



**A GUIDE TO
WRITING A
CONSTITUTION
FOR AN UNINCORPORATED
ORGANISATION**

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SUMMARY

Do not use this model if you are setting up a:

- **Charity**
- **Charitable Trust**
- **Company Limited by Guarantee**
- **Company Limited by Shares**
- **Community Interest Company**
- **Industrial & Provident Society**

There are specific models for each of these. Contact Links for details.

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Disclaimer: this model constitution should be adapted and made relevant to your organisation. Reasonable efforts are made to keep the information up to date and correct, but no warranties are given and no responsibility for its suitability, accuracy or correctness, or for any consequences of relying on it, is assumed by Links. *This version amended February 2011.*

Every voluntary and community group should have an up to date, adopted constitution – sometimes referred to as the governing document. Remember that there are different models for charities, companies and other forms of organisations listed at the front of this booklet. Only use this guide for unincorporated non-charitable associations.

An **unincorporated association** might be called a group, club, society, organisation, project, social enterprise, self-help group, centre, federation, or just the name of the group e.g. “Dynamo”. “An association has been defined in law as ‘two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and on what terms, and which can be joined or left at will’. These rules, often embodied in a **constitution**, create a contract between the members which can be enforced in the courts.” (*The Russell-Cooke Voluntary Sector Legal Handbook 3rd edition, James Sinclair Taylor and others, Directory of Social Change 2009 p.23*).

A constitution should:

- Ensure that a group’s aims are clear and agreed
- Describe the geographical or topic area
- Indicate how decisions are made and disputes resolved
- Show how the committee and officers are appointed
- Say how the constitution can be amended
- Describe how the group should wind up and what happens to its assets

It is always useful to review a constitution from time to time particularly to ensure that the description of aims and geographical/topic coverage is up to date. It is important not to put too much detail in a constitution e.g. day of the week for meetings or codes of conduct. These may change frequently and are best included in a separate document e.g. club rules or code of conduct. Constitutions will be requested by funders and should be available to all members of the association. The following example shows a number of clauses which could be in a constitution with comments about each clause.

NOTES

1) Name

When choosing a name for the group, try to avoid one that is misleading or sounds too similar to a group that already exists. It may help if a geographical area (town, village, district, estate) can be included in the name e.g. “*Chesterfield Over 50’s Group*”.

2) Aims or Objects

These are the overall purposes for which an organisation is set up, whom it is intended to benefit and what geographical area it covers (area of benefit). It is better to be as broad as possible in the description of the aims so that the group does not stray away from its purposes when it does something new. Examples of aims might be:

- a) to provide a forum for people aged over 50 living or working in Chesterfield;
- b) to improve social contacts by organising outings and events for members;
- c) to improve the quality of life for members by campaigning at local, regional and national level on relevant issues.

In this example, point c) might not be an immediate or initial aim but an issue may arise in the future on which the group wants to mount a campaign and it might be difficult to do this without having it as a stated aim. It would also be difficult to raise funds for the campaign without it being a specific aim of the group. Stating that the group may wish to campaign at a national level gives more scope for the type of issues which can be dealt with and for points to be put to central government as well as local councils etc.

CONSTITUTION

1. Name

The name of the group shall be.....

2. Aims

The aims of the group shall be:

- a).....
- b).....
- c).....

etc

3) Powers

A voluntary organisation only has the right to carry out activities directly related to its aims e.g. it can only fundraise to support its aims. Doing something outside the organisation's powers (*ultra vires*) could incur a legal penalty and might mean personal liability for the people who acted or gave authorisation. Liability might mean individuals being sued with the risk of financial penalties but could also mean being liable for a criminal charge.

Powers should be drafted as widely as possible to cover future actions.

- a) This wording should be adequate for different ways of attracting funds to the group
- b) It is better to include the power to employ even if there is no immediate intention to have staff - agents includes freelancers or other organisations
- c) Include this clause to cover all hiring, renting or buying property or equipment which includes vehicles
- d) Could be excluded but useful to have for clarification and avoidance of vicarious liability (responsibility for the acts of others)
- e) This clause is **essential** to cover all lawful acts the group may carry out in addition to the ones listed above.

3. Powers

The group shall have the following powers to:

- a) raise funds and apply for, invite, obtain, collect and receive contributions, grants, subscriptions, fees & loans
- b) employ any paid worker or pay any agent to assist in the achievement of the aims of the group
- c) hire, rent, lease and own property and equipment necessary to achieve the aims
- d) affiliate to any local or national group or association that the Management Committee decides is appropriate and disaffiliate from any group or organisation if continued affiliation be, in the Management Committee's view, against the interests of the group
- e) do all such other lawful things as are necessary to achieve the above aims or any of them

4) Membership

Not all groups have members e.g. a closed self-help group of ten people formed to support each other or three people who have agreed to run a social enterprise jointly. These will still need a set of rules (or constitution) to clarify what happens if someone leaves and who is responsible for what.

If the organisation has a membership, the constitution should set out the requirements for membership, including eligibility, rights and benefits of membership, any right of members to resign, and any right of the organisation to terminate membership. Different classes of membership may be stated e.g. full or associate, senior and junior, individual and organisational. It is important that the constitution sets out a process for applying for membership (verbal or written), how applications are approved (or not approved) and any rights of appeal. The process for terminating (stopping) membership should also be laid out again with rights of appeal.

- a) Be specific here e.g. *organisations in Chesterfield who work with people over the age of 50 and people over the age of 50 who live or work in Chesterfield*. These might be the “full” members.
- b) These could be the “associate” members e.g. *friends and family of full members or organisations who support the aims of the group*. Either way, state the criteria or it will be difficult to refuse or terminate membership. You might want friends and family of the over 50’s to be able to go on trips but not to stand for election to the committee.
- c) It is important to state which members have a vote - e.g. only full members - and which can stand for election. Organisational members should only have one vote per organisation.
- d) This clause is necessary to deal with people who could upset the lawful activities of the group or bring it into disrepute. Members must be given a fair hearing or it may be possible for them to mount a legal challenge.

4. Membership

- a) Membership of the group shall be open to organisations and individuals who (full members)
- b) And ...organisations and individuals who are interested in furthering the work of the group (associate members).
- c) All members may attend and vote at the Annual General Meeting and shall be eligible for election to the committee (...or, only full members may attend and vote etc). Organisational members shall only have one vote per organisation.
- d) The committee may terminate the membership of any member breaking the rules of the group or bringing the group into disrepute. The member concerned shall have the right to be heard by the committee before a final decision is made.

Notes Continued

5) General Meetings

Groups who do not have a membership may still wish to have regular meetings and may even elect a small committee or officers to run the group. If all the members run the group, then each meeting is in effect a general meeting.

If the organisation has a membership, the constitution should set out the requirements for members' meetings. These are likely to include a requirement to hold an **Annual General Meeting (AGM)** including the notice to be given and the items of business to be discussed. Notice must be given of any special motions. There is no requirement in common law to hold an AGM but it is good practice to report to members. If it is in the constitution, it must be done. Do not be too precise about the date of the AGM as it may be impossible to keep to this. There is also no legal requirement to produce an Annual Report but funders may ask for this. It is good practice to report to members on the year's work.

Similarly there is no requirement to have an audit or independent examination of the accounts but funders may demand this or the group may wish to do this. Independent examinations are far cheaper than audits and are adequate for small groups. If there is no funding requirement and the amounts of money are relatively small e.g. a few thousand, the group may have the accounts checked internally by someone who is not involved in the day to day running of the account or is a signatory, or is related to or lives at the same address as a signatory.

The constitution may also include requirements about other meetings of the membership which might be called **ordinary, special, extraordinary or emergency general** meetings. Notice should be given and this should include the business to be discussed. The **quorum** - the minimum number of voting members who must be present before a decision can be made - should be stated for all general meetings. Be reasonable in the figure as inquorate meetings cause problems. The **majority** required to approve resolutions at meetings should be stated e.g. a simple majority or a specific proportion e.g. at least two-thirds. It should be clearly stated whether or not the Chair has a casting vote (an additional vote in case of a tied decision). The constitution may also specify whether decisions can be made by telephone or electronic means or by the requisite number of members signing a written resolution, so that a meeting does not need to be held.

Constitution Continued

5. General Meetings

The Annual General Meeting

- a) The Annual General Meeting of the group shall be held once a year. This shall be held not more than fifteen months after the holding of the preceding AGM or during (name two months).
- b) At least 21 days notice shall be given to all members.
- c) The business to be transacted at the Annual General Meeting:
 - (i) receive the Annual Accounts
 - (ii) receive the Annual Report from the committee
 - (iii) election of (officers and) committee
 - (iv) appointment of independent examiner/auditor (if necessary)
 - (v) consider any motions (if wished, or the AGM can be followed by a Special General Meeting, see below)

Special General Meetings (SGM)

Special General Meetings may be called by the Management Committee (or by, e.g. 10 members signing a requisition) and all members shall be given..... 21 days notice of the meeting together with details of the business to be discussed.

Ordinary General Meetings

Ordinary General Meetings shall be held once a quarter to discuss activities and plans. Members shall receive ...14 days notice of the meeting.

Conduct of all General Meetings (including AGM)

The meeting shall be chaired by the current Chair or substitute member. The **quorum** for General Meetings isone fifth of the membership or ...10 whichever is greater. Decisions shall be by simple majority or....three quarters of members present and eligible to vote. The Chair has (or does not have) a casting (second) vote in the event of a tie.

Notes Continued

6) Governing Body (Management Committee)

a) The membership elects a smaller group of people who manage the day-to-day running of the group for the members. This is the governing body or **management committee**. Avoid using the term “board” or “trustees” as these terms usually refer to a limited company and charity, respectively. In an unincorporated association, the Committee Members have personal unlimited liability for the group and should therefore be clear when standing for election or appointment about their roles and responsibilities. Links can help with these by providing in-house training and support. The make-up of the Committee must be described in the constitution specifying either precise numbers or upper and lower limits e.g. *not less than 5 and not more than 8 members elected at the AGM*. There is no set rule to what officers there should be but it is useful to have a Chair, Secretary and Treasurer. Officers can be elected at the AGM or the committee members can appoint them at the first meeting. The constitution must make it clear which method is being adopted. The constitution could also contain details of how committee members should be nominated e.g. by a nomination form to be with the Secretary one week before the AGM.

b) The period of office should be clear. Annual elections can be held or a proportion can retire each year.

c) It is useful to allow the committee to fill casual vacancies which may arise during the year but should only last until the next AGM.

d) Some constitutions also allow co-options e.g. to reflect the make-up of the community or to gain certain skills for the committee. The constitution must be clear about who can fill a vacancy, on what grounds, whether they can vote and for how long they serve (usually until the AGM).

e) The constitution may specify a minimum number of times the committee should meet a year. If the committee stops meeting altogether then the membership can call a special general meeting to either elect a new committee or dissolve the group.

f) As for general meetings, the constitution should state a realistic **quorum** for committee meetings and the method of reaching a decision e.g. majority vote. Again be clear whether the Chair has a (second) casting vote in the event of a tie.

g) The constitution should state whether the main committee can appoint sub-committees and it is important to limit the ability of the sub-committee to spend or enter into contracts.

Constitution Continued

6. Management Committee

a) A committee consisting of ...3 officers, (Chair, Treasurer and Secretary) and up to ...5 other members shall be elected at the AGM to manage the affairs of the group *or...* Up to 8 members shall be elected at the AGM and at their first meeting they shall appoint...3 officers (Chair, Treasurer and Secretary) from amongst their number.

b) The Officers and Committee Members shall serve until the conclusion of the next Annual General Meeting after their election and are eligible for re-election *or...* Committee Members shall serve for three years and a third of the Committee shall retire each year but are eligible for re-election.

c) The Committee may fill any casual vacancy on the Management Committee including vacancies among the Officers and any person appointed shall serve until the conclusion of the next Annual General Meeting.

d) The Committee may co-opt up to.....3 persons on to the committee and they shall have full voting rights. They shall serve until the end of the next AGM.

e) The committee shall meet a minimum of..... times per year.

f) The quorum for a Committee is ... one third of its current number or ... four whichever is the larger. Decisions shall be by simple majority and the Chair shall ... (not) have a casting vote.

g) The Committee may establish such sub-committees as it feels necessary but such sub-committees shall not enter into legal or financial agreements without the prior authority of the Committee.

Notes Continued

7) Funds and Finance

It is important to remember that all committee members are personally liable for the funds and finances not just the Treasurer. If any money goes missing it is likely to be the most wealthy committee member who is sued, not the Treasurer! All committee members should therefore ask questions about the finances and be sure they understand what the group is spending and why, and that everything done is in line with the aims.

- a) It is essential that any funds are spent solely on the aims of the group. It might sound obvious but it is easy to slip into spending on an activity which does not contribute to the aims. If this happens, the committee members who authorised the expenditure may be personally liable.
- b) If the group has funds, then a bank account should be opened in the name of the group. It is important that this is exactly the same as the name on the constitution or this could cause problems with funders releasing funds. Money laundering rules means that banks will demand personal identification of cheque signatories.
- c) It is essential to have at least two signatories on cheques but the total number of people authorised to sign is variable. It is helpful to have more than two so bills can be paid when someone is unavailable. Internet banking means that signatories can be validated electronically but again two signatures ought to be used. It is wise not to have signatories who are related or live at the same address as this can seem suspicious.
- d) The financial year end can be set as wished but it is convenient to use end March as this will coincide with many funding authorities financial year.
- e) It is good practice to produce management accounts for committee meetings at regular intervals, perhaps quarterly. This means decisions can be made in the light of current financial knowledge and early action taken in the case of any problems.

8) Amendments to the Constitution

This clause is essential as otherwise committee members may be personally liable for any actions taken. The change must be authorised by a Special General Meeting or a special resolution at an AGM.

Constitution Continued

7. Funds and Finance

- a) All funds shall be spent solely on the aims of the group.
- b) A bank account shall be opened in the name of the group
- c) All cheques shall be signed by 2 of4 signatories authorised by the committee, none of whom shall be related or live at the same address.
- d) The financial year shall run from.....1st April to 31st March.....
- e) Regular financial reports on income and expenditure shall be made to the committee during the year.

8. Amendments to the Constitution

Amendments to the constitution may be made only by a resolution passed by a majority of the members Or two thirds (*see section on General Meetings above*) at an AGM or Special/Extraordinary General Meeting, of which due notice has been given together with the wording of the proposed amendment.

9) Dissolution - Winding Up a Group

This clause is essential. It ensures that closing the group is done democratically and prevents a few people closing the group down without the consultation and approval of the majority. It also states what happens to any assets, i.e. goods and money left after all debts are paid. The Special/Extraordinary General Meeting that dissolves the group can also decide where the assets go as long as the constitution is followed and any creditors or funders with an interest have been consulted.

It is essential that a group which has ceased to function should be properly wound up and not left dormant as committee members could remain liable for anything to do with the group e.g. equipment.

Links can help with the details of winding up a group.

Adoption of Constitution

It is very important that the constitution is formally adopted at a General Meeting and signed. One signature, usually the Chair is sufficient, but founding members/initial subscribers can also sign. These are the people who originally set up the group and, of course, after some time may no longer be involved in running the group. It is therefore helpful to have the current Chair countersign the constitution if it is being sent to funders to show it is still valid. Any amendments should also be signed by an Officer with the date of the general meeting where the amendment was passed.

9. Dissolution

A resolution to dissolve the group must be passed at a Special General Meeting or by special resolution at an Annual General Meeting and must be carried by...a simple majority ...or two-thirds majority of members present and eligible to vote. The Chair shall (not) have a casting (second) vote in the event of a tie. Any assets of the group after the satisfaction of all debts and liabilities (including seeking the agreement of relevant funders) shall be given or transferred to an organisation with similar aims.

.....

Adoption of the Constitution

This constitution was adopted

on.....

Signed.....Chair

