Borders Book Festival governance memorandum

As unanimously agreed by the board

May 2022

AGREEMENT

This governance memorandum establishes how the board of the Border Book Festival (comprising 7 directors/trustees) operates in conjunction with the festival management (comprising the two ‘creative directors’, who are also trustees, and other consultants)

The aims of the agreement are:

- To provide strong underpinnings to the governance of the festival
- To ensure that roles and responsibilities are clear; and
- To align the festival with relevant legislative requirements and appropriate best practice

This agreement should be read in conjunction with the Memorandum of Association (the ‘MoA’; see extracts in Appendix One), relevant Scottish and UK legislation and guidance issued by the Office of the Scottish Charity Regulator (‘OSCR’).

BACKGROUND

The Borders Book Festival began in 2004 as an unincorporated entity with the purpose of arranging annual literary festivals in Melrose. It acted originally in conjunction with the Melrose Arts Trust, an existing charitable trust operating a small theatre in Melrose.

In February 2006, the Borders Book Festival was incorporated as a separate and independent charitable company limited by guarantee with its own board of trustees.

The company was established to:

(i) promote the arts for the benefit of the public, and in particular to encourage and develop public participation and interest in the cultural and social heritage of the Borders Region;

(ii) present public readings and other artistic performances at the annual Borders Book Festival or elsewhere, for the benefit of the local and general public;

(iii) support and encourage authors, writers and other practitioners of the arts by providing them with the opportunity to perform or display their talents at the annual Borders Book Festival or elsewhere;

(iv) establish and promote international, national and regional exchanges of ideas and information in relation to the arts, by lectures, performances, displays and otherwise in suitable public venues.
GOVERNANCE

Consistent with these objectives, the board agrees the following:

**Organisation purpose, vision and values**: board members agree to uphold the purpose, vision and values of the festival

They ensure this by:
- Requiring that any person seeking to join the board is given a copy of the Memorandum and Articles of Association (‘MAA’) and other relevant documents; and that the board then satisfies itself that they have been read and understood before the new trustee is formally appointed
- Providing every person who joins the board with a copy the Scottish Arts Council’s “Care, Diligence, and Skill” handbook (or any more recent publication, covering the same issues, as determined by the board) to prepare them for their role and responsibilities
- Facilitating an accurate record of proceedings, through a consistent approach to minutes which are taken at each board meeting (to include a record of attendance, order of business, decisions and actions); these are approved at the start of the subsequent board meeting.
- Providing board members with regular information about the organisation’s activities, assets, other resources and progress against targets. These reports are updated regularly. The festival’s annual accounts are made widely available through access on the BBF website.
- Making this agreement available on the BBF website, so that stakeholders (including regulators, funders, sponsors and members of the public) can understand the governance of the festival, allowing it to be read in conjunction with the trustees reports contained within the annual accounts (see above)
- Providing brief biographies of each trustee on the BBF website, making clear which trustees are also part of the management of the festival

**Leadership**: the board provides strategic direction to the festival management, and ensures it is accountable for the delivery of the festival, in line with BBF’s purpose, vision and values.

To fulfil this leadership responsibility, the board:
- Approves all decisions deemed to be of a strategic nature, including the appropriate structure for the organisation (such as ensuring the appropriate mix and structures for charitable and trading activities)
- Approves the festival budget and ensures appropriate accounting and other controls are in place (see also ‘control’ section below)
- Determines the fees and any other remuneration due to trustees who are also ‘creative directors’ (or hold other management positions) – these decisions are taken exclusively by those trustees (who must comprise a majority of the board) who do not receive fees or any other remuneration from the festival
- Defines and regularly reviews all other festival policies and procedures. This includes the organisation’s position on environmental impact and sustainability, equality, diversity and inclusion
- Recognises that the creative directors have the artistic freedom to programme and manage the festival, within the bounds of organisation’s purpose, vision and values and the approved budget
- Carries out regular reviews of performance (for both the organisation overall and key individuals)
- Is expected to provide practical assistance to the festival management, including, but not limited to, support in attracting/ maintaining major sponsors and funders; developing/ maintaining relationships with local and (where appropriate) national government and key cultural agencies
- Ensures that its members are able to fulfil these roles through induction, regular training and performance reviews.

**Board behaviour**: the board, both collectively and individually, embraces and demonstrates mutual respect, integrity, openness and accountability.

The board achieves these standards by:
- Being transparent, open and accountable about how the organisation is governed
- Promoting equality and diversity in its membership and elsewhere within the organisation
- All trustees contributing constructively to board discussions
- Handling concerns and complaints, from within and outwith the organisation, transparently, constructively, and impartially
- Ensuring the complaints procedure is in line with appropriate guidance (See policy in Appendix Two)
- Declaring interests and avoiding conflicts of interest, a process which is minuted and reviewed at each board meeting. (See Appendix Three)
- Creating constructive board environment where diverse and at times conflicting views are respected and welcomed and decisions are reached collectively.

**Control**: the board develops and implements appropriate controls to direct and oversee progress and performance of the organisation.

The board achieves this by:
- focusing on long- and short-term strategy, performance and assurance rather than being involved in operational matters on a day to day basis
- Being clear on the difference between governance and operations, delegating operational tasks where appropriate, while recognising that responsibility and accountability is always retained by the board.
- Defining and delegating responsibilities, with clear guidelines for managing oversight, including delegation to festival management or board sub-committees set up for focused activities, as appropriate
- Holding regular meetings to discuss, review and approve plans and budgets (including details of financial limits and circumstances where the creative directors are required to refer to the board for approval)
- Acting in accordance with the MAA and exercising their powers for the purposes conferred
- Acting in a way that the directors consider, in good faith, would most likely promote the success of the festival for the benefit of its stakeholders as a whole
- Exercising reasonable care, skill and diligence
- Operating clear policies on expenses, hospitality, gifts, and payments of trustees (see also ‘leadership’ section above) and not accepting any such benefits from third parties, unless allowed under the relevant policies
- Reviewing the legal structure from time to time to ensure it provides appropriate protection for the organisation, trustees and members
Effectiveness: the board understands its role, powers and duties, and works collectively and pro-actively to achieve its organisational purpose.

To meet this objective, the board:

- Meets at least 3 times per annum, with informal updates in the interim between the chair and creative directors, as regularly as required, with updates to all other board members as necessary (in keeping with the spirit and letter of the rest of this document)
- Receives sufficient, timely information (in relation to finances, operations and anything else that is material and relevant)
- Reviews the MAA, this agreement and polices on issues such as equal opportunities and safeguarding, every year
- Takes part in board training and development every year
- Has a transparent and timely trustee recruitment and induction policy.
- Maintains a code of conduct that is signed and adhered to by each trustee (including confirmation that they are not disqualified as directors).
- Carries out an annual review of board members and of the skills required on the board
- Ensures its members are aware of their legal responsibilities and powers under the Charities and Trustees Investment Act (Scotland) 2005, the Companies Act 2006 and other relevant legislation
- Has an agreed period of tenure for non executive members of 4 years, after which trustees are eligible to be appointed for a further term of 4 years
- Has an active policy in respect of succession planning for the board and the festival management
APPENDIX ONE– extract from Memorandum of Association

THE COMPANIES ACTS 1985 to 1989

COMPANY LIMITED BY GUARANTEE

AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

of

BORDERS BOOK FESTIVAL

1. The name of the Company (hereinafter referred to as "the Company") is

BORDERS BOOK FESTIVAL

2. The Company's registered office is to be situated in Scotland.

3. Each and every clause (including this clause) both of the Memorandum and of the Articles of Association of the Company shall be read and interpreted as if there were embodied therein an over-riding qualification to the effect that no expenditure of income by the Company shall be permitted for the purpose of carrying out any activities which are not wholly charitable within the meaning of Section 505 Income and Corporation Taxes Act 1988, or of any amending act or regulation thereunder (which meaning shall be ascribed to the Word "charitable" wherever used in this Memorandum) and that in all cases in which activities permitted by the objects of the Company are in their nature capable of being exercised for the purposes which are not wholly charitable, the powers contained in the objects of the Company shall be held to limit such activities to those which will not prejudice the charitable status of the Company within the statutory meaning before mentioned, subject to the said over-riding qualifications the objects for which the Company is established are:

(i) To promote for the benefit of the public the arts (which for the purposes of this clause shall mean the literary or any other arts provided in each case that they are of recognised cultural, aesthetic or educational value) and to foster, promote and increase public appreciation and knowledge of and to improve public participation and interest in the arts, and in particular the active encouragement and development of public participation and interest in the cultural and social heritage of the Borders Region by all and any of the following means, namely: (a) presentation of public readings and any other performances or events calculated to promote any of the arts or to foster, promote or increase public appreciation or knowledge thereof or interest therein at the
annual Borders Book Festival or at other festival in the Borders Region of Scotland or at such other place or places as the company through its directors shall from time to time determine, such activities to be for the benefit of the local and general public; (b) the support, encouragement and promotion of authors, writers and practitioners of any of the arts by providing them with opportunities to perform and display their talents at the said Borders Book Festival or at such other place or places as the company through its directors shall from time to time determine; (c) the establishment and promotion of international, national and regional exchanges of ideas and information in relation to the arts, the dissemination of the useful products thereof and the establishment and maintenance of such local, national and international links with other bodies, institutions and companies as may assist in the achievement of the foregoing. This will be effected by the promotion of education and especially appreciation and understanding of the arts, by lectures, demonstrations, performances, displays and otherwise in theatres, community centres, schools and in any other suitable venues.

In furtherance of these Objects, but not otherwise, the Company shall have the following powers:

(ii) (a) To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of any property.

(b) To apply for, register, purchase, or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patent rights, brevets d'invention, licences, secret processes, trade marks, designs, protections and concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.

(c) To improve, manage, construct, repair, develop, exchange, let on lease or otherwise mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property rights of the Company.

(d) To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined and to hold or otherwise deal with any investments made.

(e) To lend and advance money or give credit with or without security to any person, firm or Company, to enter into guarantees, contracts of indemnity and suretyships of all kinds, to receive money on deposit or loan.

(f) To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, Standard Security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future), and also by a similar mortgage, charge, Standard Security, lien or Security to secure and guarantee the performance by the Company of any obligation or liability it may undertake or which may become binding on it.
APPENDIX TWO – COMPLAINTS PROCEDURE

Background

As a charity, the BBF trustees recognise that the charity must be open to appropriate scrutiny, not least given the objectives of the book festival to serve its relevant communities, the fact that funding is raised from a range of sources (including members of the public and taxpayer-funded bodies) and that those who serve the festival (as employees, consultants, volunteers, suppliers and others) have a legitimate interest in being treated appropriately.

Where individuals believe that they have not had a satisfactory engagement with the charity, it is important that they may seek redress through a formal complaints procedure.

Procedure

Complaints about the running of the festival will in the first instance be made to the most appropriate member of the operational team, preferably in writing.

If the complainant is dissatisfied with the response or outcome, or the complaint is about matters other than the experience of a particular festival, the complaint should be passed to either of the creative directors, again, preferably in writing.

As an appeal, if the complainant is unhappy about the response or outcome, or the complaint relates to one of the creative directors, it should be put in writing to the chair of the trustees.

The chair will inform those affected and ensure that other non executive trustees are aware of the substance of the complaint. Where it is deemed material, the chair will provide a summary of findings to the non executive trustees for approval.

Once determined, all relevant book festival personnel will ensure that the findings are enacted as swiftly as possible.

Communication

The outcome will be communicated to the complainant, or anybody acting in an official capacity on their behalf. It will also be reported to the next board meeting to ensure all trustees are fully aware of the proceedings and that any appropriate lessons can be learned.

Website

This policy, with a template complaint form and appropriate notes on how to contact the relevant individuals at the book festival, will be published on the BBF website.
APPENDIX THREE

Borders Book Festival Conflict of Interest Policy

Defining a conflict of interest

In line with OSCR guidance, the BBF trustees recognise that a conflict of interest is any situation where there is a potential for a BBF trustee’s personal or business interests (or the interests of someone they are connected with) to be different from the interests of the charity. In this situation, it could be difficult for the trustee to make an impartial decision.

As OSCR distinguishes, there are two main types of conflict of interest:

Appointment conflict: This is a conflict of interest which can arise between a charity trustee and the person or organisation which appointed them. There is a low risk of this conflict of interest as none of the trustees is appointed by an external body, but should this ever change, this policy will be reviewed.

Personal conflict: this is a conflict of interest arising where a trustee might not be able to do what is best for the charity because it conflicts with the trustee’s own personal or business interest in relation to that matter. We recognise that where a trustee (or related party) is an author and their books are promoted (through events or sales) or where the trustee is linked to individuals or businesses providing services to the book festival, the potential for a conflict exists and should be managed accordingly.

In all such circumstances, the trustees will act in the interests of the charity to identify conflicts of interest and then to manage them.

Dealing with conflicts of interest

The BBF trustees recognise their collective responsibility to manage conflicts of interest and to act clearly in the charity’s best interests.

Again, following OSCR’s guidance, BBF trustees will manage potential conflicts of interest by following these four steps:

1. Identify:

   Keep in mind the categories of conflict of interest, so that all the trustees (and potential charity trustees) understand what could be a conflict of interest.

   Maintain a register of interests for all BBF trustees and make sure it is updated and minuted at each board meeting.

   Have conflict of interest as a regular agenda item at the beginning of board meetings.

   Declare any potential conflict of interest as soon as trustees become aware of them.

2. Manage:

   If a conflict of interest is identified, it must be discussed by all trustees at the board meeting and, if deemed necessary, the conflicted trustee should withdraw from the meeting or part of the meeting.
Where there is a conflict, the BBF trustees will make sure that decisions are taken in the charity’s interests. We will ensure that the BBF board can still carry on its business and still form a quorum even if a number of trustees have to withdraw.

3. **Record**

All discussions and decisions about conflicts of interest will be recorded in the minutes of the board, including details of:

- who the conflict affected
- when the conflict was identified and declared
- what was discussed and decided
- who withdrew from the decisions and how the remaining charity trustees made a decision in the best interests of the charity
- Required updates to the BBF’s register of interests (which is included in all minutes)

4. **Learn**

BBF trustees agree to learn from the experience, make improvements to the charity’s policy and procedures and where necessary seek professional advice.