

Factsheet 2: Constitutions

1. What is a constitution?

Every organisation, unless it is very small and informal, is likely to have a **governing document**. This is a set of agreed rules governing how an organisation will be run, how the members will work together and what they are working towards.

The form of the governing document depends on whether the organisation is incorporated (going to register as a company limited by guarantee or another form of incorporated body) or unincorporated (not registered as a company or another form of incorporated body). Confusingly, the term 'constitution' is sometimes used for all governing documents, regardless of their format.

Governing documents of incorporated bodies

The constitution of a company limited by guarantee must be in a specific format called articles of association. A new form of incorporated body, the charitable incorporated organisation (CIO), is expected to become available in 2012. A CIO's governing document will have to be in a specific format called a CIO constitution.

Governing documents of unincorporated organisations

Most unincorporated organisations are membership organisations called associations. An association is a group of people working together for mutually agreed aims. The governing document of an association is usually called a constitution but may be called rules or something similar.

Some unincorporated organisations are trusts. Their governing document must be in the format of a trust deed or declaration of trust.

Governing documents of charities

Being a charity is completely separate from whether the organisation is incorporated or unincorporated. The format of the governing document depends on whether it is incorporated or unincorporated – but if the people setting up the organisation want the advantages of being a charity (and are willing to operate within the restrictions on charities), they must include certain provisions in the governing document. In particular, the objects (purposes) must be legally charitable. Conversely, if the people setting up the organisation do not want it to be a charity, they will need to be sure they write the governing document in a way that is not legally charitable.

What about not having a governing document?

Some groups prefer to remain informal and not adopt a constitution. For others, however, a constitution is not only an effective tool for running an organisation but also a requirement because of the activities they are undertaking. For example, a group that wishes to open a bank account, or provide services in a community, or apply for funding will face problems if they do



not have a constitution. A constitution is also a way of ensuring that the public and funding bodies feel confident that a group is being run properly and its money managed properly.

2. A constitution must have... A name

Choose your own. It might reflect the area or the field in which you work. But before committing yourself to it, search for the name in the register of charities at: www.charitycommission.gov.uk and the Webcheck section at: www.companieshouse.gov.uk, to be sure the name is not the same as or very similar to an existing charity or company. If you want to be a charity or company it is a legal requirement not to have too similar a name, but even if you do not want to be a charity or company, it is not sensible to have a name that could be confused with another organisation.

Objects

This section sets out what the organisation aims to achieve (its objects or purposes), the people it intends to work with or for (its beneficiaries), and usually the geographic area where it will operate (its area of benefit). If your organisation wants the advantages of being a charity, then you will need to ensure your objects will fit in with what the Charities Act 2006 defines as legally charitable. Regardless of whether the objects are or are not charitable, it is important to make sure that the objects give you flexibility for the future.

If an activity or service is not within the organisation's purposes, beneficiary group(s) or area of benefit as defined in the constitution, you may not be able to do it.

Powers

This covers activities which are not **directly** within the objects, but which an organisation can do to achieve its objects. These are things such as:

- Fundraising
- Networking
- Hiring or purchasing premises
- Employing staff
- Taking out insurance
- Borrowing money

It is essential to ensure there is a general power, along the lines of 'Such other actions as are necessary to achieve the organisation's objects'. This will cover most activities that are not specifically mentioned in the powers.

Membership

Associations and companies always have a membership, but trusts do not. An organisation's membership is made up of people who are interested in working together to achieve the aims of the organisation. The governing document will set out who is eligible to become a member, and the process for applying and being accepted as a member. To become a member a person often has to sign a membership application and be approved by the committee or a membership sub-committee, and, if the organisation requires, pay a membership fee.



Management committee

This committee has responsibility for the good governance of the organisation and ensuring it complies with all legal requirements and with good practice. It is up to the organisation to decide the minimum number of committee members that should be set in the governing document, and whether a maximum should be set. The minimum should not be less than three. There is no legal requirement to set a maximum in the governing document. If a maximum is set it should not be too large, as it makes the committee unwieldy and inefficient to have too many.

Committee members may be appointed in a variety of ways. These will be set out in the governing document.

- *Elected* - by and from the membership of the organisation. In most organisations, all or most committee members will be appointed in this way.
- *Nominated or appointed* by another organisation. The governing document should make clear whether the external organisation nominates the person (and they have to be elected or approved in some other way by your organisation), or whether the external organisation appoints the person to your committee and your organisation has no say in it.
- *Co-opted* by the committee. Provision for co-option is usually included in a governing document to enable the committee to fill vacancies, and to appoint people to the committee with specific skills/knowledge.

It is in the interests of the group to ensure that the committee members do not benefit personally because of their position in the organisation. In a charity, any payment or other benefit provided to a committee member, or a person connected with them (close family member, business partner etc) may be unlawful. The organisation should take advice about clauses that need to be included in the governing document about benefits to committee members and connected persons, and all organisations should have a conflict-of-interest policy expanding on the constitutional provisions.

If the organisation is legally charitable a person cannot generally be on its committee if he or she:

- is under 18 (or 16 if the organisation is registered as a company limited by guarantee or a charitable incorporated organisation).
- has been declared bankrupt and the bankruptcy has not been discharged.
- has an unspent conviction involving deception or dishonesty;
- is subject to a court order for failing to make payments under a county court administration order.
- has been declared by a court to be incapable of managing his or her own affairs.
- has been removed from being a trustee of any charity or is disqualified from being a company director.



In all organisations, regardless of whether charitable or not, a person who is barred from working with children or vulnerable adults may not serve on the committee if the organisation's work is primarily with children or young people, or with vulnerable adults. Advice should be taken if this might apply.

Officers

A committee has officers who carry out its main jobs. There are usually at least three specified in the governing document:

- A chair, who ensures that meetings run smoothly, and decisions are made, may also act as spokesperson for the organisation, and may be authorised to make decisions between meetings if these cannot wait until the next meeting.
- A secretary, who informs everyone of meetings and ensures minutes are taken and may also deal with correspondence.
- A treasurer, who oversees the organisation's income and expenditure, and ensures the organisation has appropriate financial procedures.

All officers should understand that they act on behalf of the committee as a whole and cannot do things 'off their own bat'. All officers must report regularly to the committee.

Committee meetings

Meetings of the committee are held to share information and make decisions and must comply with the governing document. This will specify the minimum number of committee members needed to hold a valid meeting and make decisions (quorum) and may also specify the minimum number of committee meetings to be held over a year.

General meetings

General meetings are meetings of the organisation's members. Every year the organisation will need to have an annual general meeting (AGM). The governing document may specify when the first one must be held; if not, it should be held within 12 months of the group setting up. The AGM is a chance for the committee to tell members what is going on and a chance for the members to hold the committee accountable. It is also when the annual accounts are presented, and if the governing document requires it, the accounts will be approved by the members. If all or some committee members are to be elected by the members of the organisation, this is generally done at the AGM.

The governing document should also allow for other general meetings. These might just be called general meetings, or might be called ordinary, special, or extraordinary general meetings.

Finances

Every organisation should have a bank account in its own name. A minimum of two people should be required to sign cheques or authorise bank transactions. To ensure there are always at least two available to do this, there should be three or four signatories. The organisation should have clear policies stating that cheques cannot be signed, or bank transactions



authorised by two people who are related, and that no one can sign a cheque or authorise a payment to themselves or a family member. (Family member in this case includes co-habitees).

Changing your constitution

It is essential to make provision in your governing document to amend it later. Your organisation is likely to grow and develop over the years, and without an amendment clause it is likely to be very difficult and perhaps impossible to amend it. The amendment clause generally allows amendments to be made with a 2/3rd or 3/4th majority vote at a general meeting. If the organisation is legally charitable (even if it is not registered with the Charity Commission) some amendments – in particular to the objects, amendment and winding up clauses, and any clause that allows payments or the provision of benefits to committee members – to have prior written consent from the Commission.

Closing down the group

There must be provision in the governing document to wind up (also called dissolve) the organisation. This nearly always requires a general meeting and a specific majority, usually 2/3rds or 3/4ths. The governing document should also state what happens with any money or other assets remaining after all bills have been paid and other financial obligations met. It will usually say that any remaining assets must be given to another organisation or organisations which have similar objects.

3. Helpful documents

A number of sample constitutions can be found on the Charity Commission website at:

[www.charitycommission.gov.uk/Start up a charity/Guidance on registering/mgds.aspx](http://www.charitycommission.gov.uk/Start_up_a_charity/Guidance_on_registering/mgds.aspx)

These should only be used by organisations which wish to be legally charitable.

NAVCA also have a sample constitution for small charities whose income is under £5000 and is likely to remain at this level for a while. This can be found at:

www.navca.org.uk/publications/smallcharityconst.

The Charity Commission has published a useful leaflet 'CC22 – Choosing and Preparing a Governing Document'. This can be found at: www.charity-commission.gov.uk/publications/cc22.aspx. This should be used only by organisations which wish to be legally charitable.

4. Further Help

Versa Collective

email: hello@versacollective.org, or visit: www.versacollective.org

The Charity Commission – 0845 300 0213 or www.charitycommission.gov.uk

