

Facts promoting questions at the BDS AGM 2010 from Richard James

1. The concerns

(a)

R. JAMES: BDS Council members were not given the opportunity to debate and discuss the options for change to 2010 BDS Subscription rates at a Council meeting before an announcement was made in the November BDS Newsletter. The decision on rates was made solely by the Chairman and Vice Chairman.

This course of action is a breach of the specific requirement in the BDS Memorandum and Articles of Association Article No 3.1 (..... Annual subscriptions payable by Members shall be sums as are specified from time to time by the Council etc etc)

BDS COUNCIL'S RESPONSE:

Authority for financial matters is delegated by Council to BDS Finance Committee (*Rule 5.4.1*). Council were advised by e-mail on 16th October 2009 that the current economic situation urgently required a small increase of £3 in Membership subscriptions, which had not previously been raised for 4 years. BDS Finance Committee subsequently endorsed this increase on 18th November 2009, and BDS Council ratified it at their meeting on 25th November 2009. Members were advised of the increase in the next issue of the BDS Newsletter and on the BDS website. The BDS have not received any adverse reaction to this increase from any Member, either verbally or in writing.

BDS Council will be writing to Mr James to require him to disclose his sources of information about BDS Council's procedures and deliberations. BDS Council Members are well-aware that the deliberations and proceedings of Council and Committees are strictly confidential, and that any Council or Committee Member disclosing the same will be subject to disciplinary proceedings and potential dismissal (*Rule 8.6.2*), unless such person or persons have already been so disciplined or dismissed.

(b)

R. JAMES: *The BDS Memorandum and Articles of Association (Article 4.3) require the Society to hold an AGM "within six months of the end of the Society's financial year and not more than fifteen months since the date of the last annual general meeting".*

The timings of the 2010 AGM are a breach of these time limits on two counts to this specific Article of Association. (There is however now a resolution to amend this article at the 2010 AGM.)

BDS COUNCIL'S RESPONSE:

Since becoming a Company Limited by Guarantee, the BDS has been advised by the BDS Hon. Solicitor that it is no longer a legal necessity under the Companies Act 2006 to hold an Annual General Meeting. However, BDS Council considered that retaining an annual social function, which in the past few years has been held in the form of a dinner dance, would provide both a pleasure for Members and fulfil article 3.1.11 of the Memorandum of Association Objects ' *to promote and hold...social functions and other entertainments*'

In previous years, many Members and Council have commented that an April meeting is inconvenient, as it is (a) at the beginning, rather than at the end, of the driving Season, and (b) can be difficult to avoid clashes with the Easter holidays and the start of the showing/driving Season. Attendance has rarely been more than 100 people, so BDS Council took the decision to move the

date to the autumn. The 30th October 2010 was fixed upon, as being after the end of the driving and showing Season for most people, and would avoid clashing with BDS Area AGMs (which are usually between November and January).

The change of date means that the BDS annual meeting can also be combined with the end of Season BDS Judges and Area Commissioners Conferences, which makes a more cost-effective event for all concerned. As Mr James points out, a resolution to amend this article accordingly has now been made

(c)

R. JAMES: In July 2009 the BDS Council received an invitation to co-operate in the development of the Professional Carriage Masters Association, (PCMA), a legally constituted trade association of commercial carriage coachmen, the majority of whom are BDS members. A reply in the negative was eventually received some 5 months later.

This is in breach of article 3.1.13 of the BDS Memorandum of Association (to co-operate with any other society, organisation, or body in the furtherance of any of the purposes mentioned above i.e. specifically paras 3.1.4 and 3.1.5, 3.1.9, and 3.1.11).

A similar negative situation exists with regard to UKcc (Carriage Driving), a group of carriage driving coaches and trainers promoted by the Department for Culture, Media and Sport, administered by the BHDTA and the BEF.

BDS COUNCIL'S RESPONSE:

BDS Council considers that Mr James is confusing the **facility** to co-operate with other organisations with an **obligation** to do so. For example, we have the facility to 'subscribe to any charity and grant donations for any purpose' (3.2.6), but this does not mean we are obliged to subscribe and donate to every charity, which would obviously be an impossibility.

Article 3.1.13 of the Memorandum of Association does not, therefore, mean that the BDS is forced to endorse every new organisation which would benefit from being associated with the established national harness horse driving organisation.

The background to this is that BDS Chairman, John Parker, attended a meeting at Cribbs Funeral Directors Head Office, to discuss setting up an organisation for commercial carriage operators, which later became known as the PCMA. Mr James' initial proposal was that the BDS would endorse PCMA activities, and later that the PCMA would affiliate to the BDS. It was considered that it would be difficult for Members and Government Departments to understand how the BDS could maintain independence and impartiality, if we were to appear to represent the activities of the PCMA, especially as it is the declared intention of the PCMA to act as a regulatory body, purporting to have powers to prevent operators obtaining Local Authority Licences.

Mr James invited a large number of commercial harness horse operators, many of whom are BDS Members, to an 'awareness day' at the Unicorn Trust. Mr Parker subsequently received representations from BDS Members, expressing their concerns that the PCMA was, effectively, seeking to restrict the ability of many well-established, competent people to continue to offer horse drawn funeral services. Their main area of concern was that the PCMA had stated that the National Association of Funeral Directors (NAFD) would be instructing Funeral Directors to cease to use the services of any horse drawn funeral operator who had not become a Member of the PCMA by the autumn of 2010. It is a matter of concern that the PCMA have negotiated a ban on non-PCMA operators working for Co-Op Funeral Services.

Mr James also advised them that he was proposing to write to Local Authorities recommending that they impose licensing restrictions on any horse drawn funeral or wedding operator who was not a

member of the PCMA.

Concerns were expressed that the PCMA appeared to have been instigated by Mr James without the consensus of the majority of existing operators. Mr James informed the BDS of their intention to appoint assessors to carry out examinations of horse drawn vehicles, harness and horses, plus appraise the driving competence of those who are, essentially, business rivals. This obviously raised uncertainties about the integrity of these proposed appraisals and inspections, and also the question of whether operators whose vehicles, harness, horses and/or driving skills were 'failed' by the PCMA evaluators would be forced to wind up their businesses.

The BDS has since received complaints that the PCMA has severely restricted the business of several long-established operators. Some in the South East of England have lost as much as 50 per cent of their business as a direct result of the PCMA's activities.

The Office of Fair Trading and Trading Standards have contacted the BDS, as the Awarding Organisation responsible for the quality and integrity of qualifications, and we have provided them with the relevant information which we hold.

Mr Parker also spoke to the Chief Executive of the NAFD, Alan Slater, who was unaware of the activities of the PCMA, but assured Mr Parker that the NAFD would not, under any circumstances, instruct Funeral Directors to only employ operators who are PCMA Members.

Following representations from a number of BDS members, it was felt that horse drawn funeral operators are at least entitled to have more than one choice of professional organisation to join. Council therefore set up the BDS Register of Commercial Operators in August this year. The BDS Commercial Register has a £30 annual subscription, and requires the applicant to submit evidence of applicable BDS Qualifications, plus evidence that they possess current third party public liability insurance. Full details are on the BDS website.

The BDS Commercial Register is fully recognised by the NAFD and their Members; notification of the BDS Commercial Register has already appeared in the NAFD Magazine.

Whilst Article 3.1.13 states that one of the objectives of the BDS is to '*co-operate with any other society, organisation or body*', it is not **compulsory** for the BDS to do so. The BDS are already Members of the National Equine Welfare Council, which covers the horse welfare requirements of article 3.1.5, plus we are an Awarding Organisation regulated by Ofqual (the Office of the Qualifications and Curriculum Regulators of the Department for Education), which covers the requirements of Articles 3.1.2, 3.1.4, and 3.1.9, and we sit on the Lantra Awarding Organisations Panel, plus were responsible for setting up, and currently Chair, the Equine Awarding Organisations Panel (EAOP), which comprises the British Horse Society (BHS) and British Horseracing Education and Standards Trust (BHEST), NPTC and Edexcel, which together with our regular activities fulfils our objectives under 3.1.11.

1(c) ii. Mr James alleges that 'a similar negative situation exists with regard to the UKCC group'.

BDS Council do not understand this comment. The BDS is a Member of the UKCC Development Board, and has been since 2007. However, the UKCC is primarily concerned with providing coaching for sporting excellence – in other words, coaching people to win competitions - and since the BDS's remit is to promote education which is relevant to ALL Members, whether they compete or not, BDS Council and BDS Awards Board took the decision in 2007 to develop our training and qualifications programme through Lantra (the Sector Skills Council for Land-based Training and Education).

This means that our new education programme will be able to follow the established BDS tradition of providing training and qualification relating to horse care, stable management and horse welfare, in addition to the specialist skills of identifying harness and vehicles, harnessing up, putting-to, Grooming and Driving at all Levels. Once candidates have acquired these vital skills, they are fully equipped to use them in the context of recreation, sport or commercial harness horse driving as they wish. The BDS is one of only 5 Equine Awarding Organisations in the UK, and the sole Awarding Organisation offering nationally-accredited qualifications for harness horse driving.

(d)

R. JAMES: *An invitation was sent in May 2010 by a director of the Salisbury Bursary Fund to meet the BDS chairman or a nominated member of BDS Council to discuss, among other subjects, the opportunity of further sponsorship of a BDS training activity. Neither the BDS Chairman nor a member of Council was available for a meeting until the autumn, a six months delay. As a result of this negative response a further request was made by SBF to discuss training sponsorship opportunities with the Chairman of the BDS Harness Horse Training Board. This was directly declined.*

Both these negative responses are a breach of article 3.1.13 of the Memorandum of Association and also article 3.2.3 "To take such steps as may seem expedient for the purpose of procuring contribution to the funds of the Association"

BDS COUNCIL'S RESPONSE:

The background to this is that Mr James, who is Secretary to the SBF, entered into an agreement on behalf of the SBF with the BDS, signed by the Chairman of BDS Finance Committee, which provided £16,030 funding for BDS Members over a three year period towards Assessment for the BDS Road Driving Safety Test. This meant that BDS Members could take the Test for £5. The BDS reciprocal contribution was £19,236. The BDS reciprocal contribution was sourced from the surplus generated from WATOs Assessments, most of which was received from non-BDS Members.

The SBF funding ended in April 2010, and Mr James wrote on 12th May to propose further SBF funding. Mr Parker replied by e-mail, offering to meet him and Richard Lanni to discuss the SBF proposals on 21st May, but Mr James declined to meet on this date. Mr Parker asked Mr James to provide a written outline of the SBF funding proposals for Council to consider. Council are still awaiting this. The next available period when Messrs. Parker, Lanni and James could all be together was in September, but Mr James replied that he did not want to wait that long.

Mr James then wrote to the Chairman of BDS Training Committee, Brian Ball, requesting a meeting to discuss SFB funding. The Chairman of Training Committee's written reply was that he was willing to take any SBF proposals put forward by Mr James to BDS Council for consideration. No proposal has been forthcoming and Mr James now claims that Mr Ball 'directly declined' his request.

The Vice Chairman, Mr Lanni, spoke specifically to Mr James about the SBF assisting with providing some development funding towards the BDS Qualifications and Training Programme, for which the BDS has already provided significant sums of money. Mr James declined to provide any SBF funding for this purpose. In his capacity as editor of Carriage Driving Magazine, Mr James has shown no interest in printing information about the BDS Education Programme, other than to promote the Road Driving Test part-funded by the SBF. What little he has printed has contained fundamental errors.

The BDS feel it is perfectly reasonable to request an outline of these funding proposals, and the expressed reluctance of Mr James to provide anything in writing, coupled with the benefit of hindsight, has resulted in the following areas of concern:

- From the outset, Mr James was negative in his attitude to providing information about the structure, remit and funding sources of the Salisbury Bursary Fund;
- we had expected to receive at least basic information once we had entered into the agreement with them, but to this day, we have no idea of how or where the SBF source their money nor what it is supposed to be used for
- We have no information about the remit or objectives of the SBF to fund projects
- It has become an area of increasing intrigue to the BDS that SBF money appears to be being used for projects which are difficult to identify with education, as implied by the term 'Bursary' in their title
- A bursary is normally defined as a scholarship, or payment of money, to enable individuals to pay for their education or training. It is therefore difficult for the BDS to understand how it is possible for SBF funds to be used to:
 - (a) provide 50% funding towards membership of the PCMA for the first 50 applicants, when the PCMA is quite clearly not an educational or training organisation
 - (b) Pay £1,000 sponsorship of classes at the BDS 2010 Towerlands Show, which is also clearly not an educational project.

R. JAMES: *These BDS Council deliberations do not respect or concur with the BDS Memorandum and Articles of Association which Council members were elected by Society members to administer. Directors' duties under the Companies Act 2006 require that directors should act in accordance with the company's constitution and exercise powers for their proper purpose (section 171).*

BDS COUNCIL'S RESPONSE:

It is Council's opinion that at all times they respect and concur with the BDS Memorandum and Articles of Association and that their response to Mr James' questions demonstrate that commitment.

Mr James' comment is provocative, profoundly inaccurate and unsubstantiated. He has been asked to present evidence to support his allegations but has failed to do so.

R. JAMES: Question:

Will the Chairman of Council give this Annual General Meeting his assurance that he will, as Chairman, ensure in the future that the business of the BDS is conducted within the parameters of the BDS Memorandum and Articles of Association as required by the Companies Act 2006?

BDS COUNCIL'S RESPONSE – The question resulting from Mr James' comments and concerns is directed solely at the Chairman. John Parker's response on behalf of Council is:

'I will continue to conduct BDS business as I have always conducted BDS business, which is properly, fairly, impartially and with the best interests of the Society, its Members, and British harness horse driving at heart'.

2. Financial Matters

R. JAMES: *Over the last three financial years to December 2009, the BDS Test and Training Committee (now reconstituted as the BDS Awards Board and BDS Harness Horse Training Board) have invested some £68K of member's funds (generated from trading surpluses) in training matters. There has been a small income stream over the same period of some £9K.*

BDS COUNCIL'S RESPONSE:

The £68K Mr James refers to represents part of the surplus generated from WATOs Assessments, which is currently £125,000. The WATOs surplus has been identified for the purposes of education and assessment for nationally-accredited qualifications. This follows negotiations between the

Chairman, Secretary of BDS Awards Board and HMCR VAT Officials when it was established that WATOs fees would be zero rated for VAT provided they were used for these educational purposes.

Since the exemption only applies to nationally accredited qualifications, our existing Preliminary, Intermediate, Advanced and Road Driving Tests would not have been eligible in their present format. It is obviously not feasible, or desirable, for the BDS to use this surplus to provide training only for horse transport qualifications. Therefore, it has been necessary to develop our other qualifications into the nationally-accredited framework, so that surpluses from WATOs and future Assessments can be used without VAT penalties.

The Chairman, Vice Chairman and Secretary to BDS Awards Board similarly negotiated an exemption from VAT for BDS Horse Passports. We are the only one of 84 VAT-eligible Horse Passport Issuing Organisations which has secured an exemption from VAT.

Question: (a)

R. JAMES: *What individuals, firms or organisations have in the main, been in receipt over the three year period of this sum of £68K and what was the nature of the services provided.*

BDS COUNCIL'S RESPONSE:

Test & Training Cost Summary

		2009	2008	2007
		£	£	£
Expenditure				
Stephanie Evans:	Hourly Rate	9,614	6,636	1,607
	Travel Expenses	4,056	3,889	332
	Accommodation	466	355	
	Office Expenses	2,163	3,080	179
	Venue Hire	713	829	
Linda Tate:	Verification Fee	1,392	866	
	Meeting Expenses	3,243	2,710	
	Unit Writing Expenses	213	52	
	Test & Assessment Fees (22 Assessors)	8,518		
	Test & Assessment Fees (27 Assessors)		7,700	
	Test & Assessment Fees (24 Assessors)			7,390
	Venue Hire	2,530	1,470	865
	Training Grants	400		525
	Assessors' Expenses	4,682	2,893	2,592
	Training Board & Committee Meeting Expenses	2,657	2,923	570
	Training Clinics Underwritten	1,101		
		£41,748	£33,403	£14,060
Income				
	Candidate Test and Assessment Fees	£ (6,817)	£ (7,144)	£ (7,052)
	Profit & Loss Account	£34,931	£26,259	£ 7,008

QUESTION (b)

R. JAMES: *What is the projected surplus or deficit to the training account for the current year ending December 2010?*

BDS COUNCIL'S RESPONSE:

The latest projected cost for Test & Training 2010 is £11,000.

QUESTION (c)

R. JAMES: *What is the 2011 budgeted income (or further investment) for the Test & Training account?*

BDS COUNCIL'S RESPONSE:

The budget for 2011 has not yet been established. The Finance Committee is planned to meet in mid November, as is usual, and their proposed budget will be presented at the next Council meeting .

QUESTION (d)

R. JAMES: *What is the projected surplus or deficit for the BDS Profit and Loss account for the financial year ending 31 December 2010?*

BDS COUNCIL'S RESPONSE:

The latest projected Profit & Loss Account for 2010 shows a Deficit of £20,891.