

REPORT OF THE CONSTITUTIONAL TASK FORCE

4.8.13

THE SOCIETY OF AUTHORS

REPORT OF THE CONSTITUTIONAL TASK FORCE

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If the Society is to meet authors' needs in the 21st century, its 129-year-old constitution needs updating. The legal, structural and procedural issues this raises are complex, somewhat technical, interdependent and in some cases potentially divisive. In late 2012 the Management Committee (MC hereafter) therefore appointed us to debate the issues and produce this report. Our brief was to clarify areas of agreement, identify any remaining issues of difficulty or disagreement, and make recommendations accordingly. For further background on the creation of the task force and this report, see the [Society's website](#).

We have met eight times, at roughly monthly intervals, since December 2012. The meetings were lengthy and the discussions free-ranging and robust. The work has focused mainly on the three sets of issues covered in the rest of this report: the Society's legal status (Section 1), who does what (Section 2) and elections (Section 3).

The MC discussed this report at its meeting on 18 July and considered the final draft by email. Excluding Patrick Barwise (the MC representative on the Task Force), seven MC members have expressed their views on the recommendations and on which option they support on those issues for which the Task Force did not reach agreement. These seven members were unanimous in their preferences so we simply refer to them collectively as the MC and, where relevant, their views are indicated below.

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1 The Society's Legal Status

The key legal issue is to find a constitutional arrangement that best suits the Society. We start from a tricky position. The Society is a private company limited by shares. It is not a charity but it is a trade union. However, as a trade union it is a special case, in legal parlance, a 'Special Register' body under the Industrial Relations Act 1971, which exceptionally allowed trade unions incorporated as companies to retain their status.

This means that the Society does not have to comply with all the rules that govern trade unions, for example on elections, but also that if its trade union status is to be preserved care will have to be taken to avoid any change to its corporate identity that might jeopardise this privileged position. This then raises the question, why remain a trade union?

Why remain a trade union?

Being a trade union enables us to bargain collectively on behalf of our members. This would otherwise be an unlawful restraint of trade and might also breach competition law. The Society negotiates on behalf of its members with, notably, the BBC. Losing the ability to do this would be significant for many members. Moreover, the changes taking place in the publishing industry might well require the Society in future to undertake more activities of this nature.

As a Special Register body, the Society enjoys the same privileges as other trade unions. The list of Special Register bodies was frozen in 1974 when the 1971 Act was repealed. Therefore if we wish to continue as a company while still retaining trade union status we have to retain the existing company. The arrangement described below will ensure that the shares are clearly held on behalf of the members and votes are cast according to their will expressed in ballots and general meetings. Retaining the Society's present corporate structure avoids any complications about losing trade union status.

The number of shareholders

At present the shares are vested in the members of Council, who hold them on an implied trust for the membership as a whole.¹ Custom and practice dictate that the 72 shareholders (i.e. the Council members) cast their votes as directed by the Society's members.

Given that the shareholders are really no more than a device to comply with company law, acting entirely as instructed by the Society's members, there are no implications for the democratic governance of the Society if we reduce their number to something more manageable, and select shareholders who will remain able to do the job for an extended period of time. The shareholders will enter into a formal shareholders' agreement or trust

¹ The proposal put forward last year was to issue shares to all members of the Society, but this would be expensive and bureaucratic. A private limited company is not the most appropriate structure for the participation of 9,000 members. Indeed, until relatively recently the number of members of a private limited company was limited to 50. A company with thousands of members would normally be a public limited company – but for regulatory reasons, apart from anything else, this is not something the Society can contemplate. Some members have also raised concerns about becoming shareholders – even though there would be no risks attached.

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deed under which they agree to vote as the members direct. We propose to retain the current arrangements whereby if the Company is wound up its assets must be transferred to an organisation with similar objects.

We and the MC recommend:

- i) Continue as a Special Register trade union and a company limited by shares,
- ii) The shares are held by three trustees or nominees of whom one should be the President, another the Treasurer (an honorary professional appointment with no axe to grind) and the third a member of Council chosen by the President. We imagine that this is likely to be a former Chair, though that should not be a requirement.

With three shareholders, even if one is unable to act for some reason, the other two will be able to take any actions that may be necessary.

Other options we considered

We considered four other options: a company limited by guarantee, an industrial and provident society, a co-operative, and a fully-fledged trade union. We rejected these for the reasons given in the Appendix.

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2 Who Does What

2.1 Sovereignty and General Meetings:

We and the MC recommend: there should now be a formal acknowledgement that sovereignty lies with the members, who have delegated certain powers to the Management Committee for the Society's day-to-day running. The MC and all other organs of the Society – namely the President and Council, Groups, and staff – are accountable to, and involving of, the members at a General Meeting and, as far as is practicable, between meetings.

We and the MC recommend:

- i) 35 members of the Society may convene an Extraordinary General Meeting to take place at a date not earlier than one month or later than three months from the date of notice,
- ii) The MC or any MC member or 15 other members of the Society may propose a resolution to be voted upon at an already scheduled General Meeting with at least two weeks' notice.

2.2 The Management Committee:

At present the MC has 12 elected members who serve for a term of three years. This term is renewable but custom and practice have meant that people serve for a single term. All major policy and strategy decisions are taken by the MC. It is the board of directors of the company and meets about six times a year.

We and the MC recommend:

- i) As at present the MC is elected by and answerable to the members,
- ii) It has executive authority within the Society and policy changes have to be approved by it,
- iii) It remains the board of directors of the company, meeting about six times a year,
- iv) Its agendas, papers, minutes and decisions are published in as timely and transparent a way as possible on the Society's webpages (except that matters that are confidential for commercial, legal or personal privacy reasons are redacted).

MC members' expenses:

We and the MC recommend: members of the MC are entitled to the reimbursement of expenses. They may in future receive remuneration if that is agreed by an ordinary resolution of the general meeting.

Unlike ALCS, the Society does not remunerate Committee members though it does pay expenses. There is a case for giving Committee members an honorarium in the way that some countries (e.g. Denmark and Germany) do for visiting writers. So attendance at a Committee meeting would automatically generate a standard payment for which no formal request or justification is asked.

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Advantage: this might be a (small) extra incentive for younger/poorer authors to stand for election.

Disadvantage: even a token payment would be expensive for the Society. Assuming an honorarium of £100 per meeting attended and an average number of meetings the MC would cost £7,200 a year; with the Group Chairs included that rises to £10,200; and including sub-groups with over 500 members and an honorarium of £75 per meeting attended, the additional cost would be £18,000 a year. The Society does not have any outside income: all its money comes from members' subscriptions. Each fee of £100 would be more than the entire annual subscription of one member. On balance therefore the Task Force (*with CP dissenting*) and the MC do not recommend paying Committee members fees in addition to expenses.

Length of time on Committee:

An increase from the current three to four years would increase the time MC members spent as experienced and effective members of the committee but would make it harder to recruit people willing to serve and reduce the flow of new MC members.

We and the MC therefore recommend:

- i) the current three-year term is retained,
- ii) MC will do more to mentor and involve new MC members so they can get up to speed more quickly.

2.3 The Chair of the Management Committee:

We and the MC recommend:

- i) The Chair chairs the Management Committee although that function may be delegated to another MC member in the Chair's absence,
- ii) The Chair is responsible for implementing the decisions of the MC and the other committees and sub-committees, and works closely with the Chief Executive (CE) to that end,
- iii) The Chair is also a public face of the Society. He or she plays a key role as an ambassador for the Society and comments on its behalf on broad policy issues and/or specific issues on which he/she has been fully briefed,
- iv) The Chair formally appraises the CE each year after consulting the members of MC, staff and Council and selected outside partners. An invitation is posted to the website inviting soundings from members,
- v) The Chair is, *ex-officio*, a member of the Finance Sub-Committee which recommends the remuneration of the Chief Executive and agrees with the CE the recommended pay-envelope for other staff and, in broad terms, how that will be allocated among the staff. That recommendation is discussed by the MC, which either approves it or may decide on a new settlement,

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- vi) The Chair chairs the AGM/EGM – although that function may be delegated to another member of the MC in the Chair’s absence.

Expenses and remuneration of the Chair:

We and the MC recommend: the Chair is entitled to the reimbursement of expenses. The Chair may in future receive remuneration if that is agreed by an ordinary resolution of the general meeting.

2.4 The Council

At present the Council members (together with the MC) are the Society’s shareholders and oversee the MC. But assuming that the Society’s share ownership is switched to three individuals only, as recommended in Section 1 above, other Council members will no longer be shareholders. If that happens there are three main options for the Council:

Option 1: the Council is abolished.

Advantage: it simplifies the Society’s structure.

Disadvantage: the Society loses the counsel of experienced authors (many of whom have served on the MC or as Chair) – and also the prestige that a published list of the Council adds to the public perception of the Society.

Option 2: the Council becomes wholly nominal. Council membership becomes a position of dignity without authority.

Advantage: we retain the public acknowledgement of such distinguished writers being members.

Disadvantage: we lose the ultimate safeguarding of the constitution.

We and the MC recommend:

Option 3: the Council becomes an ‘upper house’ of ‘Members of Council’, with the sole but important substantive function of defending the constitution, assets, and aims of the Society. Council would act only if it believed those were under threat. In addition, one option for electing the President is for this to be one of Council’s roles (see Section 3.3 below). Our other recommendations (all of which are agreed by MC) are as follows:

- i) Council Members are appointed by the MC subject to formal ratification at the AGM,
- ii) They are appointed for a ten-year term with unlimited reappointment,
- iii) The figure of ‘up to 60 members’ in the existing constitution is gradually reduced (while at the same time new members are appointed),
- iv) Members of the MC are no longer ex officio Council members,
- v) The Council holds an annual meeting timed in relation to the AGM, to take place within, say, a week of the AGM,

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- vi) The President chairs the Council,
- vii) Outside its annual meeting, the President may convene the Council if he or she believes its function of 'defending the constitution, assets, and aims of the Society' is at issue,
- viii) A quorum of five Council members may convene it on the same terms.

Advantages: the Society would retain the asset represented by a body of distinguished writers. In the event of extreme (and highly unlikely) circumstances, there would be an ultimate safeguard of the Society's interests.

Disadvantages: abolishing the Council or making it wholly nominal would be marginally simpler.

2.5 The President

We and the MC recommend:

- i) The President plays a key role as an ambassador for the Society and comments on the Society's behalf on broad policy issues and/or specific issues on which he or she has been fully briefed,
- ii) He or she has no powers to act on behalf of the Society or to commit the Society to any course of action or expenditure unless specific authority has been delegated by the Management Committee,
- iii) If the Council becomes an 'upper house' acting as a constitutional safeguard as we recommend (see 2.4 above), the President becomes the chair of the Council and has the power to convene it in its role as a constitutional safeguard. (This would be a change from the somewhat anomalous present situation whereby the Chair, and not the President, chairs the Council),
- iv) The term is for five years and the President may serve for a second term only,
- v) Anyone standing for the office of President is already a member of the Council.

2.6 Groups

The Society has a number of subsidiary groups based on identifiable shared professional interests. These groups are serviced by the staff of the Society and are active in initiating policy ideas and helping MC keep in touch with the full range of professional interests across the membership. They also provide significant value for many members as a source of personal contacts, mutual support, and specialist events.

We and the MC recommend:

- i) As at present, the Chairs of the largest groups attend MC meetings ex officio where they participate in the discussions, but do not vote, and also report to MC on their groups' activities and concerns,
- ii) There is a definition of 'the largest groups' in the form of a percentage. Normally any group representing more than 5% of members (about 450) has such a right,

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- iii) MC can, on an ad hoc basis, invite Chairs or representatives of other groups to attend MC meetings,
- iv) MC agrees a standard constitution for the groups.

2.7 The Chief Executive (CE):

Since the Society's incorporation in 1884 the person responsible for the day to day running and management of the Society's affairs has been variously known as 'Secretary', 'General Secretary' and now 'Chief Executive'. The current title was adopted by MC in 2012 to bring it into line with general current practice and external stakeholders' expectations.

We and the MC recommend: as at present, the CE is appointed by the MC which determines the terms and remuneration of that post and, through its Chair, annually appraises the person appointed. The CE is responsible to the MC for the financial and legal administration of the Society and the associated charitable trusts, and for the provision of services to members and the smooth running of the office.

2.8 The Finance Sub-Committee and the Treasurer:

We and the MC recommend:

As at present,

- i) The Finance Sub-Committee has oversight of all issues relating to the Society's finances and is answerable to the MC,
- ii) It is chaired by the Chair of the MC,
- iii) The other ex-officio members are the Treasurer and the CE,
- iv) The Treasurer is an honorary, non-voting, non-elected position and s/he attends the MC,
- v) The Treasurer is appointed by MC for a five-year term subject to reappointment by the MC for any number of terms,
- vi) The position of Treasurer is held by a qualified accountant who need not be a member of the Society,
- vii) In addition to the three ex-officio members, the Finance Sub-Committee continues its practice of co-opting at least one other suitably qualified individual as the need arises.

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3 Elections

3.1 Election of the Management Committee

The role of the MC (Articles 14 & 15 of the existing Articles of Association) is to conduct and manage the business of the Society subject to review by the AGM and the Council. Put simply, the key function of the MC's members (individually and collectively) is to ensure that the Society is run properly for the benefit of all members. Their election is therefore of great importance.

The Committee consists of 12 members, each elected for three years. Four members retire each year and four new ones are elected. (Arts 16 – 18).

The current system

Society members are informed in first quarter of the year of the identity of retiring MC members and (in the weeks after that) of nominations for the vacancies. The nominations can be made by the existing MC (including those who are retiring) or by any two Society members. If only the same number of candidates as the number of vacancies is nominated, those candidates are duly elected. If the number of nominations is greater, a balloted election takes place. The process takes about four months, members being notified of the results at the subsequent AGM.

In practice what has usually happened is that throughout the year the MC invites suggestions for nominees. At its January meeting the MC considers a long list of potential nominees (suggested by members and staff as well as members of the MC) and produces a shortlist by secret ballot. Shortlisted individuals are approached in order of the number of votes received and asked whether they would be willing to be put forward as a Management Committee nominee for election. The names of those who agree to stand as MC nominees are published in the spring issue of *The Author* and an invitation to general members to make further nominations is issued. In recent decades only two elections (in 2011 and 2013) have been contested.

Advantages: the vacancies do get filled (in contrast to some arts organisations where they often do not); a mix of members, representing different aspects of the writing profession as well as diversity of age and experience, can be nominated; members perceived to have relevant experience and the ability and willingness to contribute, can be suggested; potentially effective members who would be unlikely to stand without prompting can be invited to serve.

Disadvantages: in years of no contest, members have no direct influence over who represents them; the system opens the door to the perception that undue influence by the CE and MC members is possible; the appearance of 'official' candidates may discourage others from standing; when there is a contest the Committee's nominees may have an advantage.

We considered four options

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(a) The current system

(b) The 'forced contest' approach

This means that most of the present system is retained but the MC is required to nominate more candidates than the number of vacancies, thus forcing a ballot whether or not others are nominated

Advantages: the vacancies still get filled; the wider membership gains a degree of direct control.

Disadvantages: good candidates are likely to be put off because of the inevitability of a contested election: it would be more difficult and time-consuming to identify more candidates and get them to stand. This system would cost more than the current system while retaining most of its other disadvantages.

(c) The 'open contest' approach

This is the familiar procedure adopted by many organisations, including PEN International and the Writers' Guild. Vacancies are filled by an election of members nominated by other members with no formal input from the ruling body.

CP, PG and WH favour this approach.

Advantages: this approach is more democratic and transparent than the current system; it offers a genuinely level playing field; only committed candidates are encouraged to stand; it also encourages younger, less well-established authors to stand.

Disadvantages: the vacancies may not get filled; good candidates may be unwilling to stand; even if the vacancies do get filled, those elected may not represent the whole profession; this system is time-consuming and expensive to administer.

(d) The 'starred list' approach

Here 'other member' nominations are invited before the MC's nominations are made public. The MC can nominate any number of candidates up to the number of vacancies. All the nominations are announced together, with a contest if there are more nominations than places. The MC's nominations are identifiable in the list of candidates only by being starred or stated to be MC nominations.

PB, NS and the MC favour this approach.

Advantages: the MC still gets to choose a suitable mix of candidates, but the membership is not unduly influenced or pre-empted by early, official announcements; because the MC can nominate fewer candidates than the number of vacancies, this system is flexible and could evolve towards the 'open contest' approach if the evidence over time is that plenty of candidates are coming forward.

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Disadvantages: this system is more democratic than the current one but less than the open system.

The MC will discuss this option further and may suggest refinements or an amended system.

Whichever procedure is adopted, we and the MC recommend:

- (i) MC members need have been members of the Society for a minimum of three months prior to nomination,
- (ii) Elections should continue to be subject to a rigorous, fair, scrutinised and transparent election process in line with company and trade union law. Clear notice will be given. Election is by scrutinised postal ballot, with ratification at the AGM. Eligibility requirements are made clear,
- (iii) The Rules should state that for each election, candidates will present 500 word statements. In addition current members of the MC who will be remaining on the committee will present 250 word statements. This will allow Members to have a sense of the balance of the committee,
- (iv) The MC may co-opt up to three non-voting members for a term of up to two years, renewable once. This will allow specific gaps in knowledge to be filled,
- (v) The MC may co-opt voting members to fill a gap in the case of retirement or death, but only until the next election. The MC has the option to fill casual vacancies either by co-option or by election, or to leave them empty until the term would have ended had the incumbent not died or retired (which may be preferable as it maintains the regularity of the system of four members retiring each year).

Elections hustings

The TF (*CP and PG dissenting*) and the MC agreed that hustings, whether at a meeting or online, are not appropriate for MC elections. It would not add any useful indication of who might be the best candidates and many people who would make effective MC members would be dissuaded from standing if there were a hustings process.

3.2 Election of the Chair of the MC

We considered four options:

1) Continuing with the present system.

At present the MC follows the process described in Article 20 of the existing constitution: 'At the first meeting of the Committee of Management after every annual election of members of the Committee, a Chairman of the Committee of Management shall be elected. The outgoing Chairman shall be eligible for re-election.' Advantages: MC members are in a good position to know who is likely to make an effective Chair; the process is efficient in terms of time and cost.

PB and NS and the MC favour this option.

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WH favours this option if the Chair's role and responsibilities remain much as they are at present but would favour direct election if the responsibilities are widened.

Disadvantages: since the Chair does so much more than simply chair meetings of the MC, there is an argument that the rest of the membership should have some direct input into his or her election.

2) The 'ratification option'

Under this option, the MC nominates the Chair from among its members and that nomination has to be ratified by a vote of all members, with the requirement that the candidate secure a majority of votes cast.

Advantages: it gives all members a direct say in the filling of the most important unpaid office in the Society.

Disadvantages: there would be a hiatus between nomination and ratification; there would be a cost in time and money; good candidates might be discouraged from standing; non-ratification would lead to a new process having to be started.

3) The 'open but conditional election option'

Under this option, any member of the Society may be nominated and elected as Chair subject to the following conditions: he or she should already be on the MC and have served for a year, or have served at least two years on one of the qualifying Groups' Committees, within the previous five years, or have served a term on the MC within the previous five years.

Advantages: it gives members a decisive voice in the filling of the most important office in the Society.

Disadvantages: there would be a hiatus between nomination and ratification and a cost in time and money; good candidates might be discouraged from standing; MC members will typically be in the best position to know who is likely to make an effective Chair and that experience would be lost.

4) The 'open election option'

Under this option, any member of the Society may be nominated and elected as Chair who has been a full member of the Society for three years.

CP and PG support Option 4 and, failing that, Option 3.

Advantages: it gives members an even more decisive voice in the filling of the most important office in the Society than under option 3.

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Disadvantages: there would be a hiatus between nomination and ratification and a cost in time and money; good candidates might be even more likely to be discouraged from standing than under option 3; MC members will typically be in the best position to know who is likely to make an effective Chair and that experience would be lost.

Under Options (3) and (4) by which the Chair is elected by all members, there would need to be rules for the nomination of candidates: We suggest that:

- i) A candidate for election to the Chair must be nominated by three members of the Society,
- ii) If more than one candidate is nominated, election is by ballot of the whole membership. Candidates are expected to issue an election statement outlining their qualifications for election,
- iii) The ballot for the Chair takes place at the time of the ballot for new members of the MC.

3.3 Election of the President

At present the Council elects the President for life as a mark of honour that at the same time reflects prestige on the Society.

The election of the President:

Option 1

As at present members of the Council continue to elect the President. Advantage: The members of Council will typically be in the best position to judge who would make an effective President. Disadvantage: The majority of members have no input into that decision.

PB, NS, WH and the MC recommend this option.

Option 2) At least two candidates for the President are nominated by the MC and then elected by all the members.

Advantage: The members feel that they have played a role in the choice of this important position.

Disadvantage: Potential candidates might be deterred. There is a cost in time and money. The Council will have no say in the election of the President.

An open election may deter the best candidate from standing.

It may be difficult to find two candidates of sufficient calibre prepared to stand in an open election.”

CP and PG recommend this option:

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Appendix: Alternative Options for the Society's Legal Status

These are the options for the Society's legal status that we considered and rejected (see Section 1).

(a) A Company Limited by Guarantee

A company limited by guarantee is, other things being equal, the most suitable corporate structure for a membership organisation, especially a not-for-profit one. Instead of owning shares, members simply guarantee to contribute a certain sum to the assets of the company if it becomes insolvent and are easily released from the obligation when they leave. There are no shares to transfer, only a list of members to maintain. A company limited by guarantee could easily be incorporated. It could serve as the holding company for the existing private limited company, the shares in which would be transferred to the new company. There would therefore be no need to transfer assets and update contracts.

However the new company would not and could not be a Special Register body and the old company would be at risk of losing its trade union status because it would no longer be performing the function of a trade union. The problems might not be insuperable, but we could see no advantage in assuming the potentially substantial extra costs and compliance burden of setting up a second company, which would be a device in the same way as the nominees mentioned above would be.

(b) An Industrial and Provident Society (IPS)

IPSs are registered (but not necessarily regulated) by the Financial Conduct Authority as opposed to being registered at Companies House. They are suitable structures for co-operatives and mutual organisations, but as the Society is not trading and does not provide financial services to its members we do not consider registration as an IPS to be the right course. It would not be possible for a trade union to be an IPS or vice versa, so to take this approach would entail losing that status. If we chose to go down this route it would also be expensive, partly because IPSs are outside the experience of most company lawyers.

(c) A Co-operative

Some members have expressed a preference for a co-operative, but that expression has no precise legal meaning: a co-op may be a company limited by guarantee, an industrial and provident society, or all sorts of other things. The distinguishing features of co-operatives are ownership by the members and distribution of profits to them. A straightforward private company limited by shares could do this. As the Society is non-profit-making, it is not appropriate to think in terms of co-operatives. However, the principle of ownership by the members is a sound one, which we and the MC recommend achieving by means of a trust or shareholder agreement.

(d) A fully-fledged Trade Union

A final possibility would be to create a new trade union (rather than a Special Register union). The only real differences in the legal regime that we would have to live under are that the President and the General Secretary would have to be elected by the members, as would even non-voting members of the Management Committee. However, under our current legal status, if we decide at any time to make these elected posts, this can be done

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under the current Special Register status. There seems to be no advantage to incurring the considerable expense of becoming an ordinary trade union when the Society already is a trade union, albeit a special type of union, and we would enjoy no additional benefits.