

## **RNSA PORTSMOUTH MOORINGS – WAY AHEAD**

### **Background**

1. This paper provides details on the future structure for RNSA Portsmouth Moorings. It is a joint paper from the RNSA CEO (Phil Warwick) and Chair of the current moorings trust (Peter Davies).
2. The RNSA CEO's excellent Transformation Strategic Position paper, sent to all members prior to the recent EGM, includes an overview of the implications for the Portsmouth moorings organisation with the planned change of RNSA to a Charitable Incorporated Organisation (CIO). The paper recommended that the preferred option would for Portsmouth Mooring to become a Company Limited by Guarantee (CLG). This proposal was briefed at the recent berth holders meeting and the RNSA EGM.
3. Since then the CLG options have been worked up in more detail and advice taken from the lawyer involved in the main RNSA Transformation work.

### **The Principles**

4. In developing a preferred structure, the key principles were:
  - a. A large number of moorings are occupied by veterans and thus the RNSA charity is prohibited from offering this as a service to members.
  - b. It is vital that the moorings organisation remains linked with RNSA as a charity and as a service sports association, especially to ensure access to MOD sites.
  - c. Equally, under charity law, it is essential that the moorings organisation is set up and managed as an "arm's length" organisation and, for example, no funds can flow from the charity to moorings.
  - d. The current VAT exemption for mooring charges is based on the organisation being a not-for-profit organisation providing sports facilities, which includes moorings.
  - e. As in the current Governance arrangements, should the moorings organisation be wound up the assets would revert to RNSA.
5. Noting these principles and examining the options covered in the CEO paper further, the optimum solution is for RNSA Portsmouth Moorings to become an CLG. This proposed route was supported fully by the legal advice.

### **A Company Limited by Guarantee**

6. There is plenty of open source information about what an CLG is. However, for those less familiar, the key characteristics are:
  - a. A CLG is a formal company structure covered by company law and which; needs to be registered with Companies House; has formal Memorandum and Articles of Association; completes all mandated returns and acts within company law.
  - b. There are no shareholders or shares and any surplus must be used to support the object of the company and cannot be returned to members. i.e. effectively operating as a not-for-profit organisation.
  - c. There must be a least 1 member and 1 director, who can be the same person.
  - d. Members individual liability is limited to the amount stated in the Articles of Association – generally £1.
  - e. Members must be individuals or a legal entity – i.e. another company or CIO.

### **Moorings CLG Governance Structure Options**

7. Two options were discussed with the legal representative; (1) The CIO is the sole member of the CLG; (2) The CIO is a corporate member of the CLG with additional independent members, but closely linked to the RNSA CIO.
8. Option (1) whilst possible, has risks as the CLG would effectively be a wholly owned subsidiary of the RNSA CIO. This means that moorings accounts would need to be consolidated with the CIO accounts and submitted to the Charity Commission, which may raise concerns given the relative financial scale of the 2 organisations. The CLG might not be seen as operating sufficiently at “arm’s length” from the CIO. The not-for-profit VAT exemption would be lost if the CLG had to make a profit for the CIO. Accordingly, it was not the preferred solution for us or the lawyers.
9. We (Peter Davies & Phil Warwick) discussed the alternative option (2) in considerable detail by phone with the lawyer and agreed that this should be the solution we go forward with.

### **Moorings CLG Preferred Governance Structure**

10. The proposed structure is:

- a. Moorings is established as an CLG with 6 Members, 5 of whom are also Directors:
- b. The Members would be:
  - RNSA CIO as a corporate member
  - 5 Individuals who are both Members of the CLG and Directors as follows:
    - The CEO of the RNSA CIO;
    - One member/director appointed by the RNSA CIO who is also a trustee of the RNSA CIO;
    - One further member/director appointed by the RNSA CIO, who could be a trustee of the CIO or other suitable person (e.g. Portsmouth Branch Captain);
    - 2 independent members/directors who must be members (in the broadest sense) of RNSA and preferably berth holders, provided they have the right skill set. They would be selected by the other Directors, with nominations sought from all berth holders.
- c. Berth holders would be considered as stakeholders in the company and kept informed of moorings plans by newsletters and an annual briefing meeting. They will also have a direct input via the 2 berth holder directors on the board representing their interests.

11. This proposal demonstrates a strong connection between RNSA and the Moorings CLG, whilst demonstrating that the CLG is also independent. The legal advice was that, to further strengthen the link, the CIO appointed Directors (including the CEO) should have a majority on the CLG board.

12. We also considered a structure where all berth holders are formal members of the company. There is nothing in company law to prevent this approach. However, there are significant implications for this option:

- The main drawback or risk is that the CIO would then become a minority, almost irrelevant, member of the moorings company and thus the strong link between moorings and the RNSA Charity would be very tenuous.
- As such Moorings could be perceived as a private, independent members club, which would risk our essential cover as being part of the service sports association.

- There would be an increased management and administration overhead, which would increase the running costs for moorings and, for example, might mean that the CIO CEO could no longer act as the manager for moorings.

Accordingly, primarily for the first two reasons, this option is not recommended and was not considered further.

13. The proposed structure has been endorsed by the current RNSA management, the trustees of the CIO and the current trustees of the moorings organisation.

14. On a personal note, both Phil and Peter support this option fully in their respective organisational roles, as well as both being berth holders themselves. We think it represents the right balance of protection by the strong affiliation to RNSA CIO, independence of finance and ability of berth holders to have a say in the running of the moorings organisation. It also pretty well aligns with the current moorings Governance arrangement, as detailed elsewhere on the forum, which has provided us all with excellent and well managed moorings. It will also protect our VAT free status.

### **Other Considerations**

15. There are a few additional aspects associated with this plan:

- Memorandum of Understanding (MOU).** To further strengthen the CIO/CLG link and assure that moorings retains its status as being part of the wider RNSA, an MOU will be put in place.
- Risk Assessment.** Charity Commission guidelines require a Charity to undertake a risk assessment when partnering or forming a relationship with other charities or non-charity organisations. The CIO trustees must approve the risk assessment. This has been completed to support the proposed structure.
- License Fee.** The lawyer advised that the CLG should pay an annual license fee to the CIO to cover the use of RNSA branding. Although we feel this should be broader than just branding and should recognise the strategic linkage. However, the current thinking is that this will not be an overly large financial commitment. For example, it might be staged over say 3 years to a maximum of £10K per year, which would only increase berthing fees by just over 3% after 3 years. Still meaning berthing charges are exceptionally reasonable.
- Articles of Association.** A set of Articles of Association need to be drafted by the lawyer and approved by the members and directors of the CLG, as well as the Trustee board of the RNSA CIO. Most of the articles will be based on model ones provided by Companies House. There will be a small number of articles which are specific to the moorings CLG covering:
  - **Objects** – supporting RNSA Charity by provision of moorings, but not restricted to just that to provide flexibility in the future;
  - **Winding up of CLG** - All assets to be passed to RNSA Charity if CLG is dissolved;
  - **Distribution of surplus** – not to be returned to members, only to be used for moorings, legitimate operating costs, as well as an annual “license” fee to RNSA for branding and strategic cover.
  - Details of members and directors as discussed earlier.
- CLG Name.** To future proof the company in case (not planned at the moment!) other Branches seek their moorings to be included within the CLG as well as allowing an option for visitors’ moorings to be run from within it, the intention is to name the company **RNSA Moorings Limited**.

## **CLG Operational Structure**

16. We also discussed options for the operational structure for the CLG. This is a 2<sup>nd</sup> order consideration at this time and can be refined/amended later. It is included now as background and may need to change as RNSA establishes the steady state workload under the CIO regime.
17. When the current moorings trust was set up in 2011 the decision was taken to collocate the moorings office in the main RNSA office and to also to contract for support and input from the GenSec/CEO and Deputy. Moorings paid a fair share of all office overheads and makes an annual transfer of funds to cover the time of the non-dedicated moorings staff. This sharing of personnel and office space saved money for the moorings, as well as contributing circa £20K per year to RNSA Central.
18. In principle retaining some form of sharing of services and staff makes economic sense for both organisations. Equally, the formation of the CIO and the future ambitious plans for RNSA will increase the workload on RNSA staff. Therefore, a review of current levels of support will be required.
19. The initial operational structure proposal is as follows:
  - a. The RNSA CEO (Phil) will spend circa 1 day per week on moorings business, in effect acting as the Managing Director. Moorings CLG will pay RNSA an agreed sum to cover this role.
  - b. The moorings secretary (Gemma) will become full time and take on all admin associated with moorings, including preparing accounts.
  - c. The waterfront manager (John Kilian) will remain as is, although in the future this role may be reviewed.
  - d. The deputy CEO (Heather) will relinquish any responsibility for moorings, providing additional support for the CIO.
  - e. Moorings will retain 1 desk in the main office.
  - f. A service level agreement will be drawn up between the CIO and CLG to ensure that fair costs are attributed to the moorings use of the office and facilities.
20. It is accepted that this might be an interim position and, for example, if the workload on the CIO CEO increases then the CLG may need to employ its own manager and maybe find alternative accommodation.

## **Conclusion**

21. This plan meets legal advice, best reflects the current model where berth holders are recognised as key stakeholders and optimises the link between the CIO and CLG. As always, we welcome the ideas and support of the berth holders as we look to develop a sustainable model that is fit for purpose and meets the intent of enabling RNSA members to own boats and go sailing.
22. Many thanks for working with the Executive on this and we all hope that it will be business as usual and berth holders will continue to be very happy with the excellent service we have enjoyed over many years.

**CEO RNSA / Chairman PNMF Trustees**

**1 Dec 19**