

**Memorandum and articles of association**

**of**

**Waverley Initiatives Limited**

**Date of incorporation:**

**Registration number:**



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**Registered number:**

**The Companies Act 1985**

**Company limited by guarantee and not having a share capital**

**Memorandum of association**

**of**

**Waverley Initiatives Limited**

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**1. Name**

The name of the company (the **Company**) is Waverley Initiatives Limited.

**2. Registered offices**

The registered office of the Company will be situated in England and Wales.

**3. Objects**

3.1 The objects for which the Company is established are to carry on business as a general commercial company, and the Company shall have the power to do anything that a natural or corporate person can lawfully do which is necessary or expedient to achieve its objects except as expressly prohibited in the memorandum, and without limiting its general powers the Company shall have the following powers:

3.1.1 to purchase, take on lease, or in exchange, hire or otherwise acquire real or personal property and rights or privileges, and to construct, maintain and alter buildings or erections;

3.1.2 to sell, let or mortgage, dispose of or turn to account all or any of the property or assets of the Company;

3.1.3 to purchase or otherwise acquire plant and machinery including, without limitation, computer hardware and software, furniture, fixtures, fittings and all other effects of every description and to apply for registration of any patents, rights, copyrights, licences and the like;

3.1.4 to borrow or raise money on such terms and on such security as may be thought fit with such consents as are required by law;

3.1.5 to take and accept any gift of money, property or other assets whether subject to any special trust or not;

3.1.6 to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments and to operate bank accounts;

3.1.7 to invest moneys of the Company not immediately required for its purposes in or upon such investments, securities or property as may be thought fit subject nevertheless to

such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law;

- 3.1.8 to make any donations in cash or assets or establish or support or aid in the establishment or support of and to lend money (with or without security) to or for any charitable associations or institutions;
- 3.1.9 to undertake and execute charitable trusts;
- 3.1.10 to engage and pay any person or persons whether on a full-time or part-time basis or whether as consultant or employee to supervise, organise, carry on the work of and advise the Company and, subject to the provisions of clause 4 hereof, to make any reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees or former employees and their wives, husbands and other dependants;
- 3.1.11 to amalgamate with any companies, institutions, societies or associations;
- 3.1.12 to pay out of funds of the Company the costs, charges and expenses of and incidental to the formation and registration of the Company;
- 3.1.13 to insure and arrange insurance cover for and to indemnify members of the Company, board members, officers, servants and voluntary workers and those of its members from and against all such risks incurred in the performance of their duties as may be thought fit.

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

- 4.1 The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit, to members of the Company and no director of the Company shall be appointed to any office of the Company paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the Company.
- 4.2 Provided that nothing herein shall prevent any payment in good faith by the Company:
  - 4.2.1 of reasonable and proper remuneration to any member, officer or servant of the Company (not being a director) for any services rendered to the Company and of travelling expenses necessarily incurred in carrying out the duties of any member, officer or servant of the Company;
  - 4.2.2 of interest on money lent by a member or director of the Company at a rate per annum not exceeding two percentage points less than the base lending rate for the time being of the Company's clearing bankers or 3% whichever is the greater;
  - 4.2.3 to any director of reasonable out-of-pocket expenses;
  - 4.2.4 of fees, remuneration or other benefit in money or money's worth to a Company of which a member of the Company or a director may be a member holding not more than one hundredth part of the capital of such Company;

4.2.5 of reasonable and proper rent for premises demised or let by any member of the Company or any director.

5. **Limited liability**

The liability of the members is limited.

6. **Members guarantee**

Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the Company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding £1.

7. **Winding up**

If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other charitable body or bodies having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 4 hereof, such body or bodies to be determined by the members of the Company at or before the time of dissolution, and if so far as effect cannot be given to such provision, then to some other charitable body.

We, the subscribers to this memorandum of association, wish to be formed into a company pursuant to this memorandum.

**Name and address of subscribers**

**Signed**

[

]

[ ]

dated

2009

witness signature:

name:

address:

occupation:

**Registered number.**

**The Companies Act 1985**

**Company limited by guarantee and not having a share capital**

**Articles of association**

**of**

**Waverley Initiatives Limited**

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**1. Interpretation**

In these Articles:

- 1.1 **Act** means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force and any provisions of the Companies Act 2006 for the time being in force
- 1.2 **Articles** means the articles of association of the Company
- 1.3 **Council** means Waverley Borough Council and any successor body
- 1.4 **clear days** in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect
- 1.5 **electronic communication** and **communication** have the meaning given by the Electronic Communications Act 2000
- 1.6 **executed** includes any mode of execution
- 1.7 **in writing** includes, without limitation, electronic communications
- 1.8 **Office** means the registered office of the Company
- 1.9 **Seal** means the common seal of the Company
- 1.10 **Secretary** means the Secretary of the Company or any other person appointed to perform the duties of the Secretary of the Company, including a joint, assistant or deputy secretary
- 1.11 **the United Kingdom** means Great Britain and Northern Ireland.

Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these Articles become binding on the Company.

## 2. **Members**

- 2.1 The subscribers to the Memorandum of Association of the Company and such other persons as are admitted to membership in accordance with the Articles shall be members of the Company. No person shall be admitted as a member of the Company unless he is approved by the directors. Every person who wishes to become a member shall deliver to the Company an application for membership in such form as the directors require executed by him.
- 2.2 A member may at any time withdraw from the Company by giving at least seven clear days' notice to the Company. Membership shall not be transferable and shall cease on death.
- 2.3 The directors may also at their discretion terminate the membership of any member but the requirements of natural justice shall be respected and a member shall be entitled to be heard in his own defence by the directors or a committee of the directors.

## 3. **General meetings**

The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to convene a general meeting in accordance with the provisions of the Act. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the company may call a general meeting.

## 4. **Notice of general meetings**

- 4.1 General meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety per cent of the total voting rights at the meeting of all the members.
- 4.2 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted.
- 4.3 The notice shall be given to all the members and to the directors and auditors.
- 4.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## 5. **Proceedings at general meetings**

- 5.1 No business shall be transacted at any meeting unless a quorum is present. One person entitled to vote upon the business to be transacted, being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.
- 5.2 If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other time as the directors may determine.

- 5.3 The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within 15 minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chairman and, if there is only one director present and willing to act, he shall be chairman.
- 5.4 If no director is willing to act as chairman, or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.
- 5.5 A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.
- 5.6 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 from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for 14 days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
- 5.7 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:
- 5.7.1 by the chairman; or
- 5.7.2 by at least two members having the right to vote at the meeting; or
- 5.7.3 by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting;
- and a demand by a person as proxy for a member shall be the same as a demand by the member.
- 5.8 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 5.9 The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 5.10 A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.



- 5.11 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such other time and place as the chairman directs not being more than 30 days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 5.12 No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
- 5.13 The members of the Company may pass a resolution in writing in accordance with the terms of the Act. A proposed written resolution of the members of the Company shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the Companies Act 2006).

## 6. **Votes of members**

- 6.1 On a show of hands every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy, unless the proxy (in either case) or the representative is himself a member entitled to vote, shall have one vote and on a poll every member present in person or by proxy shall have one vote.
- 6.2 A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place as is specified in accordance with the Articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
- 6.3 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
- 6.4 The appointment of a proxy shall be in writing, executed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve):

I/We \_\_\_\_\_ of \_\_\_\_\_

being a member/members of the above-named Company, hereby appoint

of \_\_\_\_\_ or failing him

of \_\_\_\_\_

as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Company to be held on \_\_\_\_\_ and at any adjournment thereof.

Signed on \_\_\_\_\_

- 6.5 Where it is desired to afford members an opportunity of instructing the proxy how he shall act the appointment of a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve):

I/We \_\_\_\_\_ of \_\_\_\_\_

being a member/members of the above-named Company, hereby appoint

of \_\_\_\_\_ or failing him

of \_\_\_\_\_

as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Company, to be held on \_\_\_\_\_, and at an adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No 1 †for †against

Resolution No 2 †for †against

† strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed this \_\_\_\_\_ day of \_\_\_\_\_

- 6.6 The appointment of a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may:
- 6.6.1 in the case of an instrument in writing be deposited at the office or such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

- 6.6.2 in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications:
- a in the notice convening the meeting, or
  - b in any instrument of proxy sent out by the company in relation to the meeting, or
  - c in any invitation contained in an electronic communication to appoint a proxy issued by the company in relation to the meeting,

be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;

- 6.6.3 in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or

- 6.6.4 where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the Secretary or to any director;

and an appointment of proxy which is not deposited, delivered or received in a manner so permitted shall be invalid.

In this Article and in the next, "address" in relation to electronic communications includes any number or address used for the purpose of such communications.

- 6.7 A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the Office or at such other place at which the instrument of proxy was duly deposited or where the appointment of the proxy was contained in an electronic communication at the address at which such appointment was duly received before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

## 7. Number of directors

Unless otherwise determined by ordinary resolution, the number of directors shall not be subject to any maximum and the minimum number is one.

## 8. Powers of directors

- 8.1 Subject to the provisions of the Act, the Memorandum and the Articles and to any directions given by special resolution, the business of the Company shall be managed by the directors who may exercise all the powers of the Company. No alteration of the Memorandum or Articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by

any special power given to the directors by the Articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

- 8.2 The directors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

9. **Delegation of directors' powers**

The directors may delegate any of their powers to any committee consisting of one or more directors or other persons. They may also delegate to any employee or officer of the Company such of their powers as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the Articles regulating the proceedings of directors so far as they are capable of applying.

10. **Appointment and retirement of directors**

Notwithstanding any other provision of these Articles, the members of the Company may at any time and from time to time appoint any person to be a director or remove any director from office. Every such appointment or removal shall be effected by notice in writing and signed by or on behalf of the relevant members. Such notice may be in the form of a facsimile or other machine-made copy and shall take effect immediately (or on such later date, if any, specified in the notice) upon deposit of the notice at the registered office of the Company marked for the attention of the directors. Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more members.

11. **Disqualification and removal of directors**

The office of a director shall be vacated if:

- 11.1 he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director; or
- 11.2 he is removed from office under Article 10; or
- 11.3 he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- 11.4 he is, or may be, suffering from mental disorder and either:
- 11.4.1 he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1984; or
- 11.4.2 an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or

11.5 he resigns his office by notice to the Company; or

11.6 he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated.

**12. Directors' expenses**

The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committee of directors or general meetings or separate meetings of the holders of debentures of the Company or otherwise in connection with the discharge of their duties.

**13. Directors' appointments and interests**

13.1 Subject to the provisions of the Act and of the Memorandum of Association, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the Company and may enter into an agreement or arrangement with any director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his services as they think fit. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the Company.

13.2 Subject to the provisions of the Act and the Memorandum of Association and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:

13.2.1 may be a party to, or otherwise be interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;

13.2.2 may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested; and

13.2.3 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

13.3 For the purposes of Article 13.2:

13.3.1 a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and

- 13.3.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.
- 13.3.3 A director shall not have an interest in any arrangement between the Council and the Company because the director is an employee or an elected member of the Council.
14. **Authorisation of directors' interests**
- 14.1 For the purposes of section 175 of the 2006 Act, the board of directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act.
- 14.2 Authorisation of a matter under Article 14.1 shall be effective only if:
- 14.2.1 the matter in question shall have been proposed in writing for consideration by the board of directors, or in such other manner as the board of directors may determine;
  - 14.2.2 any requirement as to the quorum at the meeting of the board of directors at which the matter is considered is met without counting the director in question and any other interested director (together the Interested Directors); and
  - 14.2.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.
- 14.3 Unless otherwise determined by the board of directors (excluding the Interested Directors), any authorisation of a matter under Article 14.1 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 14.4 Any authorisation of a matter under Article 14.1 shall be on such terms and/or conditions as the board of directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the board of directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the board of directors (excluding the Interested Directors) pursuant to any such authorisation.
- 14.5 If a director receives or has received any information otherwise than by virtue of his position as a director of the Company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- 14.5.1 disclose any such information to the Company, the board of directors or any other director or employee of the Company; or

14.5.2 use or apply any such information in connection with the performance of his duties as a director;

provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this Article shall apply only if such situation or relationship has been authorised by the Board under Article 14.1.

14.6 A director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the board of directors under Article 14.1 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

15. **Proceedings of directors**

15.1 Subject to the provisions of the Articles, the directors may regulate their proceedings as they think fit. A director may, and the Secretary at the request of a director shall, call a meeting of the directors. It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote.

15.2 The quorum for the transaction of business of the directors shall be two unless there is a sole director, in which event, the sole director shall constitute a quorum.

15.3 The directors may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within 5 minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.

15.4 All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.

15.5 A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors as (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors.

15.6 If and so long as there is a sole director, he shall be entitled to exercise all the powers and authorities vested in the directors by these Articles, in which event, the provisions

of these Articles shall be construed accordingly. A sole director may exercise any such powers and authorities by resolution in writing signed by him.

- 15.7 If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.

16. **Secretary**

The Company may have a Secretary who shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.

17. **Minutes**

The directors shall cause minutes to be made in books kept for the purpose:

- 17.1 of all appointments of officers made by the directors; and
- 17.2 of all proceedings at meetings of the Company, and of the directors, and of committees of directors, including the names of the directors present at each such meeting.

18. **The Seal**

The Seal shall only be used by the authority of the directors or of a committee of directors authorised by the directors. The directors may determine who shall sign any instrument to which the Seal is affixed and unless otherwise so determined it shall be signed by a director and by the Secretary or by two directors.

19. **President, vice-presidents and patrons**

The directors may appoint any person to be the president and any person or persons to be vice-presidents or patrons of the Company for such term or terms specified at the time of appointment as they shall think fit. Such persons shall not by virtue only of such appointments be directors or members of the Company.

20. **Accounts**

No member shall (as such) have any right of inspecting any accounting records or other book or document of the Company except as conferred by statute or authorised by the directors or by ordinary resolution of the Company.

21. **Notices**

- 21.1 Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the directors need not be in writing.
- 21.2 The Company may give any notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his registered address or by leaving it at that address or by giving it using electronic communications to an address



for the time being notified to the company by the member. In this Article "address" in relation to electronic communications includes any number or address used for the purpose of such communications. A member whose registered address is not within the United Kingdom and who gives to the Company an address within the United Kingdom at which notices may be given to him shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the Company.

21.3 A member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

21.4 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

## 22. Indemnity

The Company may indemnify any director against every liability incurred by him or her in that capacity to the extent permitted by the Act.

Name and address of subscribers

Signed

[

]

[ ]

dated

2009

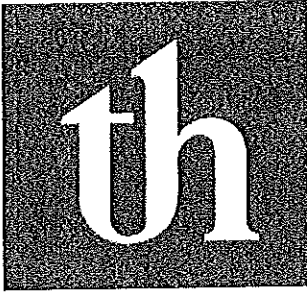
witness signature:

name:

address:

occupation:





**dated 28 April 2009**

**Waverley Borough Council**

**Briefing note on the role and responsibilities of board members**

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## Waverley – Local delivery vehicle

### Briefing note on the role and responsibilities of board members

#### 1 The local delivery vehicle

- 1.1 The local delivery vehicle, Waverley Initiatives Limited (the **Company**), will be set up as a company limited by guarantee with limited liability. Its activities will be governed by its memorandum and articles of association (its written constitution) which state that it is managed by a board of management. The board will be responsible for the affairs of the Company and will owe a number of duties to it.
- 1.2 The primary duties owed by board members are the general fiduciary duties (duties of good faith) which lie at the heart of their relationship with the Company. These duties have now been codified under the Companies Act 2006 which sets out statement of 'general duties' about how directors (i.e. board members) are expected to behave. In addition, there are further requirements relating to board members' duties under general company law and insolvency law.
- 1.3 This note summarises the key role and responsibilities of board members mentioned above.

#### 2 Statutory statement of directors' duties under the Companies Act 2006

##### 2.1 The statutory duties of directors set out in the Companies Act 2006 are:

##### 2.1.1 The duty to exercise reasonable care, skill and diligence (section 174)

For the board member of a non-charitable organisation, the test is such skill as can 'reasonably be expected of a person with his or her knowledge and experience.' This is a subjective level of skill and care and can produce a low threshold: a person with no particular housing, business or financial skills is not expected to show any of these attributes in carrying out their duties. In contrast, a leading banker or accountant would be expected to show considerable financial skill or care.

If on the other hand charitable status is adopted, board members are subject to a higher minimum standard, being the skill and care which can be expected of a 'prudent man or woman of business' in the exercise of their personal business affairs. This is not a subjective standard based upon the actual skill of the board member, but the objective standard of the reasonable businessman or businesswoman. Given this, board members of a charitable organisation should ensure that they either have the necessary skills or receive adequate training so as to acquire them.

##### 2.1.2 The duty to act within powers (section 171)

Board members must take particular care to ensure that every proposed activity falls within the permitted objects of the Company as set out in the memorandum of association as well as any other documents affecting the constitution and use his or her powers solely for the purposes for which they are conferred. If in doubt, independent advice should be obtained.

**2.1.3 The duty to promote the success of the Company (section 172)**

A director of a company must act in the way he/she considers, in good faith, would be most likely to promote the success of the company for the benefit of the company as a whole and in doing so must have regard to a number of factors set out in section 172 of the Companies Act 2006. For a not-for-profit company, whose purpose is not to benefit members, the board members of the company must act in a way which achieves the objects of the company rather than in a way which benefits the company member(s).

**2.1.4 The duty to exercise independent judgment (section 173)**

Board members must use their own judgment when making decisions. This does not mean that external advice cannot be obtained, but board members must not unreasonably follow external advice.

**2.1.5 The duty to avoid conflicts of interest (section 175)**

A board member must not put himself or herself in a position where his or her own interests conflict directly or indirectly with those of the company. This is discussed in more detail in paragraph 3 below.

**2.1.6 The duty not to accept benefits from third parties (section 176)**

A board member must not accept a benefit from a third party conferred by reason of his/her being a board member or his/her doing (or not doing) anything as a board member. This duty will not be breached where the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict. This may, for example, permit board members to accept nominal gifts such as pens and pencils.

**2.1.7 The duty to declare an interest in a proposed transaction or arrangement (section 177)**

If a board member is in anyway directly or indirectly interested in a proposed transaction or arrangement with the company itself, he/she must declare the nature and extent of that interest to the other board members.

**3 Duty to avoid conflicts of interest**

**3.1 The duty (section 175 of the Companies Act 2006)**

The Companies Act 2006 provides that 'a director of the company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.'

The Act then effectively divides conflicts into two types, transactional and situational. Different provisions apply to both and the duty will also depend upon whether the company is to be charitable or non charitable.

**3.2 A non charitable company**

**3.2.1 Transactional conflicts**

The duty to avoid conflicts does not apply to transactions or arrangements with the company itself. Transactional conflicts do not need authorisation as is the case with situational conflicts (see below). Instead, board members must **declare the nature and extent** of any such interests either before the company enters into the transaction (section 177), or where the transaction has already been entered into and section 177 has not been complied with (section 182).

### 3.2.2 Situational conflicts

These conflicts (for example a conflict a board member has because he owes a duty of loyalty to one company that conflicts with his duty of loyalty to another) must be avoided unless **authorised**. No conflict will be deemed to have arisen where the situation cannot reasonably be regarded as likely to give rise to a conflict of interest (section 175(4)(a)).

Authorisation requires the non-conflicted board members to pass a resolution authorising the conflict. The conflicted board member(s) cannot count towards the quorum and should not vote on this resolution (section 175(6)). This kind of authorisation is only permitted where a company's articles do not prohibit it.

## 3.3 A charitable company

Slightly different provisions apply for charitable companies.

### 3.3.1 Transactional conflicts

The duty to avoid conflicts does not apply to transactions or arrangements with the company that are **specifically allowed in the company's articles**. This means that specific transactions or arrangements that are to be permitted should be listed in the articles (section 181(2)). However, transactions where a conflict may arise often require Charity Commission consent and therefore the articles should not allow these without referring to the requirement for consent.

Charity Commission consent is required for benefits to board members of charities, however, where the memorandum of association already permits certain payments to board members, these should be listed in the articles as permitted arrangements with the company.

### 3.3.2 Situational conflicts

Conflicts may only be authorised by board members where the constitution **includes a provision** enabling them to authorise that kind of conflict. Where the constitution does permit authorisation the board members must authorise in accordance with those provisions. Requirements as to the interested board member(s) not being counted in a quorum and that they should not vote still apply.

The Charity Commission has indicated they are unlikely to accept a general power in the articles of association allowing board members to authorise any conflict of interest, as many conflicts require Charity Commission consent. They are happier with specific provisions in the articles allowing specific types of conflict (much as with transactional conflicts).

## 4 Company law

4.1 The Companies Act 1985 (where still in force) and the Companies Act 2006 impose a number of statutory duties, prohibitions and restrictions on board members. Provisions include an obligation to prepare and file company accounts, the maintenance of registers, the submission of annual returns and the appointment of auditors.

4.2 Under section 415 of the Companies Act 2006 board members must prepare a director's report for each of the Company's financial years. Under section 417 for companies other than small companies the directors' report must also contain a 'business review'. The purpose of the business review is to inform members of the Company and help it to assess how the board members have performed their duty under section 172 of the 2006 Act to promote the success of the Company.

## 5 Insolvency law and other duties

5.1 A board member of a company which is facing financial difficulties should be aware of the scope of potential personal liability if he or she is found guilty of wrongful or fraudulent trading. Fraudulent trading requires an action to defraud creditors of the company or creditors of any other person or a similar fraudulent purpose. Wrongful trading can arise where a company has gone into insolvent liquidation and the board member knew or ought to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation and that once the board member knew or ought to have known this, he or she fails to take every step possible to minimise the potential loss to the company's creditors. This may include a situation where a company is unable to pay its debts as they become due, but still continues to trade.

5.2 A board member cannot escape liability by arguing that he or she did not take an active role in the affairs of the company or that he or she did not have access to adequate information concerning the company's trading position. It is one of the requirements of the fiduciary duties of directors that they should ensure that they take an active role and that they obtain adequate information from the company's officers and advisors.

5.3 Board members may also have statutory responsibilities (and also face potential personal liability) under other statutes such as Health and Safety legislation.

## 6 Consequences of breach of the duties – civil and criminal liability

6.1 Board members can be both civilly and criminally liable for breaching the various duties under the 2006 Act.

6.2 However, the actions of board members can in many instances be ratified by the company's members (subject to certain limitations) and board members may also be provided with indemnity for their actions by either the company or through indemnity insurance that the company may have in place.

6.3 In the case of those duties which are considered fiduciary duties, the consequences of breach may include:

- (a) Damages or compensation where the company has suffered loss;
- (b) Restoration of the company's property;

- (c) An account of profits made by the board member;
- (d) Recession of a contract where the board member failed to disclose an interest.

6.4 For these purposes, the duty to exercise reasonable care, skill and diligence under Section 174 is not considered to be a fiduciary duty.

6.5 There is a criminal offence under section 418 of the 2006 Act in relation to a company's directors' report. This must contain a statement to the effect that, in the case of each of the persons who are board members at the time the report is approved, so far as the board member is aware there is no relevant audit information of which the company's auditor is unaware and the board member has taken all the steps that he/she ought to have taken as a board member in order to make himself/herself aware of any relevant audit information and to establish that the company's auditor is aware of that information. Where a board member's report containing such a statement is approved but the statement is false, every board member who knew that the statement is false, or is reckless as to whether it was false, and fails to take reasonable steps to prevent the report from being approved, commits a criminal offence.

6.6 Section 463 of the 2006 Act also makes board members liable to compensate the company for any loss arising from a false or misleading statement in a board member's report, remuneration report or any omission from such a report of information required to be included in it.

6.7 A number of other provisions of the 2006 Act also provide for criminal liability for board members. In particular, failure to declare an interest in a proposed transaction or arrangement under section 182 is a criminal offence, as are failures to comply with filing and record keeping obligations.

## 7 Claims against board members

Where a board member has breached his duty to the company, any cause of action in respect of that breach vests in the company and it is the company that should make any claim in respect of that breach. In the case of the Company, such an action would be driven by the board or the Council as sole member.

## 8 Practical decisions

8.1 In practical terms, the duties of boards members require them to attend meetings and to become actively involved in the management of the company and its decision-making processes.

8.2 Board members may delegate the administrative duties of running the company to their staff and agents. However, board members cannot delegate their ultimate responsibility and consequently it is for them to set the policies which the officers implement and the parameters of any delegation must be clear.

8.3 In addition, it is for the board to monitor and review compliance with the policies it sets and the company's performance generally. Adequate reporting procedures from officers to the board are a vital component in protecting the board members and enabling them to fulfil their role.



8.4 The board should also authorise the appointment of external advisers: legal, financial, accounting, taxation, etc. Generally, board members will not be liable for any loss arising from a default of an agent of this nature provided that the agent was employed only to do acts in the scope of his or her normal business, the appointment was made on a reasonable basis and their activities were supervised with common prudence. In practice, the board should ensure through officers that any agent has relevant experience and qualifications.

8.5 The Company may also arrange or pay for insurance to be put in place to protect board members from personal liability in their roles as board members. This will protect board members against any actual or alleged 'wrongful act' that may be committed in the course of carrying out their duties (other than a dishonest, fraudulent or illegal act).

## 9 Conclusion

The role of board members is an extremely important one. While the above statements of the various duties imposed upon board members may sound onerous, it should be remembered that provided that a board member acts in good faith and with due skill and care he or she will not be likely to face criticism. In particular this means that the board member should seek advice from officers or from appropriate qualified advisers as appropriate.

**Trowers & Hamlins LLP**  
28 April 2009

