

**ANNEX to minutes of a meeting of the BOARD of DIRECTORS of SCOTTISH FENCING LIMITED on  
22 APRIL 2021**

*[see Item 3: Response to Governance proposal received. "The Board agreed the proposed response but decided not to publish it immediately on the grounds that it had no evidence that any significant numbers of members shared the author's misconceptions, and that a public announcement would give the allegations a profile they did not merit. It agreed to attach the response to these minutes as an annex, thereby making it available to the membership once the minutes are published."]*

The Board recently received a long e-mail which made a number of serious charges against it and set out some suggestions to improve the governance of Scottish Fencing. It was a considered piece of work but it rested on several errors and misconceptions. It suggested that the views it contained were shared by a number of members. In a subsequent e-mail the author said "For those who are aware or care, the feelings range from dismay, disbelief, anger to deep hurt". Although we have only received this one complaint, the Board believes it is important to answer the charges made and consider the suggestions for improvement.

The first charge is that the Board has changed the relationship between the President, Chair and Directors, and did so without giving any notice. This charge is based on the misconception that previously the President took the decisions and ran Scottish Fencing, and that henceforth it will be the Chair of the Company that does so. Neither is true. Since 2015, when new Articles of Association were agreed by the membership at an AGM (and Mike O'Donnell was chair and Chris Hyde President) Scottish Fencing has been run by its Board: that has not changed. The Board is sovereign as a collective body and no Director on it is superior to any other and no Director can over-rule a Board decision. Many decisions are taken on its behalf by Directors within their delegated areas of responsibility (their 'Portfolio') but the Board can over-turn any of them if it needs to.

The second charge is that the Chair of the Company has been given effective power to control the Board and the other Directors. That is not true either. The Chair of the Company has no authority over the Directors and is definitely not their 'line manager'. The job description refers to "management of the Board" but that cannot be interpreted as managing the individuals who comprise that Board. The Chair has no power to give instructions to another Director, cannot over-rule a majority decision of the Board, cannot prevent any Director from calling a meeting at any time at seven days notice, and the obligation on the Chair to set the agenda for Board meetings does not mean that the Board cannot discuss any topic it wishes. All Board members contribute topics for the agenda, as does the CEO.

Within this charge is criticism that the Chair is the CEO's line manager. Line management of the CEO is a normal function of a board chair because a board cannot function as a line manager. (How does a board have a confidential discussion with an individual about a health or family issue which is affecting their work?). The Board remains fully able to call the CEO to account for his actions: he presents a written summary and an oral report to every meeting. There remains a clear separation of duties between the Chair and the CEO, as required by the **sportscotland** governance framework. One leads the Board, the other is a servant of it, with their own, full job description and delegated authorities. The fact that the Chair acts the CEO's line manager does not undermine that.

The third charge is that by making changes without consultation, and while an election was in progress, the “previous Board” has not acted with openness and integrity. We have not made any changes and have operated entirely within the Articles, so this charge also fails. We may not be a perfect exemplar of corporate governance but we are committed to acting with openness, integrity and honest endeavour in the best interests of fencing in Scotland. Constitutionally it is also wrong to think of a ‘previous’ and a ‘current’ Board. The Board never ceases to exist (unless all the directors resign or die) and the Board is never bound by previous decisions. What it has done it can undo, as long as it remains within the terms of the Articles.

What the prospect of a contested election for President exposed was that no job description had ever been written for the President, and the Chair’s responsibilities were only set out, with those of the other Directors, in the Portfolio paper agreed by the Board at a meeting in June 2019. Since 2015 no public affairs issues have ever arisen which gave us cause to think about the role of President, which is perhaps why it was not mentioned in the Portfolio paper. The Board is confident that the job descriptions it has now agreed and published reflect both the Articles of Association and the way in which Scottish Fencing has been run since 2015 when those Articles were introduced.

The foundation must always be “what do the Articles say?” because we have no discretion to waive them.

- They contain two explicit definitions which state:
  - *“‘President’ means an Elected Director who is further elected to represent the Company as its titular and functional head in all public affairs”;*
  - *“‘Chair of the Company’ means the chair of the Company appointed by the Directors in accordance with Article 18(11)”.*
- Article 18(11) states *“The Directors shall appoint one of their number to be the Chair of the Company on such terms as they deem appropriate (and usually for a four-year period, at the discretion of the Directors). The duties of the Chair of the Company shall include chairing all meetings of the Directors and General Meetings of the Company (unless unavailable or unwilling for any bona fide reason to do so)”.*
- There are two subsidiary references to the President, one which requires an election by ballot of the membership if there is more than one candidate to become President and one which makes clear that the President is one of the seven Elected Directors permitted.
- There are subsidiary references to the Chair which empower them to:
  - exercise a casting vote at any meeting they are chairing where the votes are equally divided for and against;
  - rule whether a conflict of interest prevents any Director from taking part in a vote on a particular issue;
  - receive disputes about the interpretation of the Articles and refer them to the Directors for a decision.

Our Articles do not spell it out but it is a general principle of corporate governance that the Chair of any Board is responsible for leadership of that board and ensuring its effectiveness on all aspects of its role.

The nature of the Directors' and President's roles were clearly stated on the call for nominations, the notice of the election, and the ballot paper. Thus, accusations of mis-representation cannot be sustained. The e-mail's author also said "this is not how I and other members see the role of President at any time in living memory". We can only say this is how it has been since 2015 and "living memory" before then is irrelevant.

It is also perhaps worth pointing out two differences between ourselves and British Fencing. British Fencing's President has an international role but is not a director and does not have a vote on its board. They are selected by the board after a process of open competition and appointed by it subject to confirmation at the subsequent AGM. The Chair of British Fencing is recruited and appointed by the board as an independent director and cannot be an elected director. When our new Articles were being prepared in 2014, **sportscotland's** preference was for us to recruit an independent chairman but the Board at the time chose not to follow that route.

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