

# Summary of Barnardo's Articles

## **Interpretation**

1. Article 1 cross refers to the Schedule which contains the definitions used throughout the document.

## **Objects and Powers**

2. The objects of Barnardo's are set out in Article 2 and are as follows:-

*The Objects of the Charity are for the public benefit:-*

- 2.1 *To promote the care, safety and upbringing of children and young people by:-*

*2.1.1 Supporting and assisting those in need, their families and carers;*

*2.1.2 promoting their health; and*

*2.1.3 advancing their education.*

- 2.2 *The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage.*

## **Basis and Values**

3. In pursuing the Objects, Barnardo's shall have regard to its Basis and Values being:-

### *3.1 Basis*

*3.1.1 Barnardo's derives its inspiration and values from the Christian faith.*

*3.1.2 These values, enriched and shared by many people of other faiths and of no religious faith, provide the basis of our work with children and young people, their families and communities.*

### *3.2 Values*

*Barnardo's work is carried out in accordance with the following values:*

*3.2.1 Respecting the unique worth of every person;*

*3.2.2 Encouraging people to fulfil their potential;*

*3.2.3 Working with hope;*

*3.2.4 Exercising responsible stewardship.*

4. Article 4 sets out the powers which Barnardo's may exercise in order to achieve its objects. There is a fairly full list, which broadly reflects the current constitution, and in Article 4.33 there is a "sweep-up" power to do anything which is lawful and promotes Barnardo's objects. A general power to provide support and guidance to children, young people and their families and carers is inserted at Article 4.1. The wording of existing clause 4(e) concerning the carrying on of the business of an Adoption Society is updated and inserted as Article 4.2.
5. Article 4.32 allows Barnardo's to pay premiums in respect of indemnity insurance on behalf of the trustees and other officers of Barnardo's and updates old clause 4(p) in the current Memorandum. Such insurance can protect trustees against the possibility of personal liability arising as a result of acts of negligence or default, where they have been acting in good faith.
6. Other noteworthy powers not in the current Barnardo's constitution include:
  - 6.1.1 Article 4.9 which confirms the authority of Barnardo's to engage in campaigning, including political campaigning, to the extent charities are allowed to do so; and
  - 6.1.2 Article 4.22 which allows Barnardo's to incorporate subsidiary companies to carry on any trade.

#### **Limitation on Private Benefits**

7. Article 5 contains important provisions about the application of Barnardo's funds. There is a general principle of charity law that payments to trustees or certain persons connected to trustees are prohibited unless either there is a statutory power to make the payments, the Charity Commission or the Court authorises the payment, or the Articles provide for the payment to be made. Articles 5.2 and 5.4, set out a full list of the types of payments Barnardo's may seek to make to members and trustees respectively.
8. Article 5.2 deals with payments to members. It allows payments to members in their capacity as beneficiaries, payments for reasonable and proper remuneration for goods or services supplied to Barnardo's, interest on money lent to Barnardo's, and rent on premises let to Barnardo's.
9. Articles 5.3 and 5.4 deal with payments to trustees. Article 5.3 imposes a prohibition on payments to trustees, except in the circumstances set out in Article 5.4, or where the Charity Commission has consented to the benefit in writing. Note that Article 5.4 also includes a reference to persons "Connected" to a trustee (the term Connected is defined in the Schedule), since the Charity Commission's view is that those with connections to trustees, such as spouses, children and businesses in which a trustee has an interest, are also prohibited, unless specifically

allowed in the Articles. The benefits which trustees and persons connected to a trustee can receive from Barnardo's are:

- 9.1.1 payments made to them as beneficiaries;
- 9.1.2 reasonable expenses (this would cover, for example, travel expenses and childcare cover for trustees while attending trustees' meetings, but would not cover any form of payment for a trustee's time in attending the meeting);
- 9.1.3 remuneration for goods and services supplied to Barnardo's. This would allow, for instance, payments to a trustee who was a fund raising expert for fund raising services rendered to Barnardo's. It does not, however, cover payments to anyone for acting as a trustee, nor services performed by a trustee under a contract of employment with Barnardo's. Note that no more than half of the trustees, in any year, can benefit under Article 5.4.3;
- 9.1.4 interest on money lent to Barnardo's;
- 9.1.5 rent on premises let to Barnardo's;
- 9.1.6 premiums for trustee indemnity insurance as referred to above; and
- 9.1.7 payments under the indemnity provisions in Article 7.

In relation to any benefit conferred under Article 5.4, the trustee concerned must comply with the conflicts of interests provisions in Article 22.

- 10. Article 5.5 applies the exceptions to the restrictions on benefits to trustees to Barnardo's subsidiary companies.
- 11. Article 5.6 which takes advantage of section 181(2) of the Companies Act 2006 by allowing trustees to disapply, in certain circumstances (ie. those listed in Articles 5.3 to 5.5) the duty to avoid a conflict of interest. This means that if (inadvertently) a trustee fails to follow the conflicts of interest procedure set out in Article 22 when dealing with a conflict in Articles 5.4 and 5.5, he or she will nevertheless be protected from any breach of his or her statutory duty because the duty to avoid a conflict has not arisen in the first place. Importantly, though, that trustee would nevertheless have breached both the Articles and good governance requirements in failing to follow the conflicts procedure.

This provision therefore merely takes advantage of a statutory provision by reducing the technical chance of a claim for breach of statutory duty.

## **Liability of members and indemnity**

12. Article 6 includes part of the current limited liability clause (clause 8 in the current Memorandum) and limits the liability of members to £1.05.
13. Article 7 modernises the indemnity which appears in existing Article 68.

## **Trustees**

### ***Trustees' powers and responsibilities***

14. Article 8 formally entrusts the management of Barnardo's to the trustees acting in their capacity as trustees.
15. Articles 9 to 12 contain provisions concerning delegation of the trustees' powers. These are broadly comparable with the powers to delegate to committees in the current Article 51, although the power in Article 10 extends to a more general power of delegation.
16. Article 10 provides for the establishment of committees, and covers the functions and reporting requirements of those committees.
17. Article 11 deals with delegation to staff, specifically the Chief Executive.
18. Article 12 deals with delegation of investment management: it is in line with Charity Commission guidance on investment.
19. Article 13 allows the trustees to make rules dealing with the management of Barnardo's.

### ***Decision-making by Trustees***

20. Articles 14 to 24 regulate the decision-making of the trustees. Under Article 14 trustees can make decisions by majority vote at a meeting or by 80% agreement without a meeting under Article 21.
21. Article 15 deals with the calling of trustees' meetings. Notice of trustees' meetings can be given orally, and electronically. New trustees should be asked to confirm in writing that they are happy to receive notice of trustees' meetings by email and/or telephone and to provide appropriate email addresses and telephone numbers for this purpose.
22. Article 16 provides that trustees participate in a trustees' meeting when they can all communicate with each other: they do not necessarily need to be in the same place. This would allow for a trustees' meeting to be set up by telephone or video conferencing or by Skype.
23. Article 17 deals with the quorum for trustees' meetings. Article 47 of the current Articles state that the quorum may be fixed by the trustees and unless otherwise fixed it shall be five. Article 17.2 states that

unless the quorum is fixed it shall be five or one-third of the total number of trustees, whichever is greater.

24. Article 18 replicates in part Article 49 concerning the method of appointment of a Chair and a Deputy chair. Article 18.5 provides that the Trustees shall elect an Honorary Treasurer.
25. Article 19 states that the Trustees shall recommend a candidate for appointment as President and candidates for Vice Presidents who must be approved by the Members.
26. Article 20.1 of the revised Articles provides that in the event of a tied vote at trustees' meetings the Chair shall have a casting vote.
27. Article 21 allows the trustees to make a decision without holding a meeting if 80% of all Trustees indicate to each other by any means that they share a common view on a matter. This mechanism may be useful where a decision needs to be made between meetings. A decision would be valid if, for example, some of the trustees indicated their agreement by email, while others were consulted on the telephone. It is important that appropriate records are kept of trustees' decisions: Article 52 (which deals with minutes generally) makes it clear that decisions made in this way must be minuted. Article 21.3 provides a framework for making decisions outside meetings.
28. Article 22 addresses trustees' interests and management of conflicts of interest. Under both charity law and company law, trustees of charitable companies must take careful steps to disclose interests and to manage conflicts of interests. The Companies Act 2006 introduced new statutorily defined duties to disclose interests and avoid conflicts of interest. Since October 2008 it has been important to include provisions for managing conflicts of interests in the Articles, not least because a trustee complying with the provisions in the Articles is automatically (under the Companies Act 2006) not in breach of his or her duties to avoid a conflict of interest.
29. Article 22.1 makes it clear that trustees should disclose any interest (direct or indirect) which they have in a proposed transaction or arrangement with Barnardo's. They must also disclose any duty or interest which conflicts or may conflict with the interests of Barnardo's or the trustees' duties to Barnardo's. There is no definition of "interest" or "conflict of interest" – trustees should take a commonsense approach to whether a situation gives rise to an interest or duty and hence a conflict. A conflict of interest would include a situation where a trustee had a conflict of duties or a conflict of loyalties.
30. Article 22.2 reflects provisions in the Companies Act and means that there is no duty to disclose an interest of which other Trustees should be aware.

31. Article 22.3 deals with the situation where a trustee's interest or duty does not or is not reasonably likely to give rise to a conflict of interest and it allows the trustee with the interest/duty to take part in the decision-making process as normal. If there is any doubt over whether or not a conflict exists, the unconflicted trustees will decide the matter.
32. Articles 22.4 and 22.5 set out a procedure for the trustees to follow if there is reasonably likely to be a conflict of interest or there is in fact a conflict of interest. Article 22.4 allows a trustee to participate in the decision-making process even where he or she has a conflict except:
  - 32.1.1 in any situation (other than those listed in Articles 22.4.1(a) to (d)) where the trustee could receive a benefit; and
  - 32.1.2 in any situation where the unconflicted trustees decide that the trustee's conflict is such that he or she should not participate in the decision-making process.

In the situations in 32.1.1 and 32.1.2 above, the conflicted trustee must comply with Article 22.5 which allows the trustee to remain for any discussion if invited to do so, but otherwise the trustee cannot be counted as part of the quorum for that part of the meeting, must withdraw during the vote and have no vote on the matter.
33. Article 22 also builds in a few permitted safeguards for protecting trustees from liability for breach of their statutory duties. For instance, Article 22.6.1 confirms there is no breach if a trustee in a position of conflict withholds confidential information from Barnardo's.
34. Article 23 imposes a requirement to keep a register of trustees' interests.
35. Article 24 is a saving provision, in the event that there are technical defects concerning the appointment of trustees.

### ***Appointment and retirement of Trustees***

36. Articles 25 to 27 deal with the appointment and retirement of trustees.
37. Article 25 provides for a minimum of eight trustees, and a maximum number of twenty trustees.
38. Article 26 deals with how individuals become trustees and reflects the position under the current Articles.
39. Under the current Articles the trustees are appointed for a term of three years, following which they retire but are eligible for reappointment. This term is retained under Article 26.2.

40. Trustees appointed by the trustees must retire automatically at the next annual general meeting under Article 26.3. This also reflects the position under the current Articles.
41. Article 26.4 provides that trustees cannot be under 18.
42. Articles 26.6 and 26.7 set out prerequisites and procedures for appointments, including notice which must be given before an appointment is made.
43. Article 26.7 clarifies the timing of retirement.
44. Article 26.8 makes it clear that trustees must make decisions themselves, and cannot appoint an alternate.
45. Article 27 sets out when trustees will cease to act. Article 27.5 provides that a trustee shall be automatically disqualified if her or she is on a barred list maintained under the Safeguarding Vulnerable Groups Act 2006.
46. The provisions in the Charity Commission model constitution regarding the removal of a trustee absent without permission are at Article 27.8.
47. Article 27.9 gives the members the right to remove trustees, subject to the trustee having a right to be heard. The members have a statutory power to remove trustees under company law in any event.
48. Article 27.10 contains a general power for the trustees to remove fellow trustees.

## **Members**

### ***Becoming and ceasing to be a Member***

49. Articles 28 to 29 deal with members.
50. Under Article 28.1 the members are such persons who were either Honorary or Ordinary Members prior to 21<sup>st</sup> July 2011 and all those whom the trustees admit to membership.
51. Article 28.2 requires members to complete an application for membership. Article 28.2.2 requires a member to affirm the Basis and Values. Under Article 28.3 the trustees can prescribe additional criteria for membership in their discretion, if they wish.
52. Article 28.4 requires the names of the members to be entered into a members' register.
53. Article 29 sets out when membership ceases. Article 29.2.2 provides that a member will cease to be a member if they are bankrupt as is the position under the current Articles. Article 29.2.4 allows the trustees

to remove a member or categories of members for reasons not related to conduct, which mirrors existing Article 5.

### ***Organisation of General Meetings***

54. Articles 30 to 47 deal with general meetings of the members. To a large extent these repeat statutory provisions regarding the calling and holding of members' meetings.
55. Under Article 30, Barnardo's shall hold an annual general meeting of the members each year.
56. Article 31 allows the trustees to call general meetings other than the annual general meeting. Article 31.2 also refers to the requirement for trustees to hold a general meeting if members requisition a meeting under company law.
57. The notice period for general meetings is generally 14 days, but under Article 32.2 this can be shortened if a majority in number of the members, representing 90% of the voting rights at the meeting, agree.
58. Article 33 sets out the required contents for the notice of a general meeting.
59. Article 34 sets out who must receive notice of general meetings.
60. Article 35 deals with the quorum for general meetings. This is set at seven members (or their proxies) as under the current Articles. Note, however, that Article 35.2 provides a saving provision if a quorum is not present. The meeting will automatically be adjourned to the following week, or an alternative date (within 14 days) decided by the trustees. If, at the adjourned meeting, a quorum is not present within 30 minutes, those present and entitled to vote will be deemed to make up a quorum. This provision provides a mechanism to ensure that general meetings can validly be held, even if it is difficult for a quorum to attend in practice.
61. Article 36 deals with the chairing of general meetings and should be self-explanatory. Article 37 deals with attendance and speaking at general meetings and should, be self-explanatory. Article 38 sets out the procedure for adjournment of a members' meeting.
62. There are two ways of voting at general meetings, on a show of hands, or on a poll (which is effectively a ballot). Under Article 39, resolutions will be dealt with on a show of hands unless a poll is demanded. The chair's decision about whether a resolution is passed, or passed with a particular majority, on a show of hands, is final and is set out in Article 39.2. This provision reflects the company law position.
63. Article 40.1 deals with voting rights. Under Article 40.1, anyone present at a meeting who is a member or a proxy for a member has one

vote on a show of hands. If a person holds votes in more than one capacity (eg. as a member in their own right, and as proxy for another member) they can only vote once on a show of hands. On a poll, every member present in person or by proxy will have one vote. This means that a proxy holding the votes of more than one member will have one vote for each member they represent.

64. It is likely that where proxy votes are involved it will be more straightforward to hold a poll vote. Article 42 therefore confers very extensive rights to demand a poll. It is possible for polls to be demanded in advance of the meeting, or at the meeting before a show of hands on the resolution in question, or immediately after the result.
65. Article 42 deals with the power to demand that a vote be conducted by way of poll.
66. Article 43 deals with the procedure on a poll: there is scope for the poll to be delayed for up to 30 days after the general meeting.
67. All members have a right under company law to appoint a proxy. Article 44 sets out the procedures which apply in relation to the appointment of a proxy. The information which needs to be included in a proxy notice is listed.
68. Article 45 deals with the delivery of proxy notices. It deals with when and how notices should be delivered, the effect of revocation, and what happens if a member who has appointed a proxy still attends a general meeting. Proxy notices must be delivered at least 48 hours (excluding Saturdays, Sundays and public holidays) before the meeting. This means that if a meeting is held at 9am on a Monday, the proxy form must be delivered by 9am on the preceding Thursday. This is the longest period allowed by law.
69. Article 45.1 refers to a “Proxy Notification Address”, to which proxy notices (and any revocation of them) must be sent. It gives members a reasonable degree of flexibility about where to send notices: let us know if you do not want this.
70. Article 46 sets out the situations in which amendments may be made to resolutions at general meetings after notice has been sent out.

### ***Written Resolutions***

71. Under company law, members can make decisions in writing rather than at a meeting and this is provided for in Article 47.

### **Administrative Arrangements and Miscellaneous**

72. Articles 48 and 49 deal with communications. Note, in particular, that provided the recipient agrees, notices and other documents may be sent by email or by making them available on a website. Article 48

contains some provisions dealing with when documents are deemed to be served, and what should happen if documents sent electronically are returned undelivered. Article 49 simply cross refers to the relevant communication provisions of the Companies Act.

73. Article 50 deals with the company secretary. There is no longer a legal requirement for a company secretary, so the Articles give the trustees discretion about whether they or appoint a secretary or not.
74. Article 51 is a saving provision which prevents proceedings or resolutions from being invalidated by accidental technical failures.
75. Article 53 deals with record keeping and a reminder of the requirements to keep records and to file reports and accounts with Companies House and the Charity Commission. Article 53.2 limits the rights members have to access documents to the rights conferred on them by law, or specifically allowed by trustees' or ordinary resolution.
76. Article 54 ensures that the Articles will prevail over the model regulations which would otherwise apply under company law.
77. Article 55 provides that should Barnardo's be wound up, its assets must be used for the objects or transferred to a charity or charities to be used for the objects or for similar purposes, or ultimately used for charitable purposes selected by the Charity Commission.