



**Long-term governance arrangements for Foundation of Hearts and  
Heart of Midlothian Football Club**

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**Response to feedback from members during 2017 consultation**

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E-mail: [governance@foundationofhearts.org](mailto:governance@foundationofhearts.org)

## SECTION 1

### CONTEXT

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In 2015, the directors of Foundation of Hearts (the “Foundation”) set up a project to develop the corporate governance arrangements which would be put in place between the Foundation and Heart of Midlothian plc (“the Club”) when the Foundation acquired majority ownership (75.1%) of the Club from Bidco (1874) Limited.

In May 2017, we issued our initial proposals for the governance arrangements in a document entitled “Building a Framework of Good Governance”, and we asked members for their views during a four-month consultation, which included an open meeting of members at Tynecastle.

We originally envisaged that, after the consultation ended, we would finalise our proposals and submit them to the 2017 annual general meeting of the Foundation for approval (or rejection) by members. In the event, however, we decided that we should extend the timetable for our governance work, principally in order to keep in step with the timetable under the Bidco Agreement, which had been changed to include a two-year stadium funding period.

The stadium funding period has now ended, and, as you know, the Foundation has been able, thanks to the amazing support of its members, to contribute the promised £3 million towards the development of the new main stand. The Foundation is currently on track to fulfil the remaining financial conditions in the Bidco Agreement, and assume majority ownership of the Club within the next two years. We therefore feel this is a suitable point at which to resume our governance work.

The purpose of this document is to give a summary of the responses received from members during last year’s consultation, and to set out our conclusions on whether, and where, we should revise our proposals to reflect the feedback.

Having looked again at our proposals in light of the comments received, we believe we are close to settling on the final version. But before we reach that stage, we want to give members a final opportunity to comment. So we are providing an eight-week period for feedback on this document. If new or compelling arguments are made to us during the period, we will consider them and look again at our proposals.

Information on how to have your say is given in **section 4** of this document.

After the period for feedback closes on 19 September, we will finalise our proposals and submit them for approval at the annual general meeting of members in December.

In designing our future governance framework, we know we may not be able to please everyone, but, through the consultation, a body of consensus has emerged that will form the basis of our final proposals. The process so far has been extremely valuable, and we are grateful to those of you who took the time to share your thoughts with us. We want to put in place a system which will have the trust and confidence of a broad majority of our members, and which will provide a foundation for long-term success and stability at the Club. Following the first consultation period, we believe we are on the path to achieving that objective.

## SECTION 2

### WHAT WE PROPOSED IN 2017

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Full details of our governance proposals in May 2017 can be found in chapters 2 and 3 of the consultation document:

(<https://www.foundationofhearts.org/media/290/building-a-framework-of-good-governance-april-2017.pdf>)

The following is a re-cap of what we proposed:

#### *Proposals in relation to the Foundation*

1. The existing constitution and governance rules of the Foundation would, in large measure, remain fit for purpose after the transition to Foundation ownership, and would be retained.
2. Membership of the Foundation would continue to be based primarily on active pledging, so that the Foundation could continue as an important source of funding for the Club. But our flexible membership rules would provide scope for us to introduce other categories of membership for non-pledgers.
3. We would also retain the principle in our constitution that, on a members' resolution, every member has one vote, regardless of how much he or she is contributing to the Foundation each month.
4. The current process for appointing Foundation directors with expertise in specific areas such as finance, marketing or legal matters (known as "specialist directors") would be modified. Specialist directors would be selected and appointed by the board in the first place. The members would then be asked to approve the appointment in a straight yes/no decision at the next annual general meeting. This process would avoid the possible scenario of two or more candidates having to compete in a contested election.
5. We would introduce formal letters of appointment for directors. These would spell out the legal responsibilities of each director and the standard of conduct that he or she was required to adhere to.
6. One of our directors would be designated as Director of Members' Affairs, with specific responsibility for maintaining effective engagement and communication with Foundation members and with the wider community of Hearts supporters.
7. Any proposal for the Foundation to sell its shareholding in the Club would require to be put to a vote of the Foundation members, potentially with a requirement for a super-majority.

#### *Proposals in relation to the Club*

1. So far as possible, the existing business structures of the Club would be retained, in order to provide continuity and stability.
2. As at present, the board of the Club would include two non-executive directors nominated by the board of the Foundation. The other directors would be a combination of executive and non-executive directors, as appropriate, and one of the non-executive directors would be an external independent director. The board of the Club would choose its chairman from among the directors.

3. A nomination and governance committee would make recommendations to the board on the appointment of new directors. Its members would include one independent non-executive director and one of the directors nominated by the Foundation. The committee would also monitor the governance framework to ensure that it remained effective and was being adhered to.
4. The Club board would oversee the executive management of the Club, and would carry ultimate responsibility for its success. Certain matters would be reserved for decision by the Club's shareholders. These would be matters considered to be important and emotive issues for supporters, such as a potential sale of the Stadium or a change of the team's name.
5. The Foundation would not interfere in the running of the Club's business – that is the responsibility of the Club's executive management under the leadership of the chief executive. There would be appropriate dialogue and reporting between the two boards, with the voice of the Foundation being principally heard through its representatives on the Club board.
6. The Foundation and the Club would put in place a "working together" document, which would set out guidance, procedures and processes governing the relationship between them.

## SECTION 3

### SUMMARY OF FEEDBACK AND OUR DECISIONS

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This section gives a summary of the responses we received in last year's consultation, and sets out our decision on whether – and, if so, how – our proposals should be revised in light of those responses.

We are very grateful to all those who responded during the consultation. Some members commented in person at an open meeting which we held in the Gorgie Suite. Other members had their say through the Jambos Kickback forum, and we have noted their views and comments.

A wide range of views were expressed in the consultation. Some members disagreed with or queried specific areas of our proposals. Others said that, on the whole, they thought we'd got it right. The summaries of responses below are intended to provide a representative overview of the feedback received, rather than reflect all views expressed. But all views were considered.

Paragraph references in this section correspond with the paragraphs in our original consultation document. Our response on each of the points raised is shown in italics.

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#### **The Foundation's membership structure (paragraphs 3.3 – 3.6)**

A number of responses provided detailed comments on this key area of our proposals. In order to keep this section 3 to a manageable length, the responses are summarised and analysed in the Appendix to this document.

#### **Use of future funding from the Foundation (paragraph 3.5)**

Some responses suggested that future funding contributions from the Foundation to the Club should be ring-fenced and earmarked for specific purposes, rather than be used in the general running of the Club.

*We considered carefully this suggestion, and on balance we do not propose to give the Foundation a unilateral right to direct how contributions should be spent. We believe the people entrusted with running the Club must be given flexibility, and allowing the Foundation to determine how funding should be spent would arguably be contrary to the principle that the Foundation will not get involved in the day-to-day running of the Club. The Club will plan its budget on the basis that Foundation funding should be over and above the income required to meet the Club's running costs, and this will make it unlikely in practice that Foundation funding would go into general working capital. There will be transparency in how the funds are used, and members will be able to give us their ideas about how they would like the funding spent. If there was a clear groundswell of opinion among members that using the funds for a particular project would be a positive step, that evidence would carry a lot of weight in discussions with the Club.*

One respondent suggested there should be a cap on the percentage of contributions received which could be used by the Foundation for its promotional activities and other internal purposes.

*On balance, we do not agree with this suggestion. While it is clearly important that the Foundation keeps its cost base as low as possible, it would be difficult to set a fixed limit for what the running costs should be, and spending too little on administration could impair*

*efficiency. Our annual accounts provide complete transparency on costs. During the four financial years in which we have been meeting our financial obligations under the Bidco Agreement, our administrative costs have been less than 3%, on average, of our income from pledges.*

**Majority required to approve a disposal of the Foundation’s shares in the Club (paragraphs 3.19 – 3.20)**

We proposed that any decision to sell the Foundation’s shareholding in the Club would require to be put to a vote of the Foundation members, with a built-in requirement for a super-majority. We did not receive specific feedback on this proposal – it is not a scenario anyone is envisaging at the present time - but we confirm our initial view that the appropriate majority required to sanction a future sale would be a 90% majority of the votes cast.

**Composition of the Foundation board (including specialist directors) (paragraphs 3.7 – 3.15)**

A number of specific points were raised:

1. There should be stronger safeguards against “entryism, cliques and power struggles” arising on the Foundation board.

*No governance system can, on its own, provide complete protection against corrosive behaviour, but we believe our proposals incorporate effective safeguards. The governance framework is designed to maintain a balanced board with an appropriate combination of skills and due recognition of the benefits of diversity. Directors will be elected for a specific term of three years, at the end of which they must either stand down or seek re-election. In the election of directors, the “one-person-one-vote” principle is a significant protection against the creation of power blocs.*

2. One place on the Foundation should be reserved for an external independent director who would not be a member of the Foundation.

*We are not satisfied that an arrangement of this kind would contribute to the effective functioning of the board. The board is a working unit, and we feel it works best if every director has first-hand knowledge of the Foundation’s operations and is able to devote time, outside the boardroom, to the running of the Foundation.*

3. The board should appoint or re-appoint its chairman on an annual basis.

*Under our constitution, the chairman has no specified period of office, so the board can decide in its discretion what is an appropriate timescale for succession. We feel it would normally be appropriate for a chairman to serve more than one year, and his or her appointment will be automatically subject to review when their three-year term of office as a director expires.*

4. Some respondents expressed concern at the proposed changes to the system for electing specialist directors. They felt the proposals eroded democracy, and the present system should be retained so that candidates submit to election and re-election by the members in the same way as ordinary directors.

*We recognise these concerns and the present system will therefore remain in place (including the requirement that a specialist director must be a member of the Foundation).*

5. At present, specialist directors can comprise up to half the total number of directors (but not more). It was suggested that this was too many, and specialist directors should be limited to less than half.

*We see the need for specialist directors diminishing in the medium-to-long term, and we are therefore happy to adopt this suggestion. There will also be a new rule that a specialist director cannot serve as chairman if it would result in specialist directors holding a majority of the votes on the board by virtue of the chairman's casting vote.*

6. One respondent expressed concern at the potential future workload of directors and the significant demands it could place on individuals who serve on a voluntary basis.

*We have had similar concerns for some time, and have been considering potential ways of addressing the issue. At present, the maximum number of directors who can sit on the Foundation board is six. We believe an increase in the maximum number to seven would be justified. In reaching this view, we recognise, and have balanced, the need to ensure the board will not be so large as to become unwieldy.*

*Any increase in the size of the board would only take place after the Foundation has become majority shareholders in the Club. All we would propose to do at this stage is create the necessary headroom in our constitution as part of the suite of amendments to pave the way for the new governance structure.*

*In this context, we should also record our appreciation of the invaluable help the board receives from a number of Foundation members who give freely of their time and expertise.*

#### **Foundation representation on the Club board (paragraph 3.24)**

A few respondents suggested that Foundation representatives should be in a majority on the board of the Club.

*We don't consider this would be appropriate. It would mean that the make-up of the Club board largely mirrored the make-up of the Foundation board, and consequently there would effectively only be one board. We believe there needs to be a mix, because the board of the Club and the board of the Foundation will have different roles and responsibilities, and the balance of skills and experience required on each will not be identical.*

*In addition, we feel it is incorrect to focus simply on the arithmetic of board membership - weight of numbers is less important than having the right individuals in place, each making an effective contribution.*

One respondent felt it should be made clearer in the governance framework that the Club's nomination committee could not veto the choice of Foundation representative on the Club board.

*We confirm the nomination committee would not be involved in the appointment of the Foundation representatives to the Club board. The only test the representatives would require to meet would be (as at present) the SFA's "fit and proper" person test. We have also decided that only directors of the Foundation should be eligible to represent the Foundation on the Club board, and that one of the two places should be filled by the Foundation chairman.*

#### **Matters reserved for approval by the Club's shareholders (paragraph 3.38(2))**

We proposed that certain decisions regarding the Club should be reserved for approval at a general meeting of Club shareholders (e.g. a sale of the stadium). We received feedback that a super-majority requirement would not be appropriate for these decisions, and that, depending on the subject-matter, the majority required should be either a simple majority or a 75% majority.

*We agree that a super-majority requirement should not be stipulated, and in the final proposals we will specify either 50% or 75%, as appropriate, as the required majority for each decision on a reserved matter.*

*One of the reserved matters proposed by us was a decision to change the name of the stadium. After further consideration, we believe this should be a matter for the directors of the Club, as stadium naming rights are a potentially valuable commercial asset of any club.*

We also received suggestions that before the directors of the Foundation decided how they would cast the Foundation's votes on a reserved matter at a meeting of Club shareholders, they should obtain a mandate from the Foundation members.

*We agree that this should be the normal procedure, subject to the caveat that the directors would have a discretion as to how the wishes of the Foundation members should be ascertained. This is because there could be situations where time constraints would preclude the convening of a general meeting but an electronic ballot would be feasible as an alternative.*

*We should perhaps also clarify the effect of a voting mandate from the members. Majority rule would prevail, and in the subsequent vote by Club shareholders, we would cast all the Foundation's votes in line with the majority decision of our members. So if (for example) our members gave us a mandate by a 70/30 majority, we would not cast 70% of our votes one way and 30% the other way.*

Some respondents felt that, in addition to having a say on reserved matters, the members of the Foundation should also have a say on other matters affecting the Club - for example by voting on a medium-to-long-term strategic plan for the Club.

*The Foundation membership is a vital component of the governance framework, and it is crucial that their voice is heard on the direction and shape of the Club. On balance, however, we believe this will be best achieved through ongoing dialogue and communication, rather than by a requirement for formal approval. We have said that one of our board's crucial tasks will be to "keep in touch with the members, listen to their issues and concerns, find out what they want from their membership, and share information about the Foundation and the Club" (paragraph 3.16). We propose to designate one of our directors as a Director of Members' Affairs, and if the level of interest justifies it, a system of open meetings will be established as part of the engagement process. A Club report will be presented at each annual general meeting of the Foundation.*

*A formal requirement for approval of a long-term strategic plan would need to be supported by potentially complex mechanisms to prevent a vacuum arising if approval was refused, and would also need to allow flexibility for the plan to be revised and updated without reference back for further approval.*

### **Director of Members' Affairs (paragraph 3.16)**

It was suggested the position should be re-named as "Director of Supporters' Affairs", because the director should be tasked with communicating and engaging with supporters generally.

*On balance, we believe it is preferable to retain the original name, as the greater part of the director's activity will be keeping in touch with Foundation members and listening to their issues and concerns.*

A member asked if the designated director would be specifically elected to the position by the members, or would be appointed by the directors from among their own number.

*We confirm the latter would be the case.*

Some ideas for greater engagement and communication were put forward. One suggestion was a focus group which would act as a sounding board for ideas emanating from the Foundation board or from the members. Another was for a supporters' council composed of elected representatives who would have a "gateway" to the board of the Club.

*These are ideas we would readily ask the Director of Members' Affairs to investigate if it was clear that the demand among members for a focus group or council was strong enough to justify the additional administrative work. But we feel it is best, initially, to keep our governance framework simple, and to let the channels for communication and engagement evolve in the light of experience.*

*If we did introduce a council of elected representatives, there would need to be clear governance rules, and we would not favour the council members having a "gateway" to the Club board if that denoted a right of open and direct access.*

### **Letters of appointment for directors**

We proposed that each director of the Foundation would sign a formal letter of appointment, and in it, he or she would undertake to uphold the values of the Club and the Foundation and act with the highest standards of fairness and integrity. One respondent suggested that the common values and standards of conduct should include good faith, sporting integrity, openness, transparency, inclusiveness and commitment to act "without fear or favour".

*We are happy to take these suggestions on board for consideration in both the "working together" document and the letters of appointment. For maximum impact, however, we would seek to keep any list of values or standards relatively short. Some standards of conduct are automatically imposed on directors by law, and these can safely be omitted from any list. Also, a very detailed list of standards might imply a rather pessimistic assumption that all directors are innately untrustworthy.*

### **"Working together" document**

A respondent said it was vital that the "working together" document be kept under regular review.

*We agree. The "working together" document must be enduring, but it will not be immutable. As we said in paragraph 3.39, its fitness for purpose will be evaluated at appropriate intervals in light of the changing needs of the Club and the Foundation. We are currently drafting the "working together" document, and will make it available for review as a draft before we finalise our governance proposals. That draft will spell out the procedure for regular review. Feedback from the Foundation members will be part of the review process.*

## SECTION 4

### HOW TO HAVE YOUR SAY

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We are consulting on the proposals in this document for an eight-week period, from 25 July 2018 to 19 September 2018. You can give us your views:

- **by e-mail:** e-mail us at [governance@foundationofhearts.org](mailto:governance@foundationofhearts.org);
- **by post:** write to us at FoH Consultation, c/o HMFC, Tynecastle Park, Gorgie Road, Edinburgh EH11 2NL;

Please include your name and an address (e-mail or postal) at which we may contact you.

Please note that we will not routinely acknowledge receipt of responses.

While we encourage everyone to have their say, we are principally interested during this final consultation in hearing new arguments and submissions, rather than feedback which repeats arguments raised in the previous consultation stage.

If you have any questions about this document or need advice on the form of response, please e-mail us at [governance@foundationofhearts.org](mailto:governance@foundationofhearts.org).

## APPENDIX

### The Foundation's membership structure

We proposed that membership of the Foundation would continue to be based primarily on active pledging. Categories of associate membership could also be created for non-pledgers, but those members would not have full voting rights.

We received a wide range of comments on this aspect of our proposals.

Some respondents were opposed to a model which restricted full membership to active pledgers. They argued that pledgers who contributed to saving the Club when it faced extinction and who then helped to deliver majority ownership should continue to be entitled to vote in the Foundation's affairs whether or not they continued to pledge in the future. They felt it would be wrong to "jettison" those who saved the Club.

They also made the point that if the number of active pledgers declined after delivery of majority ownership, key decisions affecting the Club could in future rest with a small number of people. In that situation, the Foundation would no longer be a genuine collective vehicle for supporter ownership. Giving an enduring vote to past pledgers would counter this risk by increasing the number of voters.

One respondent claimed that tying vote rights to continuous pledging was not part of the original model for the Foundation, and its introduction would be "mission creep".

Other respondents took a contrary view. They said they were not convinced that people should continue to have full voting rights when they were no longer shouldering any of the financial burden. It was felt that, in some cases, membership of the Foundation may have been set up in the name of young people, and it would be unjustifiable to give them a vote for the rest of their days. It was also pointed out that, as time goes by, the Foundation would inevitably lose touch with former pledgers, and the register of members could become increasingly out of date and unreliable. To address this, it might be necessary to levy a nominal annual membership fee in order to maintain contact.

*We have carefully considered all the feedback, and have decided that, on balance, we should not change our original proposal. In our view, the best membership model for the Foundation is one based primarily on active pledging. This view is based on the following considerations:*

1. *The preferred membership model is encapsulated in our "pledge for life" message. We have been consistently promoting this theme for some time.*
2. *The importance of acknowledging the contribution of those who stepped up in the Club's hour of need is beyond doubt, and we would never play down our debt of gratitude. The only debate is around the appropriate form of that acknowledgment. We have striven to create fitting ways of giving something back to our original pledgers (many of whom tell us that seeing our team turn out each week is, for them, reward enough). One of our first initiatives as a board after the Bidco Agreement was put in place was the fan tribute strip in 2015. With the backing of the Club, we are now in the fourth year of our souvenir pitch plot scheme, which recognises the support given by pledgers. We have also created a series of pledgers' clubs for members who reach certain levels of contributions, and we have plans on the drawing-board for the installation of an interactive roll of honour in the Club museum. We believe initiatives such as these are more appropriate forms of recognition than enduring voting rights.*

3. *The original principles on which the Foundation was established did not incorporate any explicit promise of enduring voting rights which survived the cessation of pledging. The whole focus at that stage was on the immediate task of saving the Club, and no detailed long-term membership model was settled upon – in effect, nothing was ruled out and nothing was ruled in. Suggestions of “mission creep” are therefore, we feel, overstated.*
4. *Under a membership model with enduring voting rights, there could be an implicit sense of “job done”. But such a sentiment is not one we would recognise or endorse. A perception of “job done” would almost inevitably lead to a fall-off in funding for the Club. We believe the continued provision of material sums would make a significant contribution to the success of the Club, both on and off the field.*

*We are not clear what the qualifying period for obtaining enduring voting rights would be, in particular whether it would require pledging to continue until transfer of majority ownership under the Bidco Agreement. If it was possible to qualify at any earlier date, this would concern us, because it could lead to a decline in pledge levels at a time when we still had financial commitments to meet under the Bidco Agreement.*

5. *In designing the governance framework, we believe it is important to keep it simple and avoid overly complicated structures. A membership model which is based on active pledging and the principle of one-person-one-vote meets that test, but we are doubtful that a system based on enduring membership would. There would certainly be practical difficulties in maintaining an up-to-date and accurate register of members (which the Foundation is obliged to maintain under the Companies Act), as many of our members would not be active pledgers.*
6. *We are very mindful of the need to maintain membership numbers, so that the Foundation is a genuinely representative body and our shareholding in the Club is not under the control of a relatively small number of individuals. Conferring enduring voting right would mitigate that risk, but in a potentially unsatisfactory way. The bloc of former pledgers could, over time, become quite unrepresentative and detached from the Club, and if they never took the trouble to vote, the protection afforded by them against an over-concentration of decision-making is illusory. The bloc would also decline in size over time as members died, and its effectiveness in maintaining membership numbers would thus gradually diminish.*

*The real protections against a fall-off in membership have to be assiduous work by the board of the Foundation to attract and retain members, and a shared belief among a substantial section of supporters that continuing to contribute is the right way to ensure that our club never faces an extinction event again.*

One of our respondents suggested that a possible way of acknowledging the contribution of the original pledgers would be to give them a symbolic stake in the Club - one share each, for example (assuming always that this would still leave the Foundation with at least 75.1% of the shares).

*While we understand this may seem an attractive idea, we believe that, in practice, it would not be possible to implement the proposal without placing an undue burden on the Club’s administrative resources. The influx of new members would involve multiple share transfers from the Foundation, and would significantly increase the size of the Club’s share register.*

One respondent who favoured enduring voting rights also submitted a detailed case for a wholesale restructuring of the Foundation. Under this scenario, the Foundation would be restructured as two

separate bodies, each with its own role. One entity would be a trust, and its role would be to hold the shares in, and oversee, the Club. It would be a dedicated fan ownership vehicle (we assume it would be based on the model trust developed by Supporters Direct). The other entity would be a fundraising arm, and it would operate a club membership scheme open to all supporters. In return for a membership fee, members would be offered a range of benefits, from discounts on Club merchandise to loyalty points.

The stated reason for advocating this structure was to give greater flexibility around the membership model. Membership of the trust would be based on both current and past contributions. In particular, “once contributions reach a specified threshold, then that person should be afforded membership of the trust for life”.

*This was a thoughtful and interesting submission.*

*Nevertheless, we do not believe it would be appropriate to dismantle our current structure and convert into a sophisticated dual structure of the kind proposed. There would be formidable complexities and practical details to be worked through, and these could divert us at a time when all our attention would need to be focused on ensuring a smooth transition in ownership of the Club. The new structure would involve three separate organisations (a trust, the Foundation and the Club), and it would be a challenge to make this structure simple and easily understood by our members and supporters in general. The structure would be complex and time-consuming to administer, and internal costs could increase. The numbered points made earlier in relation to enduring voting rights within the Foundation could be equally made in relation to life membership of the trust after reaching a contribution threshold.*

It was also suggested in the consultation that when the final governance proposals are submitted to the members for approval (which we plan to do in December), the membership model should be the subject of a stand-alone resolution, so that members have a clear choice between membership based on active pledging and membership which gives voting rights to past contributors. A similar approach was suggested in relation to whether or not future funding from the Foundation should be earmarked for specific purposes (see section 3)

*We will take account of this suggestion when we finalise the governance proposals and map out the approval process. Our view at this stage, however, is that we should present our governance framework as a single package rather than uncouple key elements. If we had to accommodate the possibility of two different membership models, we would also have to propose two different governance structures, as the membership model informs a large part of the overall structure. The end-result would be copious amounts of information for members to digest, with the possibility that, at the end of it all, the members might vote for one of the membership models but not for the concomitant governance structure. In presenting the final proposals to our members, we would, of course, give full details of the preferred membership model in our explanatory summary of the framework.*

Finally, we are pleased to report that during the consultation, no body of opinion emerged in favour of moving from the one-person-one-vote principle to a system of individual voting rights weighted according to the level of monthly contribution.