

# FINAL REPORT TO SOFTBALL IRELAND

INDEPENDENT PANEL: Alacoque McMenamín; Ann Murphy; Joseph Richardson

## Introduction

Softball Ireland approached the Independent Panel to help it investigate a dispute which had arisen regarding the management of the National Men's Slow Pitch team by Jonathan Spielberg and the conduct of the Softball Ireland Board in relation to the difficulties which arose from the management of that team.

In light of the problems thrown up by the dispute and the Softball Ireland Board, Softball Ireland asked the Panel to make recommendations regarding the governance deficits in Softball Ireland Constitution and Regulations.

The report will set out the following;

- An Executive Summary
- The process under which the dispute was handled
- The investigation report with recommendations regarding the resolution of the dispute
- Recommendations regarding the deficits in governance in Softball Ireland

## Executive Summary

### RECOMMENDATIONS

The Panel has taken into consideration the significant failures in governance and financial management which came to pass due to the unsound governance structure, the rushed planning of the National Men's Slow Pitch team trip to Europe, bad financial planning, and the personal assurances given; it recommends the following;

1. That Softball Ireland pay €344.94 to Anthony O'Grady,
2. That Jonathan Spielberg pay Softball Ireland an additional €643.34 to defray partially the balance of €1,250 on the loan,
3. That the remaining balance on the loan be absorbed as a loss by Softball Ireland.

## PART I

### INVESTIGATION AND FINDINGS

#### Process

The Panel met on foot of the referral from the Secretary of Softball Ireland. The original draft terms of reference were reviewed by the Panel in light of a file of information including the Constitution of Softball Ireland. The Panel

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found the terms of reference as drafted were not appropriate under the Constitution of Softball Ireland and proposed its own terms of reference to Softball Ireland and Jonathan Spielberg. Both Jonathan Spielberg and Softball Ireland agreed to proceed under the revised Terms of Reference.<sup>1</sup> The Terms of Reference insured that each party would be heard; each party could comment on the submissions of the other party; each party would be asked to review the Panel's draft report and correct any errors of fact; and each party would be asked to agree to the recommendations of the report.

The recommendations on governance would be issued in the same report by the Panel but without requiring the approval of the parties.

Each party was asked to furnish any and all documents which it felt were appropriate to the resolution of the dispute. The Panel ensured that each party had sight of all documents.

The Panel consulted the parties and determined that it could handle the matter with maximum efficiency and fairness by convening a meeting with both parties present.

On 14<sup>th</sup> January 2020 the Panel convened a meeting at the Dublin Dispute Resolution Centre, Distillery Building, Church Street, Dublin 7 at 18:00hrs. The meeting concluded at 20:15hrs. Anthony O'Grady, Colum Lavery, Conor Sayles, and Jonathan Spielberg attended

Each person who attended the meeting signed a confidentiality agreement which included the revised Terms of Reference. Each person understood that a report would issue to Softball Ireland which would contain recommendations on the resolution of the dispute but that the content of the meeting would be confidential and would not be disclosed in the report.

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<sup>1</sup> See Appendix I for the Terms of Reference.

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## INVESTIGATION REPORT

### Introduction

This section of the report will be divided in two sections; 1) the matter of the loan and; 2) the matter of the suspension.

### Slow Pitch Loan

The Panel determined that a loan of €2,000 issued on 22<sup>nd</sup> May 2018 to Jonathan Spielberg. The loan was issued to help fund the National Men's Slow Pitch team's entry to an European competition in Summer 2018. This was an unusually short lead in time to organise a team and to fund it. Jonathan Spielberg accepted the role of team manager on the basis that failure to send a team to compete in the competition would result in a two year ban from the same competition.

Normally a team would be gathered over a longer period which would permit fundraising, budgeting, organising of equipment, and travel. The rule in Softball Ireland is that teams self-fund via contributions from team members, sponsorship, and any funding given by Softball Ireland. In this case a small grant of €500 was made and was not refundable. It was not uncommon for Softball Ireland to offer a loan to a team to create a float from which the team could operate.

Jonathan Spielberg set about drafting a budget and estimating costings for the trip. It is accepted by both parties that the budgeting was undertaken and that the estimates of costs were not as accurate as might have been expected had more time been available to check assumptions and costs. The €500 grant was used to defray partially the costs of two members of the team. It is accepted by both parties that Softball Ireland did not monitor the management of the team budget before the competition.

The expectation of sponsorship was not great but the team expected a small amount of sponsorship from one equipment supplier by way of a reduced invoice. When the invoice from that supplier was presented it was found that the supplier had not reduced the cost on the invoice. The balance of the cost was borne by one team member, Anthony O'Grady, who recovered some of the extra cost from other team members. Anthony O'Grady has made an

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excess contribution of €344.94. This invoice and the loss of sponsorship only crystallised in April 2019 well after the competition had finished in 2018.

The Panel reviewed the statement of account produced by Jonathan Spielberg which had been submitted to it and Softball Ireland. Having worked through the figures, it was accepted by both parties that a loss of €1,489.95 was incurred by the team. It is accepted by the parties that no detailed examination of the team's accounts took place in 2018. The loss was not brought to the attention of the Softball Ireland Board in the period August 2018 to November 2019, despite the repeated requests of the Softball Ireland Board for a statement of account.

Jonathan Spielberg had made a commitment to repay the loan in October 2018 before the loss had crystallised. It is accepted by both parties that Jonathan Spielberg anticipated a small loss and, motivated by that realisation, agreed to cover the loan repayment and loss. Softball Ireland accepted Jonathan Spielberg's undertaking that he would repay the loan. It is accepted by both parties that, over the course of several months, the undertaking was relied upon by Softball Ireland. Relying on that undertaking the membership of Softball Ireland was informed, in error but at no fault of the Treasurer, at the Annual General meeting in 2018 that the loan had been repaid. However, on each occasion it sought to have repayment concluded, Jonathan Spielberg was unable to discharge the loan. He did make some payments such that the outstanding balance is €1,250.

As the scale of the loss became apparent, and due to other circumstances, Jonathan Spielberg was not able to repay the loan as he anticipated although there was one attempt to pay it in full which failed.

Relations deteriorated between members of the Softball Ireland Board and Jonathan Spielberg due to the failure to repay the loan as undertaken and the possibility of resolving the problem diminished to the point at which the Softball Ireland Board suspended Jonathan Spielberg. During this period intemperate statements were made by Jonathan Spielberg which were withdrawn. Members of the Softball Ireland Board made intemperate statements to Jonathan Spielberg which were acknowledged to be intemperate at the hearing.

Both parties agreed that the normal practice when a team made a loss was that the players paid the legitimate cost overruns. Softball Ireland

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acknowledged though that, at this remove, it would be unfair to seek reimbursement from the players. It also accepted that the loss, at this juncture, was not a major concern to it.

### **Findings Regarding the Loan**

The Panel finds that Jonathan Spielberg took on the management of the National Men's Slow Pitch team with the consent of the Softball Ireland Board and that, in doing so, both parties knew that the Softball Ireland Board avoided a possible difficulty, namely the loss of an opportunity to compete at European level if Softball Ireland had failed to field a team.

The Panel finds that the loan of €2,000 was issued to the management of Jonathan Spielberg without any provision for reporting or oversight by the Softball Ireland Board until after the completion of the competition.

The Panel finds that the budgeting and costings undertaken by Jonathan Spielberg did not accurately forecast the costs which were incurred which led to a loss of €1,489.95. The failure of budgeting stretched to a failure of sponsorship to materialise although this did not crystallise until well after the event in June 2019.

The Panel finds that when the sponsorship failed Anthony O'Grady made paid the relevant invoice in full and recouped some of the shortfall. He remains €344.94 out of pocket.

The Panel finds that the use of the non-refundable grant to defray partially the costs of two team members was unfair and not the best use of the funds.

The Panel finds that the Softball Ireland Board relied on undertakings from Jonathan Spielberg that the loan would be repaid and in doing so did not take disciplinary action against him until repeated requests to render an account proved fruitless. It did not follow its usual practice of requiring team members to cover any legitimate shortfall. But for the undertaking of Jonathan Spielberg to cover the loan repayment, the extent of the loss suffered by the Men's slow pitch team would have come to light sooner than it did.

The Panel finds that Jonathan Spielberg gave the undertaking to repay the loan when he believed that the loss incurred would be less than €500 but also in the knowledge that the budget and cost projections had not been, in retrospect,

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accurate. The Panel finds the funds were mismanaged and that the spending on uniforms appears excessive.

The Panel finds that Softball Ireland's way of doing business places great reliance on the project management skills of the manager who takes on a project, in this case, the National Men's Slow Pitch team. In the circumstances Jonathan Spielberg was placed at a personal risk which materialised when a loss occurred and which was compounded by his subsequent actions and the reactions of the Softball Ireland Board.

The Panel is conscious that, but for the fact that a loss occurred, the governance failures and personal mismanagement would not have been brought to light.

The Panel finds that there is an outstanding balance on the loan of €1,250 and that Jonathan Spielberg has already paid off €750 of the loan.

### **RECOMMENDATIONS**

The Panel has taken into consideration the significant failures in governance and financial management which came to pass due to the unsound governance structure, the rushed planning of the slow pitch team trip to Europe, bad financial planning, and the personal assurances given; it recommends the following;

1. That Softball Ireland pay €344.94 to Anthony O'Grady,
2. That Jonathan Spielberg pay Softball Ireland an additional €643.24 to defray partially the balance of €1,250 on the loan,
3. That the remaining balance on the loan be absorbed as a loss by Softball Ireland.

### **Suspension**

The Panel made an preliminary recommendation that the Constitution of Softball Ireland did not make provision for suspension for misfeasance in office by a Softball Ireland Board member and, on that basis it recommended the immediate lifting of the suspension of Jonathan Spielberg which had occurred before the rescheduled Annual Meeting.

Softball Ireland acceded to this recommendation and lifted the suspension of Jonathan Spielberg before the meeting. The Panel finds therefore that the

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matter of the suspension is moot and that neither further action nor a recommendation is required of it.

For the sake of completeness, the Panel heard submissions from both parties concerning the suspension and the effect it had on each side. The Panel wishes to record its thanks to both parties for their full engagement on this issue and believes that the meeting provided an opportunity to begin to repair relations.

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## PART II

### GOVERNANCE REVIEW AND RECOMMENDATIONS

#### **Introduction**

Within the context of an investigation of the conduct of members of Softball Ireland, Softball Ireland has asked the Panel to review its governance and to make recommendations for changes which are appropriate to Softball Ireland.

Softball Ireland is the National Governing Body (NGB) of Softball in Ireland and seeks to build a relationship with Sport Ireland as the State body which manages sport in Ireland. Softball Ireland has had contact with Sport Ireland and has been informed that it should seek to combine with the allied sport of Baseball because Sport Ireland wishes to reduce the numbers of NGBs and to increase the size of these bodies.

#### **Sport Ireland**

Sport Ireland has begun a strategy of raising the competency of the NGBs in governance and has adopted a Governance Code which applies to all NGBs which receive Sport Ireland funding. The Panel has framed its recommendations regarding governance reform within the context of that Governance Code.

#### **Governance Code**

Sport Ireland is the guardian of, operates and maintains, *The Governance Code, A Journey to Success – A Code of Practice for Good Governance in Community, Voluntary, and Charitable Organisations in Ireland* ( [www.governancecode.ie](http://www.governancecode.ie) ) hereafter “the Code.”

The Panel will frame its long term recommendations within the terms of this Code.

### **LONG TERM RECOMMENDATIONS**

#### **The Current Governance of Softball Ireland**



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Softball Ireland is governed by Constitution (2012) and Regulations. Annexed to the Constitution are detailed standing orders regarding the conduct of meeting and a detail explanation of the single transferable voting system.

The Panel has noted that the Constitution is deficient in several key aspects regarding the management of board members and the business of the organisation.

### **Softball Ireland within the Code**

The Code sets out three types of organisations; 1) Type A, run by volunteers with no employees; 2) Type B, employs a small staff; 3) Type C, so large that the board functions as a business management board.

Even with incorporation into a CLG, Softball Ireland would fall into Type A. The rest of this section of the report will address the issues raised under the recommendations for Type A under the Code.

## **MANAGEMENT OF THE ORGANISATION IN LIGHT OF THE CODE**

### **Principle 1 of the Code, Leading Our Organisation**

This recommends a written plan with a vision, mission and objectives which are reviewed on a triennial basis. It also recommends a written constitution. However since the Panel recommends incorporation as a CLG, the constitution will be a necessary element of the incorporation. There should be a workplan for the organisation, clear board member responsibilities, and reporting back to the board regularly so that progress on the plan can be monitored.

Volunteers who are not members of the board need to be managed with a clear volunteer policy to which they sign up.

### **Principle 2 of the Code, Exercising Control over Our Organisation**

This Principle recommends that organisation form itself with the appropriate structure.

Panel has noted that Softball Ireland is an unincorporated association. This is unusual for an NGB. Today most NGBs are Companies Limited by Guarantee (CLG). This provides a clear legal structure, with clear limitations on liability

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and clear responsibilities outlined for directors. It also creates clear accounting requirements and helps to meet modern governance standards.

The Panel recommends that Softball Ireland incorporate itself as a CLG. There is no requirement to seek charitable status especially given the size of the organisation. Charitable status would require Softball Ireland to submit itself to the dictates of another governance code as well.

Under this heading the Code recommends proper record keeping by the Secretary, compliance with the General Data Protection Regulation, child protection / safeguarding, proper budgeting, the terms of any grants received from public or private bodies, and proper financial management procedures.

Risk management is a crucial role for the NGB. It must address all the risks it can identify with appropriate measures where possible, avoiding or mitigating the risks as the case may be.

In broad terms the main risks for NGBs are; vetting of volunteers and safeguarding of children; records management; financial management or risk; insurance; and asset ownership, management, and registration.

The Panel recommends that all the issues raised here be addressed, especially those around financial control, record keeping, GDPR, and safeguarding. In many NGBs the culture is that of a sports club rather than a business managing an activity. The Panel recommends that Softball Ireland take stock of the situation, in light of the work which it has asked the Panel to undertake, and to think of itself as a professional body.

### **Principle 3 Being Transparent and Accountable**

Softball Ireland should ensure that it communicates with its members and stakeholders in as efficient a manner as possible. It is suggested that an annual activity report issue to each member with the Notice of the AGM.

Softball Ireland should ensure that it has an efficient way to communicate with all members.

### **Principle 4 Working Efficiently**

Softball Ireland should ensure that all its board members are aware of the terms of the Code. Board members should understand that they are required to act responsibly and independently, where appropriate, of any sector which

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they represent. Proper records and accounts must be kept. Meeting should be run in a business like fashion

The Panel recommends that each year at least one meeting is set aside to reflect on the previous year's practice at the board, to set out ways to improve practice and increase compliance with the Code.

The selection of board members is often a difficult area for NGBs, especially trying to insure the appropriate skills are present while seeking representation of all sectors.

Softball Ireland has detailed standing orders for its board and election processes. These should be retained and reviewed periodically.

### **Principle 5 Behaving with Integrity**

If Softball Ireland incorporates as an CLG, it will automatically place its board members under the code of conduct for directors which is set out by the Office of the Director of Corporate Enforcement.

The Panel understands that members act generally with integrity and in a disinterested fashion but recommends that Softball Ireland should develop policies on conflicts of interest, gifts, hospitality, travel, etc. as appropriate for board members, teams, etc.

The Panel recommends that the constitution of Softball Ireland make provision for a robust, simple, fair, and effective, disciplinary policy for the management of Softball Ireland.

### **Conclusion**

Softball Ireland should seek to have its Softball Ireland Board members familiarise themselves with the Code as a matter of urgency. The management of sport in general has become much more formal and regulated than heretofore and any failure to maintain appropriate governance standards places Softball Ireland at unnecessary risk.

## **RECOMMENDATIONS FOR IMMEDIATE ACTION**

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## Introduction

Having been called on to address a specific dispute which has occurred because of a deficit in governance at Softball Ireland, and because Softball Ireland has been forced to postpone its Annual Meeting on foot of the dispute, the Panel makes the following recommendations for the immediate attention of the Annual Meeting which is convened for February 2020. The following sections of the Constitution should be revised as follows;

- Article 1 permits schools to join Softball Ireland and Article 6 is silent on children as members. Softball Ireland as a matter of law must have the appropriate safeguarding policies and procedures in place at all levels of the organisation from the NGB to the teams. **This represents a serious risk for Softball Ireland which must be addressed without delay.**
- Article 7.1 of the Constitution should be revised to delete temporal restriction in the section. It might read “SI should normally hold.... unless the board shall determine otherwise and so advise the members.”
- Article 7.3.7 should make provision for the event of an Annual Meeting failing to reach a quorum. Either it should be postponed for a stated period and a reduced quorum specified such as 30%, or the quorum should be reduced to a level which will guarantee a quorate Annual Meeting such as 25%. As it stands Article 7.3.7 creates a difficulty without offering a solution should it occur.
- Article 9 does not limit the time people may hold positions or require a break in service of officers. It is suggested strongly that this is not good practice and that senior officers should hold their offices for a specified period after which they should step down. This is very difficult area in small organisations requiring volunteers to undertake roles, but the organisation should organise succession planning for senior officers as a matter of course.
- Article 9 does not specify the duties and rights of the President, Secretary-General, or Treasurer. It permits a conflict of interest for the Treasurer and Secretary-General. It is suggested that this matter be addressed by a declaration of a conflict of interest by each board member recorded in the minutes of the meeting at which any conflict arises. However in the matter of a decision relating to his own club, a treasurer or secretary-general should recuse himself from the relevant decision. It is suggested that the Treasurer be given explicit authority to demand a financial report from team managers within 8 weeks of a team competition concluding.

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- Article 10.3 should state that all powers not reserved to the Annual Meeting are reserved to the Board.
- Article 13 has no provision which covers complaints or disputes arising from the conduct of office holders or members as office holders or managers of the sport. This is a serious deficit which should be addressed. Softball Ireland needs to give itself the power to discipline and punish officeholders and managers who do not act appropriately.
  - It is recommended that the AGM address this by inserting a section in the Constitution which permits the Softball Ireland Board to form a sub-committee to hear and determine any complaint about the conduct of a member as an officeholder or manager. There should then be a right of appeal to a neutral third party whose determination would be final.
- Team finances should be monitored by Softball Ireland and loans offered to teams should only be paid down on vouched receipts or invoices. Rigorous budgeting should be required and a national policy on budgets developed.
- All foreign team trips or competitions should be reviewed within 2 months of completion with the team manager sending a financial account and review of general performance to the Softball Ireland Board.

### Conclusion

The Panel offers these Recommendations having reviewed the Constitution of Softball Ireland and being involved in resolving a dispute of foot of the governance deficits of Softball Ireland. The Panel re-emphasises that the issue of safeguarding of minors must be addressed as a matter of urgency.

The parties have read this report and are happy that it represents the facts as divulged at the hearing. The Panel is pleased to be able to offer this report to Softball Ireland as an unqualified report, each party having seen the relevant recommendations and agreed them.

Issued 28<sup>th</sup> January 2020

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### **APPENDIX I**

#### **Terms of Reference**

1. The Independent Panel will only accept appointment as an independent third party seeking to resolve this dispute in as amicable a fashion as is possible.
2. The Independent Panel will contact Mr. Spielberg to inform him of what is proposed and seek his co-operation.
3. The Independent Panel will review the file of documents provided by Softball Ireland and furnish Mr. Spielberg a copy of the file. It will request that he furnish any documents he cares to offer which bear on the matter.
4. The Independent Panel, having analysed the file(s), will draft an initial report on the matter which will set out the facts, in so far as they can be ascertained, and make recommendations.
5. It will invite Softball Ireland and Mr. Spielberg to make comments on the file and offer corrections of matters of fact.
6. The Independent Panel will then revise the initial report in light of any comments and then issue a draft final report which will include recommendations.
7. Thereafter the draft final report will issue to Softball Ireland and to Mr. Spielberg for final comments and acceptance by both parties.
8. The Independent Panel will then consider these comments and issue the final report. It is hoped that the final report will be issued with the consent of both parties. If however consent is not forthcoming, the report will be issued as a qualified final report.
9. Each side will be offered sufficient time at each stage to consider the report and to respond.
10. Any recommendations on governance will be issued independent of the parties in the report and the parties will not be invited to comment on them.

The Independent Panel believes that this process will conclude by the end of January 2020 and in that context the AGM, convened for 11<sup>th</sup> January should be postponed until early February.