

# **SOUTHERN EARLY MUSIC FORUM CONSTITUTION**

## **Adopted at the Society's Annual General Meeting on 4<sup>th</sup> September 2021**

*References to "notes" are to the explanatory notes provided by Making Music - see Appendix.*

### **1. Name**

The name of the Society shall be The Southern Early Music Forum, hereinafter referred to as the Society.

### **2. Objects (see note 1)**

The objects of the Society shall be to advance, improve, develop and maintain public education in, and appreciation of, the art and science of music in all its aspects by any means the trustees see fit, including through the presentation of public concerts and recitals.

### **3. Membership (see note 2)**

(1) Membership is open to individuals who are approved by the trustees.

(2) (a) The trustees may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the Society to refuse the application.

(b) The trustees must inform the applicant in writing of the reasons for the refusal within twenty-one days of the decision.

(c) The trustees must consider any written representations the applicant may make about the decision. The trustees' decision following any written representations must be notified to the applicant in writing but shall be final.

(3) Membership is not transferable to anyone else.

(4) The trustees must keep a register of names and addresses of the members which must be made available to any member upon request

(5) Every member shall have one vote.

### **4. Termination of membership**

Membership is terminated if:

(1) the member dies;

(2) the member resigns by written notice to the Society unless, after the resignation, there would be less than two members;

(3) any sum due from the member to the Society is not paid in full within six months of it falling due;

(4) the member is removed from membership by a resolution of the trustees that it is in the best interests of the Society that his or her membership is terminated. A resolution to remove a member from membership may only be passed if:

(a) the member has been given at least twenty one days' notice in writing of the meeting of the trustees at which the resolution will be proposed and the reasons why it is to be proposed;

(b) the member or, at the option of the member, the member's representative (who need not be a member of the Society) has been allowed to make representations to the meeting;

(c) the decision to terminate the membership is communicated to the member in question in writing within 7 days of the meeting taking place;

(5) any decision made by the committee to terminate a membership is final.

### **5. Officers and trustees (see note 3)**

(1) The Society and its property shall be managed and administered by a committee comprising the officers and other members elected in accordance with this constitution. The officers and other members of the committee shall be the trustees of the Society.

(2) The Society shall have at least the following officers:

(a) A chair,

(b) A secretary,

(c) A treasurer.

More officer roles can be appointed if deemed necessary by the trustees

(3) A trustee must be a member of the Society

- (4) No one may be appointed a trustee if he or she would be disqualified from acting under the provisions of clause 8.
- (5) The number of trustees shall be not less than three but shall not be subject to any maximum.
- (6) The first trustees (including officers) shall be those persons elected as trustees and officers at the meeting at which this constitution is adopted.
- (7) A trustee may not appoint anyone to act on his or her behalf at meetings of the trustees.

#### **6. Payment of trustees (see note 4)**

- (1) Trustees can be paid legitimate expenses incurred on behalf of the Society
- (2) Any other trustee payments, or payments to connected persons of trustees, must be with the approval and/or permission of the Charity Commission and in accordance with the Trustees Act 2000 and section 185 of the Charities Act 2011 where appropriate.

#### **7. Appointment of trustees (see note 5)**

- (1) The Society in a general meeting shall elect the trustees and may elect the officers.
- (2) The trustees may appoint any person who is willing to act as a trustee. They may also appoint trustees to act as officers.
- (3) At each annual general meeting a third of committee members shall retire and be eligible for re-election up to a fixed number of three-year terms as set out in the Society's rules and regulations.
- (4) In case of a vacancy arising on the committee, the committee may co-opt a new trustee who shall then stand for election by members at the next annual general meeting.

#### **8. Disqualification and removal of trustees (see note 6)**

A trustee shall cease to hold office if he or she:

- (1) is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision);
- (2) ceases to be a member of the Society as detailed in section 4
- (3) in the written opinion, given to the Society, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;
- (4) resigns as a trustee by notice to the Society (but only if at least two trustees will remain in office when the notice of resignation is to take effect); or
- (5) is absent without the permission of the trustees from all their meetings held within a period of 12 consecutive months and the trustees resolve that his or her office be vacated.

#### **9. Powers (see note 7)**

In furtherance of the objects but not otherwise the Committee may exercise the following powers:

- (1) power to raise funds and to invite contributions provided that in raising funds the Committee shall not undertake any substantial permanent trading activities and shall conform to any relevant requirements of the law;
- (2) power to buy, take on lease or in exchange any property necessary for the achievement of the objects and to maintain and equip it for use;
- (3) power subject to any consents required by law to borrow money and to charge all or part of the property of the Society with repayment of the money so borrowed;
- (4) power to employ such staff as are necessary for the proper pursuit of the objects and to make all reasonable and necessary provision for the payment of pensions and superannuation for staff and their dependents;
- (5) power to co-operate with other charities, voluntary bodies and statutory authorities operating in furtherance of the objects or of similar charitable purposes and to exchange information and advice with them;
- (6) power to establish or support any charitable trusts, associations or institutions formed for all or any of the objects;
- (7) power to appoint and constitute such advisory committees as the Committee may think fit;
- (8) power to do all such other lawful things as are necessary for the achievement of the objects.

#### **10. Meetings and proceedings of the committee (see note 8)**

- (1) The trustees may regulate their proceedings as they think fit, subject to the provisions of this constitution.
- (2) The committee shall hold at least 2 ordinary meetings each year. A special meeting may be called at any time by the chairman, or by any 2 members of the committee, upon not less than 4 days' notice being given to the other members of the committee of the matters to be discussed, but if the matter includes the appointment of a co-opted member then not less than 21 days' notice must be given.
- (3) Any trustee may call a meeting of the trustees.
- (4) The secretary must call a meeting of the trustees if requested to do so by a trustee.
- (5) The chairman shall act as chairman at meetings of the committee. If the chairman is absent from any meeting, the members of the committee present shall choose one of their number to be chairman before any other business is transacted.
- (6) There shall be a quorum when at least one third of the number of members of the committee for the time-being, or three members of the committee (whichever is the greater), are present at a meeting.
- (7) No decision may be made by a meeting of the trustees unless a quorum is present at the time the decision is purported to be made.
- (8) A trustee shall not be counted in the quorum present when any decision is made about a matter upon which that trustee is not entitled to vote.
- (9) If the number of trustees is less than the number fixed as the quorum, the continuing trustees or trustee may act only for the purpose of filling vacancies or of calling a general meeting.
- (10) Questions shall be determined by a majority of votes of the members of the committee present and voting on the question, but in the case of equality of votes, the chairman of the meeting shall have a second or 'casting' vote.
- (11) The committee shall keep minutes of the proceedings at meetings of the committee and any sub-committee, and shall ensure that these are stored safely, and that they are available for inspection as required.
- (12) The committee may appoint one or more sub-committees, consisting of three or more members of the committee, for the purpose of making any enquiry or supervising or performing any function or duty which, in the opinion of the committee, would be more conveniently undertaken or carried out by a sub-committee: provided that all acts and proceedings of any such sub-committee shall be fully and promptly reported to the committee.
- (13) Where the Society has a paid conductor or musical director, he or she may attend committee meetings except when his/her position is being considered. He/she shall not be eligible to vote in a committee meeting.

#### **11. Conflicts of interests and conflicts of loyalties (see note 9)**

A Society trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Society or in any transaction or arrangement entered into by the Society which has not been previously declared; and
- (2) absent himself or herself from any discussions of the Society trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Society and any personal interest (including but not limited to any personal financial interest).

Any trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the trustees on the matter.

#### **12. Rules (see note 10)**

- (1) The trustees may from time to time make rules or bye-laws for the conduct of their business.
- (2) The bye-laws may regulate the following matters but are not restricted to them:
  - (a) the admission of members of the Society (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
  - (b) the conduct of members of the Society in relation to one another, and to the Society's

employees and volunteers;

(c) the setting aside of the whole or any part or parts of the Society's premises at any particular time or times or for any particular purpose or purposes;

(d) the procedure at general meeting and meetings of the trustees in so far as such procedure is not regulated by this constitution;

(e) generally, all such matters as are commonly the subject matter of the rules of an unincorporated association.

(3) The trustees must adopt such means as they think sufficient to bring the rules and bye-laws to the notice of members of the Society.

(4) The rules or bye-laws shall be binding on all members of the Society. No rule or bye-law shall be inconsistent with, or shall affect or repeal anything contained in, this constitution.

### **13. Finance (see note 11)**

(1) The financial year shall end on the last day of February.

(2) A banking account shall be opened in the name of the Society and payments shall be authorised by any two officers.

(3) The income and property of the Society whencesoever derived shall be applied solely towards promoting the objects of the Society as set forth above. No portion thereof shall be paid or transferred either directly or indirectly to any trustee except in payment of legitimate expenses incurred on behalf of the Society or with approval and/or permission from the Charity Commission

### **14. Annual General Meeting (see note 12)**

(1) The Society must hold a general meeting within twelve months of the date of the adoption of this constitution.

(2) An annual general meeting must be held in each subsequent year and not more than fifteen months may elapse between successive annual general meetings.

(3) At least 21 days' written notice of an AGM shall be given to all members.

(4) The committee shall present to each AGM the report and accounts of the Society for the preceding year.

(5) Nominations for election to the committee must be made by members of the Society in writing. Should nominations exceed vacancies, an election shall be held.

### **15. Special General Meeting (see note 12)**

(1) All general meetings other than annual general meetings shall be called special general meetings.

(2) The trustees may call a special general meeting at any time.

(3) At least 21 days' written notice of an SGM shall be given to all members.

(4) The trustees must call a special general meeting if requested to do so in writing by at least ten members or one tenth of the membership, whichever is the greater. Where the Society has less than 30 members, the trustees must call a special general meeting if requested to do so in writing by at least five members. The request must state the nature of the business that is to be discussed. If the trustees fail to hold the meeting within twenty-eight days of the request, the members may proceed to call a special general meeting but in doing so they must comply with the provisions of this constitution.

### **16. Procedure at General Meetings (see note 12)**

(1) No business shall be transacted at any general meeting unless a quorum is present.

(2) A quorum is:

(a) 3 members entitled to vote upon the business to be conducted at the meeting; or

(b) one tenth of the total membership at the time, whichever is the greater.

(3) If:

(a) a quorum is not present within half an hour from the time appointed for the meeting; or

(b) during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the trustees shall determine.

(4) The trustees must re-convene the meeting and must give at least seven clear days' notice of the re-convened meeting stating the date time and place of the meeting.

(5) If no quorum is present at the re-convened meeting within fifteen minutes of the time

specified for the start of the meeting the members present at that time shall constitute the quorum.

(6) The secretary or other person specially appointed by the committee shall keep a full record of proceedings at every general meeting of the Society.

**17. Accounts (see note 13)**

The financial accounts shall be audited or examined to the extent required by legislation or, if there is no such requirement, scrutinized by a person who is independent of the Committee and then submitted to the members at the Annual General Meeting.

**18. Alterations to the constitution (see note 14)**

(1) The constitution may be altered by a two-thirds majority of the members present and voting at any General Meeting, provided that fourteen days' notice of the proposed alteration has been sent to all members and provided that nothing herein contained shall authorise any amendment which shall have the effect of the Society ceasing to be a charity.

(2) No amendment may be made to clause 1 (the name of the Society), clause 2 (the objects), clause 13 (finance), or clause 19 (dissolution), without the prior written consent of the Charity Commission. The committee shall send the Charity Commission a copy of any amendment made under this clause. Where a society is too small to register with the Charity Commission only sub clause (1) of this clause will be applicable.

**19. Dissolution (see note 15)**

In the event of the Society being wound up, any assets remaining upon dissolution after the payment of proper debts and liabilities shall be transferred to a charitable institution or institutions having similar objects to those of the Society.

## Appendix

### **Explanatory notes on the model constitution provided by “Making Music”<sup>1</sup>**

#### **General**

*Making Music* provides a helpful explanation of how to use the model constitution. The following extracts are particularly relevant to SEMF:

- *“[the] model constitution has been developed with the Charity Commission and is designed to be used exactly as it is. You should not make any alterations, additions or deletions other than inserting the name of your charity and your financial year end.*
- *the model constitution is a Charity Commission approved document and so is a robust and solid governing document that will stand your [organisation] in excellent stead when it comes to matters of charity regulation. Changing the document will jeopardise this.*
- *a big advantage of using [the] model constitution is that it will put you on the fast track for registering with the Charity Commission. Remember if your income is over £5000 a year you must register with the Charity Commission. If you use [the] model constitution exactly as it is, and provide a full and complete application, your registration will be fast tracked making the process easier and quicker.*
- *one key aspect of any charity is management structure – the people responsible for running the charity. These are the trustees and should be elected by the membership. The important thing to understand about trustees is that **all** committee members (not just the Officers on the Committee) are trustees and all trustees are committee members. (This is the Charity Commission regulation.) You will see both terms used and they are essentially the same thing. The trustees are responsible for the running and overall direction of the charity. They should ensure that it is being well run, delivering its charitable objects for public benefit and that income is being used correctly (i.e. to promote and meet the objects).*
- *all music groups are different and have their own ways of doing things that are important to them. A constitution is not the right place for these sorts of specific details and if you are using the model constitution you should not change anything. Instead we recommend having a separate ‘Rules and Regulation Document’ to go along side your constitution. [This must] not contradict anything in your constitution, as the constitution is the legal governing document.”*

#### **Explanatory notes on the clauses of the model constitution**

*(as provided by “Making Music”)*

##### **Note 1**

##### **(Clause 2. Objects)**

**Objects** this Object is mandatory and deliberately ‘catch-all’ for music groups. It is worded to comply with the key charitable criteria of public benefit and with charity law. As such you should not change the wording or add any additional wording.

**Expanding on Objects:** The object sets the charitable purpose in advancing education in and appreciation of music. The means to do that is a matter for the trustees’ decision. Some groups have identified detailed and specific means to further the purpose, for example by ‘encouraging the playing of traditional English folk music in Lancashire’.

The detail of the means to further the purpose does not need to be included in the constitution objectives. The means can be set out elsewhere such as in a separate ‘Rules and regulation’ document. This will allow you to go in to more detail about exactly what these are and how you aim to meet them, this could include a business plan and strategic approach for your charity and furthering charitable purpose.

In using our model constitution you should, therefore, not make any alterations, additions or deletions to the objects.

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<sup>1</sup> Making Music, The National Federation of Music Societies. A company limited by guarantee, registered in England and Wales no. 308632. Registered charity in England and Wales no. 249219 and in Scotland no. SC038849.

## Note 2

### (Clause 3. Membership)

**Sub clause 2 (a):** in “acting reasonably and properly” trustees must comply with the [discrimination guidance in the Equality Act 2010](#), ensuring they do not discriminate against individuals in the membership application process.

Sub clause 2 (a) will also cover you if you refuse membership on the grounds of an audition process.

**Expanding on membership and termination of membership:** the constitution sets out the general principles of membership and termination of membership, you may want to expand on these in a separate ‘Rules and regulation’ document. This might include things such as:

- Who is in charge of membership admin (e.g. membership secretary)
- The cost of subscription fees and how they are to be paid
- What is expected of members (attendance, payment of subs etc.)
- A code of behaviour
- How members can expect to be contacted by the committee

**Sub clause 4:** a full list of members' names and address should be kept on file by the trustees. The constitution states this information should be available to members. However, to ensure data protection rules are followed, it is acceptable for the names only to be made available on request.

## Note 3

### (Clause 5. Officers and trustees)

The key point here is that all committee members are trustees and all trustees are committee members (i.e. it is not just the officers that are trustees). As such all committee members are responsible and liable for the management of the charity. You can find out more about the role of trustees in our trustee handbook and on the Charity Commission website.

## Note 4

### (Clause 6. Payment of trustees)

The issue of paying a trustee is one of the most common queries we receive from member groups. Specifically the issue of having a paid Musical Director/Conductor (MD) who is also on the committee and therefore a trustee can lead to difficult and delicate situations and is one of the most frequent problems raised by amateur music groups. *[This is not relevant to SEMF so the remainder of this section of the MM guidance notes has been omitted.]*

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## Note 5

### (Clause 7. Appointment of trustees)

**Sub clauses (1) and (2):** The constitution sets out that members must elect trustees at an AGM. The constitution allows for two possible approaches for electing officers. Either:

- a) the membership may appoint someone directly to an officer role on the committee – i.e. the membership elect a chair, treasurer etc.
- b) the membership appoint committee members – the committee then decide which committee members will fill which officer roles
- c) A combination of both could be used – i.e. members elect the chair (for example) directly but other officer roles are decided by the committee from those elected to the committee

We recommend setting out how this process will work in the separate ‘Rules and Regulation’ document.

**Sub clause (4):** this clause allows the easy appointment of committee member if a vacancy arises. The new committee member must meet the criteria in clause 5 (3) and (4). The wider membership must also be notified of the decision and a co-opted committee member must stand for formal election at the next AGM.

## Note 6

### (Clause 8. Disqualification and removal of trustees)

**Sub clause (1):** You can find more details on who is disqualified from being a trustee in the [Charities Act 2011 – section 178](#). To help ensure due diligence and best practice is being followed you can find out more in our Trustee handbook [link to follow] and use the [Trustee eligibility declaration form \(publishing.service.gov.uk\)](#)

## Note 7

### (Clause 9. Powers)

This clause sets out the powers that the trustees can use in promoting the charity's objects. It may be that not all of the powers are relevant to your charity at the time of writing. However all clauses should be included as it means that if the powers are needed your constitution allows for their use and sets out the conditions trustees must meet in exercising the powers.

**Sub clause (1):** This sub-clause provides a general power to raise funds through a variety of methods. The clause does not prevent trading in order to carry out the charity's object (known as primary purpose trading) - for example, the sale of concert tickets.

Trading profits and some other forms of charity income may be liable for tax. Charity trustees need to ensure that they understand their responsibilities. Further information is available from the Charity Commission web site - [how charities may lawfully trade](#)

Detailed information on the taxation of trading profits earned by charities can be obtained from the HMRC website - '[Detailed Guidance notes for Charities](#)' with particular reference [Annex iv: trading and business activities - basic principles](#)

## Note 8

### (Clause 10. Meetings and proceedings of the committee)

Further guidance can be found in the Charity Commission guidance [Charities and meetings \(CC48\)](#)

**Sub clause (11):** inspection here refers to inspection from a professional body (e.g. auditors). Minutes of committee meetings do not have to be made available to the wider membership or for public inspection.

**Sub clause (13):** this refers to paid Conductors/Music Directors who are not trustees.

[Not relevant to SEMF]

## Note 9

### (Clause - 11. Conflicts of interests and conflicts of loyalties)

Further guidance can be found in the Charity Commission guidance [Conflicts of interest: a guide for charity trustees \(CC29\)](#)

## Note 10

### (Clause 12. Rules)

This section refers to the separate 'Rules and Regulations' document mentioned on page 4, and throughout this document. This document should set out the internal procedures adopted by the committee to ensure the effective administration of the charity. The important thing about this document is that it should not contradict anything in the constitution.

## Note 11

### (Clause 13. Finance)

**Sub clause (3):** this is a key clause in terms of setting up as charity and establishing the not for profit status of the charity. The clause reflects charity law requirements that income and property of the charity must be applied solely towards the promoting the objects as detailed in clause 2 (objects) and not to benefit the members and trustees. The clause also allows for the possible payment of trustees in line with clause 6 (Payment of trustees).

The trustees have a duty to ensure that the funds are used correctly and applied in accordance with the principle.

**Expanding on finance;** this clause sets out the principle of not for profit and how income is to be applied. You may want to expand on this in a membership handbook by detailing how income will be used and what it will be spent on. This could be specific details or general principles. It is important to remember to justify how the use of income is promoting the charity's objects.

## Note 12

### **(Clauses 14. Annual General Meeting, 15. Special General Meeting and 16. Procedure at General Meetings)**

Further guidance can be found in the Charity commission guidance [Charities and meetings \(CC48\)](#)

#### **(Clause 16. Procedure at General Meetings)**

**Sub clause (6):** Note that this provision permits the re-scheduled meeting to proceed without a quorum being present within 15 minutes of the specified start time. It also means that the number of members present 15 minutes after the scheduled start of the meeting will form the quorum if the quorum required at sub-clause 12(2) is not achieved.

## Note 13

### **(Clause 17. Accounts)**

**Gross annual income up to £25,000:** no formal external scrutiny is required by legislation. However, accounts should be scrutinised by someone independent of the committee. This does not have to be an accountant but should ideally be someone with some financial knowledge and experience. It could be someone from the wider membership or someone a member knows, or you could find another local music group and arrange to swap accounts – you can use our [Find a Group tool](#) to do this.

**Gross annual income above £25,000 and up to £500,000 and gross assets up to £3.26m:** external scrutiny is required by legislation. This can be an Independent Examination of accounts by an approved person or a full audit. If you require an Independent Examination the best thing to do is contact a local charity accountant.

**Either gross income above £500,000 or gross assets above £3.26m (and income above £250,000):** a full audit is required.

You can find out more about accounting in the Charity Commission Guidance: [Charity reporting and accounting: the essentials \(CC15b\)](#)

## Note 14

### **(Clause 18. Alterations to the constitution)**

All groups must notify Making Music if they make changes to any of clause 1 (the name of the Society), clause 2 (the objects), clause 13 (finance), or clause 19 (dissolution)

## Note 15

### **(Clause 19. Dissolution)**

This is an important clause for setting up a charity – the key point being that assets are transferred to an organisation with similar objects – i.e. music for the public benefit. You can expand on this in your separate 'Rules and Regulations document' if you would like – either establishing a process of how this will be decided or naming an organisation.