

COMPANIES ACT 2006

WRITTEN RESOLUTION

FOYLE DOWN SYNDROME TRUST LIMITED (the "Company")

Date of Circulation: 6<sup>th</sup> March 2019.

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 (the "2006 Act"), the following resolution was passed as a special resolution (the "Resolution").

IT WAS RESOLVED:-

SPECIAL RESOLUTION:

"THAT, the regulations contained in the document attached to this form and headed "Articles of Association" be adopted as the articles of association of the Company in substitution for and to the entire exclusion of the existing memorandum and articles of association including the relevant provisions of the memorandum of association that would otherwise be treated as provisions of the articles under Section 28 of the Companies Act 2006."

All of the members entitled to vote on the Resolution set out above on the 6<sup>th</sup> day of March 2019, irrevocably agreed to the Resolution.

Signed: Angela Thompson Dated: 6<sup>th</sup> March 2019.  
Company Secretary/Director  
Choir  
Angela Thompson.



**NI039134  
NIC105694**

**COMPANIES ACT 2006  
COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION  
OF  
FOYLE DOWN SYNDROME TRUST LIMITED**

**COMPANIES ACT 2006**

**COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

**- of -**

**FOYLE DOWN SYNDROME TRUST LIMITED**

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1. The company's name is FOYLE DOWN SYNDROME TRUST LIMITED (and in this document it is called the "**Charity**").
2. LIABILITY OF MEMBERS
  - 2.1. The liability of the members is limited.
  - 2.2. Every member promises, if the Charity is dissolved while he/she remains a member or within one year after he/she ceases to be a member, to pay up to £1 towards:
    - 2.2.1. payment of those debts and liabilities of the Charity incurred before he/she ceased to be a member;
    - 2.2.2. payment of the costs, charges and expenses of winding up; and
    - 2.2.3. the adjustment of rights of contributors among themselves.
3. OBJECTS
  - 3.1. The Charity's Objects are to:
    - 3.1.1. relieve and rehabilitate children and adults with Down Syndrome; and
    - 3.1.2. advance the education of such persons and their parents and carers.

#### 4. POWERS

- 4.1. The Charity has the power to do anything which is calculated to further the Objects or is conducive or incidental to doing to. In particular the Charity has power:
- 4.1.1. provide or secure the provision of social services, educational facilities, practical assistance for children and adults with Down Syndrome, their parents or carers;
  - 4.1.2. to co-operate with other bodies;
  - 4.1.3. to provide advice and other charitable services;
  - 4.1.4. make or receive grants or loans of money;
  - 4.1.5. to open and operate bank accounts and other facilities for banking;
  - 4.1.6. to organise (or to make grants or loans towards the costs of others organising) meetings, lectures, conferences, broadcasts or courses of instruction;
  - 4.1.7. to publish or distribute information in any format;
  - 4.1.8. to enter into any funding or other arrangement with any government or any other authority (supreme, municipal, local or otherwise) and to obtain from such government or authority any rights, concessions, privileges, licences and/or permits;
  - 4.1.9. to establish, participate in and/or support (financially or otherwise) groups, forums, associations, federations or organisations with purposes which are within the Objects for any of the charitable purposes included in the Objects;
  - 4.1.10. to set up, make grants to, support or administer other charities and undertake and execute charitable trusts;
  - 4.1.11. to give guarantees (but only in accordance with the restrictions imposed by the Applicable Charities Legislation (if any));
  - 4.1.12. to accept any gift of money, property or other assets whether subject to any special trusts or not;
  - 4.1.13. to buy, take on lease or exchange, hire or otherwise acquire land and property of any tenure and or any option or any other interest in land and to maintain or equip it for use;
  - 4.1.14. to borrow money or raise money for the purposes of the Charity and to mortgage or charge the whole or any part of the property of the Charity as security for loans (but only in accordance with

the restrictions imposed by the Applicable Charities Legislation (if any));

- 4.1.15. to acquire or hire property rights or privileges of any kind and to construct, restore, improve, maintain and alter such property;
- 4.1.16. to erect and construct buildings, houses or works of any description on any land whether or not owned by the Charity, and to demolish, rebuild, enlarge, alter and improve buildings, houses or works, and generally to deal with and develop the property of the Charity;
- 4.1.17. to raise funds, including making reasonable charges for any services provided (whether to beneficiaries or not), and invite and receive contributions. In doing so the Charity must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations;
- 4.1.18. to sell, lease, licence, let, grant options over or otherwise dispose of or turn to account property of any kind (but only in accordance with the restrictions imposed by the Applicable Charities Legislation (if any));
- 4.1.19. to make planning applications, applications for consent under bye-laws or building regulations or other similar applications;
- 4.1.20. to pay any rent and other outgoings and expenses and execute and do all such other instruments, acts and things as may be requisite in connection with the use, maintenance, upkeep, expansion, alteration or improvement of such property;
- 4.1.21. to purchase lease or hire and operate and maintain any equipment necessary or convenient for the administration of the Charity;
- 4.1.22. to promote or carry out research;
- 4.1.23. to set aside funds for special purposes or as reserves against future expenditure but only in accordance with a written policy about reserves;
- 4.1.24. to deposit or invest funds in any manner (but to invest only after obtaining advice from a Financial Expert, unless the Trustees reasonably conclude that in all the circumstances it is unnecessary or inappropriate to do so, and having regard to the suitability of investments and the need for diversification);
- 4.1.25. to delegate the management of investments to a Financial Expert, but only on terms that:
  - 4.1.25.1. require the Financial Expert to comply with the investment policy (and any revision of that policy) set

down in writing for the Financial Expert by the Trustees;

- 4.1.25.2. require the Financial Expert to report transactions to the Trustees at such interval as the Trustees consider appropriate;
- 4.1.25.3. require the Financial Expert to review the performance of the investments with the Trustees regularly;
- 4.1.25.4. entitle the Trustees to cancel the delegation arrangements at any time;
- 4.1.25.5. require the investment policy and the delegation arrangement to be reviewed with the Trustees at least once a year;
- 4.1.25.6. require all payments to the Financial Expert to be on a scale or at a level which is agreed in advance and to be notified promptly to the Trustees on receipt;
- 4.1.25.7. prohibit the Financial Expert from doing anything outside the powers of the Trustees;
- 4.1.26. to arrange for investments or other property of the Charity to be held in the name of a nominee (being a corporate body controlled by the Trustees or by the Financial Expert acting under the instructions of the Trustees) and to pay any reasonable fee required;
- 4.1.27. to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required;
- 4.1.28. to purchase insurance designed to indemnify the Trustees against any personal liability in respect of any negligence, default, breach of trust or breach of duty committed by them in their capacity as Charity Trustees provided that the terms of such insurance exclude the provision of indemnity for liability incurred:
  - 4.1.28.1. to pay a fine imposed in criminal proceedings;
  - 4.1.28.2. to pay a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
  - 4.1.28.3. by a Trustee in defending criminal proceedings in which he is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him; or

- 4.1.28.4. by a Trustee, to the Charity, that arises out of any conduct which he knew (or must reasonably be assumed to have known) was not in the interests of the Charity or in the case of which he did not care whether it was in the interests of the Charity or not;
- 4.1.29. subject to Article 7, to employ paid or unpaid agents, staff or advisers and to engage the services of volunteers;
- 4.1.30. to provide and contribute to superannuation or pension funds for the employees and workers of the Charity or any of them or otherwise to make provision for such employees and workers, their widows and children;
- 4.1.31. to enter into contracts to provide services to or on behalf of other bodies;
- 4.1.32. to acquire, merge with, amalgamate with or enter into any joint venture or partnership, partnering or collaboration working and/or to amalgamate for the takeover of the Charity by or to take over any charitable organisation (or part thereof) the purposes of which is in the opinion of the Trustees similar to the purposes of the Charity;
- 4.1.33. to enter into and carry into effect agreements or arrangements with associations, institutions, companies or individuals which are reasonably necessary for the attainment or furtherance of the Charity's Objects or any of them;
- 4.1.34. to establish, participate in and support (financially or otherwise) groups, associations, federations or organisations with purposes which are within the Objects;
- 4.1.35. to establish or acquire Subsidiary Companies to assist or act as agents for the Charity;
- 4.1.36. to institute, prosecute or defend any claims, suits or actions or other proceedings affecting the Charity or its Objects and to compromise any matter or difference or to submit any such matter to arbitration or mediation and to compromise, compound or abandon any debts owed to the Charity or any other claims and to compromise any dispute in relation to debts or any other claims against the Charity upon evidence that the Trustees shall deem sufficient and so that the Trustees shall not be responsible for any loss occasioned by any act or thing so done by them in good faith;
- 4.1.37. to pay the reasonable and proper costs of forming and administering the Charity; and
- 4.1.38. to do anything else within the law which the Trustees believe will promote or help to promote the Objects.

## 5. MEMBERS

- 5.1. The subscribers to the Memorandum were the first members of the Charity.
- 5.2. From the date of adoption of these articles the members of the Charity shall be the Trustees of the Charity for the time being. Members shall cease to be members of the Charity when they cease to be Trustees or their membership is terminated under Article 7.
- 5.3. Membership is not transferable.
- 5.4. The Trustees must keep a register of names and addresses of the members.

## 6. TERMINATION OF MEMBERSHIP

- 6.1. Membership is terminated if:
  - 6.1.1. the member dies;
  - 6.1.2. the member resigns by written notice to the Charity unless, after the resignation, there would be less than two members;
  - 6.1.3. any sum due from the member to the Charity is not paid in full within six months of it falling due and the Trustees resolve to terminate the membership of the Charity;
  - 6.1.4. the member ceases to be a Trustee;
  - 6.1.5. the member is removed from membership by a resolution of the Trustees that it is in the best interests of the Charity that his or her or its membership is terminated. A resolution to remove a member from membership may only be passed if:
    - 6.1.5.1. the member has been given at least twenty-one days' notice in writing of the meeting of the Trustees at which the resolution will be proposed and the reasons why it is to be proposed; and
    - 6.1.5.2. the member or, at the option of the member, the members' representative (who need not be a member of the Charity) has been allowed to make representations to the meeting.

## 7. LIMITATION ON PRIVATE BENEFITS TO MEMBERS AND TRUSTEES

- 7.1. The income and property of the Charity shall be applied solely towards the promotion of its objects.



- 7.2. No part of the income and property of the Charity shall be paid or transferred, directly or indirectly, by way of benefit, to members and no Trustee may receive any remuneration, or other benefit in money or money's worth, from the Charity, except for payment in good faith of:
- 7.2.1. any payment made, or benefit provided, to any member, or Trustee, or Connected Person in their capacity as a beneficiary of the Charity provided that a majority of the Trustees do not benefit in this way;
  - 7.2.2. reasonable and proper payment to any person (not being a Trustee) for any goods or services supplied to the Charity;
  - 7.2.3. reasonable travelling and other out of pocket expenses necessarily incurred in carrying out the duties of any employee, Trustee or other representative of the Charity;
  - 7.2.4. interest on money lent to the Charity at a reasonable and proper rate per annum;
  - 7.2.5. reasonable and proper rent for premises let to the Charity;
  - 7.2.6. payments, or other benefits, in money or money's worth, to any company of which a member, Trustee or Connected Person is a member holding not more than 1% of its capital;
  - 7.2.7. reasonable and proper premiums in respect of indemnity insurance effected in accordance with Article 4.1.28;
  - 7.2.8. the usual professional charges for business done by any member, or subject to 7.3, any Trustee or Connected Person, who is a solicitor, accountant or other person engaged in the profession, or by any partner of his/her, when instructed by the Charity to act in a professional capacity on its behalf;
  - 7.2.9. payment for other goods or services provided to the Charity by any member or, subject to 7.3 any Trustee or Connected Person (other than for acting as a trustee).
- 7.3. Any payments, or other benefits, under Articles 7.2.8 and 7.2.9 may only be made if the following conditions are satisfied:
- 7.3.1. the payments, or other benefits, are set out in writing between the Charity and the other party and do not exceed an amount that is reasonable in all the circumstances;
  - 7.3.2. any relevant Trustee is absent from and does not count towards quorum for the part of any meeting at which there is discussion of and does not vote on any resolution relating to his/her, or a relevant Connected Person's, engagement by the Charity under any contract, the payment and other terms of such contract and such person's performance under it.

- 7.3.3. in relation to any proposed contract with a relevant Trustee, or Connected Person, that the other Trustees are satisfied that it is in the best interests of the Charity to enter into a contract with that Trustee, or Connected Person, rather than with someone who is not a Trustee, or Connected Person;
- 7.3.4. the reasons for the decision of the Trustees are recorded in the official minutes of trustee meetings;
- 7.3.5. in any financial year, no more than a minority of Trustees are subject to such an arrangement where remuneration is payable.
- 7.4. The restrictions and qualifications to them, under this Article 7, relating to remuneration of and provision of benefits to Trustees from the Charity apply also to remuneration of and benefits to Trustees from Subsidiary Companies.
- 7.5. Subject to Article 7.6, any Trustee who becomes a Conflicted Trustee in relation to any matter must:
  - 7.5.1. declare the nature and extent of his or her interest before discussion begins on the matter;
  - 7.5.2. withdraw from the meeting for that item after providing any information requested by the Trustees;
  - 7.5.3. not be counted in the quorum for that part of the meeting; and
  - 7.5.4. be absent during the vote and have no vote on the matter.
- 7.6. When any Trustee is a Conflicted Trustee, the Trustees who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interests of the Charity to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee, to:
  - 7.6.1. continue to participate in discussions leading to the making of a decision and/or to vote; or
  - 7.6.2. disclose to a third party information confidential to the Charity; or
  - 7.6.3. take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or Material Benefit from the Charity; or
  - 7.6.4. refrain from taking any step required to remove the conflict.
- 7.7. This provision may be amended by special resolution but, where the result would be to permit any Material Benefit to a Trustee or Connected Person,

only with the prior written consent, where required under the Applicable Charities Legislation.

## 8. GENERAL MEETINGS

- 8.1. An annual general meeting must be held in each year and not more than fifteen months may elapse between successive annual general meetings.
- 8.2. The Trustees may call a general meeting at any time.
- 8.3. A general meeting may be called on a written request to the Trustees from members entitled to exercise at least 10% of the voting rights of members or, if more than twelve months have passed since the Charity last held a general meeting, from members entitled to exercise at least 5% of the voting rights of members.
- 8.4. On receipt of a written request made pursuant to Article 8.3, the Trustees must call a general meeting within 21 days and the general meeting must be held not more than 28 days after the date of the notice calling the meeting.
- 8.5. Members must annually at the annual general meeting:
  - 8.5.1. receive the accounts for the Charity for the previous financial year;
  - 8.5.2. receive a written report on the Charity's activities;
  - 8.5.3. be informed of the retirement of those Trustees who wish to retire or who are retiring by rotation;
  - 8.5.4. elect Trustees to fill the vacancies arising;
  - 8.5.5. appoint reporting accountants or auditors for the Charity.

## 9. NOTICE OF GENERAL MEETINGS

- 9.1. The minimum period of notice required to hold a general meeting of the Charity is fourteen clear days.
- 9.2. A general meeting may be called by shorter notice if it is so agreed by a majority in number of members having a right to attend and vote at the meeting, being a majority who together hold not less than 90 percent of the total voting rights.
- 9.3. The notice of a general meeting must specify the date time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be an annual general meeting, the notice must say so. The notice must also contain a statement setting out the right of members to appoint a proxy under s.324 of the Companies Act 2006 and Article 11.

- 9.4. The notice of a general meeting must be given to all the members and to the Trustees and auditors.
- 9.5. The proceedings at a general meeting shall not be invalidated because a person who was entitled to receive notice of the general meeting did not receive it because of an accidental omission by the Charity.

## 10. PROCEEDINGS AT GENERAL MEETINGS

- 10.1. No business shall be transacted at any general meeting unless a quorum is present.
- 10.2. A quorum is three members present in person or by proxy and entitled to vote upon the business to be conducted at the meeting.
- 10.3. If:
  - 10.3.1. a quorum is not present within half an hour from the time appointed for the meeting; or
  - 10.3.2. during a meeting a quorum ceases to be present,the meeting shall be adjourned to such time and place as the Trustees shall determine.
- 10.4. The Trustees must reconvene the meeting and must give at least seven days' notice of the reconvened meeting stating the date, time and place of the meeting.
- 10.5. If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting the meeting shall be dissolved.
- 10.6. General meetings shall be chaired by the person who has been appointed to chair meetings of the Trustees.
- 10.7. If there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting a Trustee nominated by the Trustees shall chair the meeting.
- 10.8. If there is only one Trustee present and willing to act, he or she shall chair the meeting.
- 10.9. If no Trustee is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present in person or by proxy and entitled to vote must choose one of their number to chair the meeting.
- 10.10. The members present in person or by proxy at a meeting may resolve by ordinary resolution that the meeting shall be adjourned.

- 10.11. The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.
- 10.12. No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.
- 10.13. If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of the meeting.
- 10.14. Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded:
  - 10.14.1. by the person chairing the meeting; or
  - 10.14.2. by at least two members present in person or by proxy and having the right to vote at the meeting; or
  - 10.14.3. by a member or members present in person or by proxy representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
- 10.15. The declaration by the person who is chairing the meeting of the result of a vote shall be conclusive unless a poll is demanded.
- 10.16. The result of the vote must be recorded in the minutes of the Charity but the number or proportion of votes cast need not be recorded.
- 10.17. A demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the person who is chairing the meeting.
- 10.18. If the demand for a poll is withdrawn the demand shall not invalidate the result of a show of hands declared before the demand was made.
- 10.19. A poll must be taken as the person who is chairing the meeting directs, who may appoint scrutineers (who need not be members) and who may fix a time and place for declaring the results of the poll.
- 10.20. The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.
- 10.21. A poll demanded on the election of a person to chair a meeting or on a question of adjournment must be taken immediately.
- 10.22. A poll demanded on any other question must be taken either immediately or at such time and place as the person who is chairing the meeting directs.
- 10.23. The poll must be taken within thirty days after it has been demanded.

10.24. If the poll is not taken immediately at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

10.25. If a poll is demanded the meeting may continue to deal with any other business that may be conducted at the meeting.

## 11. CONTENT OF PROXY NOTICES

11.1. Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:

11.1.1. states the name and address of the member appointing the proxy;

11.1.2. identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

11.1.3. is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the Trustees may determine; and

11.1.4. is delivered to the Charity in accordance with the Articles and any instruction contained in the notice of the general meeting to which they relate.

11.2. The Charity may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

11.3. Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

11.4. Unless a proxy notice indicates otherwise, it must be treated as:

11.4.1. allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

11.4.2. appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

## 12. DELIVERY OF PROXY NOTICES

12.1. A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Charity by or on behalf of that person.

12.2. An appointment under a proxy notice may be revoked by delivering to the Charity a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

- 12.3. A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 12.4. If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

### 13. WRITTEN RESOLUTIONS

- 13.1. A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective provided that:
  - 13.1.1. a copy of the proposed resolution has been sent to every eligible member;
  - 13.1.2. a simple majority (or in the case of a special resolution a majority of not less than 75%) of members has signified its agreement to the resolution; and
  - 13.1.3. it has been received at the registered office within a period of 28 days beginning with the circulation date.
- 13.2. A resolution in writing may comprise several copies to which one or more members have signified their agreement.

### 14. VOTES OF MEMBERS

- 14.1. Every member shall have one vote. The chair of the meeting shall have a casting vote.
- 14.2. Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and the decision of the person who is chairing the meeting shall be final.

### 15. TRUSTEES

- 15.1. A Trustee must be a natural person aged 18 years or older and must be a member.
- 15.2. No one may be appointed a Trustee if he or she would be disqualified from acting under the provisions of Article 18.
- 15.3. The number of Trustees shall be not less than three nor more than ten (unless otherwise determined by ordinary resolution).
- 15.4. The first Trustees were those persons notified to Companies House as the first directors of the Charity.
- 15.5. A Trustee may not appoint an alternate Trustee or anyone to act on his or her behalf at meetings of the Trustees.

## 16. POWERS OF TRUSTEES

- 16.1. The Trustees shall manage the business of the Charity and may exercise all the powers of the Charity unless they are subject to any restrictions imposed by the Companies Acts, the Applicable Charities Legislation, the Articles or any special resolution.
- 16.2. The Trustees may appoint a Chairperson, one or more Deputy Chairperson, Treasurer and such other honorary officers from among their number.
- 16.3. No alteration of the Articles or any special resolution shall have retrospective effect to invalidate any prior act of the Trustees.
- 16.4. Any meeting of Trustees at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the Trustees.

## 17. APPOINTMENT OF TRUSTEES

- 17.1. Trustees shall be appointed by an election of the members of the Charity at the annual general meeting. A Trustee (including a Co-opted Trustee) must be admitted as a member of the Charity on appointment as a Trustee. At each annual general meeting all Trustees, who have served three consecutive years or more as a Trustee shall retire from office. A Trustee who retires in accordance with this Article, if willing to act, shall be eligible for reappointment for a further two terms of office of up to three consecutive years each, so that no Trustee shall serve more than nine years consecutively. When calculating the terms of office, a Trustee's terms of years already served as a Trustee as at the date of adoption of these Articles, shall not be taken into account so that a Trustee appointed since the last AGM shall be deemed to be serving their first term of office starting with the last AGM; and any Trustees serving their third term of office shall be deemed to be serving their second term of office.
- 17.2. If the Charity at the meeting at which a Trustee retires pursuant to the provisions of Article 17.1, does not fill the vacancy, the retiring Trustee shall, if willing to act, be deemed to have been reappointed unless at the meeting (i) it is resolved not to fill the vacancy or (ii) a resolution for the reappointment of the Trustee is put to the meeting and lost or (iii) the Trustee has served for a continuous term of six years provided that in exceptional circumstances the meeting may resolve that it is in the best interest of the Charity for the Trustee to remain for one further term of 12 months.
- 17.3. No person other than a Trustee retiring pursuant to the provisions of Article 17.1 or a Trustee appointed pursuant to the provisions of Article 17.6 shall be appointed or re-appointed a Trustee at any general meeting:
  - (a) unless he is recommended by the Trustees; or



- (b) unless not less than 14 nor more than 35 clear days before the date appointed for the meeting, notice executed by a member qualified to vote at the meeting has been given to the Charity of the intention to propose that person for appointment or reappointment stating the particulars which would, if he were so appointed or re-appointed, be required to be included in the Charity's register of Trustees together with a notice executed by that person of his willingness to be appointed or re-appointed.
- 17.4. Not less than seven nor more than 28 clear days before the date appointed for holding an annual general meeting notice shall be given to all persons who are entitled to receive notice of the meeting of any person (other than a Trustee retiring by rotation at the meeting) who is recommended by the Trustees for appointment or reappointment as a Trustee at the meeting or in respect of whom notice has been duly given to the Charity of the intention to propose him at the meeting for appointment or reappointment as a Trustee. The notice shall give the particulars of that person which would, if he were so appointed or re-appointed, be required to be included in the Charity's register of Trustees.
- 17.5. Subject as aforesaid, the Trustees at any meeting of Trustees may appoint a person who is willing to act to be a Trustee to fill a casual vacancy to serve out the remaining term of office.
- 17.6. The Trustees may at any time co-opt any individual who is eligible under Article 15. A Co-opted Trustee shall be appointed to hold office from the date of appointment to the next annual general meeting and shall be entitled to attend meetings of the Trustees and shall have a right to vote at meetings of the Trustees. Co-opted Trustees shall be members of the Charity for so long as they remain Co-opted Trustees. A Co-opted Trustee shall be eligible to be co-opted again, subject to a recommendation from the Trustees on each occasion but shall not serve for a period of more than three years consecutively.
- 18. **DISQUALIFICATION AND REMOVAL OF TRUSTEES**
  - 18.1. A Trustee shall cease to hold office if he or she:
    - 18.1.1. ceases to be a Trustee by virtue of any provision in the Companies Acts or is prohibited by law from being a Trustee;
    - 18.1.2. is disqualified from acting as a Trustee by virtue of the Applicable Charities Legislation;
    - 18.1.3. ceases to be a member of the Charity;
    - 18.1.4. in the written opinion, given to the Charity of a registered medical practitioner treating that person, has physically or mentally become incapable of acting as a Trustee and may remain so for more than three months;

- 18.1.5. resigns as a Trustee by notice to the Charity (but only if at least two Trustees will remain in office when the notice of resignation is to take effect);
- 18.1.6. may not be a 'fit and proper person' as described in HM Revenue & Custom's guidance and the Trustees believe that his or her continued involvement as a Trustee could jeopardize the Charity's tax reliefs and exemptions with HMRC and the Trustees resolve that his office be vacated; or
- 18.1.7. is absent without the permission of the Trustees from all their meetings held within a period of six consecutive months and the Trustees resolve that his or her office be vacated.

## 19. REMUNERATION OF TRUSTEES

The Trustees must not be paid any remuneration unless it is authorised by Article 7 or by the Commission.

## 20. PROCEEDINGS OF TRUSTEES

- 20.1. The Trustees may regulate their proceedings as they think fit, subject to the provisions of the Articles.
- 20.2. The Trustees shall meet at least once in each calendar year. Any Trustee may call a meeting of the Trustees.
- 20.3. The Secretary (if any) must call a meeting of the Trustees if requested to do so by a Trustee.
- 20.4. Questions arising at a meeting shall be decided by a majority of votes.
- 20.5. In the case of an equality of votes, the person who is chairing the meeting shall have a second or casting vote.
- 20.6. A meeting may be held by suitable electronic means agreed by the Trustees in which each participant may communicate with all the other participants.
- 20.7. No decision may be made by a meeting of the Trustees unless a quorum is present at the time the decision is purported to be made. 'Present' includes being present by suitable electronic means agreed by the Trustees in which a participant or participants may communicate with all the other participants.
- 20.8. The quorum shall be three Trustees or such larger number as may be decided from time to time by the Trustees.
- 20.9. A Trustee shall not be counted in the quorum present when any decision is made about a matter upon which that Trustee is not entitled to vote.

- 20.10. If the number of Trustees is less than the number fixed as the quorum, the continuing Trustees or Trustee may act only for the purpose of filling vacancies or of calling a general meeting.
- 20.11. The Trustees shall appoint a Trustee to chair their meetings and may at any time revoke such appointment.
- 20.12. If no-one has been appointed to chair meetings of the Trustees or if the person appointed is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the Trustees present may appoint one of their number to chair that meeting.
- 20.13. The person appointed to chair meetings of the Trustees shall have no functions or powers except those conferred by the Articles or delegated to him or her by the Trustees.
- 20.14. A resolution in writing or in electronic form agreed by all the Trustees entitled to receive notice of a meeting of Trustees or of a committee of Trustees and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the Trustees or (as the case may be) a committee of Trustees duly convened and held provided that:
- 20.14.1. a copy of the resolution is sent or submitted to all the Trustees eligible to vote; and
- 20.14.2. all of the Trustees have signified their agreement to the resolution in an authenticated document or documents which are received at the registered office.
- 20.15. The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more Trustees has signified their agreement.

## 21. DELEGATION

- 21.1. The Trustees may delegate any of their functions to committees consisting of two or more individuals appointed by them. At least one members of every committee must be Trustees and the terms of any delegation must be recorded.
- 21.2. The Trustees may impose conditions when delegating, including the conditions that:
  - 21.2.1. the relevant powers are to be exercised exclusively by the committee to whom they delegate; and
  - 21.2.2. no expenditure may be incurred on behalf of the Charity except in accordance with a budget previously agreed with the Trustees.
- 21.3. The Trustees may revoke or vary a delegation.
- 21.4. The meetings and proceedings of committees shall be governed by the Articles regulating the meetings and proceedings of the Trustees so far as applicable and not superseded by regulations made by the Trustees.
- 21.5. All acts and proceedings of any committees must be fully and promptly reported to the Trustees and for that purpose every committee shall appoint a secretary.

## 22. DECLARATION OF TRUSTEES' INTERESTS

A Trustee must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Charity or in any transaction or arrangement entered into by the Charity which has not previously been declared. A Trustee must absent himself or herself from any discussions of the Trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Charity and any personal interest (including but not limited to any personal financial interest) unless expressly invited to remain in order to provide information.

## 23. VALIDITY OF TRUSTEES' DECISIONS

- 23.1. Subject to Article 23.2, all acts done by a meeting of Trustees, or of a committee of Trustees, shall be valid notwithstanding the participation in any vote of a Trustee:
  - 23.1.1. who was disqualified from holding office;
  - 23.1.2. who had previously retired or who had been obliged by the constitution to vacate office;
  - 23.1.3. who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise;

if without:

23.1.4. the vote of that Trustee; and

23.1.5. that Trustee being counted in the quorum;

the decision has been made by a majority of the Trustees at a quorate meeting.

23.2. Article 23.1 does not permit a Trustee or a connected person to keep any benefit that may be conferred upon him or her by a resolution of the Trustees or of a committee of Trustees if, but for Article 23.1, the resolution would have been void, or if the Trustee has not complied with Article 22 or Article 23.

## 24. SEAL

If the Charity has a seal it must only be used by the authority of the Trustees or of a committee of Trustees authorised by the Trustees. The Trustees may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Trustee and by the secretary (if any) or by a second Trustee.

## 25. MINUTES

25.1. The Trustees must keep minutes of all:

25.1.1. appointments of officers made by the Trustees;

25.1.2. proceedings at meetings of the Charity; and

25.1.3. meetings of the Trustees and committees of Trustees including:

25.1.3.1. the names of the Trustees present at the meeting;

25.1.3.2. the decisions made at the meetings; and

25.1.3.3. where appropriate the reasons for the decisions.

## 26. ACCOUNTS

26.1. The Trustees must prepare for each financial year accounts as required by the Companies Acts. The accounts must be prepared to show a true and fair view and follow accounting standards issued or adopted by the Accounting Standards Board or its successors and adhere to the recommendations of applicable Statements of Recommended Practice.

26.2. The Trustees must keep accounting records as required by the Companies Act and Applicable Charity Legislation.

## 27. ANNUAL REPORT AND RETURN AND REGISTER OF CHARITIES

- 27.1. The Trustees must comply with the requirements of the Charities Act (Northern Ireland) 2008 once commenced with regard to the:
- 27.1.1. preparation of the statements of account and the transmission of a copy of it to the Commission;
  - 27.1.2. preparation of an Annual Report and the transmission of a copy of it to the Commission;
  - 27.1.3. preparation of an Annual Monitoring Return and its transmission to the Commission; and
  - 27.1.4. the auditing or independent examination of the statement of account of the charity.
- 27.2. The Trustees must notify the Commission promptly of any changes to the Charity's entry on the register of charities.

## 28. MEANS OF COMMUNICATION TO BE USED

- 28.1. Subject to the Articles, anything sent or supplied by or to the Charity under the Articles may be sent or supplied in any way in which the Companies Acts provides for documents or information which are authorised or required by any provision of the Companies Acts to be sent or supplied by or to the Charity.
- 28.2. Subject to the Articles, any notice or document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or documents for the time being.
- 28.3. Any notice to be given to or by any person pursuant to the Articles:
- 28.3.1. must be in writing; or
  - 28.3.2. must be given in electronic form.
- 28.4. The Charity may give any notice to a member either:
- 28.4.1. personally; or
  - 28.4.2. by sending it by post in a prepaid envelope addressed to the member at his or her address; or
  - 28.4.3. by leaving it at the address of the member; or
  - 28.4.4. by giving it in electronic form to the member's address.

- 28.5. A member who does not register an address with the Charity or who registers only a postal address that is not within the United Kingdom or the Republic of Ireland shall not be entitled to receive any notice from the Charity.
- 28.6. A member present in person at any meeting of the Charity shall be deemed to have received notice of the meeting and of the purposes for which it was called.
- 28.7. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.
- 28.8. Proof that an electronic form of notice was given shall be conclusive where the company can demonstrate that it was properly addressed and sent, in accordance with s.1147 of the Companies Act 2006.
- 28.9. In accordance with s.1147 of the Companies Act 2006 notice shall be deemed to be given:
  - 28.9.1. 48 hours after the envelope containing it was posted; or
  - 28.9.2. in the case of an electronic form of communication, 48 hours after it was sent.

## 29. RULES

- 29.1. The Trustees may from time to time make such reasonable and proper rules or bye laws or terms of reference as they may deem necessary or expedient for the proper conduct and management of the Charity.
- 29.2. The bye laws may regulate the following matters but are not restricted to them:
  - 29.2.1. the admission of members of the Charity (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
  - 29.2.2. the creation or recognition of working groups and the composition of the members' tasks, roles, rights and privileges of such working groups;
  - 29.2.3. the creation or recognition of groups of supporters or friends of the Charity who are not members of the Charity and the rights and privileges of such groups and any subscriptions or rules regulating the terms of their association with the Charity;
  - 29.2.4. the conduct of members of the Charity in relation to one another, and to the Charity's employees and volunteers;

- 29.2.5. the setting aside of the whole or any part or parts of the Charity's premises at any particular time or times or for any particular purpose or purposes;
  - 29.2.6. the procedure at general meetings and meetings of the Trustees in so far as such procedure is not regulated by the Companies Acts or by the Articles;
  - 29.2.7. generally, all such matters are as commonly the subject matter of company rules.
- 29.3. The Charity in general meeting has the power to alter, add to or repeal the rules or bye laws.
- 29.4. The Trustees must adopt such means as they think sufficient to bring the rules and bye laws to the notice of members of the Charity.
- 29.5. The rules or bye laws shall be binding on all members of the Charity. No rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the Articles.

### 30. INDEMNITY

- 30.1. The Charity shall indemnify every relevant Trustee against any liability incurred in successfully defending legal proceedings in that capacity, or in connection with any application in which relief is granted by the Court from liability for negligence, default, or breach of duty or breach of trust in relation to the Charity.
- 30.2. In this Article a "relevant Trustee" means any Trustee or former Trustee of the Charity.

### 31. DISPUTES

If a dispute arises between members or Trustees of the Charity about the validity or propriety of anything done by the members or Trustees of the Charity under these Articles, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

### 32. DISSOLUTION

- 32.1. The members of the Charity may at any time before, and in expectation of, its dissolution resolve that any net assets of the Charity after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the Charity be applied or transferred in any of the following ways:
- 32.1.1. directly for the Objects; or
  - 32.1.2. to any charity or charities for purposes similar to the Objects; or



- 32.1.3. to any charity or charities for use for particular purposes that fall within the Objects.
- 32.2. Subject to any such resolution of the members of the Charity, the Trustees of the Charity may at any time before and in expectation of its dissolution resolve that any net assets of the Charity after all its debts and liabilities have been paid, or provision made for them, shall on or before dissolution of the Charity be applied or transferred:
- 32.2.1. directly for the Objects; or
- 32.2.2. to any charity or charities for purposes similar to the Objects; or
- 32.2.3. to any charity or charities for use for particular purposes that fall within the Objects.
- 32.3. In no circumstances shall the net assets of the Charity be paid to or distributed among the members of the Charity and if no resolution in accordance with Article 32.1 or 32.2 is passed by the members or the Trustees the net assets of the Charity shall be applied for charitable purposes as directed by the court or the Commission.
33. INTERPRETATION
- 33.1. In these Articles:
- "address"** means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a telephone number for receiving text messages in each case registered with the Charity;
- "the Applicable Charities Legislation"** means the Charities Act (Northern Ireland) 1964 and the Charities (Northern Ireland) Order 1987 and the Charities Act (Northern Ireland) 2008 to the extent that they are for the time being in force and applicable to the Charity;
- "the Articles"** means the Charity's articles of association;
- "the Charity"** means the company intended to be regulated by the Articles;
- "Charity Trustee"** has the meaning prescribed by s.180 of the Charities Act (Northern Ireland) 2008;
- "clear days"** in relation to the period of a notice means a period excluding:
- the day when the notice is given or deemed to be given; and
  - the day for which it is given or on which it is to take effect;
- "the Commission"** means the Charity Commission for Northern Ireland;
- "Companies Acts"** means the Companies Acts (as defined in s.2 of the Companies Act 2006) insofar as they apply to the Charity;

**"Conflicted Trustee"** means a Trustee in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Trustee or person connected to a Trustee is receiving or stands to receive a benefit (other than payment of a premium for indemnity insurance) from the Charity, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Charity;

**"Connected Person"** means, in relation to a Trustee, a person with whom the Trustee shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any Material Benefit received by that person, being either a member of the Trustee's family or household or a person or body who is a business associate of the Trustee, and (for the avoidance of doubt) does not include a company with which the Trustee's only connection is an interest consisting of no more than 1% of the voting rights;

**"Co-opted Trustee"** means a Trustee co-opted by the Trustees in accordance with Article 17.6;

**"document"** includes, unless otherwise specified, any document sent or supplied in electronic form;

**"electronic form"** has the meaning given in s.1168 of the Companies Act 2006;

**"Financial Expert"** means a person who is reasonably believed by the Trustees to be qualified to give the relevant advice and/or provide the relevant services by his ability in and practical experience of financial and other matters relating to the investment;

**"Material Benefit"** means a benefit which may or may not be financial but which has monetary value;

**"member"** and **"membership"** refers to company law membership of the Charity of any class;

**"the Memorandum"** means the Charity's memorandum of association;

**"the Objects"** means the objects of the Charity as defined in Article 3;

**"Officers"** includes the Trustees and the secretary (if any);

**"person connected to a Trustee"** means (a) a child, parent, grandchild, grandparent, brother or sister of a Trustee, (b) the spouse or civil partner of a Trustee or anyone falling within paragraph (a), (c) a person carrying on business in partnership with a Trustee or with any person falling within paragraphs (a) (b) or (c) (or which is controlled by any two or more such persons when taken together), (d) a body corporate in which a Trustee or any person within paragraphs (a) to (c) has a substantial interest (or in which two or more such persons, taken together, have a substantial interest);

**"the seal"** means the common seal of the Charity, if it has one;

**"Secretary"** means any person appointed to perform the duties of the secretary of the Charity;

**"Subsidiary Company"** means any company in which the Charity holds more than 50% of the shares, controls more than 50% of the voting rights attached to the shares, or has the right to appoint the majority of its directors;

**"the Trustees"** means the directors of the Charity for the time being. The Trustees are Charity Trustees for charity law purposes as defined by the Applicable Charities Legislation;

**"the United Kingdom"** means Great Britain and Northern Ireland;

**"written"** or **"in writing"** refers to a legible document or paper or a document which can be printed onto paper including a fax message or electronic mail; and

words importing one gender shall include all genders, and the singular includes the plural and vice versa.

- 33.2. Unless the context otherwise requires, words or expressions contained in the Articles have the same meaning as in the Companies Acts and the Applicable Charities Legislation but excluding any statutory modification not in force when this constitution becomes binding on the Charity.
- 33.3. Apart from the exception mentioned in the previous paragraph a reference to an Act of Parliament includes any statutory modification or re-enactment of it for the time being in force.

Ms Jenny Ebbage  
Edwards & Co solicitors  
28 Hill Street  
Belfast  
BT1 2LA

28 January 2019

Reference Number: CW/18/258  
Casework Type: Company Consents – section 96

**Consent to change to articles**

Dear Ms Ebbage

Thank you for your correspondence of 18 December 2018, seeking written consent from the Charity Commission for Northern Ireland to an amendment to Foyle Down Syndrome Trust Limited's articles of association.

Having examined the revised articles, the Commission consents to the revised directors' benefits at clause 7 and dissolution at clause 32 in accordance with section 96 of the Charities Act (Northern Ireland) 2008 ('the Act').

The proposed amendment to the objects at clause 3 is not a regulated alteration as the change is only in relation to numbering of the clause. Our consent is therefore not required.

Section 96(5) of the Act states that where section 26 of the Companies Act 2006 applies to a company which has made a regulated alteration to its articles, a copy of this letter must accompany a copy of the amended articles when sent to the registrar of companies.

When the articles have been adopted and a copy filed with Companies House, please forward a copy of the adopted articles and the resolution to the Commission so that we may update our records.

If you are registered with the Charities Regulatory Authority in the Republic of Ireland, you must also provide it with a copy of the adopted articles.

## **Right to appeal**

You or a person who is or may be affected by this decision to give consent have a right to appeal our decision to the Charity Tribunal. If you wish to appeal, you must lodge your appeal with the Tribunal within 42 calendar days of the date of this letter. You can find further information on the Charity Tribunal's on the Courts and Tribunals Service website, or by contacting:

Charity Tribunal  
Tribunals Hearing Centre  
2<sup>nd</sup> Floor  
Royal Courts of Justice  
Chichester Street  
Belfast  
BT1 3 JF  
Tel: 02890724857  
Email: [tribunalsunit@courtsni.gov.uk](mailto:tribunalsunit@courtsni.gov.uk)

## **Request a decision review**

You or a person who is or may be affected by this decision to give consent can ask the Commission to carry out a review of its decision. If you ask for a review, we will ask a different decision maker to assess your application for consent. You should ask us for a review within 42 days of the date of this letter.

You can find guidance on *Challenging a decision of the Commission* available on our website.

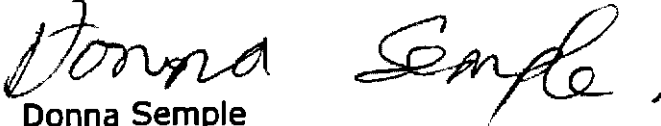
**Please note, asking for a review does not replace your statutory right to appeal to the Charity Tribunal. The time limit to lodge an appeal with the Charity Tribunal still applies even if you have applied to the Commission for a review.**

If there is something in this letter that is not clear to you please contact the Commission for further clarification.

Tel: (028) 3832 0220  
Textphone: (028) 3834 7639  
Fax: (028) 3834 5943  
Email: [casework@charitycommissionni.org.uk](mailto:casework@charitycommissionni.org.uk)

Please quote the reference number on this letter in all communications about this application and advise us if you have any accessibility requirements.

Yours sincerely

A handwritten signature in black ink, reading "Donna Semple". The signature is written in a cursive style with a large initial 'D' and a trailing comma.

Donna Semple  
Casework Officer