

Select Committee on the Constitution Report to National Council
29.6.2024

Select Committee on the Constitution Members

Alan Ransome – Chairman
Alex Murdoch
Neil Le Milliere
Malcolm Allsop
Estyn Williams
Susie Venner
Tony Catt

Independence of National Council

Discussions have been ongoing with regard to the representatives of the Board with Neil Hurford, Chair of National Council, and myself as Chair of the Select Committee on the Constitution. The Select Committee have been considering all the points involved in this discussion at our meetings.

The main meeting we held was with Nick Donald, Don Parker, Adrian Christy, with Neil Hurford and myself on Tuesday 28th May 2024. Overall I would describe the meetings as positive and satisfactory. There were two main points that Neil and I raised within the meeting.

1) The Board was suggesting it would be represented at only two of the four National Council meetings each year.

The Board proposal was for the Board to be represented by the Chairman and CEO on two out of four occasions.

Neil and I made the point that this would not be satisfactory and that there needs to be close liaison and reporting back to both sides so that the National Council can carry out its function, with only two meetings being attended National Council would not be able to carry out our responsibilities. We believe that this had been accepted.

2) The finance of the National Council meetings would be transferred to the Counties rather than being a cost to the Association.

With regard to the finance, the proposal was being made that if National Council is independent it should meet its own costs. National Council has been financed from affiliation fees from the members and it would not be helpful to National Council if any costs involved were shared between the Counties. This would be negative and it was agreed in principal that finance matters would continue as now.

Another point that was raised by the Board is that they were looking to communicate with members directly rather than through National Council, and while we have no problem with them communicating with the member direct, it is essential that the level of information to National Council continues at the current level and it is not restricted to whatever the Board feel the members should be given.

There is also a question of the timing. The Board are suggesting that they hold a Board meeting first, after the Board meeting they then have a circulation to their members about the information that they want to submit to this and following this up should be a National Council meeting.

Neil and I did not have a problem with this as long as the information coming to National Council was sufficient for the Council to be effective in its work, and we believe that this was agreed.

Another concern of the Board was that National Councillors have no mandatory requirement to consult their County Associations. We felt that while it may not be mandatory, in the past majority of cases it happens and reports are provided back to County meetings and to others within the County where required. We said we were happy to discuss in Council and remind Councillors that we believe this is part of their responsibilities in representing the County.

There is also the point that National Councillors should use their best endeavours to invite and encourage participation from representatives of the table tennis community and the broader membership in all their meetings. I have reminded the meeting that the National Council has produced a proposal to the Board that the articles should be changed so Premier clubs have a vote at meetings and at elections, and that this has not been carried forward with the Board. If this had been adopted, it would mean that table tennis organisations that cater for the sport other than at the competition level could also become Premier clubs. Therefore, this would go some way towards meeting this objective, but up to now, the board has not responded to our proposal. The type of groups that could become premier clubs, if they were inclined to do so, could be 50+ groups that play regularly across the country, school clubs and universities, which would widen this perspective and have a positive effect on the membership of the association.

It was established that this whole matter of the Memorandum of Understanding did not need to be rushed. The Board seem to feel that they needed to have something finalised by the next National Council meeting but Neil and I felt there was no need to rush this, as if there were further points to be debated which came from the next draft then it is better to have time to do this rather than being rushed.

So, we are still having to wait and see what comes in the next draft, but in any case it is clearly more important to support and improve the National Council position than it was previously, and Nick Donald's approach was to find a way forward rather than impose restrictions with any points we were not comfortable with.

My impression of the meeting was that Nick Donald was looking to cooperate and find a way forward that works for the Board and Council and in that spirit Neil Hurford and I were happy to cooperate with this.

AGM Proposals

The Select Committee have been discussing the latest set of proposals from the Board for the AGM. The main items are no. 9 and no. 10 whereby the right for any members to nominate who they wish for a position on the Board and for that person to be automatically on the ballot paper is being challenged, and it is being challenged on the basis of Sport England guidance and their requirements.

There have been procedures in place for some time that nominations have to go through the Board Nomination Committee and the Nomination Committee are able to comment on the suitability of the candidates to fill the Boards requirements. Currently any person nominated can go on the ticket, but this rule would prohibit that person if the Nomination Committee felt the person was not suitable for the job.

The Select Committee have concerns about this. There was a loss to members rights in 2017 when Sport England required the Chair to be appointed by the Board rather than elected by the members. This went to AGM in 2017 and the proposition was rejected, but Sport England were ready to cease funding for table tennis and at an EGM, in the light of all this, reluctantly members agreed to this change.

Two of our members, Estyn Williams and Susie Venner have produced papers on this matter, as below.

1) Report by Estyn Williams

Code Clause 2.4 and the Code's commentary on it

I attach below clause 2.4 and the code's commentary on it.

Clause 2.4 itself is not very clear. But it does **not** say that the Board or the nominations committee should have a right of veto. It does emphasise the importance of a documented and transparent procedure. The TTE skills matrix (on the Board page of the web site) is so general it could be used to give any answer you want.

I have highlighted part of the commentary in yellow. This explains that the nomination committee's views on whether a candidate has the required skills and experience **should accompany the election materials so that the electors have access to it.**

This is precisely what we do now! But why would the nominations committee need to tell the electors this if it had already excluded some candidates from the ballot?

My view is that the Code means that the function of the nominations committee is to make recommendations to whoever decides appoints or elects the director – that is the Board for appointed directors and the company members for elected directors.

Code Clause 2.4

2.4 Each organisation shall have a documented, formal, inclusive, rigorous and transparent procedure for the appointment of all type of directorships to the Board, and all appointments shall be made on merit in line with the skills and diversity required of the Board.

Commentary on clause 2.4 contained in the Code.

The aim of the recruitment process is to secure the best candidates for the Board, and to do so in a formal, inclusive and transparent way which builds trust in the organisation.

While the appointment process may differ for Independent and Nominated Directors, it should comply with Requirement 2.4. Thus, it should be documented, and information about the process should be available to the Board and relevant stakeholders as appropriate. For example, if a Nominated Director is appointed by the membership, it is important to ensure all members have access to the information about the process in a timely manner. For the appointment of Chair and Independent Non-Executive Directors, please refer to Requirement 2.6.

Irrespective of the process of appointment, all appointments should be made on merit in line with the skills required of the Board and the organisation's ambitions and plan to achieve greater diversity in all its forms (Req. 2.1-2.3). Requirement 1.3 requires each organisation to maintain an up-to-date matrix detailing the diversity of skills, background, experience, independence and thought required of its Board. This skills matrix enables the organisation to prepare the role description and person specification for any new Director which the organisation is seeking to appoint, whether this be for an Independent NonExecutive Director or a Nominated Director position. The organisation's Diversity and Inclusion Action Plan (Requirement 2.2) and Succession Plan (Requirement 2.7) should also inform this process.

To ensure the appointment of Nominated Directors who, under the terms of the organisation's constitution, are elected to the Board (e.g. by a particular constituency, such as a Council, or by the membership as a whole) are made on merit and in line with the required skills and ambitions for greater diversity, organisations may wish to give consideration to the following process:

- As noted above, a role description and person specification are prepared
- Vacancies (including the role description and person specification) are communicated widely (e.g. by publication on the UK Sport website, stakeholder groups and other diverse channels)
- The Nominations Committee reviews applications and satisfies itself the process can be considered free of bias and has produced a diverse range of candidates. It should also provide a view on whether proposed candidates have the required skills and experience. If this is the case, in the interests of transparency, it would be appropriate for the view of the

Nominations Committee to accompany any election materials relating to that candidate so that those making the selection have access to that information (see also Requirement 1.15 about Nominations Committees).

Estyn Williams

2) Report by Susie Venner

Asked about our views on the Code, specifically 2.4 and the associated guidance.

In one word, 'ambiguous'.

1.1a says:

The Board of the organisation shall:

a. be the ultimate decision-making body and accordingly exercise all of the powers of the organisation;

2.4 says:

Board recruitment

2.4 Each organisation shall have a documented, formal, inclusive, rigorous and transparent procedure for the appointment of all type of directorships to the Board, and all appointments shall be made on merit, in line with the skills and diversity required of the Board.

2.8 says:

2.8 The Nominations Committee shall lead the process for Board appointments on behalf of the Board.

However, the relevant commentary or guidance on this section does not clarify the situation. It talks about making it clear about the roles etc, but the relevant section (third bullet point - my bold) is:

To ensure the appointment of Nominated Directors who, under the terms of the organisation's constitution, are elected to the Board (e.g. by a particular constituency, such as a Council, or by the membership as a whole) are made on merit and in line with the required skills and ambitions for greater diversity, organisations may wish to give consideration to the following process:

- As noted above, a role description and person specification are prepared*
- Vacancies (including the role description and person specification) are communicated widely (e.g. by publication on the UK Sport website, stakeholder groups and other diverse channels)*
 - **The Nominations Committee reviews applications and satisfies itself the process can be considered free of bias and has produced a diverse range of candidates. It should also provide a view on whether proposed candidates have the required skills and experience. If this is the case, in the interests of transparency, it would be appropriate for the view of the Nominations Committee to accompany any election materials relating to that candidate so that those making the selection have access to that information (see also Requirement 1.15 about Nominations Committees).***

It would have been very straight-forward for Sport England to add a rider at this point along the lines that in order to ensure the elected appointments are made on merit and in line with the

required skills and ambitions etc etc - then ...'The Board would have the right to veto candidates it deemed the nominee did not fulfil the criteria.

However, Sport England hasn't said that. What it says is that NomComs should *review* applications, *satisfy* itself that the process is free of bias and has provided a diverse range of candidates. It also then makes provision for NomComs to express a view on whether the proposed candidates have the required skills and experience - and recommends that those views accompany any election materials. It majors on a) overseeing the process is correct; and b) providing information. It stops short of requiring a veto.

This is where the ambiguity lies. Nick says this means a veto - others think it means an informative assessment.

A simpler solution would be for TTE to agree to abide by the third bullet point - that way it must be Code compliant because we've taken it directly from the Code - and it gives the safeguard and comfort to both TTE Board and National Council/Company Members. It's clearly the middle-ground.

Susie Venner

The concern with this proposal is that if it is passed it weakens further the democratic rights of the members and the members wish to elect who they would like to be elected onto the Board. I believe that significant progress has been made with the gain in confidence in the Board itself and with the members since the appointment of Nick Donald as Chairman, and there has been good progress made here, however, once we have allowed this to be removed from the Articles it is lost regardless of who is on the Board in the future.

5th Elected Director

Proposal no. 10 is a proposition to allow the members to elect a 5th Board member rather than 4. This proposition so far as the Select Committee are concerned is widely supported. The proposal was first submitted by Tony Catt from Sussex. This was followed up with a meeting between Nick Donald and Tony Catt, and Tony Catt was advised that the Board were following the same route. Therefore, Tony Catt agreed to withdraw his proposal on that basis.

What has materialised is a statement to say that if no. 9 was proposed (the right of veto) as discussed above, with regard to the election system for elected members of the Board is lost at the AGM that the Board will withdraw no 10, the 5th Elected Director.

We do believe it is in the interest of the sport that the 5th Elected Director is debated and voted on at the AGM.

It is clear that Tony Catt submitted it because he felt that it was in the interests of the members. The Board appeared to think it was a good idea because they have proposed it as well, and certainly it is supported by the Select Committee, so in our view if it is in the interest of the sport it should not be withdrawn because of the vote on Nomination Committee's powers as referred to above, are increased to refuse a nomination.

These are complex matters. The Select Committee, and I am sure Neil Hurford as Chairman of National Council, is wanting to work with the Board to have a positive working relationship for the benefit of the sport and the Select Committee is suggesting that there should be a further meeting between the full Select Committee and Neil Hurford and the Board, should he wish to join with representatives of the Board, to discuss this before the next National Council meeting.

The Select Committee have discussed the above in detail and we have from the Committee unanimous support for the above.

Alan Ransome
Chairman
Select Committee on the Constitution
14th June 2024