

27th October 2023

WLGA CONSTITUTION

Purpose

1. To update members on issues that have recently been raised in relation to the WLGA's organisational status, which is governed by its Constitution, and seek direction and support to potential revisions to the Constitution for consideration and approval at a future meeting.

Background

2. The WLGA was founded in 1996 and a Constitution for the Association, which sets out how the organisation will be formed, governed and managed was agreed at the inaugural meeting. Since then, the Constitution has been amended on a number of occasions to address issues or changes as they arose, and the latest revision was in November 2021. A copy of the WLGA's Constitution is available on the website [WLGA CONSTITUTION](#).
3. The status of the WLGA is an unincorporated association. An unincorporated association is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit and individual members are personally responsible for any debts and contractual obligations. The general characteristics of an unincorporated association have emerged primarily from case law and are as follows:
 - is not a legal entity;
 - is an organisation of persons or bodies (more than one) with an identifiable membership;
 - has a membership who are bound together for a common purpose by an identifiable constitution or rules (which may be written or oral);
 - is an organisation where the form of association is not one which is recognised in law as being something else (for example, an incorporated body or a partnership); and
 - must have an existence distinct from those persons who would be regarded as its members.
4. Unincorporated associations and their powers are not always well understood, which means queries are often raised. On various occasions, the status of the WLGA, and in particular the powers it holds under its Constitution have been raised by external bodies, such as the Welsh Government, which has required officers to seek legal advice to clarify.

5. The recent Independent Review of the Senior Management Arrangements in the WLGA also made recommendations relevant to the governance of the Association, which, if taken forward, would require changes to be made to the Constitution.
6. It is proposed a useful exercise would be to review the WLGA Constitution in its entirety, identifying issues that have previously been raised and seeking advice on any changes required in terms of implementing the recommendations of the review, engaging a specialist lawyer with experience of unincorporated bodies to advise accordingly.

Issues in relation to the Constitution

7. In December 2022, Welsh Government finance officials wrote to the Chief Executive to raise a query that had arisen over the way in which the funding flows from Welsh Government to the WLGA and onward to Local Authorities with a view that as an unincorporated association, the WLGA would require a lead member to sign the agreement on behalf of WLGA. The Welsh Government also raised concerns in relation to GDPR requirements and responsibilities with a view that the WLGA cannot be a data controller or processor in its own right for GDPR purposes, which, in their opinion, means that any personal data shared with an unincorporated body (that is not a controller) places the Welsh Government in breach of a number of data protection principles, particularly on accountability and transparency.
8. Legal advice was sought on these issues which confirmed that the WLGA can be and indeed is a data controller for GDPR purposes and is registered with the ICO (confirming that unincorporated associations can be data controllers). The WLGA has a Data Protection Officer (provided via Cardiff Council) and an audit of WLGA processes is currently being undertaken. The Constitution also clarifies that liability for any losses incurred as a result of any breaches or losses in respect of our obligations as a controller, as an unincorporated body, the responsibility for our liabilities would usually be decided between the members of the Association. The WLGA Constitution makes reference to members being liable for their share of the 'net liabilities' of the WLGA and the legal advice received reflects that any liability under data protection law would fall within the definition of a net liability. As such, advice reflects that any liabilities following a breach which the WLGA was responsible for, would not fall to Welsh Government in terms of accountability.
9. In relation to the administration of grants, and who is able to enter into contracts on behalf of the WLGA, the legal advice is less straightforward on powers conferred by the Constitution and also links to the Financial Regulations, and delegated authorities, within which the WLGA operates. Lawyers therefore recommended that the Constitution be amended to make it clear that the Chief Executive is able to sign and/or make it clear that they can be given delegated authority to sign certain things, such as grant acceptance letters.

10. Officers have responded to Welsh Government on the issues raised in their letter, based on the legal advice received and we await a response as to whether their concerns have been addressed. Additionally, the point was made that the current arrangements have worked well since 1996 and that the WLGA is a 'Specified Body' cited in the Local Government Finance Report, also recognising that some amendments to our Constitution may be helpful in clarifying certain issues to avoid such queries arising in the future.
11. It is recognised, however, there are some limitations to the role the WLGA can undertake in undertaking its functions and this was evidenced in relation to the proposed role of WLGA in the governance of the National Adoption Service (NAS). In this instance, lawyers advised that the WLGA did not have the powers to act as was envisaged. For example, the powers conferred by the Constitution do not enable the WLGA to have a direct role in the delivery and management and act as the accountable body for NAS. To address this, councils have agreed to establish a formal Joint Committee to provide overall governance and decision-making for NAS (and Foster Wales) and the first meeting of the Committee will be held over the coming months however it has taken time to establish such arrangements and with some amendments to the Constitution may assist should a similar situation arise in the future.
12. The WLGA is the certified employers organisation for local government in Wales, a remit that transferred to the Association following the merger with Syniad. This provides for representation of the membership in national collective bargaining arrangements on pay, terms and conditions, however, this role is not referenced in the current constitution.
13. The current governance arrangements have been in place for a number of years and in contributing to the review, members raised working arrangements and governance, identifying some of these as 'cumbersome' and 'bureaucratic'. Members questioned the role and purpose of the Council and Executive Board and a widely held view was that the business should be strategic and policy focused (whereas the current agendas focus on more mundane business).
14. Implementing the review recommendations provides an opportunity to review the current arrangements and consider other options, also learning from the way in which our sister bodies are governed, for example, the LGA has a range of policy specific boards that are decision-making and feed into the Executive Board. Should members wish to amend the current governance arrangements when options are presented, changes to the Constitution would be required to put in place the new arrangements.
15. A review of the Constitution will also provide an opportunity to review other aspects of how the WLGA operates to ensure it remains fit for purpose and will enable the WLGA to undertake the work as tasked by members going forward.

Recommendations

16. Members are asked to:

- 16.1 Note and comment on the contents of this report;
- 16.2 Task officers to undertake a review of the Constitution, based on legal advice received previously and issues raised and the findings of the review, including comparisons with sister bodies and specialist legal advice; and
- 16.3 Receive a further paper with proposals on amending the Constitution for consideration and to agree a way forward.

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