

In respect of a review of British Flyball Association's Constitution

Introduction

This report contains the results of our review of The British Flyball Association's (BFA) Constitution.

The Scope of our Review

This report is not intended to be a comprehensive review of each clause of the Constitution and all potentially relevant legal issues relating to them. It is intended to draw attention to those legal issues which we, in our absolute discretion, consider to be of material importance and warrant further investigation, negotiation or amendment by BFA. This report includes an executive summary identifying the key issues which BFA should take into consideration and the outcome of our review of the Constitution. In reviewing the Constitution, we have assigned each clause a colour to indicate its significance:

Red	This paragraph is unreasonable, ambiguous, or not in accordance with applicable laws and regulations
Amber	This paragraph cannot be expressed as 'green' and requires your detailed review owing to its onerous nature, scope, and application
Green	This paragraph is of standard form, and although you should take your time to read, digest and understand its effect, it does not require amendment or detailed review

Executive summary

It should be noted that this executive summary is not exhaustive, and this report should be read in its entirety.

You need to be aware that an unincorporated association is an organisation which arises between two or more individuals who collaborate for a given purpose and provides a greater freedom of operation than a company who for instance will be required to make annual submissions of its accounts and its governance. With that in mind, an unincorporated association is not a legal entity in law. It therefore in other words has no legal rights and is not separate from its members. As a consequence, its individual members are legally responsible for the acts and omissions of the association as a whole. It follows that the BFA's members are therefore never safe from liability incurred by other of them.

Whilst the majority of our comments below do not warrant a red in their colour, **we do**

strongly advise that the Constitution is amended to expressly state that no member may commit the association to any contract or expense without consent of the body of members and that all expenses are funded in advance as currently the Constitution is silent on this matter and does not safeguard the interests of members against each other.

You'll note that the majority of our comments are in an attempt to set out clear guidelines as to how the association will work to ensure on-going success.

Review

Paragraph	Status	Comments
1. Name and Objectives		This paragraph clearly confirms the objectives of the BFA. Whilst there are no legal concerns with this paragraph, we advise that you review this in full to ensure that no further objectives need to be listed here which accurately set out the BFA's aims. Should the BFA offer any charitable aims, you may want to consider the option of applying for registration to the Charity Commission. We can provide more advice in this regard if this is at all required.
2. Committee		<p>Our interpretation, assuming correct, is that the Committee must be made up of the Chairperson, Treasurer and Secretary and whilst this paragraph confirms that their appointment will take place by a 'majority vote' it is not clear in what setting this will take place eg, at an AGM, EGM , committee meeting or simply at a general meeting. We advise that you consider make this clear at paragraph 2.1</p> <p>Paragraph 2.2: whilst this paragraph attempts to set out the eventuality where there are less than 6 Committee Members there is the possibility of co-opting Adult Members, it is also silent on how such a co-option is to be carried out and any formalities surrounding the same. Please consider this and let us have your comments.</p>
3. Committee meetings and voting		Paragraph 3.1: We note that notice of a committee meeting is provided with at least 72 hours notice or in an emergency committee on 24 hours notice. This is purely a commercial decision for you to consider as to whether you believe this offers sufficient and reasonable notice to committee members – you may want to consider extending notice of committee

		<p>meeting from 72 hours to 1 week to afford committee members ample notice and time to get their timetable in order to attend but this is ultimately your commercial decision. We advise that ‘any meeting’ in the last sentence of this paragraph is updated to ‘any committee meeting’.</p> <p>Paragraph 3.2: It is confirmed here that at least 5 committee members must vote to pass a proposal considered at the meeting. Consideration needs to be given that as quorum is set at 5 committee members, where only 5 committee members attend a committee meeting, unanimous consent will be required to pass a proposal, where 10 committee members attend then 50% of those in attendance are required to pass a proposal and where 7 committee members attend then 75% of those in attendance are required to pass a proposal. With this in mind, it may be worth considering introducing a tier if appropriate to ring fence certain decision making to 50%, 75% and unanimous approval to introduce structure to decision making by the committee.</p>
<p>4. Committee Members and other positions</p>		<p>Paragraph 4.1: This is currently silent on matters surrounding the notice period or invitation to apply to become a committee member and the time between receiving applications and sending these candidates out to members for their postal votes. Similarly our comments to paragraph 2.1, it is unclear what is meant by ‘majority vote’ here. We would advise that these matters are made clear under the Constitution.</p> <p>Paragraphs 4.1b, c, and d: We understand these paragraphs set out the criteria for “an active member” to become a Committee Member. We would advise that this criteria for good order is placed before paragraph 5.1a. We note that the previous constitution noted that a member must comply with the Code of Ethics, do you intend to include this as a criteria here too?</p> <p>It is also unclear what is meant by an “an active member”. Given that Committee Members can co-opt members onto the Committee who are Adult Members at paragraph 3, we assume that your intention is only</p>

		<p>Adult Members can apply for a place on the Committee. If this is correct, we would advise altering this paragraph to confirm the same. It is also ambiguous as to what is meant by “sanctioned tournaments”, are these tournaments approved by the Committee, if so can these be listed here? Without doing so, there is a risk that this could be up for interpretation.</p> <p>Paragraph 4.3: refers to the fact that the Committee can terminate the office of a Committee Member in accordance with paragraph 3.2. Further to our comments to paragraph 3.2 and subject to your instructions, we advise that this paragraph 4.3 is amended to refer to the required level of decision making chosen by the committee when terminating the office of a Committee Member eg 50%, 75% or unanimous approval.</p> <p>It is also unclear how the termination of the officer appointments listed at paragraph 4.4 can be terminated, similarly to our comments above is this at a Committee Meeting with 50%, 75% or unanimous approval or otherwise?</p>
<p>5. Code of Conduct</p>		<p>We have no comments regarding this paragraph save for it may be worthwhile including an express statement here that the outcome of disciplinary proceedings could result in cessation of membership.</p>
<p>6. Members</p>		<p>Paragraph 6.3: This refers to membership to the BFA being linked to payment of an annual fee. This paragraph is silent on the terms surrounding payment for instance, within 30 days of invoice. Are there any set terms which we could include here to give some clarity surrounding how payment must be carried out by members.</p> <p>Paragraph 6.5: whilst this expressly states that members have an entitlement to vote at AGMs and EGMs it does not state that they are entitled to vote at general meetings. We assume this is not the case and therefore advise that this is expressly added here. The same applies to paragraph 7.6 in respect of Junior Members</p>

		<p>regarding their ability to attend but not vote at a general meeting.</p>
<p>7. General Meetings</p>		<p>Paragraphs 7.2e and f: We note that it is clear voting in these circumstances are limited to Adult Members only and therefore strongly advise that this is carved out of paragraph 6.6 so that it is clear Junior Members have the right to vote only in certain circumstances if this is the case.</p> <p>There seemingly is a mechanism in place to allow a proposer / proxy to vote on behalf of a member who has proposed a rule change at paragraph 7.3. Have you considered the possibility of including the ability to nominate a proxy for those members who cannot attend a meeting? We can prepare and put forward reasonable mechanisms for this if required.</p> <p>There is also reference to a “BFA Veterinary Team”, we advise providing more detail here to duly identify this team and who it is made up of including registered addresses and any registration numbers.</p> <p>With regards to paragraph 7.6: whilst there are no legal concerns, for a matter of good order we advise that agendas are circulated and posted at the same time that the notices to the meeting are issued.</p> <p>This paragraph as a whole is silent on quorum at a general meeting – we note that the previous Constitution confirmed quorum “200 adult members from less ten clubs/teams” – please can you confirm what you intend to set quorum at?</p>
<p>8. Extraordinary General Meeting (EGM)</p>		<p>Paragraph 8.1: we note that mediation processes are to follow ACAS guidelines, is there any particular reason why this is stated here? We would advise setting out a more generic mediation clause to allow the BFA the opportunity to seek mediation if required in whichever way it sees fit and not limited to ACAS’ guidelines.</p> <p>Paragraph 8.2: When an EGM is called by the Committee, this paragraph (unlike 8.3) doesn’t confirm</p>

		<p>what quorum needs to be at. We advise you consider this and it is confirmed here.</p> <p>Paragraph 8.3: it's unclear what is meant by 'a minimum of 300 adult members in favour of coming' when it is later confirmed that only 40% of those adult members need to make up quorum. It is also unclear how many adult members are required from the 10 primary teams – we advise that this is clarified here as well as introduce a clear definition by what is intended to capture 'primary teams'.</p> <p>This paragraph is also silent on the notice period required to the reminder of the members of the BFA to attend the EGM unlike at 8.3 where it confirms 30 days written notice. If this is intended to be the same, we advise this is confirmed under this paragraph too.</p>
<p>9. Process for change to the Constitution</p>		<p>Whilst we note that any proposals to amend the Constitution will be considered by the Committee, this paragraph does not set out the timeframe the Committee will consider such a proposal. We advise that a timeframe you are reasonably comfortable to comply with is inserted here.</p>

Next Steps

Once you have carefully and fully reviewed the comments set out in this report, we advise it may be beneficial to arrange a call to discuss any action points or thoughts you might have.

Further Information

Should you require any further information or have questions relating to anything raised in the report, please do not hesitate to contact us.

Chadwick Lawrence LLP
4th June 2024