

# **The Fairfield Association**

## **Proposed Revised Constitution**

### **1. Introduction**

The Fairfield Association's (FA's) Constitution is a formal, legally binding document. To acquire and retain its status as a registered charity, the FA was required by the Charity Commission (CC) to adopt, and is required to retain, a constitution which meets a large number of formal requirements laid down by the Commission, many of them derived from national legislation and national regulations governing different types of charities, and others designed to deal with a large number of contingencies up to and including possible fraud and misconduct by officers, trustees and other members. The FA recognises that both the current constitution and the revised version to be proposed for adoption at AGM 2013 are challenging documents for the inexperienced reader. This document aims to explain the reasons why change is needed, to draw attention to the key features of the proposed revised constitution and highlight any significant changes from the old one, and to do so as simply as possible, in order to enable members attending the AGM to make an informed decision on whether or not to accept the recommended revision. If the revised constitution is accepted, we intend to maintain a shortened version of this document as a permanent commentary on the constitution.

### **2. Why is change needed?**

The CC has for many years provided model constitutions ("governing documents") for different types of charity ([http://www.charity-commission.gov.uk/start\\_up\\_a\\_charity/guidance\\_on\\_registering/mgds.aspx](http://www.charity-commission.gov.uk/start_up_a_charity/guidance_on_registering/mgds.aspx)).

The Constitution under which the FA operated from its foundation in 1996 to the present day was taken directly from the CC's then model constitution for a small membership association, and has been relatively little amended since then. In the meantime:

- the FA's membership, remit and assets have grown
- the CC's guidance on best practice has changed.
- despite the best efforts of the Officers and other Trustees to follow the old constitution faithfully, in line with largely informal advice from the CC, the opacity of the constitution's language (e.g. in relation to the roles of 'officers' and 'trustees') have led to questions being asked by members about whether our governance structures and procedures are fully consistent with the written constitution.

Having taken advice from the CC and after several months' often lively discussion and debate, the current Trustees have constructed a proposed revised constitution, largely based on the CC's latest model constitution for a charitable association such as the FA, but modified, where the CC permits this, to reflect what we regard as the particular needs of the FA at the present time.

### **3. What is a charitable association?**

There are different types of charity under English law. Charities may be 'incorporated' as registered companies under English law, or as 'Charitable Incorporated Organisations' (CIOs). Neither of these options is generally recommended for smaller charities, but a few years ago, after the FA's assets and activities had grown, the FA's auditor recommended that the FA should formally consider whether or not to incorporate. After discussing the main advantages (e.g. the removal of personal financial liability from the individual trustees) and disadvantages (e.g. increased financial reporting requirements) the Trustees decided it would not be sensible for the present to change the FA's unincorporated status.

Unincorporated charities have two choices. Probably the commonest type of charity is a self-governing Trust, whose Trustees are expected to operate in pursuit of a declared charitable aim – and must make an annual return to the CC to show that they are doing so – but are answerable to no-one else for their activities. Trustees appoint their own successors subject to minor procedural constraints laid down in their Trust Deed. An example would be the Fairfield Millennium Green and Community Orchard Trust (FMGCOT/'The Orchard Trust'), which was set up following the FA's success in obtaining Millennium Lottery funding for the Fairfield Orchard: the 'Millennium Greens Fund', which awarded the money, insisted that a separate, independent Trust must be set up for every project. FMGCOT gradually spent all the money with which it had been endowed and then agreed to merge with the FA, effectively handing back the asset which had been created to the FA. Although FMGCOT was not required to do so by law, it held an annual meeting open to anyone from the community, but as a Trust it was not bound by any resolutions from that meeting, which was therefore purely informal and at best advisory.

The FA, however, is a membership association, a different type of charity set up by and thereafter answerable to its members. However, standard CC recommendations for the relationship between the membership and the charity's executive are fairly limited: they call for the association's governing body to be elected at an Annual General Meeting but give the governing body freedom to operate without consultation between AGMs. As we explain below, the FA has chosen from the outset to involve members to a much greater extent than this.

### **4. What is a charity's governing body and what is a 'Trustee'?**

All charities must have a governing body. However, there has been some confusion – and a change of practice – over the years in the naming of the governing body and its members. In 1996 members of the governing body of a charitable *trust* were called Trustees, while those of a charitable *association* were referred to as the Executive Committee (or the Officers and the Executive Committee). This explains the terminology used in our old constitution. More recently, the CC changed its terminology, and its model constitutions, and began to refer to the members of all the governing bodies of Trusts, Associations and CIOs as Trustees, presumably to emphasise that they share a common fiduciary responsibility and to simplify the guidance that it offers on, e.g. the selection and

duties of Trustees, whatever the type of charity. The FA was advised that it could and should adopt the new name for members of its governing body, but that it was not required to change the constitution to reflect this. Since, as we shall see, the Trustees for many years chose not to meet independently of the membership, they saw no need to revise the constitution. They acknowledge that since it became necessary to hold closed Trustees' meetings, this has caused some confusion, and this is one reason for the proposed revised constitution.

## **5. What is unusual about the Fairfield Association?**

As described above, the 'standard', CC-recommended association would have a governing body of Trustees (including a Chair and possibly other named Officers) who are elected at an AGM open to all members, but thereafter are simply required to make annual reports – to the membership at the AGM, and to the CC – and to respond to motions passed at the AGM. The FA has always preferred to operate, wherever possible, in a rather more open and 'democratic' way. This is exemplified in two ways, through the organisation of meetings and through our approach to membership.

### *5.1. The FA Meeting*

First, the governing body has always delegated practical decision-making powers to what is known as the Fairfield Association Meeting (or business meeting), which normally takes place monthly and is open not only to all members of the FA but also to any other member of the public. These meetings are publicly advertised locally (e.g. through the newsletters distributed to all households in a growing area of Lancaster, through the FA calendar emailed to list members and displayed on the website, and through posters). In recent years the FA has also set up sub-groups to deal with specific areas of activity: either standing sub-groups (FOG, FOTT) or steering groups for particular tasks (e.g. Fauna and Flora steering groups). These groups are also open to everyone.

### *5.2 Trustees' meetings*

Legally speaking, the Trustees are liable for certain matters which they cannot properly delegate: the FA's assets, its overall financial health, health and safety (H&S) and any other 'governance' issues. In practice, few of these issues have arisen until recently, and the Trustees only began to meet as a closed group on a non-exceptional basis once the current programme of land acquisition (Fauna and especially Flora) started. In particular, Flora required frequent discussion of commercially confidential matters which could not be publicly minuted, and around the same time a group of members rightly insisted that the Trustees take a formal position as the ultimately responsible body on H&S procedures. In addition, the constitution is a governance issue and the Trustees have taken responsibility for drafting the revised constitution for recommendation to the AGM. In practice, Trustees' meetings have often been 'virtual' events conducted by email. (It should be noted that according to CC rules and both the old and proposed constitutions, Trustees must minute their meetings but there is no requirement to publish the minutes, and on several recent occasions it would have been inappropriate to do so.) However, the Trustees hope that once the Flora purchases are completed, closed meetings will once again become highly unusual or even entirely unnecessary.

### *5.3 Procedure for future FA Meetings*

The FA Meeting has worked well for many years as the main decision making body for the FA, and nothing in the revised constitution is intended to change it. However, because strictly speaking the FA meeting relies on powers delegated to it by the Trustees, it seems appropriate to formalise procedures for the FA meeting in two respects, by creating 'rules' or 'bye-laws', which should be recorded in an appendix to the constitution (see below on clause 32 and appendices):

- the FA meeting must be chaired by the Chair of the FA or in his/her absence by another Trustee; and
- the chair of the FA meeting has the right to refer any decision by the meeting on a finance, governance or H&S issue to the Trustees for ratification before it is implemented.

A proposal to this effect will be made to a FA Meeting shortly.

### *5.4 Membership of the FA*

Membership of a charitable association is open to all adults. Our old constitution specified, as recommended by the CC, that members must pay a subscription and would lose their membership if they stopped subscribing. In practice, although the FA has a growing number of subscribing members, and has a policy of keeping subscription rates low, we recognise that a substantial number of community members choose not to pay an annual subscription but are active and valuable supporters, for example as volunteers on one of the FA's sites, or as contributors to FA events. We have therefore removed the sub-clause in the old constitution which restricted membership to people who have paid a subscription. We are not proposing to change the operational definition of membership at the present time, but leaving it open in the constitution means that it could be changed in future without the need to amend the constitution again.

## **6. The Proposed Constitution**

In this section we highlight those sections or clauses which we think are most significant. As stated earlier, much of the document contains clauses which may seem to be statements of the obvious and therefore entirely non-controversial, or designed to deal with what are hopefully highly unlikely situations.

Clause:

[1-2. As recommended by the CC.]

3. Objects: a charity's 'objects' are the purposes for which it has been set up, and for which it is accountable to both its members and the CC. According to the old constitution they cannot be changed without the CC's permission prior to a vote by an AGM (we have applied for permission). They were last changed in 2008, when part (b) was added by agreement with the Orchard Trust on its merger. We have now added the words 'Flora and Fauna Nature Reserves'.

[4-5. As recommended by the CC.]

6. 'Dissolution'. All charities are required to have a dissolution clause explaining what will happen to their assets if they cease to be viable. Changes to this clause also require CC permission under our old constitution. Clause 6 replaces clause 21 of the old constitution, and is as recommended by the CC. We have applied for permission for the change. So far as we can see, the only substantive difference is that it gives more power to members to propose how the assets would be distributed.

[7. As recommended by the CC.]

8. Membership: as indicated above (section 5.4) the revised constitution does not make payment of a subscription a condition of membership. Otherwise, 8 and 9 are as recommended by the CC.

10-16. General meetings: note that these clauses refer only to 'general meetings', basically the AGM plus any 'special general meeting' which might be called in exceptional circumstances. Clauses 21-23 prescribe how Trustees' meetings operate. The constitution does NOT prescribe how any other meetings can or should be organised except under clause 24 ('delegation'). Procedures for all other meetings can be dealt with by minuted agreement, and in recent years we have aimed to summarise these in appendices to the constitution, which we are free to change at any time, and which the revised constitution explicitly authorises as 'rules' or 'byelaws'. The current appendices appear at the end of the constitution and are discussed below. Clauses 10-16 are as recommended by the CC.

17. Officers and trustees. Much of the technical wording follows CC recommendations. However, we have chosen to recommend:

- Clause 17(2): that the Secretary and Treasurer need not be Trustees. These are both demanding jobs and potentially hard to fill, and like some previous incumbents, the FA's present and highly valued Secretary and Treasurer have each said that they would not want to take on the added responsibility of becoming Trustees. We consulted the CC who confirmed that they would have no objection to these roles not being linked to Trusteeship. We have kept the term of office for the three 'officers' at one year (see next paragraph for trustees' terms of office) as the posts are sometimes hard to fill and it can be easier to recruit people if they know that they are only committed for one year at a time.
- Clause 17(5): number of trustees. Currently the FA has seven trustees, which seems to work well. The CC recommends enough to avoid any suspicion of 'cliqueyness', and not so many as to be unwieldy. After debate we settled on recommending of 3-7 (old constitution: 4-7) with a maximum of 9.

18. Trustee appointment and election.

- As previously, trustees are elected at the AGM, but it is possible to appoint an additional trustee at any time provided they then stand for

election at the next AGM. This is a useful provision and was last used to appoint Dave Brookes, who was chair of FOTT, as a trustee when FOTT joined the FA.

- Term of office of trustees. The CC model specifies 1-year terms, and so did the old constitution. Oddly, however, when we asked the CC if longer terms were a possibility they told us that they prefer them, to provide better continuity and avoid the (hopefully remote!) possibility that a particular AGM could be 'packed' and vote in an unrepresentative group of trustees. We are recommending 3-year terms with the possibility of re-election, which better fits the length of time that trustees have served in recent years. We discussed including a clause saying that elections would be staggered, to guarantee that each year, 1-3 trustee places would be available for election, but decided not to complicate the elections by putting this in writing. (It could be very cumbersome, as to start with, or if a trustee decided to resign early, there would have to be elections for terms of office with different lengths.)

19-23. These clauses, and the rest of clauses 17-18, are basically as recommended by the CC.

24. Delegation. This section is new in the revised constitution and largely follows CC recommendations: it makes it clear that the trustees are entitled (a) to authorise the FA meeting or any sub-group or committee to take decisions on any matter they authorise and (b) to retain the right to financial control of committee decisions, either by pre-agreeing a budget or in any other way that seems appropriate.

[25-30. As recommended by the CC.]

31. As recommended by the CC, with the addition of clarifying that email is an acceptable method of communication.

32. Authorises the FA, either through the trustees or at the AGM, which has the final word, to make 'rules' or 'bye-laws', which would then constitute appendices to the constitution.

[33-34. As recommended by the CC.]

## Appendices

The previous constitution contained three appendices which were drawn up at different times. Appendix 1 is an obligation which we took on when the Orchard Trust merged with the FA in 2008: we undertook to retain the Orchard Trust's Aims and Powers as a permanent appendix to our constitution, to remind ourselves of the principles on which the Trust had operated. Appendix 2 was drafted and approved to regularise the position of FOG when it was set up, and is intended to cover all possible groups including, notably, FOTT. It needs minor revision, including the amendment of some perhaps puzzling references to 'FACT', or 'the main Fairfield Association Committee and Trustees'. We also need

to create a parallel document with terms of reference and procedures for the FA meeting, incorporating the two conditions listed in section 5.3 above. Appendix 3 is a practical guide to proper procedures drawn up and approved several years ago, including how to deal with urgent matters, authorising expenditure and the conduct of meetings. It should be kept under regular review. Owing to the time pressures of preparing the revised constitution it was not possible to redraft these, but the trustees intend to present proposed revisions to a future FA meeting: in any case, this is better done after the revised constitution has been adopted.