

**To: Nick Bunting, Secretary General, Royal Air Forces Association**

**From: Bob Bertram, Chairman – Edinburgh, Lothians and Borders Branch RAFA**

**3 April 2019**

Dear Nick

I refer to the 'One Charity Briefing Paper' dated February 2019; in which you invite feed-back to yourself.

Please see below the comments of this branch.

Yours sincerely

Bob Bertram

**BRIEFING NOTE FOR AREA CONFERENCES AND ANNUAL CONFERENCES**  
**“ONE CHARITY”**

**Introduction**

As a 'briefing note' for Area Conferences this should have been just that i.e. information that would inform and focus comment and debate on this very important issue for the future of our Association.

Unfortunately this has not happened, certainly not in respect of the Scotland & NI Area Annual Conference. This despite the published timetable on Page12 'Phase2 March to April 2019, Briefing Note to Branch Officials', which indicated this would happen. In addition, it is unfortunate that the speakers on this subject at our Conference in Northern Ireland were under the impression that 1) This Briefing Note had been circulated to branches prior to our Annual Conference and: 2) That 'It was on the Web Portal' – neither which is actually the case; and many conference attendees emphasised this volubly at the conference.

The above resulted in delegates and others attending our Area Conference being handed this Briefing Note, One Member One Vote Briefing Note and the Area 2018 Annual Report by Hotel Reception on arrival on the day/evening before the Conference.

The response to this briefing note invited by yourself is detailed below and will be commented upon on a section by section basis for ease of reference.

**Background**

(5<sup>th</sup> paragraph)

This statement appears to this branch to be the main 'carrot' being dangled in front of branches i.e. “branches being relieved of the legal responsibility of running a charity and of being a trustee”.

It is unfortunate that nowhere in this document is credit given to those branches that are currently complying or at least making every endeavour to do so.

We as a branch can see some advantages to the Association of the move to a single charity; however there are many disadvantages too, some of which are detailed in this paragraph.

(6<sup>th</sup> paragraph)

It is interesting to note that this document advises that “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.

***This is similar to the (now rejected) Resolution by this branch to Annual Conference which would have allowed those branches within all jurisdictions to have the option to either be absorbed into the 'parent charity' or continue to be a registered charity if they wish to do so.***

(final paragraph)

This branch cannot agree more with the statement that “effective and extensive consultation will be key to successful implementation of this merger proposal and **is expected by the regulators**”. However; recent examples of major decisions being made without such effective consultation with branches in particular, has resulted in some scepticism.

### **General Points of Interest**

(1<sup>st</sup> paragraph)

It is disappointing that this paragraph states that “many branches have a 'feeling' of independence as they are registered charities in their own right and able to to operate within wide parameters established within the Governance Handbook.....”

We as branch Committee/Trustees feel very strongly that this is rather disparaging as this is an actual fact, not just a 'feeling' for us.

As a registered charity in Scotland we as trustees fully understand and accept that we are subject to our Royal Charter, Rules & By-laws and subject to the 'oversight' of the Association through Council – however the words 'control' and 'ultimate authority for closure' are unfortunate and unnecessary in this context. The final sentence with regard to decisions made by Conference “This may or may not be palatable to some members and they will have to make their personal decision at that point”; is in our opinion rather dismissive and insensitive to say the least.

With reference to the 'endorsement' by the regulators – we would suggest that it is unclear to us whether the charity regulators will actually endorse the merger, more advise and accept the legal and constitutional situation. It should be noted that this Branch has already consulted with the Office of the Scottish Charity Regulator and will continue to do so as is our right as a registered charity being subject to the possible revocation of our charity status without our specific agreement. As previously indicated (now rejected) ***Resolution by this branch to Annual Conference would have allowed those branches within all jurisdictions to have the option to either be absorbed into the 'parent charity' or continue to be a registered charity if they wish to do so.***

(5<sup>th</sup> paragraph)

In this paragraph it is stated that “the proposal, as presented shows what is proposed **will not** detract from comradeship, and does not revise the object of the Association”. We are unclear as to the basis for this quite emphatic statement; as we are more of the view that such a merger '**may**' result in branches disbanding and members actually leaving the association.

(6<sup>th</sup> paragraph)

“The compelling of a 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”.

Although this statement is accepted as fact; we would once again **refer to our (now rejected) Resolution to Annual Conference which would have allowed for branches that wish to do so, to continue as registered charities.**

At this point we would refer forward to page7 'Outline process for effecting the merger (paragraph e) which would allow for 'a dual structure during the transitional period'. ***This branch would suggest that if this is a viable way of working during a transitional period; why not a permanent option for same as contained in our (now rejected) resolution to Annual Conference, which if supported by Conference would have allowed all branches to either merge or to continue as a registered charity if they choose to do so.***

## Operating as one organisation

(4<sup>th</sup> paragraph)

This branch is uncomfortable with the powers of Council listed within this briefing document. We would suggest that the powers listed do indeed come under the term 'Control' – **in fact 'total control' would be more apt i.e. to dismiss a branch managing committee, to appoint managing committees, appoint interim branch manager (we note the demise of the term Chairman/Chairwoman/Chair), control of any substantial expenditure; all new powers.** Yet in paragraph 6 of this section it states that “a local branch committee will be appointed by local members”?

Although we are presuming quite detailed processes and safeguards would be reflected in the required amendments to governance rules in due course; these appear to us to be very draconian and contrary to the accepted ethos of inclusion and democracy.

## Some practical issues to consider if running the organisation as one

(1<sup>st</sup> paragraph)

We note that “all the regulators have expressed concerns about lack of a de facto trustee relationship at branch level should the merger go ahead; this due to the fact that branch committees would continue in practical terms, to be the decision making body.....and therefore continue to act as branch charity trustees although not recognised as such”.

The intention that adequate oversight (particularly as all funds will be Association funds after the merger) could be addressed by 'a delegated scheme' to determine the level of discretion branch committees will have with regard to finances; gives this branch some cause for concern.

**Our concern is that any such delegation to branches involving Bank Accounts, Fundraising, receipt and granting of donations, legacies, use of branch funds, branch events, employees, committee responsibilities, required reporting – sounds very much like what already exists?**

My understanding (certainly of the Scottish Regulator) is that anyone who has decision making control of an organisation is deemed to be a Trustee and the organisation concerned a Charity and thus required to register as such?

**It would appear to this branch that the level of responsibility and accountability being delegated to branches post-merger are even more onerous on branches than the so called 'trustee burden' – but this without the flexibility of delivery and hog-tied by restrictions coming from above.**

As an example; in paragraph 2 and in Annex 2 (Branch Funds) on page 14 “that branch funds be limited to £5,000” are both unrealistic and not reflective of some branch expenditure and income currently.

In addition and I refer forward to Page 14 under 'Annex2 – Branch Finances (indicative scheme of delegation). Paragraph 10 of this section has some interpretations of what is or is not 'charitable funds' that are questionable i.e. Christmas dinners, trips to museums (and other such activities) “must be self-funding”? This is questionable as surely such activities could come under 'welfare' if the aims of the activity are clear in that respect?

**It is therefore our view that rather than encouraging branches to accept this proposed merger; the result could be branches becoming 'unviable/unworkable' and turning down both the proposal to merge, preferring to convert to an RMG or disband.**

## Advantages of operating as one organisation

(paragraph 1)

Although the explanation in this paragraph is useful in relation to clarifying differences between being an 'Association Trustee' and being a 'Branch Trustee'; we are of the opinion that the weight given to this aspect could be construed as 'project fear' as it does not further clarify that a Branch Trustee would only be liable if he/she 'knowingly or recklessly' broke charity law.

(paragraph 2)

This statement is confusing in relation to Scottish Charity Law as any organisation that wishes to be

known as a charity, must be registered as such – so therefore the statement that “they are legally charities (under UK law) whether registered or not and all branch committee members are charity Trustees” is in our opinion questionable?

(paragraph 4)

The 'reputational risk' referred to within this paragraph (and being repeated by those giving presentations on this subject) is understood and accepted. However; the risk to the Association is also shared by Branches if the risk incident relates to Association staff or Association managed volunteers.

The remaining statements with regard to advantages, we can accept and understand.

### **Disadvantages of operating as one organisation**

(paragraph 1)

The fact that under a single structure, the organisation's assets would have to be used to meet any liability and extremis, the Association's assets may need to be used to cover the liabilities incurred at branch level; is understood. However; this can also be the case in relation to RAFA Clubs for example – and this can rankle with branches that do not have or do not wish to have a club.

(paragraph 2)

The comments that “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” - is no doubt fact.

**However we would suggest that the costs of such a merger (money, staff and time) would be better being targeted at 'non compliant/problem' branches and 'continuing education/training' for all.**

(paragraph 3)

“The Association's Council will be responsible for a larger charity with a large range of activities and volunteers. Effective oversight of local operation (by delegated authority) would become a formal duty”. **This is no doubt true; but as a branch we are concerned that 'delegated authority' could mean anything and the role of 'Area Staff, Area Officers and Area Councillors' is unclear?**

(paragraph 4)

In this paragraph it is stated that “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”

**This branch is unclear as to charity regulatory status of 'local branches' with regard to breaches of charity law etc.? Are we saying that a local branch in Scotland will be investigated and by the Charity Commission of England & Wales? We would suggest that that the Office of the Scottish Charity Regulator will no doubt have a continued interest in the operation of 'Association branches' albeit they are not registered charities – this to ensure they are indeed not operating as a charity and Committees not operating as charity Trustees.**

### **Outline process for effecting the merger**

a) It is noted that the both the Charity Commission of England & Wales and the Office of the Scottish Charity Regulator have confirmed the 'feasibility' of such a merger.

**This branch would suggest that 'feasibility' should not be construed as 'endorsement' as mentioned elsewhere in this document.**

b) Communication and Consultation – it is noted that discussions involving Council, Area Chairmen, Presidents, Area Conferences and Members will take place.

**It is unfortunate that 'branches' are not included!**

c) The 'staged merger with branches being considered in clusters' is noted – **but the implementation process is at this time unclear?**

d) The 'Administrative Tier between Council and Branches to be reviewed to ensure these are effective, efficient, needs led and support any compliance requirements'; is noted.

**However; it should be recognised that the existing Area/Regional system is not automatically to be presumed as fit for purpose for the new system!**

e) *This branch would suggest that if 'a dual structure' is a viable way of working during a transitional period; why not a permanent option for same as contained in this Branch's (now rejected) resolution to Annual Conference, which if supported by Conference would have allowed all branches to either merge or to continue as a registered charity if they choose to do so.*

f) Due diligence questionnaires from branches to ascertain assets, liabilities and relationships (full list in Page 9) is understandable; but how it is done and by whom will be vital for a smooth (or as smooth as possible) transition.

**This branch has recently been the subject of a 'Branch Audit/Branch Assessment', this during our branch AGM. These have been carried out by Branch Support Officers, with no pre-warning or sight of the proformas being used. No feed-back has been received and as we understand it, no feedback to branches is being planned. If this is an example of how a Merger Branch Audit would be carried out; this will not bode well for the future relationship between branches and the 'Association'!**

i) It is noted that “delegated authority will be given to a small number of individuals to complete the transfer agreement and other paperwork with each branch”. **As above; this arrangement and process will require much clarity, transparency and sensitivity by those so delegated.**

J-1) As in previous paragraphs; this process will require much consideration, diplomacy and sensitivity – **particularly if the branch does not support the merger!**

(SCOTLAND)

It is noted that “Scottish Branches will apply for removal from the Register under Section 18 of the Charities and Trustee Investment (Scotland) Act 2005 in conjunction with the Association”.

**This again will require much consideration as detailed above, particularly if the branch does not support merger or removal from the charity register. We as such a branch have already consulted the Scottish Charity Regulator and will continue to do so as is our right as a registered charity in Scotland.**

### **Legal and practical issues that will need to be dealt with**

a) Legacies – as a branch that has just recently been the beneficiary of a significant financial Legacy. **It goes without saying; that it concerns us that specific legacies to branches is still unclear under the merger proposals.**

d) Permanent endowment and restricted funds – **the term 'restricted funds' requires to be clarified i.e. within our branch accounts this term is used to identify and ring-fence funds which are being disbursed on behalf of RAF Benevolent Fund etc.**

f) Transfer of data – this branch is indeed a 'data processor' and also 'data controller (for non-member contacts). Under ii) we note that 'The Association' would be fully responsible for data protection duties, removing the responsibility for compliance from the branches.

### **Branch legal advice**

b) It is noted that “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”.

**Looking forward it is highly likely that this branch would wish to take 'independent' legal advice (in addition to consulting with the Office of the Scottish Charity Regulator and any other relevant organisation). However; we would question whether 'a panel selected by the Association' could in fact be independent should the advice be related to disputing the legal status of the merger i.e. against the wishes of a registered charity. In addition, we would hope that any such panel would include those with experience of Scottish charity legislation.**

### **Post-merger regulation**

It is noted that “the regulator of the Association will be the Charity Commission for England & Wales as the Corporate body is regulated by CCEW.

**As branches will be operating within the territory of the Scottish Regulator, it is unclear as to the future status of RAFA within Scottish Charity law?**

### **Next Steps**

**The words 'consultation', 'consult with branches' and 'proper meaningful consultation' are used within this Briefing document; this branch sincerely hopes that this will indeed be the case. We make this plea as a result of the poor communication and consultation evidenced in relation to the lack of pre-conference material for the Scotland & NI Area Conference recently. It should be noted that the 'One Charity' and 'OMOV' Briefing Documents were handed out to those of us arriving in Enniskillen on Friday 29 March 2019 and we were expected to engage 'meaningfully' with the speakers the very next day at the Area Conference. It should also be noted that despite the statements being made by the speakers i.e. “the documents had been circulated to branches” and “they were on The Portal”; this is not the case!**

### **Conclusion(s)**

1. The Edinburgh, Lothians and Borders Branch fully understands why some branches are finding it more and more difficult to operate as a charity; however we are of the opinion that a 'one size fits all' solution is unfair and disrespectful to those branches that do indeed make every effort to deliver the object of the Association and at the same time comply with charity legislation, guidance and good practice.
2. 'Compulsory' removal of charity status would, for many branches remove their independence and thus their ability to deliver the object of the Association in a manner that reflects and suits their individual (and in some cases unique) branch areas.
3. The 'carte-blanche' removal of the requirement, without the option of retaining charity status would, in our view be undemocratic and basically unfair- particularly as branches have been and still are, the mainstay of the Association.
4. There can be no doubt that any such merger project will be very costly in terms of finance, staffing, time and other resources. Therefore it is our view that this expenditure would be better utilised if targeted at those branches who are 'struggling or non-compliant'; this in addition to ongoing support and advice for those who are indeed managing properly.
5. For your information; the Edinburgh, Lothians and Borders Branch has over the last 2 years focussed very much on compliance, both in terms of RAFA Governance and Charity Law. No organisation would be so presumptuous as to say (or even believe) that they were 100%; but we pride ourselves in making every effort to do so.

It should be noted that this branch has commenced the voluntary 'Introduction to Good Governance Programme which is designed to provide small charities with the support to strengthen their core governance. The Award Assessment' is delivered by 'The Dundee Voluntary Action Group' with the Good Governance Award being 'The Quality Standard for Scotland'. This assessment requires submission of 12 Criteria which are assessed and if not satisfactory fed back to the originator for action. This process not only is reassurance to the Trustees that we are on the right track; but also allows us to review and improve our existing core governance.

Having commenced the Assessment in January of this year; we have submitted 4 of the 12 Criteria and all 4 have been 'signed-off' as satisfactory.

6. Taking the above into account; I trust you will understand our concerns about the focus on 'non compliant and risk branches' but no credit within this document for the efforts of those of us who are certainly making the effort.

7. Finally; this branch is unclear as to the process that would be undertaken 'if a branch as a registered charity does not agree to the merger and thus will not sign any merger documentation, including those relating to requests to the regulator for de-registration' To try and clarify this situation should it arise; we are in the process of consulting with the Office of the Scottish Charity Regulator.

The Edinburgh, Lothians and Borders Branch trusts that these comments and concerns will be fully considered as this merger proposal progresses – if indeed it does so.

Bob Bertram MBE  
Chairman  
Edinburgh, Lothians and Borders Branch

3 April 2019