

# Proposed changes to HBA's Articles of Association

## Background

The trustees are proposing to convert HBA to a Charitable Incorporated Association (CIO), with revised charitable objects that align with HBA's model charitable objects for its members.

The Charity Commission has a streamlined process for charitable companies, such as HBA, to convert to a CIO. This requires that there are no changes to either the charitable objects, or to permitted trustee benefits, at the time of conversion. The trustees have liaised with the Charity Commission regarding the proposed changes and the Commission has advised that the following two changes be made to HBA's current Memorandum of Association prior to conversion, and has provided its prior written consent, as required under section 198 of the Charities Act 2011, for these changes.

If the members at the AGM resolve to make these changes, they will be submitted to the Charity Commission for registration as soon as practicable after the meeting. If it is also resolved to convert HBA into a CIO, the application to do so will be submitted as soon as practicable after confirmation is received from the Charity Commission that these changes have been registered.

## Proposed change 1: Charitable objects

Clause 3 of HBA's Memorandum of Association currently reads as follows:

The Association is established for charitable purposes only and its object is to extend and improve the relief of sickness, infirmity and old age through Hospital Broadcasting and allied services by:

- (i) encouraging the formation of Hospital Broadcasting Organisations;
- (ii) promoting and assisting in the formation of such organisations;
- (iii) providing the means for persons and organisations engaged in or interested in these services to freely exchange ideas and information;
- (iv) providing the administrative machinery to facilitate liaison, co-operation and co-ordination of effort;
- (v) promoting the highest technical and artistic standards;
- (vi) enabling groups of members to negotiate at National and Regional levels where appropriate;
- (vii) explaining, publicising and promoting the service to all sections of the community;
- (viii) establishing international co-operation;
- (ix) providing guidelines and a code of conduct with which members shall strive at all times to comply;
- (x) the doing of all such other lawful things as shall further the attainment of the above object.

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### It is proposed to replace the current Clause 3 with:

The object of the Association is to promote the effectiveness and efficiency, for the public benefit, of organisations which:

- (1) relieve sickness, poor health and old age by providing a local broadcasting service for hospitals, residential homes and similar institutions, and for patients receiving community care; or
- (2) advance health and the prevention or relief of sickness through the promotion of the benefits of living a healthy lifestyle, and the importance of maintaining good personal mental and physical health by (mainly, but not exclusively) the means of broadcasting health education messages.

Nothing in the governing document shall authorise an application of the property of the charity for 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.

### Proposed change 2: Trustee benefit

Clauses 5 through 9 of HBA’s Memorandum of Association currently read as follows:

5. The income and property of the Association shall be applied solely towards the promotion of the object.
6. A Trustee is entitled to be reimbursed from the property of the Association, and may be paid out of such property reasonable expenses properly incurred by him or her when acting on behalf of the Association.
7. Subject to the restrictions in sub-clause 4.k), a Trustee may benefit from Trustee indemnity insurance cover purchased at the Association’s expense.
8. None of the income or property of the Association may be paid, or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit, to any member of the Association. This does not prevent a member who is not also a Trustee receiving:
  - a) a benefit from the Association in the capacity as a beneficiary of the Association;
  - b) reasonable and proper remuneration for any goods or services supplied to the Association.
9. No Trustee may:
  - a) sell goods, services or any interest in land to the Association;
  - b) be employed by, or receive any remuneration from, the Association;
  - c) buy any goods or services from the Association, except in the capacity of a beneficiary of the Association;
  - d) receive any other financial benefit from the Association, except in the capacity of a beneficiary of the Association;  
unless
    - i) the requirements of Sections 73A, 73B and 73C of the Charities Act 1993, as inserted by the Charities Act 2006, are complied with; or
    - ii) the Trustees obtain the prior written approval of the Charity Commission for England and Wales and fully comply with any procedures it prescribes.

**It is proposed to replace the current Clauses 5 through 9 with the following clauses**, which exactly replicate the text in Clauses 5 through 7 of both HBA’s proposed CIO constitution and the Charity Commission’s model CIO constitution, with “CIO” replaced by “charity”.

### 5. Application of income and property

- (1) The income and property of the charity must be applied solely towards the promotion of the objects.
  - (a) A charity trustee is entitled to be reimbursed from the property of the charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity.
  - (b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the charity’s expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (2) None of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the charity. This does not prevent a member who is not also a charity trustee receiving:
  - (a) a benefit from the charity as a beneficiary of the charity;
  - (b) reasonable and proper remuneration for any goods or services supplied to the charity.
- (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 charity on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the charity;
- (c) be employed by, or receive any remuneration from, the charity;
- (d) receive any other financial benefit from the charity;

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 charity as a beneficiary of the charity provided that it is available generally to the beneficiaries of the charity.
- (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 charity where that is permitted in accordance with, and subject to the conditions in, sections 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 charity with goods that are not supplied in connection with services provided to the charity by the charity trustee or connected person.
- (d) A charity trustee or connected person may receive interest on money lent to the charity 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 charity. The amount of the rent and the other terms of the lease

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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 charity on the same terms as members of the public.

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

The charity 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 charity 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 charity 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 charity.
- (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 charity” includes any company in which the charity:
- (i) holds more than 50% of the shares; or
  - (ii) controls more than 50% of the voting rights attached to the shares; or
  - (iii) has the right to appoint one or more directors to the board of the company;
- (b) “connected person” includes any person within the definition set out in clause 14.

## 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 charity or in any transaction or arrangement entered into by the charity which has not previously been declared; and
- (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.

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It is also proposed that **Clauses 10 through 15 be renumbered to become Clauses 8 through 13 respectively, and that a new clause 14 be added, reading as follows.** This exactly replicates the definition of a “connected person” from the model and proposed HBA CIO constitutions.

### 14. Interpretation

In this memorandum “**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 applies for the purposes of interpreting the terms used in this memorandum.