

THE ASSOCIATION OF JERSEY CHARITIES

(a members' association incorporated on 16 June 1995 under the provisions of the Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations)
(the "**Association**")

NOTICE OF GENERAL MEETING OF THE ASSOCIATION

NOTICE IS HEREBY GIVEN that a general meeting (the "**General Meeting**") of the Association will be held in accordance with the constitution of the Association at Pomme d'Or Hotel, Liberation Square, St Helier, Jersey, JE1 3UF on 7 November 2018 at 6pm.

DOCUMENTS

Appended to this Notice are the following documents:

1. Members' explanatory note setting out the reasons for and proposed steps to effect the restructuring of the Association ("**Members' Explanatory Note**");
2. Note on the Association acting as enforcer of The AJC Trust ("**Note on the Role of Enforcer**"); and
3. Execution draft of the trust instrument (the "**Trust Instrument**") by which a trust to be known as "The AJC Trust" is to be established.

PROPOSALS

Members are asked to consider approving the restructuring of the functions and activities of the Association, the details of which are set out in the Members' Explanatory Note (the "**Restructuring**"). The Restructuring is to be done in two stages.

The first stage is for the Association to establish a new trust to be known as "The AJC Trust" and to appoint its initial trustees. As part of this first stage, it is proposed that the Association be appointed enforcer of The AJC Trust. Details of what is involved in this role and the protections it will afford to Members are contained in the Note on the Role of the Enforcer. It is also envisaged that the AJC Trust and any company established and wholly owned by the AJC Trust will apply to be registered as charities under the Charities (Jersey) Law 2014. The steps referred to in this paragraph are collectively referred to as the "**First Stage of the Restructuring**".

The second stage is to amend the constitution of the Association and to transfer all of the Association's assets to The AJC Trust. The intention behind and effect of the Restructuring is, amongst other things, for The AJC Trust to take over the majority of the functions of the Association and for the Association to operate principally as a membership body for local charities and other clubs, organisations or groups who operate in the voluntary sector in Jersey. The steps referred to in this paragraph are collectively referred to as the "**Second Stage of the Restructuring**".

RESOLUTIONS

Members are asked to consider and, if thought fit, pass the following resolutions as resolutions of the Association:

1. The Restructuring be approved in principle;
2. The Association shall establish a trust to be known as "The AJC Trust" and transfer to it initial funds of £100;
3. Liz Le Poidevin, Marie du Feu, Ivo Le Maistre-Smith and Simon Larbalestier, currently officers of the Committee of the Association, shall act as the first trustees of The AJC Trust and be authorised to enter into the Trust Instrument establishing The AJC Trust and execute the same;
4. The Association shall be appointed as the first enforcer of The AJC Trust and accordingly shall carry out the duties imposed on it under the Trust Instrument;
5. The Association's role as enforcer of the AJC Trust shall be conducted by a committee of members of the Association, such committee to be established following the amendment of the constitution of the Association pursuant to the Second Stage of the Restructuring;
6. Any two officers of the Committee of the Association (each an "**Officer**") shall be authorised acting jointly to execute and deliver on behalf of the Association any other documents or instruments ("**Ancillary Documents**") which he/she/they consider in his/her/their sole and absolute discretion to be necessary or desirable in connection with the First Stage of the Restructuring, and to take such actions and steps and give such notices or instructions on behalf of the Association which he/she/they consider in his/her/their sole and absolute discretion to be necessary or desirable in connection with the Ancillary Documents or the First Stage of the Restructuring (together the "**Actions**") the fact that such Officer considers the same to be so necessary or desirable in each case being conclusively evidenced by his/her as the case may be signing the relevant Ancillary Documents, or taking the relevant Actions.

FOR AND ON BEHALF OF THE ASSOCIATION

Liz Le Poidevin

Chairman

Dated: 9 October 2018

APPENDIX

1. Members' Explanatory Note;
2. Note on the Role of Enforcer; and
3. Trust Instrument.

ASSOCIATION OF JERSEY CHARITIES

EXPLANATORY NOTE TO MEMBERS IN ADVANCE OF THE GENERAL MEETING ON 7 NOVEMBER 2018

Introduction

1. As you are aware, the Committee of the Association of Jersey Charities (the **Association**) has been exploring ways in which the Association should be restructured and reorganised in order to continue in its role as distributor of the Jersey share of the Channel Islands lottery profits in light of the coming into force of the Charities (Jersey) Law 2014 (the **Charities Law**).
2. The purpose of this note is to give members an understanding of the proposed restructuring of the Association, the first stage of which they will be asked to approve at the General Meeting on 7 November 2018. It also outlines the next steps to be undertaken and the matters which will require approval at a second General Meeting to be held on a future date.
3. **Please read this note prior to the meeting** as it explains how the changes will affect current members and how the Association will operate going forward so that when members are asked to vote at the General Meetings, they will understand what it is they are being asked to approve and why.
4. The Committee has engaged the services of the law firm, Carey Olsen, to assist it with the proposed restructuring and one of the partners of Carey Olsen who has been involved in advising the Association will be available at the General Meeting to answer any questions members may have before the formal resolutions are voted on.

Why is the restructuring necessary?

5. The restructuring is necessary for a number of reasons. First, the Association currently distributes lottery profits to its members by way of grants and by funding educational and other support services. In future, the express wish of the States of Jersey is that lottery profits be distributed more widely within the charity sector so that eligibility to apply for a grant is not conditional upon membership of the Association. This is difficult to achieve within the existing Incorporated Association structure and not possible under the current constitution.
6. Secondly, the Association has net assets of over £4million and annual income of over £1million. The existing structure with a Committee of voluntary officers overseeing all aspects of the Association's activities is becoming unsustainable.
7. Thirdly, the Association has consulted with its members over the last twelve months in order to determine what services they want it to provide. It was made clear that members wished the Association to provide additional services to those currently provided. To deliver this wider remit, the Committee has concluded that the Association should segregate its grant making functions from its support services functions and professionalise its administration.

What is proposed?

8. A diagram showing the proposed new organisation structure is attached. In summary,
 - (i) a new trust will be established to be known as "The AJC Trust" (the "**Trust**") which will (in time) take over responsibility for the Association's primary function as distributor of grants;
 - (ii) all of the assets of the Association will be transferred to the Trust;

- (iii) the constitution of the Association will be amended so that its functions are the operation of a membership scheme and oversight of the proper application of funds by the Trust for charitable purposes; and
- (iv) the Trust will incorporate a wholly owned subsidiary and that company will develop and administer a programme of educational and other services to benefit entities operating, or intending to operate, in the charity sector.

Matters to be dealt with at the first General Meeting.

9. At the first General Meeting on 7 November, only the establishment of the Trust referred to at paragraph 8(i) will be dealt with, although members will be asked to pass a number of resolutions in this respect.
10. ***The first resolution approves in principle the restructuring of the Association as set out in this explanatory note.***
11. Both of the new entities (i.e. the Trust and the wholly owned subsidiary) will apply for registration as charities, as will the existing Association, but until such time as their registration is approved, the Trust will remain dormant and the Association will continue to operate under the terms of its current constitution.
12. The purposes of the Trust will be similar to the current aims and objectives of the Association, namely to promote and facilitate charitable and community work in Jersey by supporting, benefiting and generally furthering the interests of any person that is either a registered charity under the Charities Law, or, if not a registered charity, still meets the charity test under the Charities Law – these are defined as Unregistered Charities in the trust instrument, which has been provided to members with the formal notice of the General Meeting.
13. ***The second resolution authorises the Committee to establish the Trust with £100 in the form set out in the draft trust instrument.***
14. In order to establish the Trust and submit its application for registration as a charity, four of the existing officers of the Committee of the Association have been nominated by the Committee of the Association to act as its first trustees. Those four individuals are: Liz Le Poidevin (Chairman), Ivo Le Maistre Smith (Deputy Chairman), Marie du Feu (Treasurer) and Simon Larbalestier (Secretary).
15. ***The third resolution confirms the appointment of those four individuals as the first trustees.***
16. Under the terms of the current constitution of the Association, members have a number of powers including the right to appoint and remove the officers of the Committee of the Association and to approve (or not) an increase in the maximum grant available to applicants. Members' rights will be protected under the new structure by appointing the Association as the enforcer of the Trust.
17. A separate note is enclosed which explains the role of an enforcer in more detail and the options for members to consider with regard to the exercise of the enforcer's powers in the future, including the establishment of a committee to carry out on behalf of the Association its role as enforcer.
18. ***The fourth resolution is a confirmation that the Association be appointed as the enforcer of the Trust and the fifth resolution approves the carrying out of the Association's role as enforcer through a committee of members established for that purpose.***
19. If the above resolutions are approved, the Committee will proceed to establish the Trust, register it and its wholly owned company as a charity and undertake various administrative tasks including the opening of bank accounts.

20. *The sixth resolution authorises the Committee to take whatever steps it deems necessary to achieve the same.*

Matters to be dealt with at the second General Meeting

21. When the Committee deems that sufficient progress has been made with regard to the establishment and registration of the Trust, a second general meeting will be held to approve the transfer of all of the assets of the Association to the Trust to enable it to meet its stated objectives.
22. In respect of existing funds of the Association, as members are aware, a number of gifts have been made to the Association over the years with conditions attached. Those conditions will remain and the funds will be ring-fenced under the Trust so that they can only be used in accordance with the terms of the relevant gift. In particular, any undistributed lottery profits will be ring-fenced for the benefit of organisations which were members of the Association on the relevant transfer date.
23. In respect of future funds, members will be eligible to benefit under the Trust because they become registered charities or because they satisfy the charity test under the Charities Law.
24. In either case (i.e. in respect of existing and future funds), grant applicants will still have to meet the standards of governance which currently apply and are published on the Association's website.
25. The Association will then adopt a new constitution which significantly reduces the scope of its future activities to those specified in paragraph 8(iii) above. Copies of the draft new constitution will be available to those attending the General Meeting on 7 November.
26. A further explanatory note will be circulated with the papers for the second General Meeting to explain more fully the resolutions to be voted on at that time.

Who are the trustees of the Trust?

27. As noted in paragraph 14 above, in order to establish the Trust four individuals will be appointed as the first trustees. They are all serving officers of the Committee of the Association who intend to remain in post until at least the next annual general meeting of the Association when their term of office expires. However, before the Trust accepts any funds from the Association and commences activities, it is envisaged that the number of trustees will be increased to a maximum of nine.
28. The Association retains the power to appoint and remove the trustees under the trust instrument and it will exercise this power by appointing the officers of the Committee of the Association at a General Meeting of members and subsequently appointing those same individuals as trustees of the Trust. Only individuals who are officers of Committee of the Association may be appointed as trustees of the Trust.
29. Accordingly, before the Trust commences activities and prior to or simultaneously with the adoption of the new constitution by the Association, the current officers of Committee of the Association, other than the four named in paragraph 14 above will step down as officers and at the second General Meeting up to five further officers/trustees from a list of candidates submitted to the members for consideration will be elected. Not all of the existing officers are intending to put themselves forward as candidates for the trustee role as their preference is to serve on the board of the new company referred to at paragraph 8(iv) above. The Association has recently advertised for new trustees and it is from that pool of candidates that appointments will be made.

Which entity will I apply to for a grant in future?

30. Until all of the above steps are complete and the Association has transferred its assets to the Trust, grant applications will be handled by the Association.

31. Once the Trust is in receipt of funds from the Association, the trustees will administer the distribution of grants to those entities which are eligible. In practice, this function will be exercised by a Grants Sub-Committee composed of a majority of trustees and a number of co-opted panel members.
32. The application process and forms will be unchanged as a result of the restructuring, although there may be some enhancements to processes along the way. The Committee anticipates that the restructuring will be completed in time for the March 2019 applications to be dealt with by the Trust but given the number of actions required by third parties which are outside of its control, this is by no means certain. Members will not be disadvantaged by a delay although it is convenient for the process to be completed before the year end on 31 March 2019.

How will members' existing rights be protected?

33. With regard to grants, members' rights are protected by the ring-fencing of existing funds as set out in paragraph 22 and will be eligible to benefit in respect of future funds as set out in paragraph 23. Members will also be protected by making the Association the enforcer of the Trust. As mentioned at paragraph 17 above, the role of enforcer is explained more fully in a separate note enclosed with the notice of the General Meeting.

Future role of the Association

34. While membership will no longer be a pre-condition of eligibility to apply for a grant, the Association will have an important role to play in future as a conduit for consultation, representation and development of the sector. Its new constitution will allow the Committee to create different tiers and types of membership and to vary the level of subscriptions which apply to those tiers depending on the services required by the member.
35. The new structure will increase opportunities for members to engage with the Committee and therefore influence the direction and strategy of the Trust and in particular the wholly owned services company, through representation on sub-committees and panels.

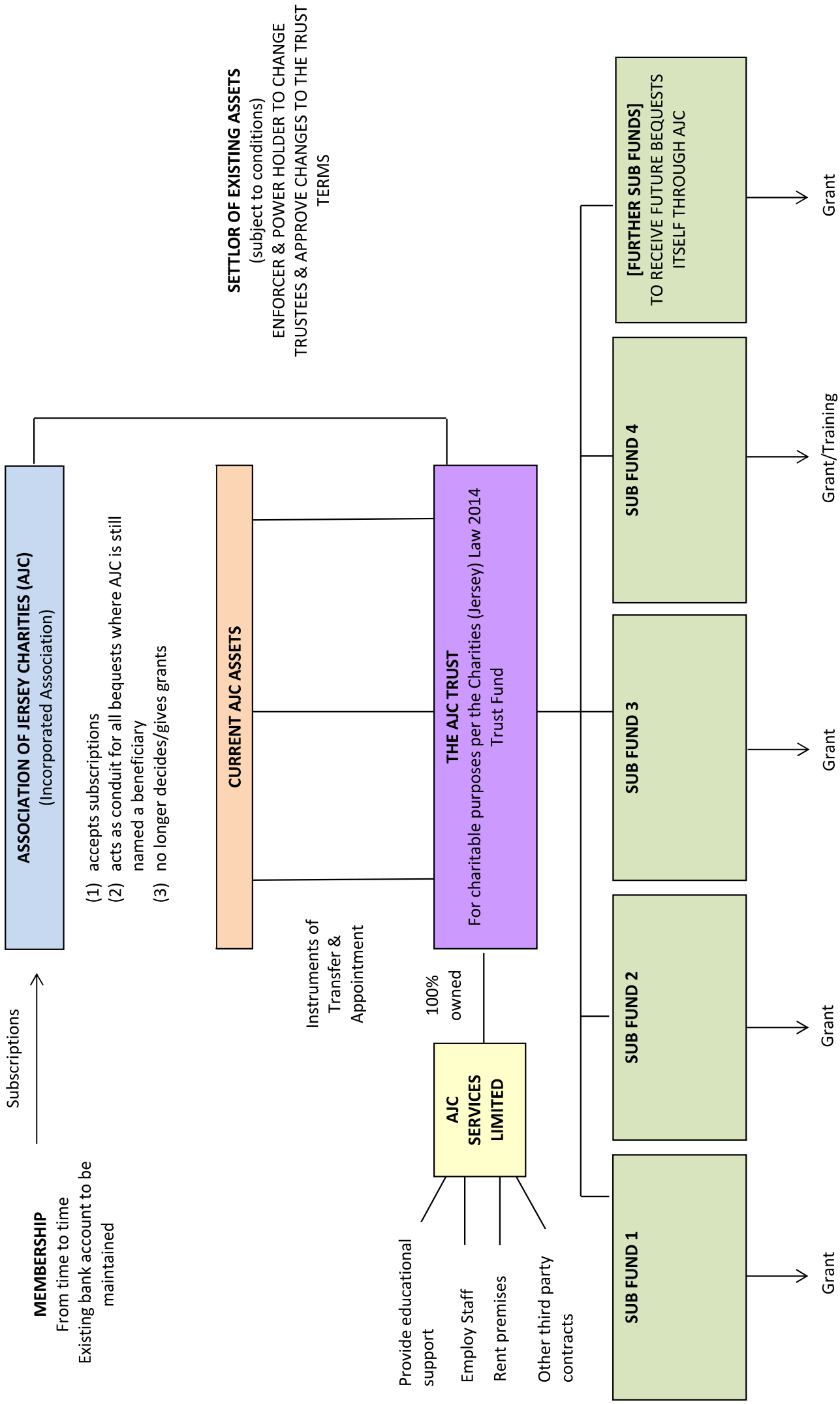
Conclusion

36. Having taken advice and considered all alternative options, the Committee is of the view that the proposed restructuring is the most appropriate course of action for the Association and that the rights and interests of the existing members of the Association will be protected in all material respects by implementing the proposals as explained in this note and set out more formally in the resolutions in the notice of General Meeting.
37. The Committee therefore recommends that members vote in favour of all of the resolutions.

9 October 2018

Appendix

Diagram showing the proposed new organisation structure



Note on the Association of Jersey Charities acting as Enforcer of The AJC Trust ("the Trust")

What is an Enforcer?

The role of the enforcer is to ensure the trustees utilise the trust funds for the specified purposes. This involves monitoring the activities of the trustees and being prepared to bring the trustees before the Royal Court of Jersey if necessary, where there is concern that trust funds are not being used properly. The enforcer is a fiduciary and therefore must exercise its powers properly and in good faith. It is not allowed to profit directly or indirectly from its office save where the terms of the trust allow.

Duties of the Enforcer

The duties of the enforcer are set out in the trust instrument of the Trust.

The Association as Enforcer has certain duties only it can exercise under the Trust. These are:

- (i) to appoint individuals to be trustees of the Trust;
- (ii) to remove any trustee from office (and thereby determine the length of the term of office of a trustee); and
- (iii) to appoint a new Enforcer to replace the Association.

In addition the trustees require the written consent of the Association as Enforcer before they can do certain things. These are:

- (i) to increase the maximum grant available in a single financial year;
- (ii) to make any amendment or change to the terms of the Trust (which would include any changes to the charitable purposes of the Trust);
- (iii) to release or restrict any of the trustees' powers or duties; and
- (iv) to terminate the Trust.

The Association is given 31 days in which to give its written consent to any of the above proposed actions of the trustees. If no response is given in that time, the trustees are entitled to proceed without the Association's written consent. The Association as Enforcer cannot unreasonably withhold its written consent, in doing so it risks the trustees taking the matter to the Royal Court of Jersey and applying for its removal and replacement.

What information can the Enforcer access?

The Trust permits the Association as Enforcer to access such documentation and information as it reasonably requires to carry out its duties and to exercise its powers under the Trust. It is also entitled to see the audited financial statements of the Trust. While information is available to the Association as Enforcer, it does not follow that this same documentation and information will be made available to all Members. This will depend on the basis on which the trustees give this information to the Association. Members only have a direct entitlement to see the audited financial statements of the Trust.

Steps necessary to enable the Association to act as Enforcer

Presently, the Association does not have a specific power under its constitution authorising it to act in such a capacity. However, the Association does have a general power to do anything which may be necessary to the attainment of the objects of the Association. This power would allow the Association to act as Enforcer. However, it is proposed that a new power specifically enabling it to act as an enforcer be added to its constitution. Members will need to approve this change together with the other changes necessary for the restructuring of the Association that

has been proposed. Members can therefore determine the manner in which the Association operates this role and how it should work in practice.

Options as to manner in which Association can exercise its powers and duties as Enforcer

There are two main ways in which the Association can choose to act as Enforcer when revising its constitution:

- (i) Member approval is required for all actions undertaken by the Association as Enforcer by way of calling of General Meetings ("EGMs"); or
- (ii) an Enforcer Committee is appointed which carries out all or some of the functions of the Enforcer.

In respect of the first option, the advantage is that Members are fully engaged with how the new trust operates and can be confident their individual interests are protected. The disadvantage is that it could become very unwieldy with in the future potentially many more registered charities becoming members and any Member vote having unexpected results. There are cost implications too with this option, as it is both costly and time consuming to convene General Meetings of the Members. It also would be difficult for the Association to carry out its role of policing the Trust if all Members had to be involved and there would be significant difficulties in maintaining confidentiality over sensitive information disclosed by the trustees to the Association as Enforcer.

In respect of the second option, the advantages are that the Enforcer Committee can act more quickly and with greater discretion, where required. Members' interests can also be protected, albeit not so directly, by Members approving the terms of reference of the Enforcer Committee and those persons appointed onto it. The disadvantage may be that some Members feel less engaged with the Trust and its activities, and feel that control lies in the hands of a select few. Hopefully, this will not be the case. There is some comfort in the fact that the trustees, who are both trustees of the Trust and Officers of the Association, are required under their charitable purposes to represent the interests of all registered charities, and unregistered bodies who operate in the voluntary sector. As such, all Members should feel a vital part of the Trust's activities, just as they have previously felt a vital part of the Association's activities.

Committee's recommended option

The Officers of the Committee have considered both options and consider the preferred option is the second option, namely the appointment of an Enforcer Committee to conduct on behalf of the Association its role as Enforcer of the Trust. The caveat to this is that they recommend that certain functions of the Enforcer should be decided by Members at an EGM or AGM. The functions the Committee believes should require Member consent are:

- (i) the appointment or removal of trustees;
- (ii) the resignation or replacement of the Association as Enforcer;
- (iii) the termination of the Trust; and
- (iv) any change to the charitable purposes of the Trust.

These powers are fundamental, in the Committee's view, to protecting Members' interests. However, the supervision of the trustees in managing the Trust, and changes to the terms of the Trust or the trustee's duties and powers are matters upon which an Enforcer Committee, appointed by Members, could decide and, if considered necessary, seek Members' approval at an EGM. To restrict the Enforcer Committee further may undermine the administrative advantages it offers. It should be noted that changes to the constitution of the Association require Member approval and Royal Court consent. A flexible approach is therefore beneficial to all parties.

The only other consideration is how the Enforcer Committee should be constituted. Should it be constituted from Members only or open to suitable third parties? Should it exclude persons who are Trustees and Officers or even directors or members of any Sub Committee or panel of the Trust?

The Committee believes a member nominated committee is best and that Members only should constitute it, as it is Members' interests which are primarily being protected by the Association as Enforcer. The Committee recommends that no Officer or trustee of the Trust or person involved in the decision-making process of the Trust be a member of the Enforcer Committee. This is to avoid the unnecessary complications of managing potential or real conflicts of interest. The Committee also recommends that the Enforcer Committee has a minimum of 3 Members who operate as a quorum and a maximum of nine Members. Whether these Members should be drawn from different size and different sector charities is a matter Members can determine when they exercise their appointment powers. The term of office is another matter, which the Committee feel it would be best for Members to determine. The revised constitution can be drafted with sufficient flexibility to allow for this.