

PAB Purpose – Executive input into PAB’s debate

We have looked through the report from the PAB subcommittee meeting held on 25 April 2002 entitled "The PAB, our Purpose and Future", and notes of the PAB meeting held in June 2002.

From our point of view, a number of issues remain to be resolved before we can produce a revision of the PAB Rules and formalise the procedures.

These issues are summarised below:

1. Role of PAB members.

According to the PAB Purpose paper, PAB members "are not intended to represent any particular interest", and "Should not be considered to be representing particular groups of interest but should be seen as a think tank".

Whilst the 'think tank' phrase is helpful, we disagree with the view regarding representation, for the following reasons:

Nominet describes the PAB as its vehicle for stakeholder consultation. Whilst it seems sensible that PAB members (particularly appointees) should not be taken to bind the organisation they represent, all appointed or elected PAB members are there to represent a particular stakeholder viewpoint, and should be expected to be responsive and communicate with their constituents. Otherwise, the PAB cannot properly function as a vehicle of stakeholder consultation.

2. Role of CoM members.

According to the PAB Purpose paper, the CoM members are seen as "wise men". However, neither the paper nor the current PAB Rules fully cover the role of the non-executive directors as PAB members.

We would propose the following for discussion:

CoM members on the PAB are there primarily to communicate the views of the PAB to the CoM and vice-versa. They will also contribute their own views or perspectives to the PAB in the light of their own business and other experience. CoM members are appointed by the CoM on an annual basis, unless otherwise necessary, for example as a result of retiring from the CoM.

3. Appointed members.

The PAB Purpose paper calls for an increase in the numbers of appointed representatives from 5 to 8. We agree with this proposal.

Both the current Rules and the PAB's draft rules allow for an annual review of the appointed members. We support this continued arrangement but believe it

should be formalised in the Rules that the tenure of appointed members is one year.

If the balance of the PAB is altered by increasing the number of appointed organisations, then Nominet should ensure that these representatives are kept fresh and relevant, otherwise the PAB may have a tendency to become inflexible.

We therefore recommend that the PAB look at formalising the mechanisms for selecting and reviewing the appointed organisations. In particular, we suggest that the following issues be addressed with regard to appointed organisations:

3.1 If the PAB feels that a particular organisation should continue to be represented, but not by the current individual representative (eg, if they do not attend meetings, or do not consult with the organisation they represent) it is not currently clear whether the PAB can recommend to the organisation that their representative changes, or whether that is solely a matter for the organisation. We recommend that there be a mechanism for the PAB to request that the representative of an appointed organisation be changed

3.2 Although the current PAB Rules contain a right for the PAB to review annually the continued involvement of appointed organisations, we recommend that a mechanism should be developed for changing the organisations that have appointed members to reflect changes in the make-up of internet community stakeholders.

3.3 Given that the internet industry stakeholders should be fully represented via the elected members, we recommend an express statement to the effect that appointed members should be from outside of the internet industry.

4. PAB Elections.

In previous PAB elections, the Company Secretary of Nominet, and not the PAB chair, has called for candidates. In practice, we have insisted that candidates are proposed, seconded, confirm their willingness to act and produce a short election statement. This is actually more than the current written rules require. We recommend the following procedure :

- PAB Chair calls for nominations from the membership, candidates must be members of Nominet
- Nominations are formally made to the Company Secretary with a member proposer and a member seconder
- Candidate confirms willingness to act to the Company secretary
- Candidate produces written election statement (250 word limit) to the Company Secretary.

We recommend that one-member-one-vote be retained for PAB elections.

5. Conduct of PAB members

PAB members currently have access to confidential and legally privileged information. At present there is no express agreement to regulate this, and we recommend that this is addressed. Should there be a contract, or should this be in the publicly available PAB rules? We recommend that whether the vehicle is the PAB rules or a contract, that the terms be published on Nominet's web site for greater transparency, particularly for potential candidates for election.

There is currently no mechanism to deal with conflicts of interest (whether real or perceived) and we recommend that a suitable, but flexible, mechanism for declaring interests be added to the PAB rules

6. Nominet's obligation to consult

There has been some debate regarding whether the creation and operation of the PAB satisfies Nominet's obligations to consult and whether consultation with the PAB replaces Nominet's obligations to consult with the Steering Committee in the Articles. In reality, this will often depend on the issue or decision in question. Whilst this issue is a matter for the CoM to determine, either generally or on a case by case basis, we recommend that some guidance on this issue be set out in the PAB Rules.

7. Definition of Policy

Policy was defined first by the subcommittee as "everything that is not operational". In the full PAB meeting, this was amended to "policy includes: Rules, Pricing, Changes of governance, Interaction with stakeholder groups and other issues that the CoM refers to the PAB"

It seems that any definition of policy will be problematic. We recommend that the definition of policy be expanded to a definition of the PAB's role, as follows:

"The PAB's role includes: proposing changes or reviewing and providing feedback on proposed changes in Nominet's standard contracts, rules, procedures, governance, voting arrangements or pricing; reviewing current or intended policy changes within Nominet; providing feedback from Nominet members and/or stakeholders on any issue; providing feedback on Nominet initiatives whether derived from the Executive, the CoM, stakeholders, the PAB or anyone else; raising issues of concern to the UK internet community in connection with Nominet; considering and voting on matters referred to it in accordance with the PAB Rules or any other rules, or procedures currently in force.

"In general, the PAB should make recommendations on issues of policy rather than operational or strategic issues, and individual members should seek the views of the organisations or members that they represent."

8. Reporting

The PAB Purpose paper proposed that the current arrangement whereby informal "notes" are produced is replaced with formal minutes, which are approved at the next meeting. We support this idea, but as the minutes will be published on Nominet's web site we recommend adding the ability to exclude sensitive, confidential or privileged information from PAB minutes.

In an attempt to increase the transparency of how the PAB works, we would like to publish a blueprint for the progress of PAB papers from origination to member consultation. This would include timescales for the publication of papers etc as well as the necessity for each set of PAB minutes to be brought before the relevant CoM Meeting.

The PAB has also agreed to drop the communiqué from the PAB chair and replace this with a NOM-ANNOUNCE drawing members' attention to the publication of the minutes.

We recommend that author of all papers and Agenda items is formally recorded.

9. Minor issues

- Proxies. The PAB Purpose paper states "the PAB may wish to consider if the issue of proxy votes at PAB meeting should be included in the PAB Rules". We recommend the following:
 - Proxies should not be free to vote however they feel on the day, but should vote in a predetermined way. Otherwise, this could give rise to capture of the PAB process by means of the proxy mechanism by effectively giving a single attendee more than one vote.
 - Non-attendees can put in a statement of their views instead, as formal votes on the PAB are rare.
- PAB recommendations are made to the CoM, and that is it!
- Whilst PAB rules are stated to be bye-laws, we do not believe this to be correct, as Article 51 which sets out an exhaustive list of bye-laws, does not include them. We advise that the PAB Rules are just rules, which can be changed flexibly in consultation with the PAB, subject to approval by the CoM.