

For: BEHP Management Meeting 14th June 2017

Company Articles of Association

This matter was prompted by Alison & Ian's concerns about the proper management of access to the website – especially editorial & generic access, which might enable accidental or malicious harm.

In the course of that discussion, Alison, Ian, David and I agreed that the question of website access was linked to decision-making and voting-rights in general. I offered to go through the company's Articles of Association with these questions in mind.

I find that the Articles are silent on the matter of website access. The only oblique references are in the company's objects, which commit us to facilitate the education/skills of 'community members and volunteers' in various tasks including new technologies (4:5), and to 'engage and mentor volunteers' with regard to our digital assets (4:7). But there is no definition of 'volunteer', and no requirements as to how they should be managed or what rights/access they should be given. The emphasis is on their acquisition of new skills and understanding, rather than on their relationship to the collection or website.

HOWEVER, the Articles are far from silent on several other issues, to which we must pay attention.

What the Articles say about 'Members'

The Articles state that the company has a two-tier structure:

1. Members – who can attend and vote at the AGM (and extraordinary GMs, if any), and who elect the Directors.
2. Directors – elected from and by the Members, who run the company between AGMs.

Directors' powers and responsibilities are defined by company law.

The precise meaning of 'membership' is vaguer. The Articles do however set out a number of procedures and entitlements:

- Anyone wishing to become a Member must apply in writing (14);
- Directors must consider an applications at the first Board meeting after it is received (16);
- Directors may refuse an application (15);
- There are no membership subs (17);

- Directors must maintain a register of Members (18);
- Members may withdraw (19) or, following proper procedures, be expelled (20);
- Membership is not transferable and ceases on death (21, 22);
- Members are entitled to attend AGMs and EGMs (23 ff);
- Members are entitled to receive at least 14 clear days' notice of AGMs and EGMs (28 ff);
- At AGMs/EGMs each member has one vote, and may appoint a proxy (40 ff);
- Directors can only be elected or appointed from among the Members (50, 52).

The current situation

Right now, as a newly-constituted company, we DO have a Board of Directors, but we DO NOT have any Members.

The Board of Directors exists because it has been accepted and approved by Companies House as an essential precondition for registering the company. The current Board is the 'Founding Board'.

However, there is NO body of Members which meet the conditions set out above i.e. there are NO individuals who have applied in writing for membership, whose applications have been approved by formally-constituted meetings of the Board of Directors, and whose names are included in a Register of Members.

Next steps: Directors & members

In order to regularise the position and bring itself in line with the Articles, the Board has a duty to enable a body of Members to come into being. That is to say, it should invite prospective Members to apply in writing, and it should consider these applications at its own formally-constituted meetings.

It may be tempting simply to 'grandfather' into membership anyone on our mailing list. However, I believe this would be a mistake, and would be in breach of the Articles.

Membership of the new company is not simply a carry-over from the previous entirely informal arrangement. Membership now brings formal, legal rights – including the right to a vote on the activities, assets (including the website) and management of the company. For this reason, the Articles place a duty on the Board of Directors to protect the company by acting as a responsible gate-keeper on membership applications.

In my view therefore, before inviting applications, the Board should agree a clear set of criteria for membership against which such applications can be assessed.

This doesn't have to mean that we turn away people with a long-standing interest in the project, because the Articles make it clear that becoming a Member is not the only form of participation. They refer to 'community members' and to 'volunteers', who are clearly envisaged as being actively involved in the project's work without having voting rights. So, at the same time as agreeing criteria for Members, I believe it would be helpful for the Board to agree criteria for these other categories. This will directly address the original question, raised by Alison & Ian, about volunteers with *de facto* access to the website.

Next steps: meetings

Finally, I believe we should regularise our current practice regarding meetings.

Right now, there is a monthly 'Management Meeting' at 1 pm, followed by a 'Project meeting' at 2 pm.

The Management Meeting at 1 pm is something close to a meeting of the Board of Directors – but it is not convened or minuted as such, and it includes some (e.g. me) who are invited to attend but are not on the Board.

I suggest the Management Meetings from now on be convened and minuted as meetings of the Board of Directors, in line with Articles 67 ff.

As for the 'Project meeting' at 2 pm, this cannot be a General Meeting of the company's Members, because there are no Members. Right now, in my view, it therefore has the status of an informal open meeting of Directors and supporters. Nothing wrong with that, so long as everybody is clear that it has no power to make decisions about the activities of the company.

I hope this is helpful and look forward to seeing everyone tomorrow.

Martin
13/6/2017