

Legal Commentary on UKCP Constitutional Changes

1. Fieldfisher LLP has been asked to provide a short legal commentary on the changes proposed to UKCP's Constitutional documents in 2022.
2. We understand that the Board of Trustees is consulting with stakeholders on a number of changes intended to reflect a more streamlined and modern approach that will continue to support its objects and functions.
3. UKCP is not a statutory regulator. Such regulators are set up, usually by an Act of Parliament. Some regulators are Charter bodies governed by a Royal Charter. UKCP is a company limited by guarantee and it is also a charity. As such, there are some documents and arrangements that UKCP must have to comply with Companies or Charities law. Having relied heavily on volunteers the UKCP is rightly formalising a number of key operational roles in line with principles of good and modern governance.
4. The constitutional arrangements need to support both the important work that UKCP does for its members, and its role as a regulator, whose national register of psychotherapists and psychotherapeutic counsellors is relied on by the public and other stakeholders. The main purpose of the UKCP Register is to protect the public, and to provide public confidence in the profession. The UKCP national register is accredited by the Professional Standards Authority and has a quality mark which is relied upon by the public seeking services, and employers and commissioners.
5. The Professional Standards Authority have Standards for Accredited Registers. These include standards in relation to governance of the organisation operating the register. Terms of Reference for governing Boards and Committees, job descriptions and recruitment processes for key governance and leadership roles are essential pieces of evidence of compliance with the governance standard.
6. As a Company the UKCP must have Articles of Association. Changes to the Articles have to be made formally and require voting at a General Meeting. The Articles contain the key provisions about the structure of a company. Some corporations also have Byelaws which are effectively the more detailed formal regulations on how the entity will operate. They too require formal adoption and voting if they are to be amended or repealed.
7. Until now UKCP has opted to have Byelaws. The provision that permits (but does not oblige) UKCP to have Byelaws is going to remain in the Articles of Association but the proposal is that the current Byelaws will be repealed. Without Byelaws some key matters that are contained in the Byelaws needs to be captured in the Articles, for example the classes of membership and their voting rights, and the Standing Orders need to be expanded, so that how UKCP is operated is still clearly set out. In the new proposed arrangements the Standing Orders will now contain the details of how UKCP is to operate. The Standing Orders can be amended by the Board of Trustees but this is subject to safeguards at proposed paragraphs 5.10 and 5.11.
8. The proposed changes to the Standing Orders show in blue matters which have simply been moved from Byelaws to the Standing Orders and in green new changes to or codification of the operational arrangements.

9. The Board of Trustees has always had responsibility for determining how UKCP should be structured and organised, including deciding on the Colleges, Committees and Officers that there should be. It also has, unchanged, powers to delegate its powers to individuals or committee on such terms as it thinks fit.
10. The proposed revised Standing Orders expressly set out some additional expectations on Organisational Members and make clearer the expectations around Quality Reviews and the consequences for failure to cooperate or comply. For individual members the Retired Category is clearly identified as a class of membership. The voting rights of members are unchanged.
11. New provisions in the Standing Orders would bring into effect a more formal method of appointment for College representatives. The need for Colleges to have committees is to be removed and replaced with the requirement for College representatives who will attend certain UKCP Committees and Forum.
12. The process for change management of official documents is currently very unwieldy and a more proportionate approach is proposed in the amendments at Paragraph 5 of the Standing Orders.
13. A revised set of Committees is set out at Appendix A with a high-level summary of each Committee's responsibilities. Each Committee will need formal Terms of Reference in writing which will be determined by or in close consultation with the Board of Trustees. These Terms of Reference documents are to be posted on the UKCP website.
14. The list of Colleges also appears at Appendix A. As before, Colleges are formed or dissolved through application to the UKCP Chair with approval or rejection resting with the Board of Trustees. There continue to be powers to suspend or dissolve a College in breach of any applicable regulations.
15. An extended list of Officers is also proposed for Appendix A. There will be more detailed role descriptors for each officer and the Board of Trustees will address how and whether roles are employed roles or not and if not what payments or honoraria will be paid to office holders.
16. We consider that many of the changes being proposed will enhance UKCP's ability to deal with wider legal requirements and expectations. This includes the management of data and information that underpin confidence in the national register and the ability to comply with data protection laws.

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