

Dated

2015



**Constitution of a Charitable Incorporated Organisation**

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## 1. INTERPRETATION

In this constitution:

**“Code of Conduct for Trustees and Governors”** means the code of conduct adopted by the Trust on the recommendation of the Short Term Committee which reported in December 2014 and such amendments to it as may be approved by the Trustees.

**“Communications Provisions”** means the Communications Provisions in the General Regulations

**“Connected person”** is to be interpreted as provided in section 118 of the Charities Act 2011 and includes:

- (a) a child, parent, grandchild, grandparent, brother or sister of the Trustee;
- (b) the spouse or civil partner of the Trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the Trustee or with any person falling within sub-clauses (a) or (b) above;
- (d) an institution which is controlled:-
  - (i) by the Trustee or any connected person falling within sub-clauses (a), (b) or (c); or
  - (ii) By two or more persons falling within sub-clauses (a), (b) or (c) when taken together.
- (e) a body corporate in which:-
  - (i) the Trustee or any connected person falling within sub-clauses (a), (b) or (c) has a substantial interest; or
  - (ii) two or more persons falling within sub-clauses (a), (b) or (c) who, when taken together, have a substantial interest.

**“Days”** means calendar days

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

**“General Regulations”** means the Charitable Incorporated Organisations

(General) Regulations 2012

<b>“Governors” and “Council of Governors”</b>	mean the members of this Charitable Incorporated Organisation
<b>“Lead Governor”</b>	means the Governor appointed under clause 9.8
<b>“Nominations and Succession Committee”</b>	means a committee, with responsibility for identifying and recommending new Trustees and Governors for appointment by the Council of Governors, established in accordance with the Terms of Reference approved by the Governors, comprising two Trustees, two Governors, one of whom will be the Lead Governor, and the Chairman of the Trust
<b>“Objects”</b>	means the charitable objects of the CIO set out in clause 4
A <b>“Poll”</b>	means a counted vote or ballot, usually (but not necessarily) in writing, and includes a secret ballot
The <b>“Trust”</b>	means this Charitable Incorporated Organisation
<b>“Trustee”</b>	means a charity trustee of the Trust who must also be a Governor.

References to legislation, regulations, determinations and directions include all amendments, replacements or re-enactments and references to legislation (where appropriate) include all regulations, determinations and directions made or given under it.

References to the singular include the plural and vice-versa and to the masculine include the feminine and neuter and vice-versa.

For the avoidance of doubt the system of law governing this constitution is the law of England and Wales.

## 2. Name

The name of the Charitable Incorporated Organisation ("the CIO") is Barnwood Trust ("the Trust").

## 3. National location of principal office

A CIO must have a principal office in England or Wales. The principal office of the Trust is in the County of Gloucestershire in England.

## **4. Objects**

4.1. The Objects of the Trust are:

(a) the relief of persons who:

(i) have a mental or nervous disorder; or

(ii) have a serious physical infirmity or disability; and

Who are sick, convalescent, disabled, infirm or in need, hardship or distress by relieving their conditions or assisting their recovery; and

(b) to promote research into the cause, prevention and treatment of sickness and to publicise the results.

4.2. subject to sub-clause 4.3 below, in applying the income of the charity under sub-clause 4.1(a) above the Trustees must give preference to persons now or formerly resident in the County of Gloucestershire

4.3. if and in so far as the income of the charity cannot be applied under sub-clause 4.1(a) above towards the relief of persons resident or formerly resident in the County of Gloucestershire, the Trustees may apply it for the relief of such other persons as the Trustees think fit.

4.4. the Trustees may relieve those eligible for assistance by making grants of money to such other persons or bodies who provide goods, services or facilities to those eligible for assistance as the Trustees think fit.

4.5. the Trustees may relieve persons in need by:

(a) providing housing or other accommodation, care, nursing and attention; or

(b) making grants or loans; or

(c) doing such other lawful acts and things as may further the objects.

## **5. Powers**

The Trust has power to do anything which is calculated to further its Objects or is conducive or incidental to doing so. In particular, the Trust has the power to:

5.1. borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The Trust must comply as appropriate with sections 124 and 125 of the Charities Act 2011, if it wishes to mortgage land;

5.2. buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;

- 5.3. sell, lease or otherwise dispose of all or any part of the property belonging to the Trust. In exercising this power, the Trust must comply as appropriate with sections 117 and 119 -123 of the Charities Act 2011;
- 5.4. employ and remunerate such staff as are necessary for carrying out the work of the Trust. The Trust may employ or remunerate a Trustee only to the extent that it is permitted to do so by clause 7 (Benefits and payments to Trustees and connected persons) and provided it complies with the conditions of that clause;
- 5.5. deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the Trust (as a 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.

## **6. Application of income and property**

- 6.1. The income and property of the Trust must be applied solely towards the promotion of the Objects.
- 6.2. A Trustee is entitled to be reimbursed from the property of the Trust or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the Trust.
- 6.3. A Trustee may benefit from trustee indemnity insurance cover purchased at the Trust's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- 6.4. None of the income or property of the Trust may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Governor. This does not prevent a Governor who is not also a Trustee receiving a benefit from the Trust as a beneficiary of the Trust.
- 6.5. Nothing in this clause shall prevent a Trustee or connected person receiving any benefit or payment which is authorised by clause 7.

## **7. Benefits and payments to Trustees and connected persons**

### **7.1. General Provisions**

- 7.1.1. The Trust may provide to the Trustees benefits provided in furtherance of the Objects where the Trustees are beneficiaries of the Trust and where those benefits are the same as or similar to benefits provided to other beneficiaries.
- 7.1.2. No Trustee or connected person may:
  - 7.1.2.1. buy or receive any goods or services from the Trust on terms preferential to those applicable to members of the public;

- 7.1.2.2. sell goods, services or any interest in land to the Trust;
- 7.1.2.3. be employed by, or receive any remuneration from, the Trust;
- 7.1.2.4. receive any other financial benefit from the Trust;

unless the payment or benefit is permitted by clause 7.2 or is authorised by the court or the Charity Commission. In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

## 7.2. **Scope and powers permitting Trustees' or connected person's benefits**

- 7.2.1. A 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 Trust where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.
- 7.2.2. Subject to clause 7.3 a charity trustee or connected person may provide the Trust with goods that are not supplied in connection with services provided to the Trust by the Trustee or connected person.
- 7.2.3. A Trustee or connected person may take part in the normal trading and fundraising activities of the Trust on the same terms as members of the public.

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

The Trust and its Trustees may only rely upon the authority provided by sub-clause 7.2.2 of this clause if each of the following conditions is satisfied:

- 7.3.1. The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the Trust and the Trustee or connected person supplying the goods ("the supplier") under which the supplier is to supply the goods in question to or on behalf of the Trust.
- 7.3.2. 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.
- 7.3.3. The other Trustees are satisfied that it is in the best interests of the Trust to contract with the supplier rather than with someone

who is not a Trustee or connected person. In reaching that decision the Trustees must balance the advantage of contracting with a Trustee or connected person against the disadvantages of doing so.

- 7.3.4. 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 Trust.
- 7.3.5. The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of Trustees is present at the meeting.
- 7.3.6. The reason for their decision is recorded by the Trustees in the minute book.
- 7.3.7. A majority of the Trustees then in office are not in receipt of remuneration or payments authorised by clause 7.

7.4. In clauses 7.2 and 7.3:

- 7.4.1. “the Trust” includes any company in which the Trust:
  - 7.4.1.1. holds more than 50% of the shares; or
  - 7.4.1.2. controls more than 50% of the voting rights attached to the shares; or
  - 7.4.1.3. has the right to appoint one or more directors to the board of the company;
- 7.4.2. “connected person” includes any person within the definition set out in clause 1 (Interpretation);

## **8. Conflicts of interest and conflicts of loyalty**

A Trustee must:

- 8.1. declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Trust or in any transaction or arrangement entered into by the Trust which has not previously been declared; and
- 8.2. in relation to any matter 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 Trust and any personal interest (including but not limited to any financial interest) a Trustee must not vote or be counted as part of the quorum in any decision of the Trustees on that matter.

## 9. The Governors of the Trust

### 9.1. First Governors

The first Governors are as follows and their terms of office will expire in the year specified below:

<b>Name</b>	<b>Year Term of Office Ends</b>
Mr David Acland	2018
Mrs Jane Alvarez-Munoz	2018
Mr Richard Ashenden	2018
Ms Suzanne Beech	2018
Dr Elizabeth Buckmaster	2018
Mrs Anne Cadbury	2017
Professor Clair Chilvers	2017
Mr John Humphrey Colquhoun	2020
Mrs Sue Colquhoun	2018
Mr Ian Cowan	2019
Mr James Davidson	2020
Mr John Davis	2017
Mrs Susan Davis	2018
Mr John Douglas-Cooper	2017
Sir Henry Elwes	2016
Mr Simon Fisher	2019
Mrs Lucy Floyer-Acland	2019
Mr Jonathan Harvie	2018
Mr Mark Heywood	2019
Mrs Deborah Hutton	2016
Mr Roger Ker	2019
Mrs Rosie Ker	2018
Mr Andrew North	2017
Mrs Lifa Oakley	2020
Mrs Caroline Penley	2016
Mrs Sally Pullen	2017
Mrs Annabella Scott	2020
Mrs Sara Shipway	2019
Mrs Linda Singer	2016
Dr Jean Waters	2018

### 9.2. Admission of new Governors

9.2.1. Governorship of the Trust is open to any individual with suitable skills and experience who is interested in furthering its purposes, and who, by applying to become a Governor, has indicated his or her agreement to become a Governor and acceptance of the duty of Governors set out in clause 9.7.

9.2.2. Governors must be elected (or re-elected) by a decision of the



Governors from candidates recommended by a decision of the Nominations and Succession Committee made by consensus.

- 9.2.3. There should be approximately three times as many Governors as Trustees. The maximum number of Governors is forty-five.

### 9.3. **Admission procedure**

The Nominations and Succession Committee:

- 9.3.1. should use a wide range of recruitment methods including personal recommendation as well as open advertisement;
- 9.3.2. may require applications for Governorship to be made in any reasonable way that it decides;
- 9.3.3. shall, if it recommends an application for Governorship, notify the applicant of that recommendation within 21 days; and
- 9.3.4. may decide not to recommend an application for Governorship if they believe that it is in the best interests of the Trust for them to do so.

### **Term of Office for Governors**

- 9.4. Each appointment must be for a fixed term and will usually be for a term of five years. In order to ensure the orderly succession of Governors, the Nominations and Succession Committee may appoint a Governor for a shorter initial term of one, two, three or four years.
- 9.5. The maximum continuous term of office for a Governor is 10 years. A Governor retiring after serving the maximum continuous term of office may not be reappointed. However, such a Governor may be reappointed after an interval of at least one year and, if so reappointed, may serve a maximum continuous further term of office of five years. The re-appointment of Governors in this way will only be appropriate in exceptional circumstances.

### 9.6. **Transfer of Governorship**

Governorship of the Trust is personal and cannot be transferred to anyone else.

### 9.7. **Duty of Governors**

It is the duty of each Governor to exercise his or her powers as a Governor of the Trust in the way he or she decides in good faith would be most likely to further the purposes of the Trust. In doing so, he or she must comply with the Code of Conduct for Trustees and Governors.

## 9.8. **The Lead Governor**

There shall be a Lead Governor, who is not a Trustee, who will work with the Chairman on the purpose and agenda of meetings of the Council of Governors and advise the Chairman on any issues that are concerning Governors. This person shall be identified by the Nominations and Successions Committee for appointment by the non-Trustee Governors for a fixed term of three years, renewable once. The Nominations and Successions Committee shall review the performance and continuing suitability of the Lead Governor before the term of office is renewed and make an appropriate recommendation to Governors.

## 9.9. **Termination of Governorship**

A person ceases to be a Governor of the Trust if:

- 9.9.1. the Governor dies; or
- 9.9.2. the Governor sends a notice of resignation to the Trustees; or
- 9.9.3. the Governor reaches the end of the maximum continuous term of office specified at clause 9.5; or
- 9.9.4. the Governor does not comply with the Code of Conduct for Trustees and Governors and the Governors decide that it is in the best interests of the Trust that he or she should be removed from Governorship and pass a resolution to that effect or
- 9.9.5. the Governor unreasonably fails to attend 3 consecutive meetings.

## 10. **Liability of Governors to contribute to the assets of the Trust if it is wound up**

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

## 11. **Governors' decisions**

### 11.1. **General provisions**

Except for those decisions that must be taken in a particular way as indicated in clause 11.4, decisions of the Governors may be taken either by vote at a general meeting as provided in clause 11.2 or by written resolution as provided in clause 11.3.

### 11.2. **Taking ordinary decisions by vote**

Subject to clause 11.4, any decision of the Governors 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 proxy votes).

**11.3. Taking ordinary decisions by written resolution without a general meeting**

11.3.1. Subject to clause 11.4 a resolution in writing agreed by a simple majority of all the Governors who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective, provided that:

11.3.1.1. a copy of the proposed resolution has been sent to all the Governors eligible to vote; and

11.3.1.2. a simple majority of Governors 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 Governors' agreement must be authenticated by their signature, by a statement of their identity accompanying the document, or in such other manner as the Trust has specified.

11.3.2. The resolution in writing may comprise several copies to which one or more Governors have signified their agreement.

11.3.3. Eligibility to vote on the resolution is limited to Governors who are Governors on the date when the proposal is first circulated in accordance with clause 11.3.1.

11.3.4. The Lead Governor or any five other Governors may request the Trustees to circulate a written resolution for decision by the Governors.

11.3.5. The Trustees must within 21 days of receiving such a request comply with it if:

11.3.5.1. the proposed resolution is not frivolous or vexatious, and does not involve the publication of defamatory material;

11.3.5.2. the proposed resolution is stated with sufficient clarity to enable effect to be given to it if it is agreed by the Governors; and

11.3.5.3. effect can lawfully be given to the proposal if it is so agreed.

11.3.6. Clauses 11.3.1 to 11.3.3 apply to a proposal made at the

request of Governors.

**11.4. Decisions that must be taken in a particular way**

- 11.4.1. Any decision to amend this constitution must be taken in accordance with clause 29 (Amendment of Constitution).
- 11.4.2. Any decision to wind up or dissolve the Trust must be taken in accordance with clause 30 (Voluntary winding up or dissolution).
- 11.4.3. Any decision to amalgamate or transfer the undertaking of the Trust to one or more other charitable incorporated organisations must be taken in accordance with the provisions of the Charities Act 2011.

**12. General meetings of Governors**

**12.1. Types of general meeting**

- 12.1.1. There must be an annual general meeting (AGM) of the Governors. The first AGM must be held within 18 months of the registration of the Trust as a 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 approve (if thought fit) the appointment or re-appointment of Trustees in accordance with clause 14.
- 12.1.2. Other general meetings of the Governors may be held at any time.
- 12.1.3. All general meetings must be held in accordance with the following provisions.

**12.2. Calling general meetings**

The Trustees:

- 12.2.1. must call the annual general meeting of the Governors in accordance with clause 12.1, and identify it as such in the notice of the meeting; and
- 12.2.2. may call any other general meeting of the Governors at any time.

**12.3. The Trustees must, within 21 days, call a general meeting of the Governors if they receive a valid request to do so from:**

- 12.3.1. at least five Governors; or

12.3.2. the Lead Governor; or

12.3.3. the Chairman of the Trust.

In each case, to be valid the request must state the general nature of the business to be dealt with at the meeting and be authenticated by the Governors making the request.

12.4. Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.

12.5. A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.

12.6. Any general meeting called by the Trustees at the request of the Governors must be held within 28 days from the date on which it is called.

12.7. If the Trustees fail to comply with this obligation to call a general meeting at the request of the Governors, then the Governors who requested the meeting may themselves call a general meeting.

12.8. A general meeting called in this way must be held not more than 3 months after the date when the Governors first requested the meeting.

12.9. The Trust must reimburse any reasonable expenses incurred by the Governors calling a general meeting by reason of the failure of the Trustees to duly call the meeting, but the Trust shall be entitled to be indemnified by the Trustees who were responsible for such failure.

12.10. **Notice of general meetings**

12.10.1. The Trustees, or, as the case may be, the relevant Governors, must give at least 21 clear days' notice of any general meeting to all of the Governors.

12.10.2. If it is agreed by not less than 90% of all Governors, any resolution may be proposed and passed at the meeting even though the requirements of clause 12.10.1 have not been met. Clause 12.10.1 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.

12.10.3. The notice of any general meeting must:

12.10.3.1. state the time and date of the meeting;

12.10.3.2. give the address at which the meeting is to take place;

12.10.3.3. 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

12.10.3.4. if a proposal to alter the constitution of the Trust is to be considered at the meeting, include the text of the proposed alteration.

12.10.3.5. 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 23 (Use of electronic communication), details of where the information may be found on the Trust's website.

12.10.4. 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.

12.10.5. The proceedings of a meeting shall not be invalidated because a Governor who was entitled to receive notice of the meeting did not receive it because of accidental omission by the Trust.

#### 12.11. **Chairing of general meetings**

The person nominated as chairman by the Trustees under clause 20.2 (Chairing of meetings) or, in his or her absence the Deputy Chairman, shall, if present at the general meeting and willing to act, preside as chairman of the meeting. If neither the Chairman nor the Deputy Chairman is present at the general meeting, those Governors present shall elect someone from among their number to preside as Chairman of the meeting.

#### 12.12. **Quorum at general meetings**

12.12.1. No business may be transacted at any general meeting of the Governors of the Trust unless a quorum is present (in person or by proxy) when the meeting starts.

12.12.2. Subject to the following provisions, the quorum for general meetings shall be the number of Governors listed in the table below:

<b>Total Number of Governors</b>	<b>Quorum</b>
30-35	11
36-40	13
41-45	14

12.12.3. If the meeting has been called by or at the request of the

Governors and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the meeting is closed.

12.12.4. If the meeting has been called in any other way and a quorum is not present within 15 minutes at the starting time specified in the notice of the meeting, the chairman must adjourn the meeting. The date, time and place at which the meeting will resume must either be announced by the chairman or be notified to the Governors at least seven clear days before the date on which it will resume.

12.12.5. 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 Governors, the meeting must be adjourned.

#### **12.13. Voting at general meetings**

12.13.1. Any decision other than one falling within clause 11.4 (Decisions that must be taken in a particular way) shall be taken by a simple majority of votes cast at the meeting (including proxy votes). A poll may be demanded in the circumstances described below, and this may include a secret ballot. Every Governor has one vote.

12.13.2. A resolution put to the vote of a meeting shall be decided on a show of hands, unless (before the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chairman or by at least 10% of the Governors present in person or by proxy at the meeting.

12.13.3. 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 chairman 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.

12.13.4. In the event of any equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall have a second, or casting vote.

12.13.5. 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 chairman of the meeting shall be final.

12.14. **Proxy voting**

- 12.14.1. Any Governor may appoint another Governor as a proxy to exercise all or any of that Governor's rights to attend, speak and vote at a general meeting of the Trust. Proxies must be appointed by a notice in writing (a "proxy notice") which:
    - 12.14.1.1. states the name and address of the Governor appointing the proxy;
    - 12.14.1.2. identifies the Governor appointed to be that Governor's proxy and the general meeting in relation to which that Governor is appointed;
    - 12.14.1.3. is signed by or on behalf of the Governor appointing the proxy, or is authenticated in such manner as the Trust may determine; and
    - 12.14.1.4. is signed by or on behalf of the Governor appointing the proxy, or is authenticated in such manner as the Trust may determine; and
    - 12.14.1.5. is delivered to the Trust in accordance with the constitution and any instructions contained in the notice of the general meeting to which they relate.
  - 12.14.2. The Trust shall require proxy notices to be delivered in the form attached or such other form as the Trustees may specify from time to time.
  - 12.14.3. Proxy notices may (but do not have to) specify how the proxy is appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
  - 12.14.4. Unless a proxy notice indicates otherwise, it must be treated as: allowing the Governor appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - 12.14.5. appointing that Governor as proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.
- 12.15. A Governor 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 Trust by or on behalf of that Governor.
- 12.16. An appointment under a proxy notice may be revoked by delivering to the Trust a notice in writing given by or on behalf of the Governor by whom or on whose behalf the proxy notice was given.



- 12.17. 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.
- 12.18. If a proxy notice is not signed or authenticated by the Governor appointing that proxy, it must be accompanied by written evidence that the person who signed or authenticated it on that Governor's behalf had authority to do so.
- 12.19. **Adjournment of meetings**

The chairman 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.

### **13. The Trustees**

#### **13.1. Functions and duties of Trustees**

The Trustees shall manage the affairs of the Trust and may for that purpose exercise all the powers of the Trust. It is the duty of each Trustee:

- 13.1.1. to exercise his or her powers and to perform his or her functions in his or her capacity as a Trustee in the way he or she decides in good faith would be most likely to further the Objects; and
- 13.1.2. to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
- 13.1.2.1 any special knowledge or experience that he or she has or holds himself or herself out as having; and
- 13.1.2.1. if he or she acts as a Trustee in the course of a business or profession, 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.

#### **13.2. Eligibility for trusteeship**

- 13.2.1. Every Trustee must be a natural person and a Governor.
- 13.2.2. No individual may be appointed as a Trustee if he or she would automatically cease to hold office under the provisions of clause 17.1.5.
- 13.2.3. No one is entitled to act as a Trustee whether on appointment

or on any re-appointment until he or she has expressly acknowledged, in whatever way the Trustees decide, his or her acceptance of the office of Trustee.

**13.3. Number of Trustees**

13.3.1. There must be at least eight Trustees until the end of the AGM in 2016, after which the minimum shall increase to ten. If the number falls below this minimum, the remaining Trustee or Trustees may act only to call a meeting of the Trustees, or to procure the appointment of a new Trustee.

13.3.2. The maximum number of Trustees is 15.

**13.4. First Trustees**

The first Trustees are as follows and their terms of office will expire in the year specified below:

<b>Name</b>	<b>Year Term of Office Ends</b>
Ms Suzanne Beech	2017
Professor Clair Chilvers	2016
Mr James Davidson	2017
Mr Jonathan Harvie	2018
Mr Andrew North	2016
Mrs Sally Pullen	2017
Mrs Annabella Scott	2016
Dr Jean Waters	2017

**14. Appointment of Trustees**

14.1. At each annual general meeting of the Council of Governors of the Trust all those Trustees whose terms of office end in that year shall retire from office.

14.2. Trustees must be appointed (or re-appointed) by the Governors from candidates recommended by a decision of the Nominations and Succession Committee made by consensus.

14.3. The Nominations and Succession Committee:

14.3.1. will normally seek candidates for Trusteeship from among the Council of Governors (and where it recommends the appointment as a Trustee of a person who is not a Governor, shall also recommend that person for appointment as a Governor in accordance with clause 9.2.2);

- 14.3.2. should use a wide range of recruitment methods including personal recommendation as well as open advertisement;
  - 14.3.3. may require applications for Trusteeship to be made in any reasonable way that it decides;
  - 14.3.4. shall, if it approves an application for Trusteeship, notify the applicant of that decision within 21 days;
  - 14.3.5. may refuse an application for Trusteeship if it believes that it is in the best interests of the Trust to do so;
  - 14.3.6. shall, if it decides to refuse an application for Trusteeship, give the applicant its feedback, within 21 days of the decision being taken;
  - 14.3.7. but any decision to confirm refusal of the application for Trusteeship shall be final.
- 14.4. Any recommendation must be made at a meeting held according to the Terms of Reference for the Nominations and Succession Committee.
  - 14.5. In selecting candidates for appointment as Trustees, the Nominations and Succession Committee must have regard to the skills, knowledge and experience needed for the effective administration of the Trust

## **15. Term of Office for Trustees**

- 15.1 Each appointment must be for a fixed term and will usually be for a term of three years. In order to ensure the orderly succession of Trustees the Nominations and Succession Committee may recommend a candidate for appointment as a Trustee for a shorter initial term of one or two years. In either case, the term of office shall end at the close of the AGM in the year during which the term of office is due to end.
- 15.2 Subject to clauses 15.2 and 20.3, any person retiring as a Trustee is eligible for reappointment, but the maximum continuous term of office is 9 years (and they may serve a shorter total term of office if initially appointed for a term of less than three years).
- 15.3 A Trustee retiring after serving the maximum continuous term of office may not be reappointed for a further term. However, such a Trustee may be reappointed after an interval of at least one year and, if so reappointed, the maximum further continuous term of office that he or she may serve is 3 years.
- 15.4 For the avoidance of doubt, a retiring Trustee may remain a Governor until he or she has served the maximum term of office for a Governor in accordance with clause 9.5.

## **16 Information for new Trustees**

The Trustees will make available to each new Trustee, on or before his or her first appointment:

- 16.1 a copy of this constitution and any amendments made to it; and
- 16.2 a copy of the Trust's latest Trustees' Annual Report and statement of accounts.

## **17 Retirement and removal of Trustees**

- 17.1 A Trustee ceases to hold office if he or she:
  - 17.1.1 retires;
  - 17.1.2 resigns by notifying the Trust in writing;
  - 17.1.3 dies;
  - 17.1.4 ceases to have capacity (assessed in accordance with section 2 of the Mental Capacity Act 2005) to (i) manage and administer his or her own affairs; or (ii) act as a Trustee;
  - 17.1.5 is disqualified from acting as a Trustee by virtue of section 178-180 of the Charities Act 2011;
  - 17.1.6 is absent without the permission of the Trustees from all their meetings held within a period of 6 months and the Trustees resolve that his or her office be vacated;
  - 17.1.7 if appointed as Chairman in accordance with clause 20.2, on retirement from that role; or
  - 17.1.8 does not comply with the Code of Conduct for Trustees and Governors and the Trustees decide that it is in the best interests of the Trust that he or she should be removed from Trusteeship and pass a resolution to that effect; or
  - 17.1.9 if he or she ceases to be a Governor.

## **18 Taking of decisions by Trustees**

- 18.1 Any decision may be taken either:
  - 18.1.1 at a meeting of the Trustees; or
  - 18.1.2 by resolution in writing or electronic form agreed by all of the 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 Trustees have signified their agreement.

## **19 Delegation by the Trustees**

- 19.1 The Trustees may delegate any of their powers or functions to a committee or committees and, if they do, they shall determine the terms and conditions on which the delegation is made. The Trustees may at any time alter those terms and conditions or revoke the delegation.
- 19.2 The power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the Trustees, but is subject to the following requirements:
- 19.2.1 a committee may consist of two or more persons, but at least two members of each committee must be Trustees;
  - 19.2.2 each committee shall be governed by Terms of Reference approved by the Trustees (and, in the case of the Nominations and Succession Committee, the Governors);
  - 19.2.3 the acts and proceedings of any committee must be brought to the attention of the Trustees as a whole as soon as is reasonably practicable; and
  - 19.2.4 the Trustees shall from time to time review the arrangements which they have made for the delegation of their powers.
- 19.3 The Trustees may appoint a Chief Executive to manage the affairs of the Trust.

## **20 Meetings of the Trustees**

### **20.1 Calling meetings**

- 20.1.1 The Trustees shall meet at least 4 times a year.
- 20.1.2 Any Trustee may call a meeting of the Trustees.
- 20.1.3 Subject to clause 20.1.2 the Trustees shall decide how their meetings are to be called and what notice is required.

### **20.2 Chairing of meetings**

The Trustees will appoint from amongst their number on the recommendation of the Nominations and Succession Committee for a fixed term in accordance with clause 20.3 a Chairman and Deputy Chairman of the Trust to chair their meetings and may at any time revoke such appointments. To provide for orderly succession the appointment may be for a shorter period than the usual period specified at clause 20.3.

The appointment of the Chairman and Deputy Chairman must be ratified by the Council of Governors. If no-one has been so appointed (and approved) or if the person appointed (and approved) is unwilling to preside or is not present within 10 minutes after the time of the meeting, the Trustees present may appoint one of their number to chair that meeting. The Trustees will also appoint from amongst their number the chairs of any committees that have been established in accordance with rule 19.

### **20.3 Term of Office of Chairman**

The Chairman shall be appointed for a fixed term of office of three years and may serve no more than two terms. So the maximum continuous term of office in that role is six years and the maximum continuous term of office for a Trustee in clause 15.3 shall be extended for the Chairman to the extent necessary to allow him or her to serve the maximum continuous term as Chairman. The retiring Chairman shall also retire as a Trustee and shall not be eligible for re-appointment as a Trustee, but may continue to serve as a Governor.

### **20.4 Procedure at meetings**

21.3.1 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 Trustees, or the number nearest to one third of the total number of Trustees, whichever is greater, or such larger number as the Trustees may decide from time to time. A 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.

20.4.1 Questions arising at a meeting shall be decided by a majority of those eligible to vote.

### **20.5 Participation in meetings by electronic means**

20.5.1 A meeting may be held by suitable electronic means agreed by the Trustees in which each participant may communicate with the other participants.

20.5.2 Any Trustee participating at a meeting by suitable electronic means agreed by the Trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.

20.5.3 Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

## **21 Saving provisions**

21.1 Subject to sub-clause 21.2, all decisions of the Trustees, or of a

committee of Trustees, shall be valid notwithstanding the participation in any vote of a Trustee:

- 21.1.1 who was disqualified from holding office;
- 21.1.2 who had previously retired or who had been obliged by the constitution to vacate office; or
- 21.1.3 who was not entitled to vote on the matter, whether by reason of a conflict or otherwise

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

- 21.2 Clause 21.1 does not permit a Trustee to keep any benefit that may be conferred upon him or her by a resolution of the Trustees or of a committee of Trustees if, but for sub-clause 21.1, the resolution would have been void, or if the Trustee has not complied with clause 8 (Conflicts of interest and loyalty).

## **22 Execution of documents**

- 22.1 The Trust shall execute documents by signature.
- 22.2 A document is validly executed by signature if it is signed by at least two of the Trustees.

## **23 Use of electronic communications**

### **General**

- 23.1 The Trust will comply with the requirements of the Communications Provisions in the General Regulations and in particular:
  - 23.1.1 the requirement to provide within 21 days to any Governor on request a hard copy of any document or information sent to the Governor otherwise than in hard copy form; and
  - 23.1.2 any requirements to provide information to the Charity Commission in a particular form or manner.
- 23.2 Any Governor 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.
- 23.3 The Trustees may, subject to compliance with any legal requirements, by means of publication on its website:

- 23.3.1 provide the Governors with the notice of their meeting in accordance with clause 12.10 (Notice of general meetings);
  - 23.3.2 give Trustees notice of their meetings in accordance with clause 20.1 (Calling meetings); and
  - 23.3.3 submit any proposal to the Governors or Trustees for decision by written resolution in accordance with the Trust's powers.
- 23.4 The Trustees must:-
- 23.4.1 take reasonable steps to ensure that Governors and Trustees are promptly notified of the publication of any such notice or proposal; and
  - 23.4.2 send any such notice or proposal in hard copy form to any Governor or Trustee who has not consented to receive communications in electronic form.

## **24 Keeping of Registers**

The Trust must comply with its obligations under the General Regulations in relation to the keeping of, and provisions of access to, registers of its Governors and Trustees.

## **25 Minutes**

The Trustees must keep minutes of all:

- 25.1 appointments of officers made by the Trustees;
- 25.2 proceedings at general meetings of the Trust;
- 25.3 meetings of the Trustees and committees of Trustees including:
  - 25.3.1 the names of all those present at the meeting;
  - 25.3.2 the decisions made at the meetings; and
  - 25.3.3 where appropriate the reasons for the decisions; and
- 25.4 decisions made by the Trustees otherwise than in meetings.

## **26 Accounting records, accounts, annual reports and returns, register maintenance**

- 26.1 The 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 account, and to the preparation of annual reports and returns. The statements of account, reports and returns must be sent to the Charity Commission, regardless of the income of the Trust,



within 10 months of the financial year end.

- 26.2 The Trustees must comply with their obligation to inform the Charity Commission within 28 days of any change in the particulars of the Trust entered on the Central Register of Charities.

## **27 Rules**

The Trustees may from time to time make such reasonable and proper rules or byelaws as they may deem necessary or expedient for the proper conduct and management of the Trust, 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 Trustee or Governor on request.

## **28 Disputes**

If a dispute arises between the Governors of the Trust about the validity or propriety of anything done by the Trustees 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.

## **29 Amendment of Constitution**

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

- 29.1 The constitution can only be amended:
- 29.1.1 by a resolution agreed in writing by all the Governors; or
  - 29.1.2 by a resolution passed by a 75% majority of those voting at general meeting of the Governors called in accordance with clause 12 (General meetings).
- 29.2 Any alteration of clause 4 (Objects), clause 30 (Voluntary winding up or dissolution), this clause or of any provision where the alteration would provide authorisation for any benefit to be obtained by Trustees, Governors or persons connected with them, requires the prior written consent of the Charity Commission.
- 29.3 No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- 29.4 A copy of any resolution altering the constitution, together with a copy of the Trust's constitution as amended must be sent to the Charity Commission by the end of the period of 15 days beginning with the date of passing of the resolution and the amendment does not take effect until it has been recorded in the Register of Charities.

## **30 Voluntary winding up or dissolution**

- 30.1 As provided by the Dissolution Regulations, the Trust may be dissolved

by resolution of the Governors. Any decision by the Governors to wind up or dissolve the Trust can only be made:

30.1.1 at a general meeting of the Governors called in accordance with clause 12 (General meetings of Governors), of which not less than 14 days' notice has been given to those eligible to attend and vote:

30.1.1.1 by a resolution passed by a 75% majority of those voting; or

30.1.1.2 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

30.1.2 by a resolution agreed in writing by all Governors.

30.2 Subject to the payment of all the Trust's debts

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

30.2.2 If the resolution does not contain such a provision, the Trustees must decide how any remaining assets of the Trust shall be applied.

30.2.3 In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the Trust.

30.3 The Trust must observe the requirements of the Dissolution Regulations in applying to the Charity Commission for the Trust to be removed from the Register of Charities, and in particular:

30.3.1 the Trustees must send with their application to the Charity Commission:

30.3.1.1 a copy of the resolution passed by the Governors;

30.3.1.2 a declaration by the Trustees that any debts and other liabilities of the Trust have been settled or otherwise provided for in full; and

30.3.1.3 a statement by the Trustees setting out the way in which any property of the Trust has been or is to be applied prior to its dissolution in accordance with this constitution; and

30.3.2 the Trustees must ensure that a copy of the application is sent

within seven days to every Governor and employee of the Trust and to any Trustee who was not privy to the application.

- 30.4 If the Trust is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.