ROYAL AIR FORCES Association
The charity that supports the RAF family

RAF Association

One Charity

Briefing note for Area Conferences and Annual Conference

Patron: Her Majesty The Queen
Registered Charity 226686 (England & Wales).
SC037673 (Scotland).

Introduction

Annual Conference 2018 approved the following resolution:

> *"This Conference resolves that Council examines and reviews the continued individual charity registration of branches vis-à-vis branches becoming legally part of the Association, under a single charity registration, consulting with regulators as appropriate. Reporting back its findings, along with any details of any proposed changes (if appropriate) to the Association's governance documents and administrative structure to effect the findings, to Annual Conference 2019."*
>
> Proposed by Northern Area Council and seconded by the South East and Eastern Area Council

In effect Conference has asked Council to explore the options of the RAF Association (the Association) and its branches (RAFA Group) operating as a single organisation.

Advice has been sought from our charity legal advisers, a specialist charity Queen's Counsel and relevant regulators.

It is not proposed to submit any resolutions for adoption at Conference 2019, simply to provide a report setting out some of the potential implications, the process by which the change could be implemented and seek Conference's agreement to continue the review of branches becoming legally part of the Association, under a single charity registration. A report on the final findings, along with any details of any proposed changes (if appropriate) to the Association's governance documents and administrative structure to effect the findings, will be submitted to Annual Conference 2020.

Background

The Council, Area Councils and branches are aware that a Royal Charter and associated Rules, Byelaws and Regulations govern the Association (the Governance Handbook). The Association is registered with the Charity Commission for England and Wales (CCEW) and the Office of the Scottish Charity Regulator (OSCR), and liaises with the Charity Commission of Northern Ireland (CCNI), the Jersey Charity Commissioner, the Guernsey Registry and the Central Registry of the Isle of Man – together, the 'regulators'.

For the purposes of this paper, branches within the Association fall into the following main groupings:

- England and Wales
- Scotland
- Northern Ireland
- European and overseas

Within the UK, there are 316 branches, which are separate unincorporated associations, of which 279 are registered as charities with the regulators. In addition, there are 74 branch clubs linked to a particular branch, which also operate as unincorporated associations. There are 31 overseas branches, 19 of which are in Europe, with the remaining 12 being outside Europe.

Within England and Wales (E&W) there are 289 branches, within Scotland there are 17 branches and within Northern Ireland there are 10 active branches.

While branches are separate from the Association and regulated directly by the regulators, the wider public would not make a distinction between the 'Association' and a 'branch' and indeed the regulators recognise the branches as being 'part' of the Association operating under the Governance Handbook. However, as separate charities, the committee of each branch are the Trustees of that charity, with all the legal/regulatory responsibilities that fall to the Trustees of any charity. As legislation/regulation affecting charities has increased, this responsibility has become an unwelcome burden for many branch committees.

Operating as one organisation would relieve local Trustees of the legal responsibility of running a charity and being a trustee, while also offering the opportunity for more cohesion, management of risk and economies of scale. Operating as one organisation would not affect branches' abilities to deliver the charitable object or to provide comradeship. The disadvantages include the increased role for the Association Trustees, the costs of the merger, and the challenges of managing such a large and disparate organisation.

A number of aspects require further consideration. In relation to branches in Europe and overseas, both the Governance Handbook of the Association and the legal system in the country within which they operate govern their activities. We are currently reviewing an 'affiliate' approach, which enables branches within the territories of Europe and overseas to operate within their own legal jurisdiction and to meet the charitable objects of the Association, without requiring them to be charities.

In relation to clubs, some preliminary work is being undertaken to decide if these should transfer to a wholly owned non-charitable trading subsidiary, as the clubs are not considered by the regulators to be charitable in nature.

Ordinarily, when two charities merge, both sets of Trustees are free to decide whether to proceed with the merger. However, branches do not exist in isolation from the Association; without the Association, the branch structure would not exist. It is proposed that the Governance Handbook is changed to allow the Association to 'enable a merger'.

Effective and extensive consultation will be key to successful implementation of this merger proposal and is expected by the regulators.

General points of interest

Branches are, in reality, already 'quasi-subsidiaries' of the Association; governed by the same Governance Handbook as the Association and deliver the 'objects' of the Association. The technical aspect of being a charity in their own right does not enhance (nor reduce) their ability to support the objects of the Association. While many branches have a 'feeling' of independence, as they are registered charities in their own right and able to operate within wide parameters established within the Governance Handbook, they are subject to the oversight and control of the Association through Council and Area councils, which have the ultimate authority to close them in certain circumstances. As a membership organisation, the decision of Conference on this matter, endorsed by the regulators, will be the route taken by the Association. This may or may not be palatable to some members and they will have to make their personal decision at that point.

We have already engaged with the regulators, including OSCR, the CCEW and the CCNI to brief them on the proposals and the aspects on which we would need their assistance, and we will continue to engage with them regularly.

Members of Conference are bound to exercise their votes to further the interests of the charity; therefore, they are fiduciaries in respect of their voting powers.

Decisions of Conference to change the Charter and Rules require Privy Council consent. The Privy Council Office will consult with the CCEW and MOD over changes to the Association's constitution.

The proposal, as presented, shows that what is proposed will not detract from comradeship, and does not revise the object of the Association.

The compelling of a branch to merge, adopted after a proper process, would be binding on all branches, and a branch wishing to block such a merger would not have a power of veto.

Operating as one organisation

Under the proposed model, the UK branches will merge into the Association. Those branches will become legally part of the Association: they will have the same registered charity number as the Association, and will have to be accounted for as an integral part of the Association; all assets and liabilities would belong to the Association, although assets would continue to be used locally (designation of funds).

Branches will retain their local identity in terms of their name but not their former charity number. They must identify themselves as part of the corporate body, a charity registered under number 226686; managing committees of branches would no longer be Trustees but would act on behalf of the Association with delegated authority from Council (the Trustees of the Association). Thus, branches will be integrated within the Association albeit managed locally.

The Governance Handbook will have 'Terms of Reference' set out by Council for branches in place of the current branch regulations, however, given the liabilities that Council will have taken on with such a merger, it is important that the Association's Trustees are able to exercise sufficient oversight and control over branches, as the Association will be liable for branch's actions and debts.

As such, Council will require the power to:

a) Dismiss a branch's managing committee (new)

b) Appoint a branch's managing committee (new)

c) Appoint an interim 'branch manager' (new)

d) Control any substantial expenditure (new)

e) Require accounts to be kept according to the form required under procedures set by the Association, to allow for both oversight and also the preparation of consolidated accounts for the Association (existing)

f) Control the form of internal rules and procedures used by branches (existing)

g) Dissolve the local branch and direct the application of any surplus funds (existing)

The Trustees of the Association have to have the ability to ensure the organisation as a whole is legally compliant and solvent, as they will become responsible for all acts and omissions of the enlarged charity.

Branches will continue to have a local branch committee – appointed by the local members in conformity with the Governance Handbook, but local branch committee members will no longer have legal duties as charity Trustees.

Some practical issues to consider if running the organisation as one

All the regulators have expressed concern that, following the merger, there is not a 'de facto trustee relationship' created at branch level which would see branch committees continue, in practical terms, to be the decision making body and therefore act as branch charity Trustees. It is intended that branch committees should continue to manage their own branch finances, notwithstanding that, following the merger, all funds will be Association funds. The regulators also require assurance that there is appropriate governance in place, giving Council adequate oversight of compliance and risk at all levels of the charity. In order to address these issues, a scheme of delegation will have to be in place, determining the level of discretion branch committees have regarding finances.

To meet the regulators' concerns (this matter has been discussed with the regulators), it is proposed branches holding in excess of £5,000 in local bank accounts must transfer the excess to the branch deposit fund, where the funds will be held on behalf of the branch (designated funds as per existing arrangements), or contribute to the Wings Appeal to reduce the total held locally to below £5,000.

A first draft of what such a scheme of delegation might include are set out Annex 2, but the following elements will need to be covered:

a) Bank accounts
b) Fundraising
c) Granting and receipt of donation (including legacies)
d) Use of branch funds
e) Branch events
f) Employees
g) Committee responsibilities
h) Reporting

Methods of ensuring effective oversight will need to be developed. Details of the extent of delegated authority that branch committees will have post-merger needs to be considered, agreed, documented and communicated to all branches. In particular, the degree of local autonomy needs to be balanced against the fact the Association is responsible for everything branches do at a local level and the need to avoid branch committee members from being regarded as de facto charity Trustees.

In relation to this:

- What practically will branches need to agree with the Association (for example contracts, large purchases, fundraising events and associated budgets)? Does the Association have the personnel to deal with these issues in a timely way?
- What central systems and processes will be required, including in respect of governance and oversight procedures? For example, Council will need a method to ensure serious incidents are reported to the Association so that they can be submitted to the CCEW
- The Association will need to ensure it has sufficient oversight and information to ensure the financial health and solvency of the organisation. Given the current levels of compliance, this will prove a significant challenge
- Council will need to consider the Association's reserves policy and how much reserves it will need to reflect the new structure
- The Association's audited accounts will include all branch activity post-merger. The auditors will need information from branches and central auditing costs may increase, although we anticipate an overall reduction in audit costs across the group. However, a portion of the audit fee/costs will be charged to each designated (i.e. branch) fund
- How will the Association ensure branches comply and what will the Association do if they do not comply?

Advantages of operating as one organisation

Branches are currently unincorporated. This means that any liability that exceeds the value of its assets and is not covered by any form of insurance is the personal responsibility of the local branch committee members as Trustees. In contrast, the Association is an incorporated Royal Charter body, which offers better protection to Trustees from personal liability.

As branches are separate organisations from the Association, but share its charitable objects and constitution (the Royal Charter, Rules, Byelaws, Area and Branch Regulations), they are legally charities (under UK law) whether registered or not and all branch committee members are charity Trustees.

The regulatory and administrative burden for charities is increasing with change to General Data Protection Regulation (GDPR), safeguarding, serious incident reporting etc. In E&W the CCEW are more proactively monitoring smaller charities who fail to submit their annual accounts. Local branch committees may welcome ceasing to be charity Trustees. This responsibility will transfer to Council, allowing local branch committees to concentrate on delivery of charitable welfare and membership activities at a local level.

This structure will allow for economies of scale with more central support for local activity. For example, group purchasing of insurance and combined audit processes.

The perception externally is that the Association is a single organisation and any failure in a branch (e.g. for non-compliance with charity law) could have a reputational risk for the rest of the Association. Merger will better reflect this inter-dependency and make it easier for the Association to ensure compliance and manage risk.

The arrangement will provide further opportunity for the Association to look at the group's property portfolio, allowing it to be regularised and invested in, while also creating opportunities either to ensure the assets are being used to their full potential for charitable purposes or to create an income to fund Association activity.

As well as reducing the administrative burden on those branches with properties, moving the business relationships (e.g. with tenants, suppliers and so on) to a larger charity with specialist staff and significant back office support will help to maximise income, minimise costs and manage risk.

Additional support and guidance can be provided to branches. For example, in relation to health and safety issues, standardisation of legal contracts and procurement processes – dealt with centrally and save each local branch needing to take legal advice on individual contracts.

Including branches within the Association's insurance framework should help to ensure that all branch activities are appropriately insured and could result in overall cost savings for the Association as a whole.

It could also be easier to cascade group wide changes or new initiatives (e.g. to raise funds) when branches are brought under one roof and working more closely together. The merger could result in the strengthening of relationship/renewed sense of unity as a group, particularly if each member has voting rights in conjunction with these changes. This structure may be particularly appealing to branches that are struggling to recruit Trustees.

There are likely to be other areas of integration, which we have yet to identify.

Disadvantages of operating as one organisation

The liability of each branch will not be ring-fenced. Currently, if one branch were to incur a liability that made it insolvent, it would fail, but the other branches and the Association would not. Under a single structure, the organisation's assets would have to be used to meet any liability and in extremis, the Association's assets may need to be used to cover the liabilities incurred at branch level.

Given the number of branches, this merger will be a very large change management project. There will be legal costs involved in moving to the new structure. It would also involve significant staff resource and management time.

The Association's Council will be responsible for a much larger charity with a large range of activities and volunteers. Effective oversight of local operation (by delegated authority) would become a formal duty.

Responsibility for dealing with any regulatory intervention into a local branch (e.g. CCEW investigation or HMRC audit) would lie at the door of the Association's Council.

Outline process for effecting the merger

The main steps involved in the process of merging branches into the Association are considered to be as follows:

a) **Initial internal review:** seeking legal advice and views of regulators to ensure the process is feasible and to identify the pros and cons and implications of such a merger. To date both the CCEW and OSCR have confirmed the feasibility of such a merger.

b) **Communication and consultation:** discussions involving Council, Area Chairmen, Presidents, Area Conferences and members – a draft plan is set out at Annex 1. The outcome from the initial internal review will form the basis of presentations to Council, Area Conferences and Conference in the first half of 2019. In May 2019, Conference will have the opportunity to decide whether it wishes to progress the One Charity project with detailed resolutions to effect the merger presented at Conference 2020.

c) **Implementation plan:** preparation of a detailed implementation plan and timetable including steps taken by the Association and the steps taken by the branches. A staged 'merger' process will be more manageable for the Association and the branches, with branches being considered in 'clusters'.

d) **Administrative structures:** the administrative tier between Council and branches will also be reviewed ensuring that these are effective, efficient, needs led and support any compliance requirements.

e) **Constitutional changes:** changes made to the Governance Handbook to insert a power for the Association to enable the 'merger' and changes to provide for a dual structure during the transitional period when there will be some branches merged and others, which remain separate, pending merger. All changes require the approval of Conference, the Privy Council and HM the Queen. The process followed for previous changes to the Governance Handbook in 2016 and 2017 will be adopted.

f) **Due diligence:** a template due diligence questionnaire with a set of questions and requests for certain information from each branch to draw out details of their assets, liabilities and relationships, the type of information required is considered in more detail on page nine. The information provided will enable the Association to understand what it is taking on and indicate where further action and/or additional formalities or paperwork are required to effect the merger. Once the responses and any accompanying information has been provided, a due diligence report will be prepared. Consideration needs to be given as to what the Association would do if it transpired as part of this process that a branch has significant liabilities and whether they would still wish to proceed with merging them into the Association.

g) **Transfer agreement:** the main document for transferring assets and liabilities is likely to be a transfer agreement, which the Association would enter into with each branch. This document will form the basis of the reporting requirements, via the Association within its annual accounts, to the regulators. As well as details of what is transferring to the Association, a transfer agreement would typically include warranties from the Trustees of the branch that they have disclosed all relevant and material information about the branch and an appropriate indemnity from the Association to protect the Trustees of the branch in the event that liabilities arise after the transfer date. It is recommended that legal advice will be available to the Branch Committee (see page ten).

h) **Additional formalities and other documents:** there may be additional formalities or steps to take to transfer certain assets and liabilities.

i) **Association approval:** the Association's Council will need to meet to consider a summary of the due diligence, approve the merger of the branches into the Association, and delegate authority to a small number of individuals to complete the transfer agreement and other paperwork with each branch.

j) **Local approval and completion of merger:** each branch would usually meet to formally approve the merger and approve the related paperwork. Once completed, the operational undertaking, assets and liabilities of the branch will transfer to the Association. In order to reduce the reporting requirements to the regulators post removal from the Register it may be preferable that branches transfer their assets to the Association prior to their removal from the Register. The new Branch Regulations and Terms of Reference, approved by the membership, will apply.

k) **Final constitutional changes:** changes made to the Governance Handbook to reflect the new integrated structure and to tidy up all the constitutional documents to remove provisions, which are inaccurate or irrelevant.

l) **Remove branches from register of charities.** Once all steps have been completed i.e. the transfer of branches' assets and liabilities, which may require additional formalities (other than the completion of the transfer agreement) to the Association, and final accounts have been drawn up.

Scotland

Scottish branches will apply for removal from the Register under Section 18 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) in conjunction with the Association. After a branch has been removed from the Register its assets (and the income from those assets) must continue to be applied for the same charitable purposes, i.e. the objects of the Association contained within the Royal Charter, the branch had immediately prior to its removal from the Register. There are also ongoing reporting requirements until those assets are fully utilised for their original charitable purpose. The Association will meet these ongoing reporting requirements.

Northern Ireland

The position of branches in Northern Ireland is subject to confirmation by the Charities Commission for Northern Ireland (CCNI). The background to the debate with the CCNI is as follows: Section 167 of the Charities Act (Northern Ireland) 2008 applies to an organisation, like the Association (corporate body) which is not a charity under the law of Northern Ireland, but which operates for charitable purposes in or from Northern Ireland. Such organisations are known as "a section 167 institution". When in force, section 167 will require Trustees of a section 167 institution to prepare an annual financial statement and statement of activities relating to its operations for charitable purposes in or from Northern Ireland. Section 167 also provides for further regulation by (including potential registration with) the CCNI.

While the position in Northern Ireland is clear in respect of the Association (corporate body) clarity has been requested from CCNI in respect of the Association's ten branches in Northern Ireland.

Guidance has been sought on whether the CCNI regard Association branches located in Northern Ireland (a) to be governed by the law of Northern Ireland and (b) to be independent organisations, the hallmarks of which include having control and direction over its governance and resources. If the CCNI confirm both to be the case, the branches in Northern Ireland would be subject to registration as Northern Irish charities in their own right in which case they will be in the same position as branches in Scotland, England and Wales.

If the view of CCNI is that Northern Irish branches are not subject to the jurisdiction of the Northern Irish courts or are not independent organisations, CCNI has been asked to confirm whether they would regard each branch as a separate s167 institution or whether CCNI would hold the Association directly accountable for the acts and omissions of the branches.

CCNI have referred these questions to their legal advisers. In the event that CCNI regards the Association and its Northern Irish branches as a single organisation, revisions to the Governance Handbook will be required and the introduction of new internal procedures to reflect this position irrespective of the outcome of the One Charity review.

Legal and practical issues that will need to be dealt with

This paper is not intended to provide a review of all the potentially relevant legal and practical issues that can arise on a merger of this scale. However, we have drawn out below some of the aspects, which we envisage will require particular attention.

a) **Legacies.** When charities come together, difficulties can arise when legacies have been made to the original charity and the original charity ceases to be a charity. For this reason, many charities that regularly receive legacy income will not wind up the original charity when they come together, but keep it as a 'shell' on the register of charities to ensure that such legacies are not lost. Bequests are, generally, made to the Association and not to individual branches; however, as part of the due diligence exercise, this will have to be checked with individual branches.

b) **Potential liabilities.** Council will consider what, if any, due diligence they need to undertake on each property to enable them to ascertain any potential liabilities before the 'merger' takes place. The Association has already commenced a significant programme to identify the basis of ownership and/or occupation of all branch properties owned to compile full property records, and that building surveys and fire risk assessments have been carried out on these properties. Council will need to consider what further legal due diligence is required for the 'merger', taking into account the work that has been undertaken to date.

c) **Employees and pensions.** Initial work indicates that branches do not have employees, whereas individuals are employed by the clubs; it is recommended that this is checked with each branch as part of the due diligence exercise.

d) **Contracts and grant agreements.** Any contracts or grants of the branch that will continue after the transfer date will need to transfer to the Association. The due diligence exercise will identify these and what actions need to be taken to transfer or terminate the contract or agreement. This may require obtaining consent from the other party or simply informing third parties where no consent is required. In some cases, a deed of novation may be required. Standard letters and a model deed of novation, together with a guidance note, can be made available to branches during the transfer stage to facilitate this process.

e) **Permanent endowment and restricted funds.** Our current understanding is that no permanent endowment and restricted funds are held by branches; this will need to be confirmed as part of the due diligence process and, if any such funds are identified, they will need to be transferred to the Association as part of the 'merger'. Once transferred, the funds will continue to be ring-fenced within the Association on their original terms. Post-'merger', we will review their terms and the feasibility of updating their purposes and restrictions, and then amalgamating them where appropriate.

f) **Data:**

   i. Transfer of data. When 'merged', branches may be transferring personal information (or 'personal data') to the Association. As part of the due diligence exercise, branches will be asked to provide a summary of personal data held by the branch, what use can be made of the personal data, and records of consents which have been obtained. Many branches act as a data processor for the data, which the Association controls as data controller. In addition, some branches may also be data controllers in their own right. As part of the 'merger', if a branch is a data controller, the Association will be required to notify individuals whose personal data has been transferred that the Association is now the data controller of their personal data, and inform them of the purposes for which it will be processing their personal data.

   ii. Data protection. Following the 'merger', the Association will be fully responsible for the branches' data protection duties, removing the responsibility for compliance from the branches.

g) **Litigation.** It will be important to identify whether any of the branches are subject to litigation, arbitration, tribunal, or mediation proceedings, or disagreements, disputes, or circumstances, which might give rise to legal claims, or legal disputes. If any such issues become apparent in the due diligence exercise, the Association will need to consider how to deal with any such issues on a case-by-case basis.

h) **Gift Aid declarations.** Gift Aid declarations, made in favour of branches, after the 'merger', the Association will not be able to rely on those Gift Aid declarations to reclaim tax from HMRC and new Gift Aid declarations will need to be sought from donors.

i) **Bank accounts.** Banking arrangements will need to be updated as part of the 'merger'. See Annex 2 for initial thoughts on this.

j) **VAT.** VAT due diligence should identify, among other things, any historic VAT liabilities of the branches and options for VAT on leases.

k) **Options for dealing with clubs.** Some initial investigations have been carried out into the way that the clubs operate. Advice has been received confirming that clubs are not charitable. While there are several possible ways of dealing with the clubs, the main option to have emerged would be for the Association to set up a wholly owned non-charitable trading subsidiary that will run the clubs.

   i. All of the clubs will be merged into this subsidiary as a group commercial structure where the clubs are legally separate and instead become controlled undertakings of a 'parent' trading subsidiary.

   ii. Many of the steps and legal and practical issues outlined above in relation to branches will similarly apply to the process of merging the clubs into a non-charitable trading subsidiary of the Association. However, there will be an additional layer of complexity by virtue of the fact that clubs are trading businesses. For example, the Association and the clubs would need to comply with their legal obligations to club employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (often referred to as 'TUPE') and give any pension schemes early and careful consideration to avoid the transfers triggering a pension debt.

   iii. The 'business risk' of running clubs either directly or indirectly will need to be separated from both the charity and the clubs individually. Council acknowledge that any investment into the restructured/consolidated club structure needs to be consistent with the Trustees' duties when investing charity funds. That any such investment have to qualify as qualifying investments for tax relief purposes.

l) **Premises.** In terms of the freehold and leasehold properties held by the UK branches, the Association as custodian or holding trustee holds most properties. As each branch merges into the Association, where the Association does not already hold the beneficial title in the property, it will be transferred to the Association to hold as legal and beneficial owner. As the transfer is from one charity to another with identical objects, Regulator consent will not usually be required and a surveyor's report will not be needed. The position will be more complex if it transpires that any property is held on special trusts or is permanent endowment. To date, our investigation into the freehold and leasehold properties held by branches has not identified any held as permanent endowment or on special trusts. If it transpires that some properties are held in this way then this may create further work in relation to the transfer.

   i. For leasehold properties, the consent of each landlord may need to be obtained to enable an assignment of the lease from the branch to the Association – each lease would need to be reviewed. It seems unlikely that landlords will object to such assignments, given the relative covenant strength of the Association.

   ii. In addition, for each property the Association will need to know what, if any, agreements have been entered into (e.g. licences or leases with third parties) and these may need to be novated to the Association.

Branch legal advice

In a standard, arms-length merger, branches and the Association would take legal advice to help them to navigate the process and ensure that they are satisfied that the transfer is in the interests of their charity and that the terms of the transfer (and particularly the warranties and indemnities in the transfer agreement).

It is recommended that, at the point of the merger process, the Association provides:

a) Extensive support to local branches to help them to navigate the 'merger' process and reduce the likelihood of obstacles arising, including through model transfer documentation and a legal Q&A. Council should ensure that the transfer documentation is proportionate and fair to both the Association and the local branches.

b) Arrange for a small panel of separate, independent law firms to be available to provide legal advice to any branch that has specific queries or concerns in relation to their rights, obligations or liabilities. The Association would fund / contribute to the costs of the independent legal advice up to an agreed amount.

Post-merger regulation

Post-merger, the regulator of the Association will be the CCEW as the corporate body is regulated by CCEW.

The Association will manage the legacy administrative relationship with OSCR and CCNI centrally.

For branches outside the UK, their local regulators will regulate branches.

Next steps

If Conference wishes to proceed with the merger, it is recommended that consultation involve the wider membership as well. It is important that the Association/Conference/Council:

a) Are open and clear about what they are trying to do

b) Should ensure that decision-makers are provided with proper explanations of the matters for decision and the pros and cons of the available options

c) Consult with branches on its proposals and consider the results of the consultation

d) Obtain appropriate amendments to the constitutional documents of the organisation, to provide the Association with all the powers it needs to implement the proposals, thereby avoiding the use of powers for purposes for which they were not originally intended

The Association should take the following specific actions:

a) The Council should approve a provisional proposal

b) There should be proper and meaningful consultation within the organisation about the proposal

c) The results of the consultation should be properly considered by Council, which should either endorse, amend or drop the proposal, as it sees fit, in light of the consultation responses

d) If Council decides to proceed, a set of the constitutional changes needed to give effect to the proposal should be prepared, with any necessary explanations, and approved by Council. If Council decides not to proceed with the One Charity approach, Council will provide a report to the next Annual Conference

e) Annual Conference will vote on the proposed changes to the Charter, Rules, Byelaws, Area and Branch Regulations

f) The decision-makers (Council and the Conference, as the case may be) should be given a full and balanced assessment of the pros and cons of the proposed merger, incorporating the results of the consultation

g) Ensure that any constitutional changes provide governance, compliance and risk management oversight of both the process of transition, the future operation of the Association and the branches to enable Council to exercise sufficient oversight and control of branches and clubs within an integrated structure

See communications/consultation plan Annex 1.

A detailed implementation plan and timetable will also be required.

Timescales/outline plan

- Conference 2019 – Report back and seek continued approval by vote
- Conference 2020 – Resolutions to amend the Governance Handbook and provide for transition arrangements
- 2020 – Pilot transfer of branches as a cluster
- 2021/2022 – Transfer of clusters of branches
- 2021 – Align the administrative structures of the Association to the new organisation

Feedback

Area Councils, branches and members are asked to provide feedback on this briefing paper to **secgen@rafa.org.uk**

Nick Bunting
Secretary General

February 2019

Annex 1: One Charity communication planning

PHASE	DATE	ACTIVITY	DETAILS	AUDIENCE
PHASE ONE			2018	
	Jul	Meeting with legal advisers	Legal advice and guidance	
	Sept	Council meeting	Initial briefing paper	Trustees
	Nov	Meeting with OSCR	Consultation with the Regulator	
	Nov	Council meeting	OSCR briefing paper	Trustees
	Dec	Meeting with QC	Legal advice and guidance	
			2019	
	Jan	Meeting with Charity Commission	Consultation with the Regulator	
	Jan - Mar	Air Mail	Info update	Members
	Feb	Council meeting	QC update and Charity Commission update	Trustees
	Feb	Area Presidents and Chairmen's meeting	Update	Area Chairmen / Presidents
	Feb	Liaison with regulators	Charity Commission of Northern Ireland (CCNI), the Jersey Charity Commissioner, the Guernsey Registry and the Central Registry of the Isle of Man	
PHASE TWO	Feb - Mar	Area Council meetings	Area Council Update – Wales, Midland and South Western, South East and Eastern and Northern	Area Councillors
	Mar - Apr	Area Conferences	Briefing note	Branch Officers
	Apr	Council meeting	Council summary	Trustees
	Apr	E-newsletter	Initial briefing to members	Members
	Apr - Jun	Air Mail	Initial briefing to members	Members
	Apr	Area newsletters	Initial briefing to branches	Branch Officers
	May	Annual Conference	Presentation, document, initial pros and cons, affirmation of progress	Delegates
			DECISION BREAK	

PHASE THREE	Jun	Area newsletters	Legal background	Branch Officers
	Jul - Sept	Air Mail	Legal background	Members
	Sept	Council meeting	Update	Trustees
	Sept	Area newsletters	Update	Branch Officers
	Oct	E-newsletter	Update briefing to members	Members
	Oct - Dec	Air Mail	Update on consultation	Members
	Oct	Survey Monkey	Detailed consultation	Members/ Branch Officers
	Nov	Council meeting	Update on consultation	Trustees
			2020	
	Jan - Mar	Air Mail	Update	Members
	Jan	Area Chairmen's meeting	Update	Area Chairmen
	Feb	Council meeting	First draft of Resolutions	Trustees
	Feb - Mar	Area Council meeting	Area Council update	Area Councillors
	Mar	Area newsletters	Update on Resolutions	Branch Officers
	Mar	Area Presidents' meeting	Update	Area Presidents
	Mar - Apr	Area Conferences	Review of Resolutions	Branch Officers
	Apr	E- newsletter	Update briefing to members	Members
	May	Council meeting	Update on Area Conferences	Trustees
	Jun	Annual Conference	Decision on Resolutions	Delegates
			DECISION BREAK	
PHASE FOUR	Jul - Dec	Implementation		
			2021	
	Jan - Dec	Implementation		
			2022	
	Jan - Dec	Implementation		

Annex 2: Branch finances – Scheme of delegation (indicative only)

Funds held by Association branches are charitable funds, both today and following the merger, and as such fall within the overall responsibility of Council.

Any funds held with restricted terms specified by the donor must be used only within the terms of the restriction.

Following the merger if a legacy is left to a branch, the legacy and all related documentation must be sent to the Legacy Department at Headquarters to administer the estate. The Legacy Department and the Director of Fundraising have delegated authority, from the Trustees, to accept and receipt legacies as they have the knowledge and expertise to be able to confirm that the amount received is correct, that it is the full amount due and that the funds can be used as specified in the will.

If a branch receives a donation in excess of £5,000, the branch is to notify Headquarters through their designated Branch Support Officer (BSO) and deal with the donation in accordance with specified procedures.

Any funds donated to or raised by a branch for welfare (this includes the rebate from the monies raised from the Wings Appeal) may be used only for welfare purposes as specified in the objects in the Royal Charter.

A branch may not use charitable funds under its delegated authority to subsidise the running expenses or capital expenditure of another branch.

Branches are not permitted to give grants or to make donations to other charities or organisations.

Any proposed large fundraising event (i.e. with expenditure in excess of £1,000) should be approved in advance by the Fundraising Team to ensure that it is in line with current strategy and does not clash with any other large event.

Organised events specifically in connection with the Wings Appeal (such as a Wings Appeal Ball), fundraising for the branch or a branch function (such as an anniversary dinner or a ceremonial occasion) should be treated as part of the normal business of the branch and should be discussed and agreed at branch committee meetings. They should not be run at a loss, as to do so would incur expenditure that does not qualify as charitable, and any surpluses should be donated either to the Wings Appeal or used for branch activities if not raised specifically for the Wings Appeal. All the receipts and payments in respect of those events should be accounted for in the branch accounts.

Other social events may be part of the normal business of the branch and should be discussed and agreed by branch committees. These events must not be subsidised by the branch, as such a subsidy would not be charitable expenditure. The income received or expenditure incurred on these events may pass through the branch's accounts but must be ring-fenced/earmarked for that purpose only. Any excess funds remaining after the event has occurred may be transferred to either branch funds or the Wings Appeal. Examples of such events are Christmas dinner for the branch members, or trips to museums, National Memorial Arboretum and battlefield tours. Sporting events must be self-funding.

Funds held by the branch for social purposes must be ring fenced in the main branch account, and only be used for that purpose. A separate bank account must not be used.

Branches are permitted to use branch funds to undertake Remembrance events. Branches must attempt to secure services at little or no cost. Expenditure must be reasonable and proportionate. Local authorities must be encouraged to meet the costs of any Civil Act of Remembrance, even if the branch organises an event on their behalf.

Branch funds may not be used to create, clean, repair or update memorials unless the Association owns the memorial and responsibility has not been passed to another party. Memorials are usually the responsibility of the local authority and branch funds must not be used to carry out work that is the responsibility of a public body.

Branches may spend funds on recruiting members, the money expended must be reasonable and proportional.

All branch accounts must be held in the name of The Royal Air Forces Association [branch name]. Personal accounts or accounts in the name of Committee Members must not be used, even for temporary cash balances.

Branches are not permitted to trade, whether in alcohol or any other commodity, without the express written consent of Council. The laws regarding trading by charities are complex, all trading activities must be authorised by and controlled by the Association centrally. Branches can offer low value items for a suggested donation (not a minimum donation). There is an HMRC concession around one off fundraising events, which are not subject to VAT, direct or corporation tax if they meet certain conditions, the main one being that they are primarily to raise funds and that no more than fifteen similar events are held in the same location per year.

Branches are not permitted to subsidise Association clubs or any other social purpose from charitable funds whether by way of carrying charges which should properly fall to the club or social purpose, by making loans or by making reductions or deferments of rent due to the branch from the club. To do so would be a misuse of charitable funds and might, after due process, result in the branch committee members, personally, being required to reimburse the charity.

Committee members who misuse or misappropriate branch funds could, after due process, be held personally liable to refund those funds to the branch.

Branches are not permitted to offer paid employment and have paid employees. Association funded positions come under the remit of the Secretary General and branches cannot pay for employed positions through their own funds as problems could occur under employment legislation of making any such payment; these include the presumption of a contract, which may put the Association at risk of an action under employment legislation. If a branch feels that it needs a paid resource then it will need to apply through the Secretary General and ultimately the Finance Committee for a post to be established. The individual would be employed on a fixed term basis dependent upon the amount of funding provided i.e. three years.

To each branch fund is credited:

a) Members' branch subscriptions rebate (existing)

b) Wings appeal rebate (existing)

c) All money raised or received by the branch specifically for its own local use, subject to the levels of delegated authority set out in the terms of reference

The members of the Branch Committee are collectively responsible for the branch funds. The committee is responsible for ensuring that there are adequate controls and accounting records and that expenditure complies with the policies and procedures of the Association and with charity law.

The Branch Chairman has overall authority and responsibility of branch finances and administration. The branch treasurer controls the branch bank accounts under the Committee's direction and must report the branch's financial state to the Committee at least once a quarter.

The Branch Committee is to approve the Treasurer's paying limit. The limit is to be established each year and recorded in the Committee's minutes. Only the Branch Committee can authorise proposed expenditure above this limit. Generally, between £250 and £500 will be sufficient depending on the size of the branch. All payments must have a second signatory.

The branch must maintain the branch bank account, which bears the name of the branch. UK branches should seek permission from Finance Directorate to open a new bank account. Branches should open an account with the corporate bank (currently Lloyds).

Every cheque in the chequebook is to be endorsed with the 'Royal Air Forces Association branch's name' and the Charity's registered number (Registered Charity No. 226686).

Branches must not hold more than one bank account unless the need can be justified to the Finance Team who will only give permission in exceptional circumstances. Branches already holding more than one bank account must consider the possibility of reducing to one.

Branches holding in excess of £5,000 in local bank accounts must transfer the excess to the branch deposit fund, where the funds will be held on behalf of the branch, or contribute to the Wings Appeal to reduce the total held locally to below £5,000.

The Branch Treasurer is to maintain an account ledger, either in electronic or hardcopy format. When keeping records in electronic format, regular printouts and back-ups are to be made and stored remotely and securely.

The Treasurer is to record all income and expenditure in each activity fund within the account (e.g. 'General', 'Welfare', 'Fundraising'). All funds, whatever their purpose, are classed as charitable funds.

The Treasurer, under the Branch Committee's direction, will safeguard the branch account chequebook, paying-in book and bank statements. These are the property of the Association.

The account ledger's layout of funds should reflect the branch account format as defined in the format of the annual branch account return (branch finance handbook). Every transaction is to be entered into the ledger. Cash and cheques are to be banked at the earliest opportunity. Any amount over £1,000 should be banked within 24 hours.

All items of expenditure must be supported by invoices or receipts. On rare occasions, when an item of expenditure is incurred for which no invoice or receipt is available, the person incurring the expenditure should create and sign a voucher, detailing what the expenditure relates to and the amount involved. The voucher must be countersigned by an independent officer of the branch.

The Branch Treasurer is to reconcile the bank statements with the entries in the ledger and with the chequebook stubs and paying-in book. On each occasion when the accounts are presented to the committee the Branch Chairman is to sign them as so reconciled and reviewed.

Vouchers and receipts must be kept for a period of seven years.

Where branches operate a petty cash account, the account must be held by the Branch Treasurer and have a limit of no more than £50. All petty cash payments and reimbursements must be recorded in the account ledger.

In case of cheques being drawn for cash all the supporting receipts must be provided. If the amount on the receipts is less than the amount on the advance cheque, the balance must be returned and recorded in the ledger. The maximum amount on such cheques must not exceed £50.

Branches are not permitted to enter into any financial credit agreement with any credit organisation without the express written permission of the Council.

The Association's financial year ends on 31 December annually. Each branch must prepare an annual branch accounts form. The branch accounts [template form] is usually sent in November and is accompanied by guidance notes. The treasurer prepares the form but it is the responsibility of the Branch Officers to ensure that it has been completed correctly. A copy of the bank statement with the closing balance for the year and any investment confirmations should be included with the returns. The original is to be signed by the Branch Officers.

The completed forms, ledger and supporting books are to be examined or audited by an [an Association internal auditor or independent examiner or a qualified auditor] who has to sign the form prior to the branch accounts being presented to the AGM. The treasurer must be available at the AGM to answer questions. Branch must cover the cost of the independent examination or audit from the branch funds, but should avoid paying the audit fees if at all possible.

Branches must refer to the 'Guide to completing the year end branch return' issued every year with the branch accounts forms by the Finance Department to establish whether they need an independent examination or audit. The guide defines who should undertake the independent examination or audit of branch accounts. [If only an independent examination is required, it is highly recommended that branches use the Association's trained Independent Examiners (IEs) – new role].

If requested by Council, the branch accounts must be audited by a qualified auditor. Any expenses incurred by Council due to such audit-taking place will be paid for by the branch fund in question.

The relevant examined or audited annual accounts must be returned to Headquarters within [check timings] month(s) after the close of the Financial Year via the local BSO. The accounts do not have to be approved by the branch AGM prior to being sent to the local BSO. A copy of the bank statement with the closing balance for the year for each bank account held and any investment confirmations should be included with the returns. Any other documents required with the returns will be listed in the guidance notes sent to branches.

The annual accounts and the report of the independent examiner or auditor must, where practicable, be kept clearly displayed at the branch premises, where any member may inspect them at any reasonable time.

After the first full year of a new branch, branch accounts must be completed. However, if the branch wishes to attend Annual Conference, the branch must submit accounts irrespective of whether they have been formed for less than a year.

It is each branch committee's responsibility to ensure that proper precautions to avoid fraud are implemented. These include but are not limited to:

a) The bank account is to be kept in the name of the Association Branch quoting the Association's Charity No. 226686

b) The account is to have a mandate of up to four signatories two of whom must sign every cheque

c) The signatories must be Branch Committee members

d) Signatories are not to sign blank, undated or partly completed cheques

e) In case of cheques being drawn for cash all the supporting receipts must be provided. If the amount on the receipts is less than the amount on the advance cheque, the balance must be returned and recorded in the ledger. The maximum amount on such cheques must not exceed £50

f) The chequebook and paying-in book are to be kept under lock and key

g) Bank statements are to be checked immediately on receipt. Any unexplained entry is to be investigated immediately

h) Money collected for specific purposes is to be properly accounted for and any surplus brought to the main account

i) Expenses payments are to be approved by the branch committee. Expenses will only be paid if they comply with the principles of [policy name], which is the policy on expense claims issued by the Finance Directorate. Expense claims containing mileage rates should be checked by the branch treasurer. There are two types of car mileage rate: one for privately owned vehicles and another one for mobility cars (which is the same as the Association car rate). The car mileage rate must not be exceeded. Both type of rates can be found in the policy

j) Invoices or receipts must be obtained for all expenditure incurred

NOTES

ROYAL AIR FORCES Association
The charity that supports the RAF family

rafa.org.uk | 0800 018 2361
enquiries@rafa.org.uk
facebook.com/RAFAssociation
twitter.com @RAFAssociation

Headquarters
Royal Air Forces Association
Atlas House, Wembley Road, Leicester LE3 1UT

Patron: Her Majesty The Queen
Registered Charity 226686 (England & Wales).
SC037673 (Scotland).