



T: [content redacted]
E: [Content redacted]

Miscarriages of Justice Organisation Scotland
121-127 Saltmarket
GLASGOW
G1 5LF

Your ref:
Our ref: MOJO(S)/Grant
13 June 2019

Dear MOJO Scotland

Thank you for your response to my letter of 21 May regarding the concerns that have been raised with us regarding MOJO Scotland's constitution and governance structures.

Unfortunately it did not answer all the questions asked and has not alleviated our concerns regarding the level of service MOJO Scotland is able to provide to its clients. The response did not provide us with the appropriate level of detail in relation to the current governance document/constitution or governance structures the organisation is working from or whether they are appropriate for payment of the grant to continue.

We understand that MOJO Scotland's structure is subject to oversight by the Registrar of Companies and by OSCR. While it is not for the Scottish Government to direct how MOJO Scotland should be organised, we need to be assured that the structure used complies with all relevant rules including for being a registered charity. As such, we appreciate that an organisation may have a single-tier structure, (governed by charity trustees with no additional members), or a two-tier structure, (governed by charity trustees with a membership body which has certain powers and duties). At this stage, we do not have clarity about MOJO Scotland's structure.

In addition to complying with these relevant rules, there are also conditions contained as part of the Scottish Government providing funding. It has always been our understanding and a condition of the grant offer that MOJO Scotland's structure would be two-tier. This is because part of our monitoring of the organisation's ability to deliver an appropriate service to its clients is for a Scottish Government official to be able to attend at least two management/members committee meetings per year. Alongside the provision of written reports, this is part of our necessary monitoring process and without this we are unable to know if the organisation is fulfilling its duties to its clients and complying with the conditions in the grant offer letter.

It would appear from the correspondence you have sent us that the management committee, as was, has now no legal effect [Content redacted].

We were informed in your email of 28 May that the organisation was in the process of adopting new members onto its management committee to further strengthen the management structure. However, it is not clear to us what role these new members would have within the organisation as such a committee may have no legal effect as part of a one tier structure. We also do not know who they are or whether the members of what was the management committee would be part of this membership in take.

As such, we would appreciate it if you would provide us with the following;

Provision of service to clients

- Details of the level of service MOJO Scotland is currently providing to its clients. This should include:
 - a written report detailing the level of service provided since January 2019,
 - what effect, if any, the current issues have made to the delivery of such a service, and
 - how the organisation intends to resolve ongoing organisational issues in order to continue to provide a service the Scottish Government requires as a result of its funding.

Organisational structure

- A diagram of the current structure of the organisation setting out roles and responsibilities of each director and member. This diagram should include names of the directors and also the names of the members, (including new members).
- Names of decision-makers about the running of the organisation
- Names of the current paid employees within the organisation, their role and how their position is funded.
- Written confirmation that MOJO Scotland continues to have a two-tier structure, (governed by charity trustees with a membership body that has certain powers and duties).

External confirmation of having appropriate governance structures in place

- Written evidence from OSCR that they are satisfied;
 - the organisation is complying with its charity status,
 - with the current governance document/constitution of the organisation, and
 - with the current governance structures within the organisation including its ability to deal with any conflicts of interest or disputes arising between directors, members and paid employees.

As you will appreciate, the Scottish Government is committed to ensuring the funding provided to MOJO Scotland is used appropriately and in line with the conditions of the grant-in-aid letter. Therefore, until such time as we are satisfied that the organisation is fully compliant with the conditions of the grant, we will only be providing a grant payment on a monthly rather than on a quarterly basis.

Once you have sent the further information requested we would like to meet with representatives of MOJO Scotland to discuss further.

I look forward to receiving a response by Friday 21 June. In terms of written confirmation from OSCR, we understand this may not be possible by 21 June but it would be helpful if you could confirm the steps taken in your response to receive this confirmation from OSCR.

Yours sincerely

[content redacted]

[Content redacted]

Unit Head

Criminal Law, Practice & Licensing Unit

THE COMPANIES ACTS 1985 TO 1989

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

ARTICLES OF ASSOCIATION OF

MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)

COMPANY NUMBER SC239555



SCT *S875BH1K*
07/06/2019 #466
COMPANIES HOUSE

PRELIMINARY

- 1 (a) The regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052) (such Table being hereinafter called "Table A") shall apply to the Company save in so far as they are excluded or varied hereby and such regulations (save as so excluded or varied) and the Articles hereinafter contained shall be the Regulations of the Company.

(b) In these Articles the expression "the Act" means the Companies Act 1985 but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

(c) Regulations 2 to 35 inclusive, 40, 41, 54, 55, 57, 59, 64, 82, 94 to 97 inclusive, 101, 102 to 108 inclusive, 110, 114, 116 to 118 inclusive of Table A shall not apply to the Company.

(d) In Regulation 1 of Table A the definition of "the holder" shall be omitted.

MEMBERS

- 2 The subscribers to the Memorandum of Association of the Company and such other persons as are admitted to membership in accordance with the Articles shall be Members of the Company. No person shall be admitted a Member of the Company unless he is approved by the Directors. Every person who wishes to become a Member shall deliver to the Company an application for membership in such form as the Directors require executed by him.
- 3 Subject to the provisions of any Rules or Bye Laws made pursuant to these Articles a Member may at any time withdraw from the Company by giving at least seven clear

days' notice to the Company. Membership shall not be transferrable and shall cease on death.

NOTICE OF GENERAL MEETING

4 In Regulation 38 of Table A:

- (a) In paragraph (b) the words "of the total voting rights at the meeting of all the Members" shall be substituted for "in nominal value of the shares giving that right"; and
- (b) The words "The notice shall be given to all the Members and to the Directors and Auditors" shall be substituted for the last sentence.
- (c) The following shall be added after the words "shall specify the meeting as such" :- "provided that the notice shall contain particulars of any Directors who are to retire by rotation or otherwise at the meeting and of any persons who are to be proposed for appointment or re-appointment as Directors at the meeting."

PROCEEDINGS AT GENERAL MEETINGS

5 (a) If a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting if convened on the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Directors may determine.

(b) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. One person entitled to vote on the business to be transacted, being a Member or proxy for a Member or a duly authorised representative of a corporation, shall be the quorum.

(c) Notwithstanding any other provision of these Articles, no resolution of the members shall be effectively made, or binding against the Company, unless and until it has been ratified and adopted by a majority of those entitled, for the time being, to vote at any meeting of the Directors of the Company.

6 The words "and at any separate meeting of the holders of any class of shares in the Company" shall be omitted from Regulation 44 of Table A.

7 In Regulation 45 of Table A the second and third sentences shall be omitted and the following words substituted therefor : -

"When a meeting is adjourned for twenty-one days or more at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting. The provisions of Regulation 38 of Table A (as amended by these Articles) with respect to the notice to be given of the business to be conducted at a meeting shall apply to such notice of an adjourned meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjourned meeting."

8 In Regulation 46 of Table A :-

- (a) paragraph (b) the words "a Member" shall be substituted for "at least two members"; and
- (b) paragraph (d) shall be omitted.

VOTES OF MEMBERS

9 On a show of hands every Member present in person shall have one vote. On a poll every Member present in person or by proxy shall have one vote.

APPOINTMENT OF DIRECTORS

- 10 The maximum number and minimum number respectively of the Directors may be determined from time to time by ordinary resolution. Subject to and in default of any such determination there shall be no maximum number of Directors and the minimum number of Directors shall be two.
- 11 Regulations 65 to 69 inclusive of Table A (alternate Directors) shall not apply to the Company. The clauses of Table A which apply to the Company shall be construed as if reference to alternate Directors were omitted therefrom.
- 12 Regulation 73 of Table A shall be amended by the addition thereto of the following:

"Provided however that in the event of default in holding the first or any subsequent annual general meeting the Directors who were due to retire from office at such meeting shall continue in office until such meeting is duly held, when the provisions of these Articles with respect to retirement shall take effect as if such meeting had taken place timeously."

- 13
 - (a) The words "stating the particulars which would, if he were so appointed or re-appointed, be required to be included in the Company's register of directors" shall be omitted from Regulation 76 of Table A.
 - (b) The second sentence of Regulation 77 of Table A shall be omitted.

DIRECTORS' EXPENSES

- 14 The words "of any class of shares or" shall be omitted from Regulation 83 of Table A.

DIRECTORS' GRATUITIES AND PENSIONS

- 15 The words "or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary" shall be omitted from Regulation 87 of Table A.

PROCEEDINGS OF DIRECTORS

- 16 A Director may vote at any meeting of the Directors or of any Committee of the Directors on any resolution notwithstanding that it in any way concerns or relates to a matter in which he has directly or indirectly any kind of interest whatsoever and if he shall vote on any such resolution as aforesaid his vote shall be counted; and in relation to any such resolution as aforesaid he shall (whether or not he shall vote on the same) be taken into account in calculating the quorum present at the meeting, PROVIDED THAT a Director shall not vote on either his conditions of service, or on the emoluments attaching thereto.

MINUTES

- 17 The words "of the holders of any class of shares in the Company" shall be omitted from Regulation 100 of Table A.

NOTICES

- 18 The second sentence of Regulation 112 of Table A shall be omitted.
- 19 The words "or of the holders of any class of shares in the Company" shall be omitted from Regulation 113 of Table A.

THE SEAL

- 20 If the Company has a seal the Directors shall provide for its safe custody and it shall only be used with the authority of the Directors or a committee of Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and the Secretary or a second Director. The obligation under Regulation 6 of Table A relating to the sealing of membership certificates shall apply only if the Company has a seal.

INDEMNITY

- 21 (a) Every Director or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings whether civil or criminal in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 727 of the Act in which relief is granted to him by the Court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
- (b) The Directors shall have power to purchase and maintain for any Director, officer or Auditor of the Company insurance against any such liability as is referred to in Section 310(1) of the Act.

RULES OR BYE-LAWS

- 22 The Directors may from time to time make such Rules or Bye-Laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Company and for the purposes of prescribing the classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they shall by such Rules or Bye Laws regulate :-
- (i) The admission and classification of Members of the Company, and the rights and privileges of such members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by members.
- (ii) The conduct of Members of the Company in relation to one another, and to the Company's servants.
- (iii) The setting aside of the whole or any part or parts of the Company's premises at any particular time or times or for any particular purpose or purposes.
- (iv) The procedure at General Meetings and meetings of the Directors and committees of the Company in so far as such procedure is not regulated by these presents.

(v) Generally, all such matters as are commonly the subject matter of similar Companies' Rules or Bye Laws.

The Company in General Meeting shall have power to alter or repeal the Rules or Bye Laws and to make additions thereto and the Directors shall adopt such means as they deem sufficient to bring to the notice of Members of the Company all such Rules and Bye Laws, which so long as they shall be in force, shall be binding on all Members of the Company. Provided, nevertheless, that no Rule or Bye Law shall be inconsistent with, or shall repeal anything contained in the Memorandum or Articles of Association of the Company.

COMPANY NOT FORMED FOR PROFIT

- 23 (a) Clauses 4 and 7 of the Memorandum of Association relating to the income and property of the Company and to the winding up and dissolution of the Company shall have effect as if the provisions thereof were repeated in these Articles.
- (b) Nothing herein shall prevent any payment in good faith by the Company :-
- (i) of reasonable and proper remuneration to any Member, officer or employee of the Company for any services rendered to the Company;
 - (ii) of reasonable and proper consideration for the purchase by the Company of any property, asset or interest therein from any Member, officer or employee of the Company;
 - (iii) of interest on money lent by any Member, officer or employee of the Company at a reasonable and proper rate per annum;
 - (iv) of reasonable and proper rent or other periodic payment for property let or occupied by the Company to any Member, officer or employee of the Company; or
 - (v) to any officer of reasonable out-of-pocket expenses.

Subscribed by the members at Lugton on the THIRD day of JUNE 2019:

Patrick Joseph Hill

Patrick Joseph Hill (Member)

Tara Babel Hill

Tara Babel Hill (Member)

From: Content redacted
Sent: 20 June 2019 15:56
To: Content redacted
Subject: Miscarriages of Justice Organisation (Scotland)

Dear [Content redacted]

I write further to your letter of 13 June, sent to us by email on that date.

I attach a detailed response to the points you raise. This response has been approved by our board of trustees. [Content redacted]. I also attach, for your information, a copy of our Articles of Association, together with a copy of the relative Memorandum (which is deemed, in terms of the Companies Act 2006, to form part of the Articles).

Our position may be summarised as: We are compliant with all requirements imposed on us by our twin regulators, being the Registrar of Companies and the Office of the Scottish Charity Regulator. Our current internal oversight mechanism has proved to be sufficiently robust, in that previous compliance and governance issues have been identified, and resolved. Our current management systems have proved to be sufficiently robust, in that our level and quality of service to our clients has been maintained, despite significant challenges during the past three months. Our service, and its delivery, meet the high standards demanded by the Scottish Government in its funding provision.

Despite all this, we find ourselves in a situation where the work we do for our clients has been placed under threat. We are in the final stages of negotiations for the lease of new premises. We have developed, and are ready to implement, enhancements to our aftercare provision. The workload of our casework team is increasing, and we have a number of clients whose cases have either been submitted or will shortly be submitted to the SCCRC. [Content redacted].

I fully appreciate that you require to be satisfied both as to our compliance and as to our ability to provide, properly and effectively, the services we are contracted to supply. [Content redacted]. I trust however, that - subject of course to OSCR confirmation - you will now recognise that this is a properly constituted, regulated and managed charity which is meeting its obligations to the Scottish Government, and effectively delivering its services to its beneficiaries.

[Content redacted]

Best wishes,

[Content redacted]
Project Manager
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009
m: [content redacted]
e: [content redacted]
w: www.miscarriagesofjustice.org



Company no: SC239555 Registered Charity No. SC033820
Registered Office 166 Buchanan Street Glasgow G1 2LS
A voluntary sector victim support organisation providing practical assistance to those affected by wrongful criminal conviction
The MOJO Aftercare Project is financially supported by the Scottish Government

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23955

COMPANIES HOUSE
STAMP PAID
EDINBURGH

THE COMPANIES ACTS 1985 TO 1989

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF

MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)



1. The Company's name is "MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)"
2. The Company's registered office is to be situated in Scotland.
3. This clause shall be interpreted as if it incorporated an over-riding qualification limiting the powers of the company such that any activity which would otherwise be permitted by the terms of the clause may be carried on only if that activity furthers a purpose which is regarded as charitable for the purposes of Section 505 of the Income and Corporation Taxes Act 1988 (including any statutory amendment or re-enactment for the time being in force). Subject to that over-riding qualification, the company's objects are:
 - (i) To promote the sound administration of human rights law including possible claims of violation of human rights in cases where the law permits the making of such claims; to promote good health and improve the conditions of life by the relief and rehabilitation of persons released from custody having been found to be the victims of a miscarriage of justice and to advance education by providing for or promoting their social integration through education and training.

In furtherance thereof, but not otherwise, the Organisation shall seek:

- (a) to assist individuals, their families and organisations in Scotland who consider they have been wrongfully convicted by providing legal advice, advocacy, casework and support in relation to appeals;
- (b) to provide centres for meetings and for giving advice, information, training and education, and for the provision of a telephone helpline; and
- (c) to establish and develop contacts between the beneficiaries and governments at local, national and international levels and between the legal profession, the probation service and any individual and organisation working within the criminal justice system.

In furtherance of the above objects but not further or otherwise the Company shall have the following powers:

- (ii) (a) Subject to such consents as may be required by law, to borrow and raise money for the furtherance of the objects of the Company in such manner and on such security as the Company may think fit.
- (b) To raise funds and to invite and receive contributions from any person or persons whatsoever by way of subscription, donation or otherwise provided that this shall be without prejudice to the ability of the Company to disclaim any gift, legacy or bequest in whole or in part in such circumstances as the Company may think fit and provided also that the Company

shall not undertake any permanent trading activities in raising funds for the above mentioned charitable objects.

(c) To hold, sponsor, arrange or organise meetings, conferences, lectures, seminars, film shows, appeals and educational classes and talks in the furtherance of the purposes of the company and to organise, manage, present, produce, and support, exhibitions, workshops, press conferences, trade fairs, festivals, advertising campaigns, promotions, displays and to assist in advising any person, corporation or organisation in relation thereto and to advertise and adopt such means as may seem expedient to promote the aims and services of the company.

(d) To make grants or loans (with or without security) to any other charitable body or charitable purpose and to grant guarantees or contracts of indemnity on behalf of any such charitable body or charitable purpose.

(e) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable, transferable, or mercantile instruments.

(f) To subscribe for either absolutely or conditionally or otherwise acquire and hold shares, stocks, debentures, debenture stock or other securities or obligations of any other company.

(g) To invest the moneys of the Company not immediately required for the furtherance of its objects in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law.

(h) To act as agents in the channelling of funds, grants and any other monies available from any source.

(i) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges and to construct, maintain and alter any buildings or erections and to purchase or otherwise acquire plant, machinery, furniture, fixtures, fittings, equipment, and all other effects of every description necessary or convenient or usually or normally used in connection with or for the purposes of all or any of the objects of the company.

(j) Subject to such consents as may be required by law, to sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the Company with a view to the furtherance of its objects.

(k) Subject to Clause 4 hereof to employ and pay such architects, surveyors, solicitors and other professional persons, workmen, clerks and other staff as are necessary for the furtherance of the objects of the Company.

(l) To insure the Company, its property and assets against such risks as the Directors shall consider it prudent and necessary to insure against.

(m) To make all reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees and their widows and other dependants.

(n) To make payments towards insurance for any Director, officer or Auditor against any liability as is referred to in Section 310(1) of the Companies Act 1985.

(o) To establish, finance and manage in the United Kingdom any body, association or organisation (whether unincorporated or incorporated) including any subsidiary company to carry out the objects of the company.

(p) To make any charitable donation either in cash or assets in furtherance of the primary objects of the Company

(q) To subscribe to, become a member of, or amalgamate or co-operate with any other charitable organisation, institution, society or body not formed or established for purposes of profit (whether incorporated or not and whether in Great Britain or Northern Ireland) whose objects are wholly or in part similar to those of the Company and which by its constitution prohibits the distribution of its income and property amongst its members to an extent at least as great as is imposed on the Company under or by virtue of Clause 4 hereof and to purchase or otherwise acquire and undertake all such part of the property, assets, liabilities and engagements as may lawfully be acquired or undertaken by the Company of any such charitable organisation, institution, society or body.

(r) To establish and support or aid the establishment and support of any charitable trusts, associations or institutions and to subscribe or guarantee money for charitable purposes in any way connected with or calculated to further any of the objects of the Company.

(s) To do all or any of the things hereinbefore authorised either alone or in conjunction with any other charitable organisation, institution, society or body with which the Company is authorised to amalgamate.

(t) To purchase or otherwise acquire and undertake all or any of the property, assets, liabilities and engagements of one or more of the associations, foundations, institutions, companies, societies, or bodies with which the Company is authorised to co-operate or federate.

(u) To sell or otherwise dispose of the whole or any part of the property, undertaking and assets of the Company to any such persons or company with charitable objects.

(v) To enter into any arrangement with any government or authorities (supreme, municipal, local or otherwise) or any corporations, companies or persons that may seem conducive to the attainment of the Companies objects or any of them.

(w) To undertake any charitable activity which directly or indirectly promotes any of the objects of the Company, including acting as trustees thereof.

(x) To do all such other lawful things as are necessary for the attainment of the above objects or any of them.

Provided that:-

(a) In case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts.

(b) The objects of the Company shall not extend to the regulation of relations between workers and employers or organisations of workers and organisations of employers.

4. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to members of the Company.

5. The liability of the members is limited.

6. Every member of the Company undertakes to contribute such amount as may be required (not exceeding £1) to the Company's assets if it should be wound up while he is a member, or within one year after he ceases to be a member, for payment of the Company's debts and liabilities contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

7. If upon the winding-up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other charitable institution or institutions having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property to an extent at least as great as is imposed on the Company under or by virtue of Clause 4 hereof, such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some other charitable object.

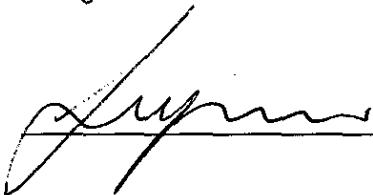
WE, the subscribers to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum.

Names and addresses of Subscribers

Lorri McLean
29 (2F1) Browham Street
Edinburgh
EH3 9JP



Fatima Uygun
02/9 Albert Avenue
Queens Park
Glasgow

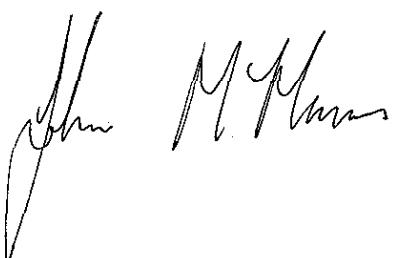


Dated this 15th day of October 2002

Witness to the above signatures

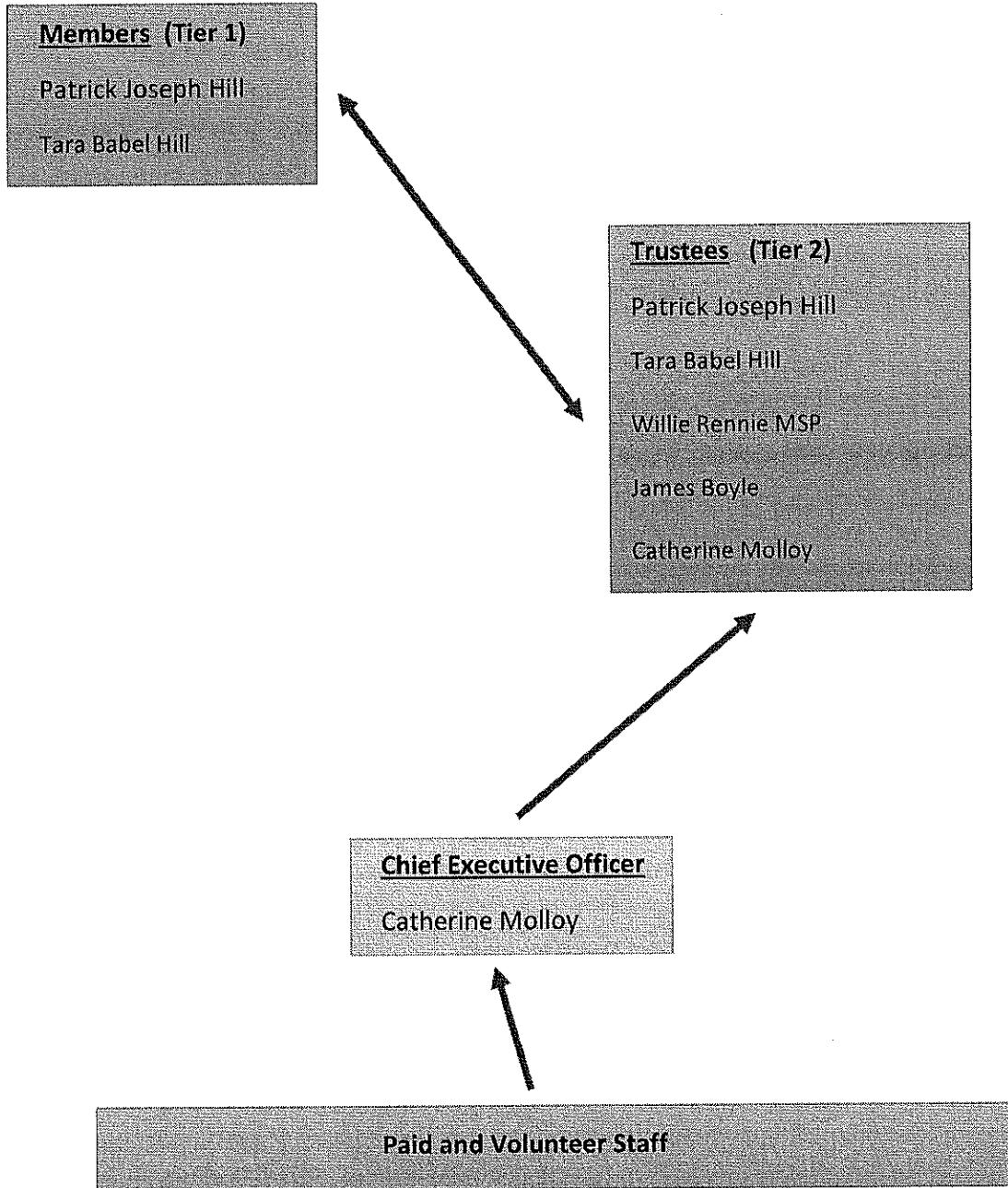
John McManus
Flat 186
145 Shawhill Road
Pollockshaws
Glasgow

Journalist



MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)

ORGANISATIONAL STRUCTURE



MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND) (“MOJO(S)”)

1 OVERVIEW

The issues giving rise to the dispute within MOJO(S) in recent weeks are, essentially, issues of compliance and governance. From your letter it appears that there remains, on your part, some concern in this regard. There appears also to be a degree of confusion surrounding the governance structure of the organisation, as that is currently constituted. We seek, in this document, both to clarify the issues that have arisen in recent weeks and to address the concerns that you have raised.

The recently addressed problems concerning our compliance and governance have their genesis in the absence, when a new governance structure was proposed in 2013, of a clear understanding of the statutory and regulatory obligations governing a registered charity which is also a registered limited company. What was adopted, in 2013, was a three-tier structure comprising members, directors/trustees, and a “management committee”. However, the terms “directors”, “trustees” and “management committee” have the same meaning, and are interchangeable. From the guidance published on their website by the Scottish Council for Voluntary Organisations (SCVO) the following statement clarifies this: *“Members of governing bodies go by a variety of names - “Trustees”, “Management or Executive Committee Members” or “Directors””*.

The arrangement thus adopted in 2013 fails to meet, [Content redacted], the requirements of both the Companies Act 2006 and the Charities and Trustee Investment (Scotland) Act 2005 because:

- i) in terms of the 2006 Act¹, the governing document of a limited company is its Articles of Association. These Articles, which incorporate Table A of the Companies (Tables A to F) Regulations 1985, expressly require that “the business of the company shall be managed by the directors, who may exercise all the powers of the company.”² [Content redacted]; and
- ii) the 2005 Act³ defines the charity trustees as “the persons having the general control and management of the administration of a charity”. In the case of a charity which is a company these persons are the directors, as examined at i) above. The OSCR publication **Guidance and Good Practice for Charity Trustees** provides, at page 5, numbered paragraph 1, that: “Charity trustees are responsible for the charity and may not pass this responsibility onto anyone else as long as they remain a charity trustee.”

[Content redacted]

[Content redacted]. In respect of our compliance obligations, our current position is as follows:

¹ sections 17 and 18

² Table A, Regulation 70

³ section 106

Companies Act 2006:

- i) the governing document of MOJO(S) is its Articles of Association;
- ii) MOJO(S) meets its statutory obligation in terms of the number of its members;
- iii) MOJO(S) meets its statutory obligation in terms of the number of its directors;
- iv) MOJO(S) meets its statutory obligations in terms of maintenance and Companies House filing of records and returns.

Charities and Trustee Investment (Scotland) Act 2005:

- i) control and management of the administration of the charity rests with the board of directors, who are the charity trustees;
- ii) the objects of the charity, as specified in the company's Memorandum and Articles of Association, meet the "charity test" requirements of the 2005 Act⁴;
- iii) the company's two-tier structure of members and trustees complies with the guidance issued by OSCR in their ***Legal Forms Factsheet***.

2 PROVISION OF SERVICE TO CLIENTS

The level of service currently provided to our clients is, as hitherto, compliant with the terms of the Scottish Government grant offer letter. **[Content redacted]**.

The steps recently taken, both to satisfy our legal and regulatory compliance obligations and to effect properly robust governance arrangements, have been necessary, and immediately so. Legal and regulatory compliance are not optional.

[Content redacted].

We have kept the Scottish Government fully informed throughout this process. We have also requested your advice and support, and would still welcome that now.

The organisational issues to which you refer have now been resolved to the satisfaction of our board of trustees. All decisions, and steps, taken by the company have been properly taken by the competent decision-makers and entirely in compliance with the applicable law. As noted above, this has been done without reduction in the level, or the quality, of service provided to our clients - the beneficiaries of this charity.

3 ORGANISATIONAL STRUCTURE

Every limited company requires, as a matter of company law, to have members. Every limited company requires, as a matter of company law, also to have directors. MOJO(S) accordingly requires, as a matter of company law, to have members and directors.

The roles of these groups of individuals are separate and distinct.

Members: In a joint-stock company (i.e. a company which has issued shares) the members are the shareholders. These are the owners of the company. In a company

⁴ sections 7 and 8

limited by guarantee (such as MOJO(S)) there are no shareholders. The members are the guarantors of the company. In either case, the function of the members is to pass resolutions at General Meetings of the company, relating to amendments to the constitution and the appointment or removal of directors.

Directors: Authority and responsibility for the control and management of the company rests entirely with the directors. In the case of a company which is also a registered charity, such as MOJO(S), the directors are the charity trustees.

MOJO(S) operates under the terms of its Articles of Association, which is its governing document. In light of the fact that it has only two members, and in recognition of the specific requirement in charity law that ultimate control and management should rest with the charity trustees, the Articles of Association of MOJO(S) expressly provide that any resolution by the members will be effective only when ratified and adopted by the charity trustees. This is a safeguard of the trustees' authority and control which goes beyond the normal organisational arrangements of charitable companies. **[Content redacted]**.

For the reasons outlined above, decisions about the running of the organisation are, properly, made collectively by the board of trustees. Further, decisions by the members as to the limited matters within their purview are subject to ratification by the board of trustees.

The organisational structure of MOJO(S) is as follows:

Members: The members of the company are Patrick Joseph Hill and Tara Babel Hill. These individuals have been the sole members of the company since the date of its incorporation. Each holds 50% of the voting rights **of the members**, i.e. at General Meetings of the company. In satisfaction of the obligations imposed on the company by the Small Business, Enterprise and Employment Act 2015⁵ Mr and Mrs Hill are registered at Companies House as "persons of significant control". This "control" refers specifically and exclusively to the limited powers of the members as examined above.

Trustees: The directors of the organisation, and trustees of the charity, are:

- 1 Mr Patrick Joseph Hill
[Content redacted].
- 2 Mrs Tara Babel Hill
[Content redacted].
- 3 Mr Willie Rennie MSP
[Content redacted].
- 4 Mr James Boyle
[Content redacted].
- 5 Mrs Catherine Molloy
[Content redacted]

A diagram of this organisational structure is provided separately.

⁵ section 81 and schedule 3

The decision-makers in the running of the charity are the board of trustees, as identified above. In keeping both with the provisions of the Charities and Trustee Investment (Scotland) Act 2005 and with the guidance published by OSCR in their ***Guidance and Good Practice for Charity Trustees***, decisions of the board are made on a collective basis and in the interests of the charity and its beneficiaries.

It is intended that the board of trustees will be strengthened in the coming months, by the addition of further board members who can bring skills and experience relevant to our work. The Justice Directorate will be kept informed of any changes to the membership of the board of trustees.

Meetings of the board of trustees are scheduled, and take place, once per month. Additional meetings will take place where circumstances dictate that this is prudent, or helpful. We would, as hitherto, welcome an officer of the Scottish Government at any meeting of the board of trustees. Similarly, an officer of the Scottish Government will be welcome to attend any separate meeting of the company's members.

The company currently has two paid employees: **[Content redacted]**.

4 EXTERNAL CONFIRMATION

OSCR has been kept fully informed and appraised of the issues we have encountered, of the steps we have taken to address these, and of the current structure and governance of the charity. Our board of trustees will be meeting with OSCR in the week commencing 24 June 2019. We will seek, at that meeting, written confirmation from the regulator in the terms you request.