

# Marshalls

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Mr J Hansson  
Chairman GCCF

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*Our ref:* SC/ycd/C38035

*Your ref:*

*Date:* 14 April 2020

By email ONLY to:- [hansson808@btinternet.com](mailto:hansson808@btinternet.com)

Dear John

### **COVID 19 Advice re constitutional matters**

1. I am sending this letter to you only so you can decide with whom to share it; it may be that you will want to raise questions with me for further clarification prior to circulation to the whole of the board of directors (Executive Committee). I am writing at this stage with “headline” advice. I have not done any drafting pending receipt of further instructions from you. These views are provisional and subject to any further comments I may receive from you/others to whom you refer this letter
2. There are 2 questions to be addressed:-
  - (i) What to do.
  - (ii) How to do it.There are issues with both questions.

#### What to do

3. It is clear that emergency action must be taken given that the Electoral Meeting of Council has already been cancelled and the fact that, if I understand your email correctly, your 3 year term is about to end.
4. In my opinion, given the need to act swiftly (implementing these things always takes time – see further below) it would be better to “keep tight” and not to try and cover anything other than the COVID 19 crisis. Given what is going to be involved (again see below) my recommendation is to keep matters as simple as possible and that for this year only, in light of the COVID 19 pandemic, emergency measures be proposed.

5. My suggestion is that we find a route under which the Electoral Meeting is postponed until, say, October. If I were a member club I would be very concerned at, somewhat in a rush now, being asked to give wide powers in any other emergency situation which powers are obviously open to interpretation and potential abuse.
6. My proposal would be that the Electoral Meeting both be postponed as mentioned above and with all officers staying in place until then. I also suggest a backup proviso that if, due to the COVID 19 pandemic it is not possible for the Electoral Meeting to take place in October, the business that would otherwise be transacted at the Electoral Meeting be dealt with by way of postal vote to take place no later than, say, 30 November, the rules and procedure of the postal vote to be decided by the Board (Executive Committee). I realise there will need to be some consequential amendments to cover returns and membership fees.
7. My point is that I do not think that it is reasonable for matters to be put off indefinitely and we have to have a fallback position as to what is to happen if this terrible situation still exists in October (or rather in September being the time when notice for an October meeting would need to be sent out).

#### How to do it

8. Obviously to achieve the above (or something similar) the byelaws will need to be changed, on a temporary basis – trying to cover the situation for future crises is something that would be best dealt with, if at all, in the cold light of day rather than right now.
9. I am aware that the byelaws have, over the years, been changed under the provisions contained in byelaw 13 pursuant to which they may be amended by a 2/3 majority vote at a meeting of Council. However there is no procedure in the byelaws themselves for decisions to be made other than at a meeting of Council. So we are stuck at that point.
10. However the Articles of Association of the Company do provide at Article 42 that the Company in general meeting shall have power to alter or repeal the rules and byelaws and to make additions thereto. I attach a copy of the Articles for ease of reference.\* I suspect that this is a power which has not, to date, been given much attention. The wording “the Company in general meeting” implies that there needs to be a meeting but, fortunately, as a matter of company law any resolution of the members of a company can be by way of written resolution. I am not in this letter advising on the use of electronic communication for written resolutions as I am sticking to headline issues here. That can come later. (\* see notes at the end.)
11. The upshot of this is that the byelaws can be amended as required by way of a written resolution of the Company.
12. This is the reason why, yesterday, I was trying to ascertain the whereabouts of the Register of Members of the Company (which form part of the Statutory Books as explained in my email of yesterday to Denise at 12.02).
13. The point is that the Register of Members is conclusive as to who are the members of a limited company. I was sent yesterday, as you know, a list of clubs who had applied for membership up to Friday 11 February 2011. It is clear from this that the procedure set out in part 3 of the Articles of Association was being followed. You will see that Article 22 on page 9 states that the subscribers to the memorandum of association shall be members and no others shall be members unless they applied for membership and the directors have approved the application.

As mentioned yesterday it is possible for a Register of Members to be kept electronically and I therefore believe that there is, from the documents supplied, (subject to one proviso see below) a convincing argument that the list of member clubs from time to time is in reality the Register of Members for company law purposes. On this basis therefore the members of the limited company are the current member clubs.

14. It is important to understand that I am, in part, taking a practical approach here although I do believe that it is one that would be respected by a court in the event of anyone seeking to challenge what is being done.
15. The proviso which I refer to in paragraph 13 is that, unfortunately, the draft Council minutes of Wednesday 2 March 2011 which were sent to me yesterday state on page 3 "all members of the Executive Committee are now members of GCCF Limited". I can only assume that this is a mistake and was intended to state that all members of the Executive Committee are now directors of GCCF Limited. The other factor is of course is that I assume no membership certificates for the limited company have ever been issued. This is not however a big point because it is the Register of Members which is conclusive as to membership. That is certainly how the byelaws have been drafted and is the basis on which the GCCF has, so far as I am aware, been run since incorporation. Putting all the above together, it would therefore be possible for the members of the Company, i.e. the existing member clubs, to pass a written resolution to amend the byelaws in the manner required. A written resolution will need to be sent round to them and very careful thought will need to be put into the wording of the resolution. As stated above I believe this should be restricted to the current COVID 19 situation.
16. The other point though that has to be addressed is what type of resolution is required to make the written resolution effective. Under company law written resolutions will either be ordinary resolutions or special resolutions. Most decisions are by ordinary resolution although certain decisions (e.g. change to the articles of association) require a special resolution. A simple majority is required to pass an ordinary resolution; a 75% majority is required to pass a special resolution. Generally speaking my view would be that the phrase "the company in general meeting shall have power to alter.." would refer to an ordinary resolution. However the nature of what is proposed here and the fact that the byelaws themselves call for a 2/3 majority to change the byelaws would found an argument that a special resolution would be required; so a 75% majority.
17. That is obviously the safest course of action but I do not know whether in practice it is likely to give rise to problems i.e. whether there is going to be difficulty in obtaining 75% approval. When special resolutions are dealt with by way of written resolution it is 75% of all members.

#### Conclusion.

18. As can be seen above there is a way forward but there is going to be quite a lot of work involved and obviously decisions in principle need to be made now as to how to proceed.

Yours sincerely **Sara Coate**

MARSHALLS



Notes: \* Article 42 of the Company's Article of Association is pasted below.

42. The Company in general meeting shall have power to alter or repeal the rules and bye-laws and to make additions thereto and the directors shall adopt such means as they deem sufficient to bring to the notice of members of the Company all such rules and bye-laws, which so long as they shall be in force, shall be binding on all members of the Company. Provided, nevertheless, that no rule or bye-law shall be inconsistent with, or shall affect or repeal anything contained in, the Articles of Association of the Company.

**Its use is the procedure for amending the Bye Laws to deal with the Covid-19 emergency. It means that each Full Member Club will have one vote on the resolution proposed after this consultation. It is a Club vote not a Council delegate vote.**

Please note also that I have amended this letter slightly from the original received. To comply with GDPR the names of those who were consulted and/or sent information on the founding of the company in 2011 have been deleted.

Ms Coate was concerned that a list of Directors had not been sent to Companies House annually as is a legal requirement. Reassurance was given on this point as they have always been supplied with the Company's Accounts by our accountants. Therefore reference to it has been removed.

In all other respects you have the complete text provided