



Dear Colleague

### **Governance Review and OCN NI-An Overview**

As I am sure you are aware with the advent of the new Charity Commissioner in Northern Ireland and the full implementation of the Company Act 2006, many voluntary and community organisations are taking steps to modernise their Memorandum & Articles of Association (M&A). OCN NI is doing exactly this and we are also using this as an opportunity to consult on the proposed new M&A prior to presentation at a General Meeting. The proposed M&A are based entirely on the model M&A released in October 2009 by the Charity Commissioners which in turn are compliant with the final implementation of the 2008 Company Act.

During our recent governance review process at OCN NI, it came to light that changes to the existing Memorandum & Articles of Association which date back to March 2006 were not compliant with the then relevant legislation (Company Act 1986). The changes to the original (May 2004) M&A were made in compliance with the articles of the original (May 2004) M&A, however the original (May 2004) M&A were not compliant with the relevant company legislation of 1986 - specifically the articles which governed the calling of a General Meeting. These articles within the (May 2004) M&A devolved responsibility to a restricted number of members rather than the 75% required by legislation to change the M&A at General Meeting

These alterations to the original M&A also made changes to the membership categories, which in turn have made it difficult to identify who is a member of the company. The original M&A created three categories of membership: - Individual, Organisation and Associate. The first category had explicit voting rights, the second did not confer voting rights and the third explicitly did not confer voting rights. The changes to this version of the M&A in August 2004 changed the categories of membership to Full and Associate. It further went on to specify that these members would be admitted on approval of the committee and who committed to fulfilling four main criteria as members.

The defacto interpretation that has been in use for several years regarding membership relates to a change in the Memorandum & Articles of Association in 2006. This change did include an Extraordinary General Meeting (EGM). This EGM altered the M&A to reflect the changes that were occurring across the national network of OCNs, and to create a governance structure that reflected FE, V&C and other sectors.

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### **Membership Definition**

The requirements of membership therefore differ depending on which M&A is referred to. Each of the M&A broadly hold in common that a member is an organisation/individual that agrees to become a member-not a centre of OCN NI- and undertakes to pay a fee. Membership in itself does not confer approved centre status, nor does approved centre status confer membership. In turn the names and categories of members should have been received by the board for confirmation of membership, regardless of whether the member was an approved centre or not. Depending on which M&A one refers to, different categories of membership exist. Equally requirements to have members- individual, associate or organisation, to sign a member's book and accede to the requirements of membership, or to be formally accepted as members by the board, have not occurred.

### **Regularising Governance Processes**

Since this realisation the board has been moving to regularise the position and after taking legal advice have prepared a new set of Memorandum & Articles of Association. These articles, as indicated above, are based on the Charity Commission model and they are compliant with the latest Company legislation, the Companies Act 2006, which came into full effect in October 2009.

As noted above, because of irregularities of grades and categories of members, the existing board has taken a decision to consult widely on these proposals and to seek to include feedback from as many approved centres as we can. We have therefore created a database of all approved centres going back to 2004/05, the year which reflects the first changes to our Memorandum & Articles of Association.

This group of centres will have the opportunity to comment on the proposals and their views will be collated and presented with the EGM proposal and notification. The opportunity to vote on the changes to the M&A will be limited by custom and practice to those centres that have approved centre status this year (09/10) and also those additional centres that had approved centre status last year (08/09) but not this year (2008/09 was the OCN NI financial year in which the irregularities came to light). If any additional centre wishes to participate in the vote, please contact me directly.

OCN NI recognises that this is a complex issue. We are determined at OCN NI to put right these irregularities in our governance structures and ensure that the governance arrangement in place taking OCN NI forward in the coming years is a robust and transparent one.

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### **New Memorandum & Articles of Association-**

The proposed new M&A are very similar to the existing ones. They provide for the general governance of the company that is OCN NI and provide a firm basis for taking the governance process forward. They do however make some major changes and it is important that these are outlined. The major changes are to provide the board with the powers to create classifications of members and to remove the articles that require a certain number of the board to be drawn from a particular sector. The new proposed M&A also make explicit the powers of the board to recruit to the board. The last major change removes the current membership structure and provides for the board to create a new membership structure if required.

The proposed new M&A, based on the Charity Commission model and compliant with the Company Act 2006, provide the opportunity for Directors of the company to establish classifications of membership although they are not required to. If however the board does decide to establish a classification of membership e.g. individual membership, a change to such a classification can only happen at the agreement of the members within that classification. Equally the board may decide in the future to create a classification of membership that is focused on Access Programmes and once established there can be no change to that classification without the express agreement of that group.

The capacity to create classifications of membership provides OCN NI with an opportunity to go further in its flexibility to meet the changing and challenging demands of learning and development sector experiencing massive upheavals. It also provides the board of OCN NI with a capability to respond more quickly to fluid markets and funding changes and to ensure the continued existence of not only the OCN NI itself but also the work we engage in with our learning providers and our learners.

A second key part of the changes means that OCN NI will no longer be a company which is established by a list of members who are not the Board of Directors. Membership of the new M&A will be limited in the first instance to the existing board. The existing board will, on adoption of the new M&A and the relevant proposal at the EGM, become the members. They will then meet to elect their Chair and to move towards recruiting new members of the board using the new procedures of open application, interview and selection. The objects of the OCN NI are also revised. These continue to focus on our learning and development role and make explicit our focus on disadvantage and inclusion.

Our proposed revised objects are:

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*The **Open College Network Northern Ireland** is established to advance the provision of education and lifelong learning for the public benefit. The charity aims to promote the education and training of adults, children & young people in such ways as the directors think fit. These include:*

- *Promoting lifelong learning for the wider community through the development of individual capabilities, competencies, skills and understanding in areas of educational value*
- *Working with stakeholders & partners to promote and provide access to learning and accreditation opportunities that facilitate lifelong learning and work related skills*
- *Providing opportunity to those who have least benefited from traditional education*
- *Recognising achievement, accrediting learning, awarding qualifications and supporting continuous improvement in lifelong learning and work related skills*

These changes are partly informed by the difficulties associated with the different M&A used to date, the different types of classifications used and the differing powers of the categories of members. They are also partly informed by the need to provide a governance capacity for dynamic and rapid change in response to the external and regulatory environment. They are also informed as OCN NI moves to become an Awarding Organisation on the QCF in its own right and hold a licence directly from OFQUAL. In this case there is a need to demonstrate a clear line between centres who register learners and those responsible for overseeing the regulatory functions of awarding qualifications.

### **Learning Providers & Members**

A key driver in this change process is the difficulty of linking a desire for membership of a particular company like OCN NI with the desire to use the services of OCN NI. Currently under custom and practice to draw on the services of OCN NI a customer or a learning provider has to be a recognised centre & member. What this does is to place a level of demand on a potential customer beyond that necessary to simply register learners, use our work books, and use aspects of the Virtual Learning Environment (VLE) we produce or avail themselves of any services that the OCN NI develops to further its charitable objects. Membership may in itself be a barrier to working with OCN NI.

This massive link between accessing services and membership is an historical one which goes back to the establishment of the Open College Networks across the UK. The Open College Networks established a credit based framework where all members were required to recognise the credits and qualifications awarded by other

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OCNs. This was an important initiative that led first to a credit based framework linking and recognising adult learning and ultimately to what we have now, the Qualification and Credit Framework.

This linking of customer/learning provider and membership means that potentially any customer of OCN NI using potentially any service or product must become a member to do so. Given the explosion of the internet, the use of electronic assessment and virtual learning environments, as well as more traditional learner materials, this has demanded a robust review of how at OCN NI we interact with customers and give our learners and learning providers what they need without placing undue membership demands upon them. It was feasible to link membership with learning provider when membership was counted in tens rather than hundreds but it is less feasible today as we seek to ensure the place of OCN NI in the learning and development field in Northern Ireland and beyond and grow our customers/learning providers into the thousands.

### **Proposals on Board Election and Membership & Stakeholder Engagement**

The board is aware that the move away from a customer membership model of company to a stakeholder model will present challenges to linking with our support and customer base across our work here in Northern Ireland. The board is keen to build relationships with stakeholders that reflect the wide reaching nature of OCN NI work here in Northern Ireland.

A key part of this stakeholder engagement is the footprint of OCN NI across Northern Ireland both geographically and creatively. The initial outline for stakeholder engagement is to create a series of three groups made up of interested parties, services users and customers. It is anticipated that this will initially focus on three types of groups:

**Sectoral Advisory Groups:** This group remit would be to advise on changes and developments in the major sectors that OCN NI operates in - FE, Schools, Adult, V&C and Employers.

**Sub-Regional Advisory Groups:** This group remit would be to advise on sub-regional developments (possibly co-terminous with the new council areas).

**Development Advisory Groups:** This group remit would be to advise on major developments in particular area linked to OCN NI focus, e.g. Health, NEETS, Offender Learning etc.

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It is anticipated that these groups would meet initially twice a year and advise and guide the board and staff team of OCN NI on direction, opportunity and need. An additional key driver within this opportunity is that stakeholder partnerships, in groups such as these, would build interest and engagement for those who wish to seek a place on the board of one of Northern Ireland's leading awarding organisations - OCN NI.

### **Proposed Board Structure**

The board structure would be a maximum of 12 Directors. Initially this board would be made up of the board in place as the new M&A are adopted. This board would then establish a process for recruiting new members to the board. Each year one third of the board would retire - this is in contrast to the current structure where all of the board is required to retire every two years (using the 2006 M&A as a reference point).

It is anticipated that the new process introduced for selection to the board would be by public advertisement of the available opportunities. These opportunities in turn would reflect the current skill mix within the board and the need to bring on additional skills to make the board as effective as possible. The public advertisements would include a person and job specification outlining the key skills needed for each new director. These in turn would be based on the OCN NI strategic and operating plan for the period.

The recruitment activity would include an application process and a selection interview. It is anticipated that the selection process would be chaired by the Chair of the board, with a minimum of two other board members, the CEO in attendance and an independent adviser to ensure transparency. The recruitment committee would then make its recommendations to the full board.

These are significant changes for OCN NI and necessary ones. They address the uncertainty surrounding previous M&A and categories of membership. It brings OCN NI in line with the latest developments in company legislation and charity law. It creates a basis for much wider and more comprehensive stakeholder engagement and puts in place a transparent process for serving on the board of OCN NI.

### **Timescale for consultation**

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This consultation process will run from the beginning of February until the 19<sup>th</sup> March 2010. The consultation results will be reviewed by the board of OCN NI in its March meeting and will inform the proposal to go forward to the EGM in April 2010.

To assist with the process we will run a consultative survey on-line which can be accessed here <http://www.surveymonkey.com/s/RJG6LXD>

In addition if any one wishes to speak to me personally on this or any other matter then please don't hesitate to contact me. My email is [bclarke@ocnni.org.uk](mailto:bclarke@ocnni.org.uk) and my mobile is 07500081878.

Yours sincerely

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The **Diversity** of Learning