

## KPC CLLRS BRIEFING NOTE ON MOORS MANAGEMENT

Dear Cllrs,

We have all now had the opportunity to read and review the Internal Management Agreement (**the Deed**) dated 15<sup>th</sup> June 2012, which KPC signed up to with two other landowners and a number of individuals with various 'commoners' rights over Haresdown and Knowstone moors.

Whatever has happened in the past, I believe KPC now need to clearly understand the role and the responsibilities that we have taken on as being party to the deed, so that we can participate more fully in the future of the moors, and ensure that our financial responsibilities as local government are fulfilled.

There are some areas where I feel that the deed is not being complied with, which impacts upon our ability to undertake financial due diligence and contribute in a meaningful way to proceedings.

### 1. FINANCIAL ACCOUNTS

- a. **6.1 "The Management Committee acting as *Trustees* shall prepare such accounts of money received and paid up as shall be proper and shall have the accounts audited for presentation and approval by the Participants at the annual HLSA Management Forum".**

I appreciate that this comes at a cost to the Moors Management Association but, together with a sight of the bank account reconciliations, fully audited accounts are fundamental for the Trustees / committee to undertake appropriate due diligence .... and as shown above is a basic requirement of the deed.

In addition, under 7(c) of the Moors Management Constitution, it states that accounts shall be audited annually .... this was voted against at the last Moors Management meeting that I attended, but as this can in any event only be changed at an AGM (under section 8 of the Constitution) I assume that it would appear on the agenda of the next AGM for ratification.

### 2. TRUSTEESHIP

- a. **2.9 "Management Committee means the officers and committee of the Haresdown and Knowstone Moors Management Association by whose constitution the Management committee will manage the UELS/HLS for the Association and act as *Trustees* in that capacity.**
- b. **7.4 " ..... but with the addition that only the participants will be able to elect the *Trustees* ...."**
- c. **SCHEDULE 1, THE MANAGEMENT ACTING AS *TRUSTEES***

It would seem that the deed imposes a clear role of Trustee on all committee members, which in itself requires more responsibility for financial due diligence than the KPC committee member would be able to undertake on the information currently supplied by the Moors Management Association. As an aside, the deed would seem to imply that whilst KPC can nominate a committee member, in order

to undertake and fulfil the Trustee part of the role, all Participants would need to vote to agree the nomination at the AGM. I am not sure whether this happens or not ... I cannot recall any vote to agree to my acting as a Trustee when I was on the committee.

### 3. BANK ACCOUNTS

To be clear, I have not seen any copies of bank statements so am not sure whether the Moors Management Association run one bank account or at least two. The unaudited accounts that I have seen makes no mention of two accounts, but that might just be my misunderstanding.

However, the deed clearly requires that a minimum of two bank accounts are run:

#### **PARTICIPANTS ACCOUNT**

This is the account where money is held for the payments to landowners and commoners, and where I believe the Trustee responsibility falls most heavily.

**5.1 "The participants authorise the Management Committee to hold payments made by Natural England in a dedicated account until the annual obligations under the HLSA have been met"**

#### **ADMINISTRATION AND MANAGEMENT FUND**

This is the account to be used for paying for work and maintenance that is required, and the money put here will be agreed at the AGM in accordance with the budget proposals and contingencies.

**2.1 "Administration and Management Fund means funds held by the Association for the administration of the UELS/HLS and with which to pay for any work done for the fulfilment of any UELS/HLS obligations and maintaining liability/protection insurances. It does not include any payments held by the Association that are due to participants which will be held in a separate dedicated account."**

**5.2 "The participants authorise the Management Committee to hold all *other* payments received from Natural England in the Administration and Management Fund with which to pay for work carried out on the Common for fulfilment of the UELS/HLS obligations as required.**

**5.3 " ..... the money will be divided between the Administration and Management Fund and the remaining Participants".**

**5.5 "The Management Committee may open *two* or more bank accounts ..... "**

### 4. FORWARD PLANNING AND BUDGETING

For KPC, this is probably one of the best ways that we can participate more fully, and ensure that the KPC nominated committee member is fully able to vote on any financial issue with the full backing of Cllrs.

If this has been happening, but I have just not seen it, then obviously that would be really helpful, and KPC just needs to ensure we have a sight of the numbers. To be clear, this budgeting forecast needs to be produced before the AGM, (presumably with draft accounts), showing the balances of the two accounts. This will mean that

participants have a clear understanding of what funds are needed for maintenance etc, in the coming year, and what funds are held (unused) in both accounts, and what new funds are expected.

**5.3 “The Management Committee shall each year before the AGM, produce estimates of the income for the forthcoming year along with an estimate of the anticipated expenditure (both sums to be held in the Administration and Management Fund) and shall then set out recommended levels of payments for participants.”**

## **5. DISPUTES**

There is provision within the deed to cover disputes between participants over both levels of payments to participants and interpretation of the terms of the deed. In the terms of the latter, should it ever come to it, Moors Management Association will appoint a solicitor, agreed by all parties, whose decision will be final.

**4.3 “In the event of any disputes between Participants arising out of the terms of this deed ..... they shall be referred to an independent expert mutually agreed between the parties ..... to a solicitor in respect of any dispute over legal interpretation of this deed ....”**

## **SUMMARY**

In view of the above analysis, on balance I believe it means that KPC will need to decide whether my concerns are sufficiently important/serious to warrant us asking Moors Management to help us by:

- a) providing audited accounts from this current year,
- b) using two separate bank accounts (if they are not already), clearly delineating monies held for maintenance/administration and monies held for potential distribution to Participants,
- c) producing (for KPC and all Participants) a detailed budget plan on expenditure and income, before the next AGM and ideally in time for our November council meeting.

Hopefully this will position KPC so that we can fully brief and nominate a Cllr for the position of committee member and be represented as a landowner at the Moors Management AGM in early December 2020 in a more confident position.

For discussion at another time, having spent a considerable amount of time on this subject, I cannot currently see any reason why landowners should receive any annual payment ..... UNLESS like the DWT they have undertaken work on the moors and participants feel they should be compensated in full or in part. Contingency monies should I think be retained in the Administration and Management Fund until they are needed.

If there is agreement within KPC that to fulfil our financial responsibilities as a council we need to be sure that the terms of the agreement that we are party to are undertaken diligently, then we will need to take some action. Perhaps, the starting point is to ask the Clerk / Responsible Financial Officer to write to the Association for a view on our concerns?

Depending upon the outcome of their response, we will be able to determine how we amend our Financial Regs and Standing Orders and appoint a Cllr to represent us.

**CLLR A J MOORE 19/10/20**