



## Everything you always wanted to know about the Constitution, but were afraid to ask... (March 2019)

*The BKA cannot exist in simple isolation, where we all “just turn up and practise”. Rather, we train in a wider context of rules and regulations which apply to all of society. Consequently, the Association needs some “rules and regulations” to ensure that it complies with the law and meets its obligations regarding a duty of care to its members. The result is this is.... The British Kendo Association Constitution!*

*This is a “jargon-free” explanation of just what the BKA is, what are our responsibilities and what the BKA Constitution attempts to accommodate in order to ensure that members can attend their dojo and train in as free and unconstrained manner as possible - within the law.*

### What is the BKA?

The BKA is an 'unincorporated association' or members' club: this means that unlike a company or a charity, the BKA does not have a separate 'legal status' from its members. It is comprised of *all* of its members at any given time; a group of individuals linked together by contract. <sup>1</sup>

The BKA itself therefore cannot make contracts, employ people, or be sued or prosecuted in its own right<sup>2</sup>.

It is not practical for all decisions to have to be taken by all members, and so the members delegate power to committees, whether direct by resolutions at an AGM, or through the Constitution.

### What contract?

The terms of contract between the members themselves, are set out in the Rules of the Club. For the BKA this means **the Constitution and Bye-laws**. Club rules are binding under contract law- when you join the BKA you agree to abide by the rules.

The rules can be changed by the members voting at an AGM; this requires a 66% majority.

### Why is the BKA Constitution so long?

The BKA is unusual in having 4 managing committees: The NC, and the 3 BuEC. It also has bodies representing the membership- the DRC. Most clubs with a short, standard

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<sup>1</sup> 'The BKA' may get cited in court proceedings as 'an identifiable group' but this is not the same as being a legal entity

<sup>2</sup> The Managing committees can, however and are indemnified by the BKA under Bye-law 11.

Constitution will have one committee - sometimes consisting of 3 people. This was a deliberate decision by the membership 10 years ago, to diffuse power and responsibilities across the BKA and to promote democracy. It means that the Constitution has to have a clear explanation of the structure, and rules for what the remit of each committee is, and how they interact with each other. Members rights, responsibilities and the BKA's processes are also set out in some detail; it is in Member's interests, that they should know what their rights and obligations are how procedures are supposed to work; and while it makes the document long it cuts down areas of ambiguity.

### **What are the Rights and Liabilities of ordinary members?**

On joining the BKA the member acquires both rights and obligations in respect to other members.

Generally, financial liabilities for ordinary members are limited to their membership fees.

### **What are the powers of committees?**

Subject to any express rule to the contrary, the committee is be empowered to determine as to how it will operate. A committee can therefore appoint sub-committees or working parties and may delegate a task to a particular officer or member of the Association.

Authority to act *must* therefore be properly delegated at each stage: From the membership to the NC or a BuEC, from the committee to a subcommittee or an officer or member.

### **What Duty of Care do Officers owe to members?**

- Officers of the BKA have a duty of care to members
- They are acting on behalf of the entire membership.
- The nature and extent of the duty of care in each case depends on what the officer has been delegated to do.
- Any decision must be taken for the benefit of the whole BKA (or Bu) and not just a section or faction of it. <sup>3</sup>
- The officer must exercise ' a reasonable standard of care' which depends on the nature of the task, whether the person is an unpaid volunteer and the size of the club. Generally, this means taking the kind of care a reasonable person would exercise in the circumstances in their own affairs.

### **Summary of The Constitution and Bye-laws**

**Articles 1-2:** The name and objectives of the BKA. To regulate and foster the sword - related arts.

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<sup>3</sup> There may be some exceptions to this under the Equality Act and in child protection matters.

**Art. 3:** the structure of the BKA: NC, BuEC, DRCs , relationships.

**Art. 4:** Set-up, powers and duties of the NC

**Art 5:** Remit, make up, powers and duties of BuEC

**Art 6:** Structure, role, duties of the DRC

**Art 7: Membership-**

Types of membership, dojo membership terms.

***Individual/full members: Rights:***

- Terms of participation in BKA events
- To stand for office
- Access to notice of and information about meetings; visibility of financial and other records; insurance policy
- To be treated fairly and with respect
- Notice of changes to rules
- To receive a membership book

***Responsibilities:***

- To conduct themselves with integrity and be truthful in all communications with each other and Officers of the BKA.
- To treat other members and Officers of the BKA with courtesy and fairness
- To refrain from abuse or defamation of any member or Officer.
- To comply with any codes of Conduct adopted by the BKA from time to time.
- To comply with any directions or sanctions imposed upon them under Article 13.
- To comply with the financial responsibilities detailed in Byelaw 2.
- To immediately inform the Chair of the BKA if on police bail charged or convicted of a criminal offence involving a child or a violent offence against a person.

Failure to meet these responsibilities may amount to gross misconduct.

**Art. 8:** Subscriptions, Bu levies, additional Bu income, terms of late renewal or non-renewal of membership.

**Art.9:** Finances:

Details of allocation of funds; non-profit making nature; powers on insolvency of a Bu; terms of loans; prohibition of employees; terms of sub-contracting; right to inspect financial records; expenses of officers; no fees for teaching; funding of national squads; power to outsource; equipment procured by committees to remain property of the BKA.

9.19: Declaration of financial interests - exclusion of interested party from decision-making on the issue.

**Art 10: Suspension/ expulsion of member:**

BuEC may suspend and ask the NC to seek expulsion; or NC may suspend a member and seek their expulsion where:

- The member has breached the constitution.
- The member is on police bail or has been lawfully charged or convicted of an offence which, in the opinion of the NC constitutes a risk to the welfare of its members.
- Has committed an act of gross misconduct
- In exceptional circumstances: if in the opinion of the NC and subject to the Constitution, the conduct of the member is injurious or likely to be injurious to the character and interests of the BKA , and is serious or where written warnings have not been heeded
- As an outcome of the complaints procedures detailed in Article 13.

Members cannot be suspended etc for the lawful exercise of freedom of expression or association.

Suspended members lose privileges of membership immediately.

Expulsions are heard at the AGM with a right of written reply and 15 minutes of allocated time (subject to extension by vote of members).

Need for permission of NC to re-join once expelled or resigned.

#### **Art 11: Suspension /removal of officers**

Power of Bu EC or NC to suspend and seek removal by polling electorate. Power of DRCs to request suspension of officer. Removal by vote of no confidence.

#### **Grounds:**

- The officer has been subject to suspension/expulsion under Article 10.
- The officer has breached the constitution.
- The officer has, in the opinion of the NC/BuEC displayed less than satisfactory administrative skills.
- The officer has, in the opinion of the NC/BuEC exceeded the authority of the post.
- The officer has, in the opinion of the NC/BuEC misappropriated funds of the BKA
- The officer has been negligent in the execution of their duties.
- The NC/BuEC cannot sustain a working relationship with the officer.
- The officer has lost the confidence of the relevant NC/BuEC/appropriate electorate.
- In exceptional circumstances ...if, in the opinion of the NC/BuEC the conduct of the officer is injurious to the character and interests of the BKA

Officers cannot be removed for lawful exercise of freedom of expression or association.

Suspended officers forfeit rights and privileges of office.

Removal of officer to be heard at the AGM, right of reply in writing and 15 minute allocation of time subject to extension by vote.

Motions of censure or disqualification may be brought by the Membership.

#### **Art 12: Conflict resolution, challenges to policy and breaches of Constitution:**

Procedure and grounds for NC to challenge operation of the Bu; powers of NC. Role of the DRC.

Procedure and grounds for BUEC to challenge operation of the NC- role of DRC.

Procedure for dojo to express concerns /challenge BuEC policies- role of the DRC.

Dojo challenges to NC/BuEC by EGM.

### **Art 13: Complaints procedure:**

Structure of complaints committees - BuCC and NCAC (National Committee Appeals Committee- a subset of the NC) for appeals. Co-opted Complaints Officer. Oversight by NC.

General principles: precedence of criminal and child protection law; confidentiality; immediate referral of gross misconduct. Complaints to be dealt with as informally as possible. No processing of anonymous complaints.

Procedure for informal complaints- within dojo, between dojo, referral to complaints officer if unresolved.

Procedure for hearing of formal complaints, filing of evidence, timescales, hearing by BuCC.

Appeals from BuCC to NCAC - grounds for appeal, consideration of leave to appeal, appeal hearings procedures.

- Suspension from the BKA.
- Removal/Disqualification/Suspension from Office for such period as deemed fit.
- Banning from holding Office for such a period as deemed fit.
- Issue a formal reprimand
- Other proportionate penalty

Failure to comply with sanctions can be gross misconduct and lead to possible expulsion, as can providing false information to a panel.

### **Art. 14: Elections and Voting policy**

Structures and procedure for election, electorate, terms of office, lengths of terms; nominations; co-option of temporary officers for unfilled posts; electioneering rules. Unopposed candidates still need to obtain 50% of the votes cast.

### **Art. 15: Communications**

Proactive communication by email. Duty of member to keep membership officer informed of changes of personal information. Details of documents to be available on website. Reporting to members; access of officers to the database.

### **Art 16: Grading**

Compliance with rules of EKF and FIK. No obligation to attend event to grade. Grading register. Right to certificate of eligibility to grade. Menjo, grading 'clocks'.

**Art 17: AGMs:** date, notice, agenda. Member resolutions and rejection of resolutions. Information to membership.

**Art 18:** EGMs: specific resolution; can be called on request of 30%+ of Bu or general membership; *must* be held within 60 days. Resolution supported by 2 sides of A4 text and committee reply of same length.

**Art 19;** Committee meetings: NC, Bu EC, DRC- minimum one per year. May have 'virtual meetings' subject to maximum access to these.

**Art 20:** Risk management: in principle risks should be managed in accordance with a principle of minimal intervention; there are inherent risks in the arts; members have the right to make informed decisions about degree of risk acceptable to them; the BKA will take reasonable steps in adopting policies to minimise risk.

**Art.21:** role of Bye-laws: Bye-laws may be made by the NC as long as they are not unconstitutional and have the same force as the Constitution. The membership does not vote on bye-laws but has the right to be informed of changes.

**Art 22:** Guidelines and recommendations: These do not form part of the Constitution, but dojo and members agree to follow them or explicitly waive the insurance cover obtained by the BKA.

Art 23- see Bye-law 17.

**Art 24:** Interpretation :

The Constitutional Trustee is the Vice Chair who acts independently of the NC and has a right to seek legal advice.

A breach of the Constitution which is not noticed at the time does not set a precedent for future action.

Amendments to the Constitution agreed at an AGM are valid from the vote and not from the formal amendment of the written Constitution.

**Art 25:** Dissolution

NC may propose dissolution a simple majority on the grounds of:

- Expense
- Failure to elect or co-opt a Chair, Secretary or Treasurer, or Bu EC Bucho
- Insolvency
- Non-recognition by EKF or FIK
- Members' motion

The matter is heard at an EGM and requires 66% of the vote. This must give authority to wind up the BKA. The funds will be held in trust and ring-fenced per Bu or else transferred to the EKF.

## Appendix 1

Duties of officers:

- To take any decisions for the benefit of the whole BKA or Bu, not a section or faction thereof
- In undertaking BKA business, to exercise the standard of care a reasonable person would exercise in the circumstances in their own affairs

- To behave with consideration and courtesy towards members at all times
- To behave with integrity at all times
- continuing duty at the end of his or her term, to co-operate with his or her successor and supply any documents or information requested to the best of his/her ability to the successor on request; to assist by answering reasonable questions relating to his or her tenure of the post.

#### **Appendix 2:**

Summary of posts on NC and their remits, including co-opted posts.

Power of Chair to act independently of NC in emergency to protect interests of BKA.

Power of Chair to write letters of concern to members.

#### **Appendix 3: Duties and responsibilities of Bu officers**

#### **Appendix 4: Duties and Responsibilities of Dojo representatives.**

#### **Appendix 5: Conduct of Meetings:**

Quorums and voting majorities. Publication of motions changing the Constitution. Casting vote of Chair. No proxy voting except in limited circumstances of concurrent Bu AGMs.

AGM and EGM , agenda and order of business. Standing orders. Acceptance of resolutions from the floor on a simple majority vote. Breaches of order at meetings. Minutes.

BuEC and DRC meetings-order of business.

#### **Appendix 6: Accounting policy**

Duties of Treasurer to produce financial records; access by external advisors; advisors to report on financial records; information to members and other bodies. Income to be applied for the promotion of the objects of the BKA only. No dividends or profits to members. Liability of members to repay unauthorised monies. Appendix list of expenses to be included in the financial report.

#### **Bye-law 1: affiliation to FIK and EKF.**

#### **Bye-law 2: Financial and data protection:**

- BuEC cannot vary expenses policies
- responsibilities to approve expenses claims
- Visibility of financial records to members
- All officers and members shall explicitly accept that as a condition of receipt of expenses or monies from the Association, all members shall have the right to examine expenses and monies paid by or received by the Association and the Associations bank statements, except for personal details specified in law
- Payments- bank transfers, cheques
- Fee-setting policy
- Ring-fencing of Bu income; allocation of income to Bu

- Dealing with deficits and surpluses

**Bye-law 3: procurement:**

Contracts for goods or services in excess of £1000 in value must be put to tender on the basis of 3 quotes.

**Bye-law 4: Membership miscellaneous** -position of temporary members, juniors, exceptional members, visitors. Storage of BKA property at members expense only.

**Bye-law 5: Dojo membership requirements**

**Bye-law 6: participation in events**-open to all members of the BKA conducting themselves in good faith.

Length of membership before gradings, eligibility for competitions, denial of participation to suspended or expelled members or in accordance with risk assessment, or failure to act in good faith.

**Bye-law 7: Hosting BKA events:** dojo shall agree a budget with the Bu and division of any profit; the Bu shall underwrite the event and the dojo shall produce accounts.

**Bye-law 8:** dojo subscriptions due June.

Bye-laws 9 and 10- see article 8

**Bye-law 11: Limited liability of officers-** officers indemnified by the BKA unless they are significantly in breach of the Constitution

**Bye-law 12: Equal opportunities policy:**

**Bye-law 13: health and safety policy;**

**Bye-law 14: Child Protection policies.**

**Bye-law 15: Mixed practices** will accommodate needs of all members as far as possible

**Bye-law 16: Insurance policy**

**Bye-law 17: Public relations policy**

**Bye-law 18:** the adoption of Sport UK Code of Conduct has now been deleted.

**Bye-law 18 (formerly 19): Communications policy:**

- Default communication by email
- Non-confidentiality of emails as standard
- Officers to use official email addresses
- Archiving of emails for 4 years
- information to be posted on website but notice of meetings etc must be given by email also
- BKA shall maintain social media presence
- Maintenance of 'in-house' debating forum- members retain liability



**Bye-law 19:**

Members right to freedom of speech; right of Association to consider consequences.

**Bye-law 20 :**

Disclosure of data and documents will be the maximum possible but subject to any relevant laws.

~end~