



22 September 2022

Dear Nominet Board Director

**Supplementary Counsel's Opinion
Subscription Fees and Weighted Voting**

Following receipt of Iain Mitchell KC's Opinion of 24 August 2022, Dulwich Storage Company Limited requested a Supplementary Opinion, which was received late yesterday. A copy is attached.

Counsel was asked to consider the payment of membership subscriptions under the Nominet Articles. Counsel's analysis of the Articles is:

Without the promulgation of bye-laws and (after 6th July, 1998) confirmatory ballots achieving a 75% majority, there is no authority given to the Board to set subscriptions, and the purported subscription demands are clearly void, as being ultra vires.

He goes on to add:

I note also that article 19 clearly intended to make weighted voting interdependent with unequal subscriptions (putting it crudely: a member might pay more to get more voting power). It is difficult to see how these two issues can be disentangled, and a bye-law which gives weighted voting without addressing subscription levels is arguably ultra vires on that account. However, this may be a largely academic observation, given the advice which I gave in my previous Opinion.

Counsel concludes:

In these circumstances, there has been no basis within the terms of the articles for subscriptions to be set and collected from and after 31st August, 1997. It follows, therefore, that the subscriptions which were collected ought not to have been paid.

The potential financial exposure for the company to its members is very significant. Comfortably in the millions of pounds. The potential damage to the fabric of Nominet if things go down that path would be even greater. We believe this can and must be avoided if at all possible.

The interconnection in the Articles between subscriptions and weighted voting only adds strength to the previous Opinion, which concluded that Nominet's weighted voting was "clearly unlawful". The terminal issues with weighted voting cannot be ignored, with an AGM looming. They must be addressed now.

Invitation

Given the above and the potential catastrophic consequences for Nominet and individuals who have been running the company for many years, we would draw directors' attention to the Envoie to the Opinion.

Mr Mitchell KC encourages "*members come together to see if it is possible to find a consensual way out of the mess which has undoubtedly been created.*".

For a start, we suggest immediately postponing the AGM to give everyone some breathing space; and that, when it is rescheduled, it is a hybrid meeting with personal attendance allowed.

Each individual director has a legal duty to apply their own independent judgement at this critical time. We extend an invitation to each director and to the board as a whole to discuss these issues with us now.

Yours faithfully

Angus Hanton (Dulwich Storage Company Limited and Former Nominet Director)

Jim Davies (Former Nominet Director)

Mr C Davies (Nominet Member)

Michael Toth (Lively Limited)