

MWML Board, September 2021

Agenda item 6: Board and Company Secretary issues

Purpose of paper

1. This paper reports on developments since the last meeting including
 - Handover from previous Company Secretary
 - Companies House issues
 - Bank account: Board to confirm authority to open a new bank account in MWML name
 - Shareholders' register and database
 - Land Registry, Certificates of Confirmation and LPE1
 - MW website.

Handover from previous Company Secretary

2. On 29 July I received from Lees Buckley (LB), who had served as MWML's Company Secretary from 2010 to July 2021, a complete set of their paper records (eight large expanding files). The records of each share transfer and each Confirmation Statement during this period were immaculately kept. There were two problems:
 - 2.1. The records that LB had inherited from their various predecessors (1985-2010) were seriously defective. There was no list at all of the original shareholders (1984-90), let alone logged against the specific property they acquired, then a further gap 1990-94, and only partial lists of transfers from 1994-2010. The worst point is that there is no way, for this early period, of matching the property address, Land Registry holding and share certificate name and number. In some cases this is embarrassing since the original owner is still the current owner/resident.
 - 2.2. It is clear that since the outset of MW (1984) there has been no systematic effort to link the various processes involved in property transfer together, using the one immutable field (the 222 MW property addresses) as the single index key for everything else (shareholder name, Land Registry name, name for service charge purposes). See para [21] below for what I have begun to do to remedy this.
 - 2.3. Meanwhile, we owe a debt of gratitude to Lees Buckley's Vathsy Brainerd, who personally looked after the MW Company Secretaryship for 11 years, with consistent efficiency. I have drafted a letter of thanks to her, for the Chair's signature.

Companies House

3. One of the key functions of a Company Secretary is to deal with the legal requirements under company law, particularly in respect of Companies House (CH). Every registered company must submit annually to CH:
 - 3.1. its audited accounts for the previous FY;
 - 3.2. a Confirmation Statement setting out basic facts including the people who exercise control (the shareholders), and those who manage day to day affairs (the Directors).
4. For MWML the key dates are these:
 - 4.1. our **accounts** for the year ended 31 March must be:
 - prepared (by auditors Lees Buckley) and submitted to Quadrant: by mid August
 - scrutinised and then approved by the Board: September meeting
 - approved by the membership: October AGM submitted to CH: by end December (submitting accounts is free).
 - 4.2. our **Confirmation Statement** must be:
 - prepared in September
 - submitted to CH between 2 - 15 October (an annual fee is payable).

5. As for every company, the Directors' approval of the accounts is a key step and the Directors are expected to have scrutinised them closely before recommending that approval. Philip Gould has been reviewing the draft accounts in recent days and will speak to this item at the meeting.
6. Meanwhile the **Confirmation Statement** is also important, and I draw attention to two points:

A: Persons of Significant Control (PSC)

7. In 2016 the Government introduced statutory guidance requiring companies to report in their Confirmation Statement on all persons having "significant control" over the company. The simplest case is of an individual or institutional owner of 25% of the share capital, or having an ability in certain circumstances to direct the affairs of the company.
8. This raises the issue of **Wates Built Homes Ltd**, who own all 230 of the "B" shares of MWML. In certain circumstances (set out in the Articles of Association), "B" shares have full voting rights, and would outvote all 222 shares held by "A" shareholders (ie all MW property owners).
9. So: is Wates Built Homes Ltd a PSC, and should MWML declare accordingly to Companies House? The answer is no - but it is worth understanding in depth why not.
 - 9.1. First, although Wates own 230 shares to "our" 222, ie 51%, they do not own that proportion of the share capital. Each "B" share has a face value of 5p but each "A" share is worth £5.00, so the 230 "B" shares are worth only 1% of the total share capital.
 - 9.2. Second, although the "B" shares carry full voting rights, they would only be able to vote on certain extreme propositions in extreme circumstances, set out in the Articles 4, 5 and 10. These specify that Wates as the only holder of "B" shares may only vote on resolutions which would (i) increase or reduce the share capital, (ii) alter the rights conferred by any class of shares, (iii) alter the Memorandum or Articles, or (iv) sell or wind up the Company. Finally, they would have an emergency power to appoint Directors if all the present Directors resigned without appointing successors.
 - 9.3. This gives Wates a permanent veto on proposals to alter fundamentally the nature of MWML and the Estate. Under the Statutory Guidance, the right to impose such a veto is not defined as exercising significant control over the **normal functioning** of the company, and therefore it can be ignored for CH returns. Thus we have been right ever since 2016 to submit returns saying that MWML has "no person with significant control".
 - 9.4. However this veto does exist, and its impact is not trivial: **as owners and shareholders we have effectively no ability to change the Articles of Association**. On his last day as MWML chairman, Julian Reid proposed a resolution to the October 2004 AGM, which was passed by a clear majority, to change the Articles (to impose a limit on new expenditure per MW property without prior majority consent). This amendment was struck down some months later, on intervention by our own professional adviser, being (1) in breach of the Articles, (2) unnecessary since there are statutory limitations on spend per property and (3) because Wates had not been informed and invited to the meeting. The Articles were left unaltered!
 - 9.5. Nor could they be altered in future, because Wates would have to be informed of any meeting where such a resolution was to be voted on, and they would be bound to use their voting power to strike down any fundamental breach of the original Articles.
 - 9.6. This point is relevant to any proposal to change the covenants which bind the Estate. The covenants are not merely contained in the original leases but also in the Articles of Association. Wates would be bound to outvote any proposals which weakened the covenants. We will come back to this point in the separate agenda item on the covenants.

B: Shareholders' Register and database

10. The second point is the need, in our CH Confirmation Statement, to submit an accurate list of our 222 "A" shareholders (and our single "B" shareholder owning 230 shares). Whereas all other elements of the Confirmation Statement can be entered on paper in a few minutes, entering the 222 "A" shareholders takes longer, as each share may be held by a complex joint ownership running to two or even three lines of text. Re-typing that annually, and formatting for printing to the requisite paper form, would be challenging and time consuming. Thus it is preferable to file online. It is also significantly cheaper (£13 as opposed to £50).
11. This kind of data is much better stored, retrieved and amended using a relational database rather than a series of spreadsheets. Because such a database can have a very simple user interface, it will be easier for someone else (in succession to me) to administer and maintain it. The third point is that only through a relational database can an array of different types of document – for example, scans of a signed share certificate and a Land Registry title deed and/or lease/transfer document – be pulled up instantly, within a single query form of the database.
12. I have therefore developed a Microsoft Access database with shareholders' names. Its core field will be simply the 222 property addresses. Against these will appear all that we need to know:
 - 12.1. property address
 - 12.2. shareholder (with date of acquisition, and from whom transferred)
 - 12.3. LR registered Proprietor (with title number, tenure, and date of acquisition)
 - 12.4. Quadrant reference for service charge purposes.
 - 12.5. This will serve several useful purposes, including those mentioned later in this paper.

Bank account: request for Board authority

13. The above reference to paying for CH services highlights both a need and an opportunity.
14. The **need** is that as Board and Company Secretary I incur necessary small expenses (stationery, photocopying, postage, software, LR fees, CH fees) which must be defrayed instantly, often by bank transfer or card. There is not time to go to Quadrant for the small funds required.
15. The **opportunity** is that such expenses can be more than covered by levying small charges (smaller than charged by previous Company Secretaries) for share transfers, approval of Transfer documents, LPE1 etc, and taking these directly into a new account in the name of MWML itself.
16. A further benefit is that since Quadrant is registered for VAT, whereas MWML is not. The income derived from charges (mostly payable by our own residents and shareholders – as are the charges for daily parking permits) would in any case not be subject to VAT. Thus we can further reduce by 20% the end costs to shareholders of these aspects of each property transfer.
17. This income and expenditure would be handled directly by me for the Board via a new online bank account with Virgin Bank, of which a Director (Sarah Johnson) will be co-signatory, alongside myself as Company Secretary. The amounts handled will be very small, perhaps under £5k annually, but I will provide the Board with a financial report regularly (say twice a year).
18. The Board could also draw on this account for small expenditure where using service charge funds might not be thought appropriate – for example, compassionate gifts.

Shareholders' register

19. As noted above we must submit annually to CH an accurate register of shareholders. There is much more to it than this though. For MWML, keeping an extremely accurate register of shareholders is essential to enforcing the mutual covenants. If there is not an exact match between the shareholder name and the name of the property owner as recorded at the Land Registry, we risk not being able to enforce the covenants in cases of dispute and/or litigation. Where a mismatch has persisted for years, which the company knew (or could or should have

known) about, a court might well find against us in attempting to enforce a covenant.

Land Registry, LPE1 responses and Certificates of Confirmation

20. Unfortunately, as noted at para 2.2 above, there has been no systematic effort to match the shareholdings to the Land Registry names. Currently I am aware of six cases where no surname matches. This is supposed to be impossible but there are several known cases, as yet unresolved, which have persisted for a decade or more.
21. Worse, this is still continuing; in the case of a property (29e Thorney Crescent) transferred in Oct 2020, the purchaser's solicitors were able to register the transfer at Land Registry because MWML's solicitor (Volks Hedleys) had issued a Certificate of Compliance, but no-one contacted the Company Secretary, so no process to transfer the share was initiated, let alone completed.
22. The reason for these problems is obvious, and so is the solution. The errors occur because the process of approving the transfer from one MW owner to another is discontinuous. The separate elements (LPE1 currently responded to by Quadrant; Certificate of Compliance application handled by Volks Hedleys; and transfer of shares handled by the Company Secretary) are not linked together.
23. Apart from causing the risks set out above (which are serious for MWML), the complexity of the process makes it slow and expensive (costing over £1,000 + VAT), whereas something around half that should be sufficient for the work involved.
24. I intend, for the next one year, to trial a process whereby the Company Secretary becomes the hub for the entire process, responding to LPE1 enquiries myself, checking the Land Registry transfer for compliance, and issuing the new share certificate. By tracking everything within a single database focused on matching names, with alerts set to notify any mismatches, the system should become much tighter. Since there are seldom even six transfers per year, this should not prove overly onerous. It will take much less time than chasing after past errors.

MW website

25. Finally, we have need of a secure way of sharing confidential documents amongst Board members (examples being the agenda and papers for this meeting). Currently, Directors receive all Board papers to their private email, which is not very secure – nor is it convenient for subsequent reference.
26. We also need a means of sharing non-confidential reference documents amongst ordinary residents (examples being the already-issued notification for the forthcoming AGM; then later the papers for that meeting; and soon after that, the minutes of it).
27. The normal way to do this is to hold documents in a shared storage drive to which access is limited to those who need to see them. Then access to the shared drive is launched from a website with different levels of login and password credentials, appropriate to the sensitivity of the documents. (None of this prevents also circulating papers in hard copy for convenience.)
28. This is what I have set up on a trial basis at www.morganswalk.online. I will demonstrate at the meeting (a) how every **owner** can access documents which they are all entitled to see but which must not be visible to every internet user worldwide; and (b) how each **Director** can log in and see in addition another set of documents which are for their eyes only.

Michael Stark
Board and Company Secretary
31 August 2021