

Healthwatch Oxfordshire Board of Directors

Date of Meeting: 11 th November 2014	Paper No: 6
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Title of Presentation: Changes to the Articles of EASI Healthwatch CIC

This paper is for	Discussion		Decision		Information	
	X		X			

<p>Purpose and Executive Summary (if paper longer than 3 pages):</p> <p>To discuss the recommendations of the Board workshop held on 28th October (report attached), and whether directors should be paid for specific work.</p>

<p>Financial Implications of Paper:</p> <p>None; minor administrative expenditure is within budget</p>

<p>Action Required:</p> <p>To discuss and approve the proposals to:</p> <ul style="list-style-type: none"> • Change the name of the company to Healthwatch Oxfordshire • Formally allow for committees in the articles • Consider alternative options for remuneration (or not) of directors • Remain a 'small form' CIC with all members as directors and vice versa • Leave the AGM unspecified as now, ie permissible not mandatory • Seek advice on tax liability if any • Agree attendance of CEO on a Company Secretary Course

Author: Jean Nunn-Price

1. Background

- 1.1 At its February 11th 2014 meeting the Board agreed that it wished the CIC (EASI Healthwatch Oxfordshire Community Interest Company) to have a separate membership as distinct from the directors, to be accomplished by converting from a small form of CIC into the larger form of a CIC, which allows for such a membership. This would allow volunteers helping to deliver Healthwatch Oxfordshire, as well as those on our mailing list, to be designated members.
- 1.2 The purpose of the workshop was to discuss how to implement the Board's previous decision to extend the membership of the CIC to become a 'large form' CIC. However, as Healthwatch Oxfordshire exists for all the people of Oxfordshire, the workshop looked at the pros and cons of having a membership category at all. What difference would it make to people if they are members?

2. Discussion

The workshop looked at a copy of the articles and a set of slides (attached) and considered the issues set out in the last slide. (Notes attached.)

- **Name change ?**

The Board has previously suggested that a name change would be sensible to avoid confusion between the company name and the function it carries out.

Recommendation 1: That the name of the Company be changed to Healthwatch Oxfordshire CIC

- **Asset locked body change ? (Article 3.5)**

This is currently ORCC. The workshop felt it was premature to select another body prior to our premises move and any change of funding. This can be reviewed if and when circumstances change.

- **Committees ? (New Article 12)**

We already have committees but our articles do not actually allow for this substructure at present.

Recommendation 2: Insert new article 12 which would read:

12.1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by Directors.

12.2 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.

- **Directors' remuneration (New Article 25) - currently nil. Should we state in articles?**

There was a divergence of opinion on this issue, some feeling that directors should not be remunerated at all, while others thought specific work commissioned by the Board and not readily found elsewhere might be an exception. The articles currently state (article 24):

24.1 Directors may undertake any services for the Company that the Directors decide.

24.2 Directors are entitled to such remuneration as the Directors determine:

- (a) for their services to the Company as Directors; and
- (b) for any other service which they undertake for the Company.

24.3 Subject to the Articles, a Director's remuneration may:

- (c) take any form; and
- (d) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

24.4 Unless the Directors decide otherwise, Directors' remuneration accrues from day to day.

24.5 Unless the Directors decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.

The workshop suggested the wording be left as it is, or that provision be made to pay directors for one-off pieces of work in specific circumstances.

- **Members who are not directors ? (27.3)**
Recommendation 3: No change, remain a small form CIC.
- **Note that members can be individuals or organisations**
- **Note that a register of members must be kept, and a register of officers**
Recommendation 4: To be formalised (Action: Company Secretary)

- **Annual General Meeting ? (29)**
Currently the articles say that the Directors can call a general meeting of members at any time. Leaving this as is will allow the Board to call an AGM but not make it mandatory to do so.
- **Quorum for general meetings, 2 or 10% - Noted.**
- **It is the Board's responsibility to ensure all records are properly kept, and that annual reports, annual returns and annual accounts are provided to the relevant Registrar (currently Companies House and FCA)**
- **All minutes and records must be kept for 10 years (Current article 32.2)**

The question of tax liability was raised. It was felt that we needed proper advice on what can be carried forward as a surplus at year end, and also to bear in mind that Corporation tax and VAT could be payable (although VAT registration is outside our current turnover)

Recommendation 5: Agree to seek professional advice on our potential tax liability as a company.

Finally, the workshop considered the question of a company secretary's course for our CEO, and recommended that this be approved.

Recommendation 6: agree the attendance of the CEO on a Company Secretary's course, as identified by the CEO and the Chair.

Appendix 1: NOTES OF MEETING: Healthwatch Oxfordshire Board Workshop

28th October 2014. At West Oxfordshire Community Centre at 1.10pm

Purpose: to consider the advantages and disadvantages of enlarging the current 'small' CIC that is EASI Healthwatch CIC, to a 'large' entity to include members drawn from volunteers and to make a recommendation to the Board

Present: Rachel Coney, Jean N-P, Richard Lohman and Vivienne Laurie.

Apologies: Jacquie P-G, Dermot Roaf

Jean had prepared a power point presentation, as attached to this paper, which was studied by everyone. **Incidental** points of clarification discussed about subscription and age (slide 7), do we all have to be in the same place eg Skype (slide 10).

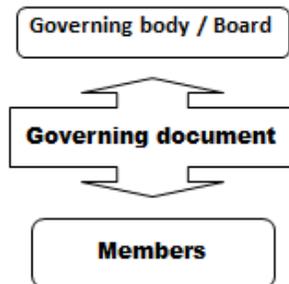
There was also one copy of draft CIC Articles (large membership) and one copy of our current CIC Articles (small CIC). Reference to paragraphs below refer to the draft CIC articles (large version)

The points listed on Slide 12 were then considered.

1. It was **agreed** that the name of the CIC should be changed to Healthwatch Oxfordshire CIC (HWCIC)
2. Asset Locked body (paragraph 3.5): it was **agreed** that all assets should be transferred as currently, in the event of HWCIC ceasing to exist, save that it should be specified that no individual should inherit, it must be a corporation. In the event that assets were acquired or created other than from funds given by OCC, then the position shall be reviewed.
3. Committees(paragraph 12): **agreed to insert new paragraph 12**
4. Directors' remuneration, **suggested leave as it is or** that provision be made to pay directors for one off pieces of work that they could be commissioned to complete in special and exceptional circumstances (paragraph 25)
5. Currently all directors are members and vice versa(see current paragraph 26.3): **agreed no change**
6. Item 6_(members can be individual etc): **noted**
7. Registers etc: **this must be formalised**
8. No need to specify that AGM will be held Paragraph 29): **agreed**
9. Quorum (paragraph 34.2): **noted**
10. Board's responsibilities: **noted. RC attending one day course for Co Secs approved**
11. Keeping records: **noted. Recommended** that when new premises acquired, lockable cupboard be found for this and Chair's papers
12. **Additional item added by VL, Tax:** we need proper advice on what can be carried forward as a surplus and to bear in mind Corporation tax and VAT could be payable although VAT registration is outside our current turnover

Conclusion: Agreed items to be recommended to the Board, noted items to be recorded by the Board and alternative issues to be decided by the Board (at Item 4 above). (VL2: 1/11/14)

Community Interest Company Governance



1

What is Governance?

"The systems and processes concerned with ensuring the overall direction, supervision and accountability of an organisation"

Governance is not directly concerned with the day to day running of the organisation.

- Strategic vs. Operational
- Steering the ship vs. stoking the boiler

Not necessarily about **doing**, but ensuring that things are **done** and in the most appropriate way.

2

MEMBERS AND DIRECTORS

- Every organisation has members
- They own and control the organisation
- They're the people who can make decisions at a General Meeting
- Whether it's an Incorporated or unincorporated organisation.

The way we were set up, there were 4 founder members (Jean, Dermot, Larry, and Anne) and these 4 then accepted the rest of the HWO committee as members. As a small Community Interest Company, all the members were also the directors.

Only the current member/directors have the power to appoint new members / directors and to elect their Chair and Vice-Chair. They also appoint their company secretary, who may, but need not be, a director.

3

Governing document

A document which details the governance of an organisation

Constitution – Unincorporated Association
Articles of Association – Limited Company
Rulebook – Industrial and Provident Society

Partnership Agreement
Trust Deed

Generally a list of numbered clauses

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Objects

- Why organisation exists and what it will achieve
- General objects
 - Why the organisation exists
 - E.g. To advance and protect the health, social care and well-being of the general public
- Specific objects
 - What it intends to achieve
 - E.g. that the public are better informed about the health and social care services available;
 - becoming engaged and monitoring the health and social care being provided to them;
 - influencing the planning and future provision of health and social care so as to improve their services and their well-being.
- Acts outside of objects – ultra vires

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Statement of liability

- Unlikely in an unincorporated organisation
- On dissolution and unable to meet debts
- Liability limited to:
 - A pound
 - Value of shares held
- Members can still be liable for reckless trading or negligence

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Membership

- Every organisation has a membership
- Can be other individuals, other organisations or both
- Can be one person (company only)
- Governing document should define:
 - Who can be a member
 - Live in an area
 - Work for the organisation
 - Pay a subscription
 - Age requirements
 - How they become a member (application etc.)
 - How they cease to be a member
- Must keep a register of members if incorporated

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Governing body/Board of directors

- Agents of the members with delegated powers
- Collective governance
- Committee governance
- Governing document should define:
 - Who can be a member of the governing body
 - How they become a member of the governing body
 - How they cease to be
 - voluntary
 - involuntary
 - Powers of the governing body

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Dissolution

- Governing document should define how the organisation can be wound up.
- and what happens to assets on winding up?
 - Co-ownership
 - Common ownership
- Asset lock?
 - Community Interest Company
 - Community Benefit Society
 - Charity

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Meetings

- Both members (general) meetings and governing body/Board meetings
 - Notice (14/7)
 - Quorum (3)
 - Voting (simple majority / electronic and unanimous)
 - Frequency (none specified)
- Secondary rules – standing orders
- Meetings and the law – may have to have an AGM by law, but only if our articles say so (Companies Act 2006 re private companies).
- Do we have to all be in the same place? (see articles 14 & 15)

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Other governance related documents

- Secondary rules – subordinate to governing document
- Standing orders – how we conduct our meetings
- Employment Contracts
- Policies and procedures
 - Employment
 - Safeguarding
 - Equal opportunity
 - Grievance and disciplinary
 - Ethical
 - Etc.....
- Mission statement

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Specific issues for us to consider

- Name change ?
- Asset locked body change ? (3.5)
- Committees ? (12)
- Directors' remuneration (25) – currently nil. Should we state in articles?
- Members who are not directors ? (27.3)
- Note that members can be individuals or organisations
- Note that a register of members must be kept, and a register of officers
- Annual General Meeting ? (29)
- Quorum for general meetings, 2 or 10% ? (34.2)
- Note that it is the Board's responsibility to ensure all records are properly kept, and that annual reports, annual returns and annual accounts are provided to the relevant Registrar (currently Companies House and FCA)
- Note that all minutes and records must be kept for 10 years (48.2)

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