

Q&A.

ON THE SPECIAL RESOLUTIONS BEING PUT TO ORDINARY MEMBERS FOR CONSIDERATION AT THE 2019 AGM.

The Governance Review has made a series of recommendations which the Council of Trustees endorse and urge members to support. While some of the recommendations can be implemented by the people at Which?, there are important changes that require our members, to agree. These changes are set out as Special Resolutions in the AGM Notice. The Notice contains explanatory notes to the Resolutions and we have also set out further questions and answers below to aid understanding of the proposed changes.

1. What effect will the Special Resolutions have on the Articles of Association of Consumers' Association (Current Articles)?

We have made available on www.which.co.uk/governance a marked-up copy of the Current Articles which show the changes that will be made if each of Special Resolutions 6, 7 and 8 pass but Special Resolution 9 fails. Below, we have also provided an overview of what happens if Special Resolutions pass or fail in a different combination. Please note that Special Resolution 9 can only pass if Special Resolution 6, 7, and 8 pass.

<p>New objects are approved (Special Resolution 6 passes)</p>	<p>Both Member approval model and Maximum Term provisions are approved (Special Resolution 7 and 8 pass)</p>	<p>Member approval model approved, but Maximum Term provisions fail (Special Resolution 7 passes, Special Resolution 8 fails)</p>	<p>Member approval model fails, but Maximum Term provisions approved (Special Resolution 7 fails, Special Resolution 8 passes)</p>	<p>New Articles approved (Special Resolution 9 passes), but any of: the new objects, Member approval model or the Maximum Term provisions fail (Any of Special Resolutions 6, 7 and 8 fail)</p>	<p>New objects, Member approval model, Maximum Term provisions and New Articles approved (Special Resolutions 6, 7, 8 and 9 pass)</p>
<p>The objects are updated into modern plain English. Clear focus on education, legal compliance, safety and disadvantaged consumers.</p>	<p>The distinction between co-opted and elected Council Members disappears. The Member approval model is adopted. All Council member appointments and reappointments will be subject to the approval of the members All Council members have up to 9 year terms of office. Council members can only be re-appointed after 9 years in exceptional circumstances. The exceptional circumstances will be described in the Rules.</p>	<p>The distinction between co-opted and elected Council Members disappears. The Member approval model is adopted. All Council member appointments and reappointments will be subject to the approval of the members All Council members have up to 9 year terms of office. Council members can only be re-appointed after 9 years after a 2 year break. After a 2 year break Council members may serve up to a further 9 years and must then take another 2 year break. This cycle can (in theory) continue indefinitely.</p>	<p>The distinction between co-opted and elected Trustees continues. The election and co-option process continues. Only the Elected Council members will be put to the members for election or re-election. All Council members have up to 9 years in office. Council members can only be re-appointed after 9 years in exceptional circumstances. The exceptional circumstances will be described in the Rules.</p>	<p>Special Resolution 9 is conditional upon each of Special Resolutions 6, 7 and 8 also passing. The entirely new set of Articles will not be adopted, therefore, but the new objects, Member Approval and Maximum Term provisions which were approved will be incorporated in the existing Articles instead.</p>	<p>An entirely new set of Articles which incorporate resolutions 6, 7 and 8 and otherwise modernise and simplify the Current Articles. Including: The objects are updated into modern plain English. Clear focus on education, legal compliance, safety and disadvantaged consumers. The distinction between co-opted and elected Council Members disappears. The Member approval model is adopted. All Council member appointments and reappointments will be subject to the approval of the members. All Council members have up to 9 year terms of office. Council members can only be re-appointed after 9 years in exceptional circumstances. The exceptional circumstances will be described in the Rules.</p>

2. Why don't we have just one vote on all of these changes?

We considered the approach of having a single vote to adopt all changes to the Articles.

However we felt that this would not provide members with adequate opportunity to engage fully with, and participate in, the decision making process. We wanted to be able to hear from members, in particular on the three key changes proposed – the update to our charitable objectives, the member approval model and the maximum term for Trustees.

3. What other models for Trustee appointments did you consider?

We looked at a broad range of potential models for Trustee appointments before focusing on three potentially viable options. In addition to the member approval model, we also looked in detail in our report *Evolving in the Modern World* at:

- an appointment model where all Trustees are appointed only by Council following a search and selection process by a Nominations Committee; and
- a modernised ballot and co-option model where candidates for election had to be interviewed by a Nominations Committee.

These are described in further detail in the Excellent Stewardship section of the Governance Review Committee's report *Evolving in a Modern World* which can be found here www.which.co.uk/governance

4. Do other charities use the member approval model?

Charities adopt lots of different approaches to appointing Trustees, depending on their legal form, purposes and history. We see the member approval model as a blend of the best we have seen in the governance of other charities and commercial companies because it has at its heart the need for all Trustees to

be accountable to members while responding to the obstacles we have found from the current dual member election and co-opted appointment model.

It has been informed by what we have heard during consultation with members and stakeholders, our research of the options available, the views of the Governance Review Committee and the Council of Trustees and the input and experience of sector experts.

5. If all Trustee candidate recommendations are put forward by the Nominations Committee, under the proposed model, won't they all come out of the same mould?

Charity and company law rules and governance codes make clear that the primary responsibility for determining the composition of trustees should sit with the trustees themselves. The Nominations Committee is responsible for the planning and processes of Trustee recruitment and ensuring that there is an appropriate mix of skills, expertise and knowledge represented. Council Trustees recognise that there is more to do to ensure that as the governing body of Which? it collectively represents the diversity of all UK consumers, to become the pre-eminent force driving positive impact for and with UK consumers.

The current model acts as a barrier to reliably building a Trustee body sufficient to oversee the complex and diverse range of activities undertaken by Which?. Elected Trustees are drawn from the membership body, the demographics of which are towards the 65+ age group, an affluent social background and are not reflective of UK society that we represent. If membership continues to fall, this problem will become more pronounced.

The Review recommends that Trustees should open up the recruitment processes and widen eligibility. The proposed model would ensure that we adopt a new approach to Trustee recruitment. The Nominations Committee will be strengthened by the addition of up to two independent members. Council's ambitions for the Committee are for it to learn from organisations that have made progress in this area and take a proactive approach to adding diversity of

thought to the Council of Trustees, in the widest sense, and reduce barriers to those who might not ordinarily consider standing for election.

This will include working with search firms that specialise in trustee recruitment, with a track record of placing trustees that provide diversity of thought, build our appeal by advertising our roles across platforms and social media to attract a broad range of trustees. To ensure we attract diversity of thought, there is also commitment to developing Trustees without prior experience of being a trustee or board director. The proposed new tenure limit of nine years will also ensure a more regular injection of new ideas and external perspective and provide more opportunities for new trustees in the future.

6. What happens if members don't accept a Trustee appointment recommendation?

If members do not approve the appointment or re-appointment of a Trustee, that person will step down and will be prohibited from reapplying for a period of three years.

Any replacement appointment will be made initially by the Council of Trustees (following a recommendation of the Nominations Committee which is responsible for undertaking an open search and selection process). The appointee would only be able to continue as a Trustee if their appointment is approved by members at the following AGM.

7. If the member approval model is adopted how will this impact member rights?

Under the member approval model, the current election process will no longer be used, but members will still have an opportunity to vote for trustees, once the initial selection process has been completed. Members (both Ordinary and Associate, together known as the 'Broad Membership')) will have an opportunity, as part of the Annual General Meeting process, to vote for a Trustee to continue in

their role. This will be presented as an ordinary resolution and will require 50% of the Broad Membership vote for the resolution to pass.

8. Will the changes that result from the Special Resolutions allow for greater member engagement and participation?

Whilst the model for appointment will have changed, the opportunity for member engagement remains the same, if not becomes greater as members will be able to vote trustees off Council if they are dissatisfied with either their performance or attendance. The Council of Trustees view this as being a powerful tool, and it is hoped that the level of engagement between the organisation and members in the run up to AGMs would be significantly higher.

9. Please give an example of how Trustee terms will work in practice.

Here is an example of how Trustee appointments will work in practice:

- A Trustee newly appointed by the Council of Trustees (on the recommendation of the Nominations Committee) in September 2021 will be subject to approval of the members at the 2021 AGM
- If the appointment is approved by members, the Trustee will continue in office until the 2024 AGM
- If the Trustee and the Council of Trustees (having considered the Nominations Committee's recommendations) wish the Trustee to continue, the renewal of their term will be subject to approval at the 2024 AGM
- If the renewal is approved by members, the Trustee will continue for a further three years
- If the Trustee and the Council of Trustees (again on the Nominations Committee's recommendation) wish the Trustee to continue for a further term, the members must once again approve the vote at the 2027 AGM

- If approved, the Trustee may serve their final term of three years. They will not be eligible to remain a Trustee or become a Trustee again at the end of that period (from the 2030 AGM) except in exceptional circumstances and, even then, only if their continued appointment is subject to the annual approval of members.

10. Why aren't we adopting the simplified articles (Special Resolution 9) even if one or more of the other resolutions (Special Resolutions 6, 7 and 8) fail?

The simplified Articles take a new approach and adopt some new, more modern terminology. If we adopted the simplified articles even if special resolutions 6, 7 and/or 8 failed, we would need to redraft existing concepts to fit in with the new approach. We would also need to create roughly six different versions of the Articles dependent upon whether one or more of resolutions 6, 7 and/or 8 pass or fail.

We felt that this would become cumbersome, confusing and difficult to understand. For this reason we are proposing that the simplified articles only be proposed for adoption if resolutions 6, 7 & 8, which contain the substantive changes the governance review recommends, are passed.

11. What do the provisions in the New Articles which relate to giving Council authority to approve benefits and payments to a Trustee under the New Articles mean in practice?

We are proposing only minor changes to the types of benefits and payments the Council of Trustees can approve to a Trustee under the New Articles. The main change is to permit Council of Trustees to pay a Trustee for goods or services delivered to the Council of Trustees (this does not permit a Trustee to be an employee). A Trustee who stands to benefit from the Association would need to

declare their conflict of interest and not take any part in the decision. Council of Trustees could only decide to make such a payment:

- if the goods/services are actually required
- the payments are reasonable and recorded in writing
- Trustees benefitting in this way are in the minority and
- the Council of Trustees is satisfied that it is in the best interests of the Association and likely to promote the success of the Association for the goods/services to be provided by that Trustee.

Any benefits or payments to Trustees are reported to members through the Trustees' annual report in the Annual Report and Accounts.

12. What will the conflicts of interests provisions under the New Articles mean for Trustees?

The conflicts of interest provisions in the current Articles only require Trustees to declare, authorise and manage commercial interests relating to the supply or promotion of consumer goods or services.

The New Articles will require Trustees to think about all interests they have that might impact their ability to take decisions solely in the best interests of the Association. For example, this could include any commercial or financial interests, their employment, other trusteeships, public office and their financial interests. Trustees will also be expected to declare such interests for their close family members and businesses that they own. This approach reflects the requirements of charity law and recommendations for good governance.