (duly audited or examined where applicable) and the trustees' annual report, and must elect trustees as required under clause [13].

Other general meetings of the members of the CIO may be held at any time.

All general meetings must be held in accordance with the following provisions.

**(2) Calling general meetings**

- (a) The charity trustees :
  - (i) must call the annual general meeting of the members of the CIO in accordance with sub-clause (1) of this clause, and identify it as such in the notice of the meeting; and
  - (ii) may call any other general meeting of the members at any time.
- (b) The charity trustees must, within 21 days, call a general meeting of the members of the CIO if :
  - (i) they receive a request to do so from at least 10% of the members of the CIO; and
  - (ii) the request states the general nature of the business to be dealt with at the meeting, and is authenticated by the member(s) making the request.
- (c) If, at the time of any such request, there has not been any general meeting of the members of the CIO for more than 12 months, then sub-clause (b)(i) of this clause shall have effect as if 5% were substituted for 10%.
- (d) Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.
- (e) A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.
- (f) Any general meeting called by the charity trustees at the request of the members of the CIO must be held within 28 days from the date on which it is called.
- (g) If the charity trustees fail to comply with this obligation to call a general meeting at the request of its members, then the members who requested the meeting may themselves call a general meeting.
- (h) A general meeting called in this way must be held not more than 3 months after the date when the members first requested the meeting.
- (i) The CIO must reimburse any reasonable expenses incurred by the members calling a general meeting by reason of the failure of the charity trustees to duly call the meeting, but the CIO shall be entitled to be indemnified by the charity trustees who were responsible for such failure.

**(3) Notice of general meetings**

- (a) The charity trustees, or, as the case may be, the relevant members of the CIO, must give at least 14 clear days notice of any general meeting to all of the members, and to any charity trustee of the CIO who is not a member.
- (b) If it is agreed by not less than 90% of all members of the CIO, any resolution may be proposed and passed at the meeting even though the requirements of sub-clause (3) (a) of this clause have not been met. This sub-clause does not apply where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations.
- (c) The notice of any general meeting must :
  - (i) state the time and date of the meeting:
  - (ii) give the address at which the meeting is to take place;
  - (iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting; and
  - (iv) if a proposal to alter the constitution of the CIO is to be considered at the meeting, include the text of the proposed alteration;
  - (v) include, with the notice for the AGM, the annual statement of accounts and trustees' annual report, details of persons standing for election or re-election as trustee, or where allowed under clause [22] (Use of electronic communication), details of where the information may be found on the CIO's website.
- (d) Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.
- (e) The proceedings of a meeting shall not be invalidated because a member who was entitled to receive notice of the meeting did not receive it because of accidental omission by the CIO.

(5)(b) The General Regulations require that the Constitution must specify a quorum. We suggest that the quorum should be 5% (or three) of the members. You may choose a different figure. If it is set too high, any absences may make it difficult to hold a valid meeting; if it is too low, a small minority may be able to impose their views unreasonably.

(5)(d) This model constitution does not require formal notice to be repeated for an adjourned meeting, but provision for this may be made in the constitution by deleting the wording in square brackets. (This may help to ensure that there is a better attendance at the adjourned meeting.)

#### **(4) Chairing of general meetings**

The person nominated as chair by the charity trustees under clause [19](2) (Chairing of meetings), shall, if present at the general meeting and willing to act, preside as chair of the meeting. Subject to that, the members of the CIO who are present at a general meeting shall elect a chair to preside at the meeting.

#### **(5) Quorum at general meetings**

- (a) No business may be transacted at any general meeting of the members of the CIO unless a quorum is present when the meeting starts.
- (b) Subject to the following provisions, the quorum for general meetings shall be three members. An organisation represented by a person present at the meeting in accordance with sub-clause (7) of this clause, is counted as being present in person.
- (c) If the meeting has been called by or at the request of the members and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the meeting is closed.
- (d) If the meeting has been called in any other way and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the chair must adjourn the meeting. The date, time and place at which the meeting will resume must [either be announced by the chair or] be notified to the CIO's members at least seven clear days before the date on which it will resume.
- (e) If a quorum is not present within 15 minutes of the start time of the adjourned meeting, the member or members present at the meeting constitute a quorum.
- (f) If at any time during the meeting a quorum ceases to be present, the meeting may discuss issues and make recommendations to the trustees but may not make any decisions. If decisions are required which must be made by a meeting of the members, the meeting must be adjourned.

#### **(6) Voting at general meetings**

- (a) Any decision other than one falling within clause [10(4)] (Decisions that must be taken in a particular way) shall be taken by a simple majority of votes cast at the meeting (including proxy and postal votes). Every member has one vote [unless otherwise provided in the rights of a particular class of membership under this constitution].

## Notes

(6)(b)-(d) The General Regulations require that, if members are to have the right to demand a poll, this must be set out in the constitution, including provisions governing the manner in which it will be conducted. The provisions suggested here reflect good practice.

Proxy voting – The General Regulations stipulate that members can only vote by proxy if there is a specific provision in the constitution, which must set out:

- (a) how a member appoints a proxy;
- (b) the rights of the proxy; and
- (c) how the appointment is terminated.

For recommended wording (which does not form part of the model), please see the Appendix to this constitution.

Postal voting – The General Regulations stipulate that members can only use postal votes if there is a specific provision in the constitution, which must make provision about the circumstances in which, and the way in which, such votes may be given.

For recommended wording (which does not form part of the model), please see the Appendix to this constitution.

(7) If the CIO will have corporate members, the General Regulations require that the constitution must include provision explaining how they will be represented at general meetings.

If the CIO will have unincorporated members (see clause 9 – Membership of the CIO) you should include references to organisations in this clause. Otherwise you should delete the words in square brackets

- (b) A resolution put to the vote of a meeting shall be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the members present in person or by proxy at the meeting.
- (c) A poll demanded on the election of a person to chair the meeting or on a question of adjournment must be taken immediately. A poll on any other matter shall be taken, and the result of the poll shall be announced, in such manner as the chair of the meeting shall decide, provided that the poll must be taken, and the result of the poll announced, within 30 days of the demand for the poll.
- (d) A poll may be taken :
  - (i) at the meeting at which it was demanded; or
  - (ii) at some other time and place specified by the chair; or
  - (iii) through the use of postal or electronic communications.
- [(e) In the event of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a second, or casting vote.
- (f) Any objection to the qualification of any voter must be raised at the meeting at which the vote is cast and the decision of the chair of the meeting shall be final.

## **(7) Representation of organisations and corporate members**

An organisation or a corporate body that is a member of the CIO may, in accordance with its usual decision-making process, authorise a person to act as its representative at any general meeting of the CIO.

The representative is entitled to exercise the same powers on behalf of the organisation or corporate body as the organisation or corporate body could exercise as an individual member of the CIO.

## **(8) Adjournment of meetings**

The chair may with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting to another time and/or place. No business may be transacted at an adjourned meeting except business which could properly have been transacted at the original meeting.

## Notes

### Clause 12 – Charity trustees

(1) This clause explains the charity trustees' legal function, legal duty to act in good faith, and statutory duty of care. We recommend that these should be set out in the constitution. The trustees cannot adopt a lower duty of care.

(2) You should include provisions setting out who is eligible to be a charity trustee of the CIO.

Sub-clause (a) requires all trustees to be individuals. It is legally permissible for a corporate body to be a charity trustee, but we would advise against a trustee body including both individuals and one or more corporate bodies. Where the CIO will have corporate members we recommend that they should not be elected as trustees; only individuals or nominees of these bodies should be eligible for election.

This clause and those that follow are drafted on the basis that the CIO will be governed by a trustee body made up of a number of individuals. If there is a good reason why the CIO will be administered by a single trustee (eg a corporation) or have any other trusteeship arrangement, you will need to amend clauses 12-16, and should seek your own professional advice.

The suggested provisions in (b) reflect the law and (c) is based on good practice. There are offences under the General Regulations concerning legally disqualified individuals acting as trustees.

If there are to be additional conditions for trustee eligibility (beyond the legal restrictions), these must be stated in the constitution. For example, some charities add requirements to ensure that trustees have particular knowledge (or experience eg of the locality in which the CIO operates or of issues relevant to the people that the CIO serves).

(2)(d) Contains an optional restriction on the proportion of charity trustees who are under 18. The Commission encourages charities to involve young people in their governance in whatever ways are appropriate in the circumstances, but advises against having a board made up entirely of people under 18. CIO trustees cannot be under 16

(3) The General Regulations require that the constitution must state the minimum number of charity trustees, if more than one.

## 12. Charity trustees

### (1) Functions and duties of charity trustees

The charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. It is the duty of each charity trustee :

- (a) to exercise his or her powers and to perform his or her functions as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and
- (b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
  - (i) any special knowledge or experience that he or she has or holds himself or herself out as having; and
  - (ii) if he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

### (2) Eligibility for trusteeship

- (a) Every charity trustee must be a natural person.
- (b) No one may be appointed as a charity trustee:
  - if he or she is under the age of 16 years; or
  - if he or she would automatically cease to hold office under the provisions of clause [15(1)(f)].
- (c) No one is entitled to act as a charity trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the charity trustees decide, his or her acceptance of the office of charity trustee.
- [(d) At least one of the trustees of the CIO must be 18 years of age or over. If there is no trustee aged at least 18 years, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.

### (3) Number of charity trustees

## Notes

We recommend setting and including minimum and maximum numbers of charity trustees.

A CIO can have a fixed number of trustees or a range between a maximum and minimum (which will give the CIO more flexibility). Option 1a provides for a specified maximum number. Option 1b provides for no maximum limit. Option 2 provides for other trustee appointment arrangements in accordance with clause 13 (see below).

Choose Clause 12(3) Option 1 (and Option 1a or b) and Clause 13 Option 1 or  
choose Clause 12(3) Option 2 and Clause 13 Option 2 (selecting the relevant parts of each section). Delete the options that you have not chosen.

For good practice, a CIO should have at least three charity trustees. If the number of trustees falls below the minimum specified in the constitution, the provisions in clause 12(3) will enable the remaining charity trustees to appoint new trustees and prevent the CIO from becoming inoperable.

A CIO should have enough charity trustees to effectively carry out their duties, but not too many so that it becomes impractical to hold effective trustee meetings where everyone can participate in decision making. We suggest a maximum of 12 trustees, but you may choose a higher or lower number depending on the CIO's needs.

(4) The General Regulations require that the constitution must include the names of the first charity trustees.

Clause 13 - Appointment of charity trustees – The constitution must make provision about the appointment of one or more persons to be charity trustees.

This clause contains two options. Choose the corresponding options in Clause 12 (3) and Clause 13

Option 1 provides for new trustees to be appointed by the membership ('elected') and retire by rotation. This is the simplest, and likely to be the usual, arrangement for most association CIOs.

The minimum number of trustees is 4. The maximum number of charity trustees is 12. The charity trustees may not appoint any charity trustee if as a result the number of charity trustees would exceed the maximum.

### (4) First charity trustees

The first charity trustees of the CIO are –

Mrs Hilda Kirkwood  
Mrs Marion Wale  
Dr Alan Hancock  
Mr Michael Newton

## 13. Appointment of charity trustees



## Notes

The mechanism for election and retirement in this clause reflects good practice. You may wish to include provision for all trustees to retire at the first AGM [(1)] but this is not essential.

(5) allows the existing charity trustees or the members to appoint additional trustees to temporarily fill vacancies or to bring additional skills and experience onto the trustee board. We recommend that you include this power.

Option 2 provides for new trustees to be appointed in different ways including election by members, ex-officio (ie by virtue of holding a certain office, eg the local vicar) and nomination by another organisation. If you use option 2 you will need to amend it to meet the CIO's particular circumstances depending on the combination of different methods of appointment that will apply. These additional appointment methods are usually only appropriate for charities operating in particular local areas or with links to particular bodies, and where it is desired to involve members of local councils, local churches or other external organisations on the trustee body.

You may wish to include provision for all elected trustees to retire at the first AGM [(1)(a)] but this is not essential.

(1)(e) allows the existing charity trustees or the members to appoint additional trustees to temporarily fill vacancies or to bring additional skills and experience onto the trustee board. We recommend that you include this power.

- (2) At every [subsequent] annual general meeting of the members of the CIO, one-third of the charity trustees shall retire from office. If the number of charity trustees is not three or a multiple of three, then the number nearest to one-third shall retire from office, but if there is only one charity trustee, he or she shall retire;
- (3) The charity trustees to retire by rotation shall be those who have been longest in office since their last appointment or reappointment. If any trustees were last appointed or reappointed on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot;
- (4) The vacancies so arising may be filled by the decision of the members at the annual general meeting; any vacancies not filled at the annual general meeting may be filled as provided in sub-clause (5) of this clause;
- (5) The members or the charity trustees may at any time decide to appoint a new charity trustee, whether in place of a charity trustee who has retired or been removed in accordance with clause [15] (Retirement and removal of charity trustees), or as an additional charity trustee, provided that the limit specified in clause [12(3)] on the number of charity trustees would not as a result be exceeded;
- (6) A person so appointed by the members of the CIO shall retire in accordance with the provisions of sub-clauses (2) and (3) of this clause. A person so appointed by the charity trustees shall retire at the conclusion of the next annual general meeting after the date of his or her appointment, and shall not be counted for the purpose of determining which of the charity trustees is to retire by rotation at that meeting.



## Notes

### Clause 14 – Information for new charity trustees

This clause represents good practice; we recommend that you include it. It is vital for new trustees to have easy access to the information and training that they need to become effective members of the trustee body.

Clause 15 – Retirement and removal of charity trustees – (1) The General Regulations require that the constitution must contain provisions setting out how charity trustees may retire or otherwise cease to hold office. The provisions in the model follow recommended good practice.

(2) and (3) This is an optional power allowing the members to remove a charity trustee. The members may only remove trustees if a power to do so is included in the constitution. This power should be exercised only in the interests of the charity, and it is important that the process is fair and transparent (as provided in (3)).

## 14. Information for new charity trustees

The charity trustees will make available to each new charity trustee, on or before his or her first appointment:

- (a) a copy of this constitution and any amendments made to it; and
- (b) a copy of the CIO's latest trustees' annual report and statement of accounts.

## 15. Retirement and removal of charity trustees

- (1) A charity trustee ceases to hold office if he or she :
  - (a) retires by notifying the CIO in writing (but only if enough charity trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);
  - (b) is absent without the permission of the charity trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;
  - (c) dies;
  - (d) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
  - (e) is removed by the members of the CIO in accordance with sub-clause (2) of this clause;]or
  - (f) is disqualified from acting as a charity trustee by virtue of section 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).
- (2) A charity trustee shall be removed from office if a resolution to remove that trustee is proposed at a general meeting of the members called for that purpose and properly convened in accordance with clause [11], and the resolution is passed by a [two-thirds] majority of votes cast at the meeting.

Clause 16 – Reappointment of charity trustees – This clause will help to ensure clarity about reappointing trustees who have retired. We recommend that you include it. There is an optional provision to limit the number of consecutive terms that a trustee can serve for, which may help to encourage regular turnover and change on the trustee board. (It is good practice to aim for a balance between continuity and change.)

Clause 17 – Taking of decisions by charity trustees - The power to take decisions by resolution in writing or electronic form outside meetings is optional, but if the trustees intend to use it, it must be included in the constitution. Such a decision must be unanimous (ie all of the trustees must agree).

Clause 18 – Delegation by charity trustees – This power is optional. We recommend you include it as a matter of good practice. The General Regulations give charity trustees of a CIO automatic power to delegate tasks to sub-committees, staff or agents; but without this additional constitutional power, the trustees will be unable to delegate any power to make decisions.

Sub-clauses (2)(a)-(c) reflect minimum good practice and are safeguards that should not be removed or diminished.

- (3) A resolution to remove a charity trustee in accordance with this clause shall not take effect unless the individual concerned has been given at least 14 clear days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been given a reasonable opportunity of making oral and/or written representations to the members of the CIO.

## 16. Reappointment of charity trustees

Any person who retires as a charity trustee by rotation or by giving notice to the CIO is eligible for reappointment. A charity trustee who has served for three consecutive terms may not be reappointed for a fourth consecutive term but may be reappointed after an interval of at least one year.

## 17. Taking of decisions by charity trustees

Any decision may be taken either:

- at a meeting of the charity trustees; or
- by resolution in writing or electronic form agreed by all of the charity trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to each of which one or more charity trustees has signified their agreement.

## 18. Delegation by charity trustees

- (1) The charity trustees may delegate any of their powers or functions to a committee or committees, and, if they do, they must determine the terms and conditions on which the delegation is made. The charity trustees may at any time alter those terms and conditions, or revoke the delegation.
- (2) This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the charity trustees, but is subject to the following requirements -
  - (a) a committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;
  - (b) the acts and proceedings of any committee must be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable; and
  - (c) the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

## Notes

Clause 19 – Meetings of charity trustees – The General Regulations require that the Constitution must include provisions for the calling and running of meetings including the minimum number of trustees who shall form a quorum, appointment of a chair and, if trustees will be able to demand a poll (a counted vote, normally with voting papers), the procedure for conducting such a poll. The provisions in this model are good practice recommendations.

(We have not included provision for trustees to have a poll as feedback from our consultations suggested that most charities did not feel it was appropriate. If this power is required, please see clause 11(6)(b-e) for a suitable wording.)

(3)(a) We recommend that the quorum for trustee meetings should not be less than one third of the number of trustees.

(3)(c) It is common, but not obligatory, for the Chair to have a casting vote. You may include or delete this power.

(4) – This clause is optional, but will be required if one or more of the CIO's trustees may from time to time participate in meetings by telephone or similar means.

## 19. Meetings and proceedings of charity trustees

### (1) Calling meetings

- (a) Any charity trustee may call a meeting of the charity trustees.
- (b) Subject to that, the charity trustees shall decide how their meetings are to be called, and what notice is required.

### (2) Chairing of meetings

The charity trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the charity trustees present may appoint one of their number to chair that meeting.

### (3) Procedure at meetings

- (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is three charity trustees, or the number nearest to one third of the total number of charity trustees, whichever is greater, or such larger number as the charity trustees may decide from time to time. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.
- (b) Questions arising at a meeting shall be decided by a majority of those eligible to vote.
- [(c) In the case of an equality of votes, the chair shall have a second or casting vote.

### (4) Participation in meetings by electronic means

- (a) A meeting may be held by suitable electronic means agreed by the charity trustees in which each participant may communicate with all the other participants.
- (b) Any charity trustee participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
- (c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

## Notes

Clause 20 – Saving provisions – We recommend that you include this clause to reduce the risk of trustees' decisions being declared invalid for purely technical reasons. This is, however, also covered in the General Regulations.

Clause 21 – Execution of documents – We recommend that you include this clause, for clarity about how documents may be validly executed on behalf of the CIO. It includes provision for use of a seal, which the General Regulations stipulate must be included if the CIO is to have a seal (but there is no requirement to have one). The General Regulations require the full name of the CIO to be clearly written on the seal, and failure to comply with this is an offence.

Clause 22 – Use of electronic communications – The General Regulations include provisions governing the use of electronic communication, and we recommend that CIO trustees familiarise themselves with the requirements. Failure to comply with the requirement to provide a hard copy would constitute an offence.

## 20. Saving provisions

- (1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:
  - who was disqualified from holding office;
  - who had previously retired or who had been obliged by the constitution to vacate office;
  - who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

- (2) Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 7 (Conflicts of interest).

## 21. Execution of documents

- (1) The CIO shall execute documents either by signature or by affixing its seal (if it has one).
- (2) A document is validly executed by signature if it is signed by at least two of the charity trustees.
- (3) If the CIO has a seal:
  - (a) it must comply with the provisions of the General Regulations; and
  - (b) it must only be used by the authority of the charity trustees or of a committee of charity trustees duly authorised by the charity trustees. The charity trustees may determine who shall sign any document to which the seal is affixed and unless otherwise determined it shall be signed by two charity trustees.

## 22. Use of electronic communications

### (1) General

The CIO will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

- (a) the requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form;

## Notes

The General Regulations state that if the CIO intends to automatically use electronic communication or a website to send formal communications to members, this must be stated in the constitution, which must also set out the circumstances in which this will happen. For suggested wording, please see the appendix to this constitution.

Clause 23 – Keeping of registers – This clause reflects the requirements in the General Regulations that the CIO keeps registers of members and charity trustees and makes this information available for inspection by interested persons. This does not have to be stated in the constitution but is included to serve as a reminder.

Clause 24 – Minutes - This clause reflects the requirements of the General Regulations regarding record keeping. We recommend that this clause is included, to remind the trustees of their responsibilities.

Clause 25 – Accounting records (etc) - This clause reflects the trustees' duties under the Charities Act 2011. We recommend that this clause is included, to remind the trustees of their responsibilities.

Clause 26 - Rules – We recommend that this power should be included for clarity, but charities automatically have this power and an express power is not needed. It is important that members are made aware of, and can easily obtain, copies of any rules.

- (b) any requirements to provide information to the Commission in a particular form or manner.

## 23. Keeping of Registers

The CIO must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, registers of its members and charity trustees.

## 24. Minutes

The charity trustees must keep minutes of all:

- (1) appointments of officers made by the charity trustees;
- (2) proceedings at general meetings of the CIO;
- (3) meetings of the charity trustees and committees of charity trustees including:
  - the names of the trustees present at the meeting;
  - the decisions made at the meetings; and
  - where appropriate the reasons for the decisions;
- (4) decisions made by the charity trustees otherwise than in meetings.

## 25. Accounting records, accounts, annual reports and returns, register maintenance

- (1) The charity trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of accounts, and to the preparation of annual reports and returns. The statements of accounts, reports and returns must be sent to the Charity Commission, regardless of the income of the CIO, within 10 months of the financial year end.
- (2) The charity trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities..

## 26. Rules

The charity trustees 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 CIO, but such rules or bye laws must not be inconsistent with any provision of this constitution. Copies of any such rules or bye laws currently in force must be made available to any member of the CIO on request.

## Notes

Clause 27 – Disputes – It is good practice to include provisions for dealing with any disputes that arise between members of the CIO. Litigation can be expensive, and litigation about the internal affairs of a charity would almost certainly constitute “charity proceedings”, which can be taken only with the Commission’s authority. We would usually require the parties to a dispute to have tried mediation first.

Clause 28 – Amendment of constitution – This reflects the CIOs’ statutory power of amendment in sections 224-227 of the Charities Act 2011. A CIO’s constitution should include these provisions for ease of reference. The constitution of a CIO cannot override the statutory power of constitutional amendment, but the General Regulations provide that you may include additional restrictions in some or all cases, for example requiring a longer period of notice before the meeting, or a higher majority, for certain changes. Additional restrictions are not provided for in this model and if you are considering this, we recommend that you take appropriate advice. To request the Commission’s consent to an amendment or to inform the Commission of an amendment, please complete our online form, which is available at *[link to be inserted]*

Clause 29 – Voluntary winding up or dissolution – This clause reflects the provisions of the Charities Act 2011, the General Regulations and Dissolution Regulations. We recommend that it is included in the constitution for ease of reference. It also highlights that there are other requirements in the Dissolution Regulations that the trustees must comply with, as there are offences for non-compliance. To inform the Commission of your CIO’s dissolution, please complete our online form, which is available at *[link to be inserted]*

## 27. Disputes

If a dispute arises between members of the CIO about the validity or propriety of anything done by the members under this constitution, 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.

## 28. Amendment of constitution

As provided by clauses 224-227 of the Charities Act 2011:

- (1) This constitution can only be amended:
  - (a) by resolution agreed in writing by all members of the CIO; or
  - (b) by a resolution passed by a 75% majority of votes cast at a general meeting of the members of the CIO.
- (2) Any alteration of clause 3 (Objects), clause [29] (Voluntary winding up or dissolution), this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written consent of the Charity Commission.
- (3) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- (4) A copy of any resolution altering the constitution, together with a copy of the CIO’s constitution as amended, must be sent to the Commission within 15 days from the date on which the resolution is passed. The amendment does not take effect until it has been recorded in the Register of Charities.

## 29. Voluntary winding up or dissolution

- (1) As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the CIO can only be made:
  - (a) at a general meeting of the members of the CIO called in accordance with clause [11] (Meetings of Members), of which not less than 14 days’ notice has been given to those eligible to attend and vote:
    - (i) by a resolution passed by a 75% majority of those voting, or
    - (ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or



(2) The constitution must contain directions about how its property will be applied if it is wound up. Any assets remaining after the payment of debts must be applied for charitable purposes that are similar to those of the CIO.

(4) it is essential for trustees to be aware that if the CIO is unable to meet its financial obligations in full when it is wound up, the provisions in sub-clauses (1)-(3) do not apply, and the relevant provisions of the Dissolution Regulations must be followed. Failure to do so is not only an offence, but it could lead to personal liability for the trustees.

Clause 30 – Interpretation – this clause explains some terms used in the rest of the constitution.

(b) by a resolution agreed in writing by all members of the CIO.

(2) Subject to the payment of all the CIO's debts:

(a) Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any remaining assets of the CIO shall be applied.

(b) If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.

(c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.

(3) The CIO must observe the requirements of the Dissolution Regulations in applying to the Commission for the CIO to be removed from the Register of Charities, and in particular:

(a) the charity trustees must send with their application to the Commission:

(i) a copy of the resolution passed by the members of the CIO;

(ii) a declaration by the charity trustees that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and

(iii) a statement by the charity trustees setting out the way in which any property of the CIO has been or is to be applied prior to its dissolution in accordance with this constitution;

(b) the charity trustees must ensure that a copy of the application is sent within seven days to every member and employee of the CIO, and to any charity trustee of the CIO who was not privy to the application.

(4) If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

### 30. Interpretation

In this constitution:

“**connected person**” means:

(a) a child, parent, grandchild, grandparent, brother or sister of the charity trustee;

- (b) the spouse or civil partner of the charity trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the charity trustee or with any person falling within sub-clause (a) or (b) above;
- (d) an institution which is controlled –
  - (i) by the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or
  - (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
  - (i) the charity trustee 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.

Section 118 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this constitution.

**“General Regulations”** means the Charitable Incorporated Organisations (General) Regulations 2012.

**“Dissolution Regulations”** means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The **“Communications Provisions”** means the Communications Provisions in [Part 10, Chapter 4] of the General Regulations.

**“charity trustee”** means a charity trustee of the CIO.

A **“poll”** means a counted vote or ballot, usually (but not necessarily) in writing.

## Appendix

The following provisions do not form part of the 'Foundation' model constitution but are available as options under clauses 19 (General meetings of members) and 22 (Use of electronic communications). For CIOs intending to include these powers in their constitutions, we recommend that you use the following wording. Notes on these clauses are included with the explanatory notes accompanying the clauses in the model.

### General meetings of members

#### (7) Proxy voting

- (a) Any member of the CIO may appoint another person as a proxy to exercise all or any of that member's rights to attend, speak and vote at a general meeting of the CIO. Proxies must 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 authenticated in such manner as the CIO may determine; and
  - (iv) is delivered to the CIO in accordance with the constitution and any instructions contained in the notice of the general meeting to which they relate.
- (b) The CIO may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (c) Proxy notices may (but do not have to) 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.

- (e) A member 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 CIO by or on behalf of that member.
- (f) An appointment under a proxy notice may be revoked by delivering to the CIO a notice in writing given by or on behalf of the member by whom or on whose behalf the proxy notice was given.
- (g) 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.
- (h) If a proxy notice is not signed or authenticated by the member appointing the proxy, it must be accompanied by written evidence that the person who signed or authenticated it on that member's behalf had authority to do so.

#### **(8) Postal Voting**

- (a) The CIO may, if the charity trustees so decide, allow the members to vote by post or electronic mail ("email") to elect charity trustees or to make a decision on any matter that is being decided at a general meeting of the members.
- (b) The charity trustees must appoint at least two persons independent of the CIO to serve as scrutineers to supervise the conduct of the postal/email ballot and the counting of votes.
- (c) If postal and/or email voting is to be allowed on a matter, the CIO must send to members of the CIO not less than [21] days before the deadline for receipt of votes cast in this way:
  - (i) a notice by email, if the member has agreed to receive notices in this way under clause [21] (Use of electronic communication, including an explanation of the purpose of the vote and the voting procedure to be followed by the member, and a voting form capable of being returned by email or post to the CIO, containing details of the resolution being put to a vote, or of the candidates for election, as applicable;
  - (ii) a notice by post to all other members, including a written explanation of the purpose of the postal vote and the voting procedure to be followed by the member; and a postal voting form containing details of the resolution being put to a vote, or of the candidates for election, as applicable.

- (d) The voting procedure must require all forms returned by post to be in an envelope with the member's name and signature, and nothing else, on the outside, inside another envelope addressed to 'The Scrutineers for [name of CIO]', at the CIO's principal office or such other postal address as is specified in the voting procedure.
- (e) The voting procedure for votes cast by email must require the member's name to be at the top of the email, and the email must be authenticated in the manner specified in the voting procedure.
- (f) Email votes must be returned to an email address used only for this purpose and must be accessed only by a scrutineer.
- (g) The voting procedure must specify the closing date and time for receipt of votes, and must state that any votes received after the closing date or not complying with the voting procedure will be invalid and not be counted.
- (h) The scrutineers must make a list of names of members casting valid votes, and a separate list of members casting votes which were invalid. These lists must be provided to a charity trustee or other person overseeing admission to, and voting at, the general meeting. A member who has cast a valid postal or email vote must not vote at the meeting, and must not be counted in the quorum for any part of the meeting on which he, she or it has already cast a valid vote. A member who has cast an invalid vote by post or email is allowed to vote at the meeting and counts towards the quorum.
- (i) For postal votes, the scrutineers must retain the internal envelopes (with the member's name and signature). For email votes, the scrutineers must cut off and retain any part of the email that includes the member's name. In each case, a scrutineer must record on this evidence of the member's name that the vote has been counted, or if the vote has been declared invalid, the reason for such declaration.
- (j) Votes cast by post or email must be counted by all the scrutineers before the meeting at which the vote is to be taken. The scrutineers must provide to the person chairing the meeting written confirmation of the number of valid votes received by post and email and the number of votes received which were invalid.

- (k) The scrutineers must not disclose the result of the postal/email ballot until after votes taken by hand or by poll at the meeting, or by poll after the meeting, have been counted. Only at this point shall the scrutineers declare the result of the valid votes received, and these votes shall be included in the declaration of the result of the vote.
- (l) Following the final declaration of the result of the vote, the scrutineers must provide to a charity trustee or other authorised person bundles containing the evidence of members submitting valid postal votes; evidence of members submitting valid email votes; evidence of invalid votes; the valid votes; and the invalid votes.
- (m) Any dispute about the conduct of a postal or email ballot must be referred initially to a panel set up by the charity trustees, to consist of two trustees and two persons independent of the CIO. If the dispute cannot be satisfactorily resolved by the panel, it must be referred to the Electoral Reform Society.

### **Use of electronic communications**

#### **(2) To the CIO**

Any member or charity trustee of the CIO may communicate electronically with the CIO to an address specified by the CIO for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the CIO.

#### **(3) By the CIO**

- (a) Any member or charity trustee of the CIO, by providing the CIO with his or her email address or similar, is taken to have agreed to receive communications from the CIO in electronic form at that address, unless the member has indicated to the CIO his or her unwillingness to receive such communications in that form.
- (b) The charity trustees may, subject to compliance with any legal requirements, by means of publication on its website –
  - (i) provide the members with the notice referred to in clause 11(3) (Notice of general meetings);
  - (ii) give charity trustees notice of their meetings in accordance with clause 18(1) (Calling meetings); [and

- (iii) submit any proposal to the members or charity trustees for decision by written resolution or postal vote in accordance with the CIO's powers under clause 10 (Members' decisions), 18(5) (Decisions taken by resolution in writing), or clause 11(8) (Postal voting)].
- (c) The charity trustees must:
  - (i) take reasonable steps to ensure that members and charity trustees are promptly notified of the publication of any such notice or proposal;
  - (ii) send any such notice or proposal in hard copy form to any member or charity trustee who has not consented to receive communications in electronic form.







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<b>Report to:</b>	<b>HEALTHWATCH BLACKPOOL</b>
<b>Relevant Officer:</b>	Steven Garner, Healthwatch Blackpool Manager
<b>Date of Meeting</b>	15 September 2016

## PROCESS AND QUALITY ASSURANCE

### 1.0 Process of reporting

1.2 Healthwatch Blackpool can draw upon the resource of Empowerment Charity and with a new Chief Executive Officer in position who is also in post at Blackpool Carers this may also allow opportunity to draw upon additional resources.

1.3 The process of reporting is proposed as follows:

1. Evidence based work plan informs the review to be carried out.
2. Additional research and local/ national data is collected to provide background information.
3. Internal planning session and discussions with provider inform how the review will take place. This includes methodology, reach, timescale, format, access and resource.
4. The review takes place as agreed.
5. Immediate initial findings are discussed with service provider and expected timescale for report is given.
6. Raw data is uploaded to survey database by Business Apprentice.
7. Report is drafted by Engagement Officer.
8. Draft Report is checked over by Performance and Administration Officer for general critique, layout, spelling and fact checking etc.
9. Draft Report is checked over by Operational Lead, any revisions made are passed by Engagement Officer to ensure information is factual and evidence-based.
10. Draft Report is discussed with Services Manager and any potential issues arising (negative feedback, press attention, criticism, legal action etc.) are risk assessed
11. Report is shared with the Board for approval
12. After Board approval, a member of the Board personally signs off the document.
13. Once approved and signed off, the report is sent to the provider for a response.
14. If response is delayed or declined to be given, Operational Lead will discuss with Services Manager and the Board Chairman regarding potential escalation.
15. Once response is provided, the report is made public with the response.
16. The report is forwarded to all external partners and commissioners for potential use or scrutiny. The report is publicised in quarterly newsletter

and if relevant a press statement is also produced.

17. Potential follow up time is suggested to revisit findings and discover what changes have taken place.

18. The service will be asked how they felt the review was conducted and how it could be improved upon in future.

## **2.0 Sampling and data collection**

2.1 When undertaking specific reviews following the evidence based work plan, Healthwatch Blackpool traditionally only consults with those using that service. This provides an easy to reach audience and can be assisted by the service provider in accessing service users.

2.2 Healthwatch Blackpool proposes to extend this reach by primarily also consulting with the wider community on the findings and to gather further information about the issues Blackpool residents face in regards to the specific service. This may take the form of a wider public consultation, focus groups before, or after service reviews to assess whether the findings accurately reflect the wider community.

2.3 As a matter of course and wherever possible, Healthwatch Blackpool will try to extend its reach more into seldom heard communities such as learning disability, traveller, young people and BME groups.

2.4 Following the completion of a review, Healthwatch Blackpool will hold an internal focus session to reflect on the process, and identify groups or communities who could not be involved and how we can tackle this in future reviews.

## **3.0 Interpretation of data**

3.1 All data is uploaded onto a survey database, which enables the extraction of small or large volumes of information. For quantitative information, this easily allows us to break down information in sub-groups to get finer detailed statistical data. For qualitative information, it groups together the responses allowing us to view the detailed experiences. All qualitative information is read and weighted on a scale (usually positive/ negative). This balance, which is given to us will then be portrayed in the report.

3.2 The perspective of service users can largely be gained from the digitisation of the information, however focus groups can often provide thematic or generalised terms or allow us to address if our findings are consistent with a wider group. The perspective of Healthwatch Blackpool though may not be reflective of this (e.g. in care home reviews service users may not highlight issues, which are noticed by Healthwatch Blackpool staff and volunteers).

3.3 With staff and volunteer findings, we write to the service provider separately with our observations from a lay-person perspective. This allows the main report to stand alone as the voice of the service user and be less open to criticism by the service provider who may have differing opinions from staff and volunteer findings which were not also found from service users (such as odours, aesthetic issues etc.).

#### **4.0 Quality of reporting**

- 4.1 Alongside the organisational improvements to improve quality, Healthwatch Blackpool staff are actively encouraged to participate in developmental opportunities such as sessions provided by Healthwatch England aimed at improving influence through report writing.
- 4.2 Branding information, pictures, report templates and guidelines are offered by Healthwatch England to standardise and assist in report writing.
- 4.3 A social media/ online community hub is available for all Healthwatch staff and volunteers, allowing open discussion around how to improve quality and share ideas, contacts, and success stories around influencing change or positive joint working with services.

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