

Update to signatories on corporate structure

1. Introduction

- 1.1. This paper follows on from discussion at the Working Group on 23 June 2020 and is intended to update signatories on progress and thinking. It is important that our work in this area has broad consensus so that any major issues or concerns are aired and addressed in good time. Please therefore let us know if you have any questions or concerns.
- 1.2. We have discussed previously the establishment of a corporate structure to ensure the sustainability of the MBC.
- 1.3. We have previously agreed, in principle, that the appropriate vehicle should be a Charitable Incorporated Organisation – a CIO.
- 1.4. We have been in discussion with Dan Bastide of Irwin Mitchell (to whom we are very grateful) who has contributed to this note.
- 1.5. Nothing has arisen from those discussions thus far that has led us to question the choice of CIO as the appropriate vehicle.
- 1.6. Much of the constitutional documentation is standard form. The purpose of this note is to raise some of the key issues which do require consideration and which will inform the bespokeing of those standard forms for our purposes.
- 1.7. The areas upon which we are seeking agreement at this stage are the broad approach to the constitution, the Objects and Activities of the CIO, membership, trustees and governance structure. We will address each of these in turn.

2. Broad Approach

As a broad approach we are erring towards simplicity as far as possible, and the adoption of standard form provisions where possible.

3. Objects and Activities

- 3.1. A CIO must have clearly stated Objects and Activities. There are recommended standard forms of wording for these – the closer we are able to fall within these standard forms the less likely it is that the provisions will be challenged by the Charities Commission whose approval we need to obtain charitable status which is necessary for the establishment of a CIO. The purpose must fall within a number of stated charitable purposes, of which health and education seem to be the appropriate categories in our case. There is a balance between wanting to be specific enough to be clear as to what we are for, while at the same time providing some degree of flexibility in the event that our activity expands beyond the current ambit. The objects must be exclusively charitable. Although the Charter does have an eye on increased effectiveness of working, and thereby increased productivity, this would have to be seen as incidental to the stated purposes. The Charity Commission will also expect a charity to convey genuinely public benefits, rather than benefits exclusively for a private cohort of members – 'For example, a professional body that provides training and improves the standards and status of their profession, will benefit its membership. If the organisation can demonstrate that the focus of its activities is towards the indirect benefit to the public through the maintenance of high professional standards and practice, then the private benefit to the members may be regarded as incidental.'

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3.2. We therefore propose the following:

Charitable objects

THE MINDFUL BUSINESS CHARTER IS AN INITIATIVE CREATED FOR THE PUBLIC BENEFIT, BOTH WITHIN THE UK AND INTERNATIONALLY, TO

(1) PROTECT AND PROMOTE GOOD MENTAL HEALTH BY REDUCING UNNECESSARY STRESS IN THE WORKPLACE

(2) ADVANCE THE UNDERSTANDING OF MENTAL HEALTH ISSUES AS THEY RELATE TO WORKPLACE PRACTICES AND THE INTER RELATIONSHIP BETWEEN WORKPLACE STRESS AND MENTAL HEALTH

Activities

TO PROTECT AND IMPROVE MENTAL HEALTH AND WELLBEING IN THE WORKPLACE IN PARTICULAR BUT NOT EXCLUSIVELY BY PRACTICAL ADVICE AND SUPPORT AND THE SHARING OF BEST PRACTICE. TO PROMOTE UNDERSTANDING OF WORKING PRACTICES THAT SUPPORT GOOD MENTAL HEALTH BY GATHERING AND DISSEMINATING INFORMATION AND WORKING TO RAISE AWARENESS. TO PROMOTE COLLABORATION BETWEEN BUSINESSES TO REDUCE UNNECESSARY STRESS IN THE WAYS IN WHICH THEY WORK WITH EACH OTHER AND WITHIN THEIR OWN ORGANISATIONS

4. Membership

There are two forms of CIO, a foundation where the only members are the trustees, and an association in which there are wider members beyond the trustees. We propose the latter. There is scope for different classes of member but for the moment we do not think there is any need – different classes can be created at a later date if so desired, for example if there were to be different levels of members receiving different levels of services.

5. Trustees and governance

- 5.1. A CIO requires trustees. There should be between 3 and 12 of them and a third of their number should stand for re-election each year. The default position is that all decision making power rests with the trustees.
- 5.2. It is possible for the constitution to establish other governance structures and committees. Equally it is possible for the trustees to create other committees or groups to assist and support them from time to time. Our suggestion is to keep things as straightforward and as flexible as possible and to leave power with the trustees but for them to have authority to create a consultation body to which they would co-opt members which would play a similar role to the Working Group and to whose meetings the trustees would all be invited. This would ensure that recommendations made by the Working Group would expect to have the support of the trustees. The trustees would also have the right, of course, to put decisions out to consultation (or approval) of the wider signatory group. We would suggest that the trustees be allowed to choose the most effective approach in any situation rather than prescribe anything at this stage. An element of custom and practice may develop over time.
- 5.3. The trustees must be individuals. They will have a degree of personal liability but there is insurance available and a CIO is a limited liability entity and so in the absence of misfeasance the sense is that this should not be an issue. It is possible to have founder trustees who would serve for a prescribed initial period. We are conscious that Barclays, Pinsent Masons and Addleshaw Goddard would like to retain some form of custodian role in this next phase of the MBC's development and so we propose inviting each of them to nominate a founder

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trustee who would remain in post for three years. In order to ensure a broad representation of other signatories we would suggest having a further 6 trustees initially – we do not have to prescribe the number in any event.

- 5.4. Trustees would hold office by virtue of their employment by (or being a partner in) a signatory organisation. We propose that trustees must hold such a position on appointment and resign their office on the termination of that role (regardless of whether they move to another signatory organisation).
- 5.5. We would suggest that as with the Working Group the consultative body be made up of member organisations who nominate one or more of their representatives to attend meetings.
- 5.6. Currently we envisage the work of the MBC would be conducted by a consultancy appointed by and answerable to the trustees. In due course we would suggest there be greater clarity over the priorities and accountability of the consultancy, perhaps with one or more of the trustees having responsibility for managing this relationship on behalf of the MBC.
- 5.7. We will need to formalise admission procedures for new signatories/members. We would suggest a process much like we have at the moment with formal approval being a matter for the trustees. We ought also to have provision for the removal of members as a last resort in case of persistent failure to aspire to the MBC's aims. We suggest this be subject to a 75% majority vote of trustees attending a duly convened trustee meeting.

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