

Guidance on draft foundation CIO Constitution

The Gloucester Diocesan Board of Education

January 2022

1 Introduction

- 1.1 This note accompanies our first draft of a Foundation model constitution (the **Constitution**) for The Gloucester Diocesan Board of Education (the **CIO**). The Foundation model constitution provides that the members of the CIO are the trustees from time to time. The alternative model (the Association model) provides for a wider membership. The Diocesan Boards of Education Measure 2021 (the **Measure**) requires us to use the Foundation model.
- 1.2 The CIO is being set up in response to the requirements of the Measure requiring the diocesan synod (the **Diocesan Synod**) to designate by way of a scheme (the **Scheme**) a charitable body as the diocesan board of education for the Diocese of Gloucester (the **Diocese**). In consultation with certain individuals/bodies within the Diocese, the existing board of education (the **GDBE**) has decided to establish the CIO.
- 1.3 The purpose of this note is to highlight the key provisions in the Constitution rather than being a clause by clause summary. Within this commentary you will see that there are a number of points on which we should be grateful for your instructions.
- 1.4 Once we have your instructions, we will prepare a further draft for your review.

2 Governance

- 2.1 Like all charitable incorporated organisations the CIO has a "two tier" governance structure. The first tier is a group of individual charity trustees who are responsible for the day to day management and control of the CIO. They are referred to in this note as the "trustees".
- 2.2 The second tier is the CIO's "members". The members are given certain rights within the Constitution and under charity law, including the right to alter the Constitution and to wind up the Charity.
- 2.3 As mentioned above, the Constitution establishes a Foundation model governance structure for the CIO that provides for the trustees and members of the CIO to be the same individuals. In practice therefore whilst the decisions for the CIO will be taken by the same individuals, it is important to note that certain decisions will require the trustees to act in their capacity as members.

3 Objects (clause 3)

- 3.1 It is important that a charity's objects are clear and sufficiently focussed so that the trustees have clarity as to the purposes for which the CIO has been set up. We have therefore suggested the following draft objects:

"to advance or assist in the advancement of education consistent with the faith and practice of the Church of England for the public benefit in the Diocese in particular by carrying out the functions of the diocesan board of education for the Diocese under the provisions of the Measure".

- 3.2 Please note that once the CIO has been registered with the Charity Commission any proposed change to the objects will require the prior written consent of the Commission. The Commission will generally give its consent provided that the proposed change is not material.
- 3.3 Please let us know if you have any comments on the suggested objects.

4 Powers (clause 4)

- 4.1 The CIO has the power to do *"anything which is calculated to further its purposes or is conducive or incidental to doing so"*. We have, however, included several specific powers in clause 4 which we consider it would be sensible to expressly refer to. These powers allow the CIO to give advice, publish or distribute information, co-operate with charitable and non-charitable bodies, to employ staff and to invest funds.

5 Benefits to trustees (clause 5 and 6)

- 5.1 As you are aware, there are strict rules under charity law which prevent the trustees of a charity from receiving benefits from the charity, except as expressly authorised. Authorisation can either come from the Charity Commission, from provisions in a charity's governing document or under the general law.
- 5.2 The Constitution pre-authorises the following benefits to the trustees (i.e. in their capacity as charity trustees and also members of the CIO):
- 5.2.1 trustees and connected persons are entitled to receive reimbursement for reasonable expenses;
 - 5.2.2 trustees and connected persons are entitled to benefit from trustee indemnity insurance;
 - 5.2.3 trustees and connected persons may receive a benefit as a beneficiary of the CIO;
 - 5.2.4 trustees and connected persons may enter into contracts for the supply of goods / services to the CIO provided that the relevant conditions in the Charities Act 2011 (the **Act**) and the Constitution are complied with; and
 - 5.2.5 trustees and connected persons may receive reasonable rent for property leased to the CIO and reasonable interest on money lent to the CIO.

6 Conflicts of interest and conflicts of loyalty (clause 7)

- 6.1 The Charitable Incorporated Organisations (General) Regulations 2012 (the **General Regulations**) provide that a charity trustee who would benefit personally from a transaction or arrangement into which the CIO proposes to enter must not take part in any decisions and must not be counted in the quorum to discharge any business relating to that transaction or arrangement.
- 6.2 This is subject to the proviso that the restriction does not apply where the transaction or arrangement to be entered into by the CIO cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 6.3 Clause 7 repeats these provisions and also reflects the provisions of the Scheme which confirm that the conflicts of loyalty arising as a result of a trustee of the CIO also being a director of the Gloucester Diocesan Board of Finance or a member of Diocesan Synod is authorised provided that the relevant trustee declares the conflict of loyalty and will not receive a direct or indirect benefit as a result of the arrangements.

7 Liability of members to contribute to the assets of the CIO if it is wound up (clause 8)

- 7.1 The Constitution confirms that the members of the CIO shall have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities in the event that the CIO is to be wound up in future.

8 Charity trustees (clauses 9 to 12)

- 8.1 The Constitution confirms that there will be at least 11 and a maximum of 15 charity trustees which reflects the requirements of the Measure and the terms of the Scheme.
- 8.2 The Constitution also confirms that there will be an "ex-officio trustee" (i.e. the bishop), appointed, elected and co-opted trustees.
- 8.3 We will need to confirm the names of the first trustees (in addition to the Bishop) in the Constitution and therefore we would be grateful if you could confirm these details in due course. We will also need to confirm the length of their initial term in office and whether they are appointed, elected or co-opted trustees.
- 8.4 The appointed and elected trustees will hold office as trustees of the CIO in accordance with the Scheme and the Constitution cross-refers to the Scheme.
- 8.5 The Constitution confirms that the co-opted trustees will be appointed by majority resolution of the board of trustees. We have suggested that the term of office of co-opted trustees should be 3 years but please confirm whether you would prefer to include an alternative. We have also suggested that co-opted trustees can hold office for 3 consecutive terms and may not be appointed for a fourth term unless at least one year has passed since the end of their third term. Again, please let us know if you would prefer to include alternative provisions here.
- 8.6 Casual vacancies in appointed or elected trustee positions are to be filled in accordance with the Scheme. For casual vacancies amongst the co-opted trustees, the Constitution confirms that the trustees will fill the vacancy and then the individual appointed will hold office only for the unexpired part of the term of the co-opted trustee that held office before them.
- 8.7 Clause 12 provides a number of circumstances in which an individual will cease to hold office as a trustee. It cross refers to the Scheme and includes circumstances where an individual is disqualified under the Act from holding office as a charity trustee, is convicted of an offence and the other trustees decide that it is undesirable in the interests of the CIO for them to remain as a trustee or if they are absent from all meetings of the trustees within a period of 6 months and the other trustees decide that they should no longer be a trustee of the CIO.

9 Proceedings of the trustees (clause 13 to 15)

- 9.1 The trustees can take decisions either at a meeting (which can be held virtually provided all participants can communicate with each other) or in writing (including by email).
- 9.2 The quorum for trustees' meetings is 2 trustees or the number nearest to one-third of the total number of trustees, whichever is greater.
- 9.3 The Constitution confirms that the Bishop or another trustee appointed in consultation with the Bishop will chair meetings. In the case of an equality of votes, the Constitution confirms that the chair of the meeting will have a second and casting vote. Please confirm if you would prefer to remove this provision.

10 Members (clauses 16 to 18)

- 10.1 As we have confirmed above, the only members of the CIO are the trustees (from time to time). Membership cannot be transferred to anyone else.
- 10.2 There are certain decisions which must be taken by the trustees acting in their capacity as members including amending the Constitution and winding up or dissolving the CIO.

- 10.3 Decisions to be taken by the trustees in their capacity as members of the CIO can be taken at a meeting or in writing.
- 10.4 Members' meetings must be called on at least 14 clear days' notice, unless the trustees (in their capacity as members) agree to a shorter notice period. The chairing of and procedure to be followed for members' meetings is the same as the requirements for trustees' meetings.
- 11 Use of electronic communications (clause 21)**
- 11.1 The General Regulations contain provisions which relate to the use of electronic communications. The Constitution confirms that the trustees and the CIO may communicate electronically with each other, including by way of the CIO's website.
- 12 Record keeping (clauses 22 to 24)**
- 12.1 These clauses set out the legal obligations placed on the trustees to keep registers of trustees and members, to keep minutes and to comply with the Act in respect of accounting and reporting.
- 13 Amending the Constitution (clause 27)**
- 13.1 The Constitution can only be amended by 75% of the trustees (acting in their capacity as members) voting at a meeting or by all of the members by written resolution.
- 13.2 An amendment which is inconsistent with the Scheme, the Measure, the Act or the General Regulations will not be valid. Certain amendments (i.e. to the objects, dissolution provisions or any amendment which will confer a benefit on a trustee) can only be made with the prior written consent of the Charity Commission.
- 14 Voluntary winding up or dissolution (clause 28)**
- 14.1 The decision to wind up or dissolve the CIO can only be made by the trustees (acting in their capacity as members) by 75% of the trustees voting at a general meeting or by all of the trustees by written resolution. You will see that there is an additional provision which allows the decision to dissolve to be made by a resolution passed by a decision taken without a vote and without any expression of dissent in response to the question put to the general meeting.
- 14.2 We have included a provision confirming that a decision to wind up or dissolve the CIO can only be taken where either the Diocesan Synod has designated an alternative body to be the diocesan board of education for the Diocese or the Scheme has been revoked and there is no intention for the Diocesan Synod to make a new one.
- 14.3 On dissolution, any remaining assets (once liabilities are paid) must be applied for charitable purposes the same as or similar to the CIO's objects.

If you have any questions in relation to the draft Constitution or this commentary, please contact Laura Chesham (lchesham@vww.co.uk / 07741310636).