



Southampton Voluntary Services

Factsheet : Constitutions

1: Introduction

A Constitution is the usual form of governing document adopted by unincorporated associations i.e. smaller voluntary and community groups where people come together as a group working to mutually agreed aims but which are not incorporated as a legal entity such as a registered company.

Where a voluntary organisation wishes, or is required, to register as a charity it must have a governing document that sets out the charity's purposes and how it is to be administered but there are a number of forms that this might take including a Constitution, Trust Deed, Memorandum and Articles of Association, Royal Charter and further guidance on these are available on the Charity Commission (CC) website and publication CC22 Choosing and Preparing a Governing Document.

This fact sheet uses the term charity and trustees but it can be used by any unincorporated association and its committee for guidance. Charity trustees are the people who under the governing document are held responsible for the control and management of the charity, its activities and finances including legal obligations and liabilities. They may be called the Trustees, Committee members, Executive, Directors, governors or other similar title. Some charities also have Custodian or Holding trustees whose role is restricted to holding the property of the charity and who act on the lawful instructions of the trustees.

2: What is a Constitution?

The Constitution is a formal document that sets out the purpose of and rules for governing an organisation. Some rules are determined by a group's legal structure and whether it wishes or is required to acquire charity status. Others will depend on how it wants to manage its own affairs, and is necessary for the following:

- To ensure an organisation's aims are clear and agreed by its members.
- To provide mechanisms for making decision and resolving disputes.
- To clarify liability and lines of responsibility, and in some cases reduce the personal financial risk of the committee.
- To gain credibility with funders and other stakeholders.
- To ensure accountability.
- To enable an organisation to affiliate to umbrella groups like Southampton Voluntary Services (the local Council for Voluntary Service) or other second tier organisation.

3: A Model Constitution

The Charity Commission recommend that a Constitution contain the following elements and section headings –

3.1 Name- A constitution should start with the name of the organisation.

Choose your own to give your group a clear identity and perhaps reflect the area or field of work in which you will operate. It would be advisable to check if there are any other groups using a similar name in order to avoid confusing the public and Southampton Voluntary Services (your local Council of Voluntary Service) will be able to advise you on any groups with similar names or ideas in order to help avoid duplication. It is advisable to include a simple power to change the name with CC approval if needed in the future.

3.2 Objects and beneficiaries- These set out what the organisation is set up to do and for whom. Organisations may have more than one object. Try to describe these clearly and unambiguously. The beneficiaries are the people the group is set up to work with and for. If it is to benefit a particular section of the public rather than the public as a whole it must make this clear in the objects clause eg for a particular age or ethnic group. The same applies if the organisation is to benefit a confined geographical area which is called the area of benefit eg Southampton or Millbrook . For registered charities all objects must be exclusively charitable for the public benefit. Examples of object clauses can be found on the CC website.

3.3 Powers - These are permissive clauses which cover what a group can do to achieve its aims and allow it to undertake necessary activities to achieve this. Trustees will need some powers, which they can use to help them carry out the objects of the charity. E.g. the power to employ and pay staff, own land or property, and borrow and raise money. Try to think broadly what powers may be needed now, and into the future, and included them to avoid having to alter the Constitution in the future. A useful power is the power to make such rules as may be necessary for the proper administration of the charity. It is important to include a power to amend the objects in case this is needed in the future and a power of dissolution. If a charity wants to remunerate its committee members, whether in cash or kind, it must include this power in its constitution. It is important that the powers are not confused with the objects as they are not charitable in themselves. The powers are usually, therefore, set out in a separate clause immediately following the objects clause.

3.4 Charity Trustees- The governing document must make it clear how many charity trustees there are to be and how they are to be appointed. It is for the organisation to decide the number of trustees needed. Charities usually have a minimum of 3 trustees and most find that between 3- 9 is adequate, although obviously larger organisations may find they need more.

The governing document should also state for how many years the charity trustees are appointed to hold office. Trustees are usually only re-appointed if those who can appoint them are satisfied that they remain the best-equipped people to take the charity forward. Often this is done on a cyclical rotation of 1/3 rd of trustees being eligible to be re-appointed or re elected every 3 years. This builds in a level of refresh and renewal of the committee which avoids 'old guard syndrome' where the same few people stay on for long periods without enabling new ideas or enthusiasm to come forward.

3.5 Meetings- The constitution must provide a basic administrative framework, which should be clearly stated. These provisions should cover:

- The minimum number of trustees meetings that the charity trustees should have each year in addition to the holding of an Annual General Meeting (AGM).
- How Emergency or special general meetings are called to discuss a particular matter.
- How all meetings of the charity are to be arranged
- The manner and period of notices to be given to call a meeting
- How a chair is to be appointed
- The chair's right to second or casting vote when the numbers of charity trustees voting for and against a resolution are equal
- The number of charity trustees or members who need to be present if a meeting is to be valid, i.e. the number needed for a quorum
- The taking of minutes and voting methods

It is good practice for an organisation to have at least one formal meeting of all members each year. Annual General Meetings (AGMs) are a legal requirement for charitable companies. The constitution will dictate some of the content of the AGM the first of which should normally be held within 15 months of the formation or inaugural general meeting, for example:

- Approving the minutes of the previous AGM,
- Receiving the accounts,
- Receiving a report from the committee on the activities of the organisation,
- Appointing auditors if necessary,
- Electing committee members and officers,
- Approving any changes to the constitution and considering any resolutions put forward.

3.6 Membership- Organisations, which have a constitution or memorandum and articles of association, have a membership. These documents should set out who can be a member. It may consist of interested individuals only, or interested individuals and organisations or there may be different categories of membership which should be defined in terms of eligibility criteria e.g. Full, Associate or Junior.

The Constitution should also set out:

- whether any subscription is payable,
- how people apply for membership and the criteria for acceptance or process for appeal if rejected
- what rights members have to stand for election or make nominations.
- whether members will have any voting rights,
- how membership may be terminated

It is important that it is made clear to members that they must exercise their membership rights only in the interests of the charity, and not for any private interest they may have. Membership could be terminated by written resignation, if fees or monies due are not paid within a stated period, by absence over a stated period or if trustees deem it is in the best interests of the organisation. In the latter case good practice is that individual or organisational membership should only be terminated for good and sufficient reason and if

the individual or organisation concerned has normally had the right to be heard, accompanied by a friend if necessary, before a final decision is taken.

3.7 Accounts- All voluntary groups should keep accurate financial records and produce a statement of annual accounts. This is good practice in terms of transparency and public accountability by the trustees by keeping members and funders informed. Charities must comply with accounting requirements of the Charities Act 1993 and 2006 including keeping records, preparing annual statements of accounts, preparation and submission of the CC annual return.

The constitution should lay down the basic procedures for financial management and control including that any funds raised must be used only for the organisation and its (charitable) objects.

There should also be clauses:

- Giving the committee or general meeting the right to determine the financial year,
- Specify that the management committee can decide rules relating to signatories
- Stating that the accounts must be audited or examined in accordance with legal requirements.

The auditors are generally formally elected at the AGM. They have the right to see financial records, the minutes of meetings and bank statements, and should also be given the right to be notified of any general meeting.

3.8 Bank Accounts- It is recommended that all governing documents provide for the setting up of bank or building society accounts as necessary, and make adequate provision of the control of such accounts, including authority for signing cheques (with good practice normally requiring authorisations by any 2 of the authorised signatories). All bank accounts must be in the name of the charity, not of individuals, and should include its CC registration number.

3.9 Charity Trustees- should not have a personal interest all constitutions should contain a clause reminding trustees that it is a legal principle that charity trustees must not benefit personally from their positions as a trustee nor be placed in a position where any personal interest might conflict with their duties as a trustee or be seen to do so. Any potential conflicts of interest should be declared and the trustee should withdraw from any decisions making in respect of that issue.

3.10 Holding of Land and investments- Where a charity needs to appoint Custodian or Holding trustee(s) to hold land or investments on its behalf the Constitutions should make provision for these appointments. Where this is likely to be the case it may be appropriate to consider an incorporated legal structure for the organisation which will allow it to act as a legal entity in its own right.

3.11 Power of Investment- Where an organisation intends to rely on the statutory power of investment contained in the Trustees act 2000 it is not necessary to include provision in the Constitution of these powers.

3.12 Power of Amendment- It is important to include a procedure by which amendments can be made to meet future needs. Where there is no amendment provision in a charity constitution it can be a complex process to do so.

The options to do so being:

- A unanimous resolution of all the members can be passed agreeing the amendments
- If there is a dissolution provision the charity can be dissolved and a new one setup with an amended updated constitution and to which the remaining charity assets of the dissolved charity can be transferred. This requires CC consent first and will result in having a new charity registration number and new bank accounts etc.
- Trustees may use the new statutory power of amendment introduced by the Charities Act 2006 to amend the charities administrative but CC guidance should be sought on this. provision

For charities, Charity Commission prior consent is usually required for changes to alter or include any of the following provisions:

- The objects provision
- The amendment provision
- The dissolution provision
- Any provision authorising benefits to trustees eg remuneration or indemnity insurance
- Widening trustees investment powers to eliminate a specific restriction or prohibition
- Expenditure of a permanent endowment.

For an unincorporated non charitable organisation the constitution could be amended by a (specified) majority decision of the members at a duly convened quorate AGM or EGM.

3.14 Power of Dissolution- The dissolution or termination clause describes the procedures for winding up an organisation. The power to decide such a move usually rests with members of the organisation at a general meeting. It should state how any remaining assets, after debts and liabilities are met, are to be dealt with. Any remaining assets should be transferred to an organisation with similar objectives and in the case of charities to another charity with charitable purposes consistent with its own objects.

3.15 Other suggestions - in addition to the above sections which are mostly requirements for charitable registration other provisions which you may wish to consider including are:

- Provision for holding land, investments and assets
- Investment powers
- Provision of financial benefits
- Provision for the resolutions of disputes between members, beneficiaries and trustees. It is sensible for all organisations to include some provision for clarifying processes to deal with this eventuality.

Lastly for adopting a new constitution there should be a covering statement specifying at what meeting, on what date and by whom the Constitution was adopted with signatures of those present and doing so who will act as the first committee and charity trustees. It is sensible to have an amendment and update sheet to note any future changes chronologically.

Copies of the constitution should be available for members to inspect or have on request. Trustees should be given a copy of the Constitution on their appointment as part of their

induction and information pack. It should be reviewed periodically by them to ensure ongoing their compliance and its relevance to current and possible future work.

4: Further Help

Model constitutions are available for unincorporated associations or as a company limited by guarantee on the Charity Commission website www.charity-commission.gov.uk.

The Charity Law Association has models available on disc or hard copy at a charge for charitable companies, charitable trusts and charitable associations on Charitylaw@aol.com

SVS can give broad guidance on appropriate legal structures and help guide you in drafting or revising your constitution. See our website: www.southamptonvs.org.uk or contact SVS Tel: 023 8022 8291 or E-mail: information@southamptonvs.org.uk

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