

## **REPORT OF THE DSO CONSTITUTION WORKING GROUP**

### **Introduction**

1. The AGM of the DSO held on 15 October 2010 considered a number of proposals, about 30 in all, for amendment to the society's constitution. Given the number and complexity of the issues involved, and the significance of making changes to the constitution, the members at the AGM voted for the proposals to be remitted to a working group which was to report back to a general meeting with an assessment of the proposals and recommendations for which if any, should be adopted. Members were also invited to submit further proposals for amendment to the working group should they wish. One member submitted proposals, and these were also considered by the working group.
2. Jeremy Crump was asked to convene the group by the AGM. Membership was open to anyone who volunteered. Those who came forward included present members of the committee (Ian Finn and Frances Barrett), past members (Chris Burns, Nicky Jackson and Jane Howard) and orchestra members who have not served on the committee (Caroline Annesley, Roland McCabe and Peter Watkins).
3. The working group met on five occasions between January and May 2011. The terms of reference which they adopted are at annex A.
4. Ian Finn tendered his resignation from the working group before the final meeting. His email to the convenor to this effect is at annex B.

### **Endorsement of this report**

5. The recommendations and views expressed in this report are endorsed by the following members of the working group:

Chris Burns, Jeremy Crump, Jane Howard, Nicky Jackson, Roland McCabe, Peter Watkins

6. Caroline Annesley endorses all the recommendations in the report other than recommendation viii (nominations to be accepted on the day of a general meeting).
7. Frances Barrett does not endorse the report, and will submit a separate statement for consideration by the general meeting.

## **Principles and approach**

8. Throughout the discussions, the working group was mindful of a number of underlying principles, and these have informed the recommendations. The principles are:

- The DSO is a small organisation whose members meet regularly during the year. The committee consists of a small group elected by the members to manage the business of the DSO in their interests, and in accordance with the aims stated in the constitution. The constitution should be such that members are confident that the committee continues to act in accordance with their wishes and interests, and that its proceedings are open and transparent.
- The committee is accountable to the membership, as represented formally in annual and extraordinary general meetings. The constitution should afford the membership the opportunity to discuss the decisions made by the committee. The committee should consult the members on significant issues. The ultimate sanction for the membership is through the election of officers and committee members at the AGM.
- The constitution should not burden the DSO with unduly bureaucratic and legalistic processes.
- Nevertheless, those elected to be members of the committee also have the role of Trustees of an unincorporated association and are financially liable for the consequences of the decisions that they make.
- The orchestra is dependent for its success on, amongst other things, an effective and dedicated committee and officers and on the willingness of members to put themselves forward for election. Any changes should not make it less likely that members of the orchestra will do so.

## **Incorporated Charitable Organisation status**

9. During the course of the group's work, Making Music published preliminary advice about changes in regulations by the Charity Commission which create a new form of charitable organisation, the Incorporated Charitable Organisation (ICO). Making Music believe that this status may be of interest to amateur music organisations, not least because it removes strict financial liability from Trustees. It was put to the working group<sup>1</sup> that consideration of the changes proposed at the AGM should be delayed until it had been determined whether DSO should seek ICO status.

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<sup>1</sup> By Frances Barrett on 9 May 2011

10. The working group discussed this but rejected on the grounds that resolution of ICO status would not be straightforward, indeed it is not certain that it would be the best status for DSO and in any case making Music have yet to issue detailed advice on its implementation. Further, there was an expectation from the AGM that the issues raised in October should be addressed. Finally, whatever the formal status of the DSO, it was likely that some if not all of any amendments made in the present process would be incorporated in a future constitution under ICO status.

### **Summary of the recommendations**

11. The recommendations whether or not to adopt proposals (whether in full, in part or in a modified form) are listed in annex C with a short explanation in each case. A parallel version of the text showing the amendments proposed by Chris Burns at the 2010AGM is at annex D. A revised text of the constitution, showing the proposed changes, is at annex E.

12. The Working Group recommends the adoption of eight of the proposed amendments, in some cases in the form submitted to the AGM, in others in a modified form. In a number of cases, the working group agreed that the object of the proposed amendments could be achieved without constitutional amendment. Rather, they depended on the spirit with which the committee carried out its role and in particular the way that members are consulted and informed of committee decisions. This part of the discussion is gathered together in paragraphs 28-31 below.

13. The recommended changes are as follows:

- i) There should be a procedure for creating honorary members
- ii) There should be a requirement for the committee to act and report back on complaints from members
- iii) The committee should be required to consult the membership on issues relating to the conductor's appointment
- iv) Vacancies on the committee should no longer be filled by co-option but by vote at an EGM.
- v) The quorum for the committee should be increased from 3 to 4.
- vi) If vacancies meant that the number left in the committee were to be less than the number required for a quorum, the committee would be empowered to do no more than call an EGM for the election of new members.
- vii) The minutes of the committee should be made available for inspection by members of the orchestra
- viii) It should be possible for nominations for officers and membership of the committee to be made at the AGM and not just by writing in advance.

### **What the proposed changes mean**

#### **Honorary members**

14. While it has probably always been the case that the DSO could choose to give honorary membership, there is no explicit provision to do so in the constitution. The amendment we recommend is that

*The Committee may propose to a General Meeting of the Society the award of honorary membership in individual cases*

The effect of this will be that any decision to grant honorary membership will need to be approved by a vote at a general meeting. In practice, members of the orchestra will be able to suggest names to the committee if they wish. The group did not think it necessary to define in detail what the right of an honorary member would be (other than that they do not have to pay a subscription) or what part they may play in the work of the orchestra.

#### Complaints procedure

15. The Committee has received complaints from members in the past, but there is nothing in the constitution which formally establishes this as a role of the committee or any requirement for the committee to respond. The proposed amendment is:

*The Committee will act fairly and promptly in response to a complaint made by a member of the Society about the management of business or about the conduct of another member. The Committee will give the complainant and any other person referred to in the complaint an account of the process by which it reached any decision.*

The effect of this change is to establish what kind of complaints the Committee should consider, to require the Committee to act promptly in dealing with it and to require transparency about how it is considered.

#### Consultation about matters relating to the appointment of the conductor

16. This recommendation will make it a requirement that anything affecting the conductor's appointment is discussed with the members. This includes not only the appointment of a new conductor but also changes to the terms and conditions of an incumbent conductor. The proposed amendment is:

*The Committee will consult the membership of the Society in matters relating to the appointment of the conductor*

The working group considered that it would not be desirable to define in the constitution the detailed procedure for appointing a new conductor or the detailed consultation arrangements. It noted that the procedure which was used in the appointment of a new conductor in 2010 was a basis for consultation, but that in future further attention should be given to explaining to the members what was proposed and seeking their agreement.

#### Co-opted members

17. It has been the practice hitherto when a vacancy has occurred in between AGMs to co-opt members onto the committee (and to make temporary appointments to officer posts). It is proposed to end this practice in the interests of greater transparency and openness. The recommended amendment states:

*Vacancies on the Committee, including officer posts, which occur between Annual General Meetings shall be filled by election at an extraordinary general meeting and not by co-option.*

There is a consequential amendment to remove the reference to co-option in article 7i (Meetings and Proceedings of the Committee).

The effect of this amendment will be to require any new committee member to be elected by the membership of the orchestra at a general meeting. The working group noted that calling an EGM was not burdensome and that, were they to be held for a single purpose such as to elect a committee member, they need not take long to complete.

#### Powers of inquorate committee

18. The previous amendment means that it is possible to envisage a situation in which, because a number of members leave during the year, the committee becomes inquorate. This isn't very likely because it would mean that the number would need to fall below four. Currently there are eight. Nevertheless, given that an inquorate committee could not make itself quorate by co-option, it would have the power to call an extraordinary general meeting for the election of new members of the committee.

19. The proposed amendment is:

*If the number of committee members is less than the number fixed as the quorum, the remaining committee members may act only for the purpose of calling a general meeting.*

#### Size of the quorum for the Committee

20. The proposal is that the quorum is increased from one third or three, whichever is the greater to one third or four, whichever is the greater.

21. In discussing this, the working group was mindful that it was undesirable that the officers, of whom there are three, should be in a position to make a decision about the business of the orchestra without involving other committee members. In practice, there were few occasions on which decision had been taken on the basis of the quorum of three.

#### Inspection of the minutes of proceedings of the committee and sub-committees

22. The present constitution requires that minutes of committee meetings are kept and are available for inspection. This is in compliance with the requirements of the Charity Commission. The proposed amendment is, for the avoidance of doubt, to make explicit that members of the orchestra are also entitled to inspect the minutes.

23. The means by which this greater transparency is to be achieved are not prescribed by the amendment, but it would be straightforward either to public minutes on the web site or to circulate them to members by email. There will of course be occasions when reasons of personal or commercial confidentiality require the published minutes to exclude details of the committee discussion.

#### Nominations at general meetings

24. There is at present a requirement for nominations to be made in writing to the Secretary 14 days before the date of an AGM. The proposed amendment is to add that nomination may also be made from the floor at the AGM. This principle should also apply to filling vacancies at extraordinary general meetings. These changes are contained in amendments to articles 10 and 11 of the constitution.

25. The working group considered that this was desirable because it reduced unnecessary formality and made it more likely that people would come forward as candidates. There is of course a cost in that it would not be apparent before the day of the meeting who would be standing and hence members would have to make up their minds on the basis of what was said at the general meeting. It would be desirable if the Committee kept members informed of nominations received before the general meeting as they came in.

26. It was noted that this was a specific point raised by the additional member who provided proposals after the AGM of October 2010.

#### **Adopting the changes**

27. We propose that the revised constitution is adopted at an extraordinary general meeting held before the end of July 2011, and that it comes into effect from the day on which the 2011 AGM is held. Hence the provision on nominations at the AGM will be effective for the next AGM and the committee elected at that meeting should be bound by the new provisions.

#### **The spirit of the constitution**

28. During the working group's considerations, the greater number of the amendments put to the 2010 AGM were withdrawn by Chris Burns, who had submitted them. The consensus in the working group was that the aims of ensuring greater transparency and engagement, and of holding the committee to account, were most likely to be achieved not by legalistic process and change to the constitution, but by the adoption by committee members of principles of openness and good practice. The formal remedies for members in holding the committee to account are in the discussion of the annual report at the AGM and in the subsequent elections. The working group noted that it was desirable that these annual events should be given proper time by the committee in their preparation and that sufficient time be allowed for discussion by the members. This meant circulation of the report in advance of the AGM and setting aside at

least half a rehearsal for the AGM. The working group was keen to remind the Chair that the choice of time for meetings (whether AGMs or extraordinary GMs) should be such as to make for the greatest possible attendance. The handling of the chair's role at the 2010 AGM was noted by a member. The working group makes no comment on the handling of that meeting, but notes that it is desirable that the outgoing chair should manage the whole meeting even if they are not re-elected in future.

29. There was also discussion of the suggestion by a member that, even where there were no more candidates than vacancies, there should be a vote on each appointment. This would be something like a US senate appointment hearing in effect – if the candidate didn't get a majority, they would be subject to public rejection. The working group therefore does not recommend this change. However, we thought it very desirable that more people came forward as candidates and that there should be real contests. This would need careful management. We did not want to get involved in the challenge of describing detailed procedures, but would suggest that these procedures be adopted for the foreseeable future:

- Ballots should be secret
- Only those who have paid the current subscription should be entitled to vote
- For ordinary committee members, each orchestra member should have a number of votes which corresponds to the number of places to be filled. They could give no more than one vote to each of their choices, up to the full number of their votes,

30. We believe that a more active use by the membership of their existing role in voting and discussing the annual report will achieve a lot in ensuring that the Committee is accountable. But there are also principles of good practice on the part of the committee which will make for greater engagement. At the core of this is effective communication about issues, and an active role in seeking members' views about repertoire, orchestra management issues and so on. Communication by email and the web site is relatively easy and while members will not want to be overburdened with communications from the DSO committee, it is better to err on the side of too much communication rather than too little.

31. There was also discussion about the management of the Committee by the Chair. Amendments which would constrain the management of the committee beyond those which are already contained in the requirements for quora, keeping of minutes etc are not recommended. The working group took the view that the Chair's role is already sufficiently complex without further detailed regulatory controls. The working group noted the desirability of chairs continuing to follow good practice in the spirit of openness and inclusion. This included calling meetings at times to ensure that as many members of the committee as possible could attend, and that, when the chair exercises a casting vote, he or she should do so in accordance with their understanding of the consensus within the orchestra when that was possible.

## **Conclusion**

32. The last 18 months have been a time of change for DSO. We have a new conductor, a new chair and a new rehearsal venue. Times of change are bound to raise issues on which people feel strongly. The result has been the often heated discussions which have taken place in the orchestra over the last year and which have led to the establishment of this committee. Our overall conclusion is that the future health of the orchestra depends not on extensive change to the constitution, although some changes are helpful, but on the spirit of openness which should inform the business of the Committee and on the membership's lead in choosing a committee it trusts and in holding it to account.

27 May 2011



## **Annex A Membership and Terms of Reference of the Working Group**

### **Remit**

1. The working group was established by a resolution of the Annual General Meeting of DSO held on 12 October 2011.
2. The WG was asked to consider the proposed amendments to the constitution tabled by Chris Burns and any other changes to the constitution which might be proposed and to report back to a future General meeting with a set of recommendations. The general meeting will decide on the recommendations (and must do so under the terms of the present constitution).

### **Membership**

3. Jeremy Crump was asked to convene the group by the AGM. The remaining members have volunteered. They are: Caroline Annesley, Frances Barrett, Chris Burns, Jane Howard, Nikki Jackson, Ian Finn, Roland McCabe, Peter Watkins.
4. The group is an open one. Other members of the orchestra can join if they wish at any time.

### **Work programme**

5. The working group will consider Chris Burns' amendments, using the text prepared by Russell Ashley-Smith for the AGM as a basis of a clause by clause discussion.
6. The group will also consider such other proposals as are made by members of the orchestra.
7. Members of the working group may table proposals for amendments themselves.
8. Proposals for amendment in addition to those already received should be tabled at least 5 working days before the meeting at which they are to be discussed. (The working group can choose to waive this rule on a case by case basis).
9. The working group will consider the amendments in the context of the advice and guidance of the Charity Commissioners and Making Music, and will have due regard to the legal responsibilities of trustees under the law on charities and other relevant legislation.

### **Submission of papers**

Any member of the working group (or indeed the orchestra) can submit a paper for consideration on any relevant issue. They should be sent to the convenor for wider circulation to the group at least 5 working days before the meeting at which they are to be discussed.

### **Record of proceedings**

10. The convenor will produce a record of decisions made at each meeting and circulate it in draft for agreement by members of the working group in advance of the subsequent meeting.
11. The records of proceedings will be open to members of the orchestra by publication on the members' page of the DSO web site.

## **Output**

12. The product of the group will be a report for consideration by a general meeting of the DSO. It will be written by the convenor.
13. The report will be presented to the chair in advance of the general meeting at which it is to be discussed in sufficient time for it to be considered by the Committee.
14. The working group will aim to present the general meeting with a unanimous report. Where agreement cannot be reached, the report will identify the areas of disagreement and the issues which underlie them. This will provide a basis on which the general meeting can make an informed decision.
15. The working group will aim to keep to a minimum the number of such issues.
16. The work shall be completed no later than a month before the 2011 AGM or by 15 July 2011, whichever is the sooner.

## **Schedule of meetings**

17. The working group will meet at least monthly.

## **Annex B**

### **Text of Ian Finn's email to Jeremy Crump, 23 May 2011**

Dear Jeremy

Please could you include the following statement from me in the final document of the Working Party:

"For various reasons I have only been able to attend one meeting of the Working Group and therefore would like my name to be removed from membership of it so that it is clear that I am not party to any of its deliberations or proposals. I would also like to repeat my long-held view that our existing constitution, which is almost verbatim the 'Making Music' Model Constitution, is perfectly satisfactory for the administration of the orchestra and that this exercise has been an unnecessary diversion from more important tasks facing us such as promoting our concerts or developing a child protection policy (a task which I'm sure the Working Group will be only too happy to undertake on our behalf)"

**Annex C: list of recommendations**

**Annex D: parallel version of constitution and Chris Burns' amendments**

**Annex E: draft amended constitution**

These three annexes are contained in separate documents.