

Governance

Section four Governing documents

4.1 What is a governing document?

A governing document:

- is your organisation's most important legal document
- describes the way your organisation should be managed
- ensures that your organisation's aims are clear, agreed by all your members (if applicable)
- provides a mechanism by which decisions are made, and provides a management structure.

What type of governing document your organisation should have depends on the type of legal structure it has (See **Section three** on **Organisational Structures**).

4.2 Key requirements

There are certain requirements that should be included in every governing document, either because they are essential to your organisation or because they will help your management committee to run your organisation efficiently. Some key provisions are listed below; however the document needs to cover a range of other issues. The model constitution published on the Charities Commission website is a good example of the range of clauses needed.

Name of organisation

This should be clearly stated. However, if you register with the Charity Commission, it has the power to ask you to change your name if it feels the name is misleading or too similar to an existing organisation.

Objects of the organisation

These define what the organisation is established to do, that is, what the purpose of your organisation is and any limitations on the scope of its activities. You may also mention the beneficiaries of the organisation, that is, who the organisation intends to help.

Powers of the management committee

You should consider what powers your management committee (MC) might reasonably be expected to need. Usually, your governing document should give

powers to: fundraise; acquire property; employ staff; or co-operate with other charities.

Membership

This deals with conditions of membership, such as subscriptions or who can be a member, voting rights and membership termination. See summary box below.

*The information below is adapted from *Voluntary but not amateur: a guide to the law for voluntary organisations and community groups* – page 18 and *RS7 - Membership Charities* at www.charitycommission.gov.uk*

What is membership?

Many voluntary community organisations (VCOs) have a membership structure. In legal terms a member is a person or an organisation who agrees to follow the terms of the governing document and in return is given rights under that governing document, for example to have the right to vote at the Annual General Meetings (AGMs).

The governing document should define who is eligible for membership, any categories of membership (voting and non-voting), how membership is approved, membership subscriptions and members' meetings. There should also be clauses on conditions of membership, members' rights and the circumstances in which membership ends.

What are members' rights?

In some instances, members' rights are automatically implied by law – additional rights and procedures about how a charity can engage with its membership must be included in the governing document.

Good governance

A key part of good governance is to ensure that the governing document is clear and covers all eventualities, and to ensure that its terms are followed. The governing document should be the first place that MC members or members go to check any details about how the charity is managed.

Tips for good practice

- Have clear procedures for admitting new members
- Keep your membership list up to date
- Keep and communicate clear information to members about their roles and responsibilities
- Keep a record of the rules about continued membership and make this available to the stakeholders, for example eligibility and reasons to end membership rights
- Give good notice and communicate clearly about the agenda and any resolutions or elections at the AGM

See form *RS7 - Membership Charities* at www.charitycommission.gov.uk for more detailed information on membership.

Members' meetings - for example Annual General Meeting (AGM)

This states the rules regarding the period and notice of meetings, the minimum number of members needed at a meeting for it to be valid (quorum), emergency meeting procedures and voting procedures. See summary box below:

What is an AGM?

Most governing documents require that once a year members are called to a meeting to conduct certain key tasks, this is the Annual General Meeting (AGM). For an unincorporated body or company limited by guarantee an AGM is not required but it is recommended to have it. If your organisation is not required to have an AGM, you need to consider how the key tasks such as elections of the MC will be achieved.

Key Tasks for the AGM

- Send annual accounts and report to members in good time (normally at least 21 days) before the AGM
- Voting and elections
- Accountability of trustees to members
- Review of accounts
- Consider resolutions

Management committee members

This states the number of management committee members*, and whether they are elected or appointed. It is also advisable to state the duration of time to hold office.

* summary box below outlines different terms used to describe 'board of trustees'. In this toolkit we use the term, management committee (MC).

All registered charities are governed by trustees – they might also be known as:

- The management committee
- Executive council
- Directors
- Council members
- The board
- The governors

"No matter what they are called, the voting members of the top governing or supervisory body of a charitable organisation are its trustees. If you occupy this role and your organisation has charitable status then you are a trustee."

www.ncvo-vol.org.uk/governanceandleadership.asp

Management committee meetings and proceedings

This covers how MC meetings are arranged, the minimum number of members (quorum) to make decisions, who should be in meetings and procedures for emergency meetings.

Restriction of financial and other benefits to management committees

This will generally state that MC members should not benefit personally from their position as MC members.

Provision to deal with the organisation's bank account

This should state clear controls.

Amendment clause

This sets out the procedure to amend the governing document.

Dissolution clause

This states how an organisation may be dissolved or closed.

Your governing document is not set in stone, and you may need to amend it if the organisation develops or wants to change the direction of its work. However, changing the document takes time and it is important to make your governing document simple and flexible so that the organisation is able to operate efficiently without constantly needing to change the governing document.

4.3 Constitution

If your organisation is an unincorporated association (see Section three on Organisational structures), you will need to have a constitution or rules as your governing document.

An unincorporated association has no separate legal existence and for most purposes, it is a collection of individuals, and thus, does not have a limited liability. In other words, members of the MC and in some cases all the members are personally legally responsible for the organisation. For example, if you fail to pay the rent because the association did not have enough money, MC members would have to pay individually.

Since the organisation does not actually exist as a legal body, it cannot own land and sign a legal document in its own name. This will be done by some or all of the MC or Holding Trustees.

Holding trustees are individuals who agree to hold an organisation's asset, for example, the lease of its building in their name. Legal advice is needed to set up such an arrangement.

A constitution of an unincorporated organisation sets out its objects (what the organisation can do) and the areas of benefit (where it can do it). It also sets out the powers available to the MC to enable the organisation to carry out its objectives. To set up a constitution, you do not need a solicitor. The Charity Commission has a model constitution which contains all the powers and administrative clauses. You can download this from the Charity Commission website (see useful contacts, Section seven).

A constitution begins to take effect once it has been adopted at a formal meeting of those people who are, or will be, the organisation's MC and the general membership will sign the constitution or a set of rules to follow. You need to keep the minutes of this meeting.

Memorandum and articles of association

If your organisation is an incorporated organisation in the form of a company, you will need to have a memorandum and articles of association as your governing document. This will be registered at Companies House who will issue you with a **certificate of incorporation**, effectively the company's 'Birth Certificate'. It has two parts: first, the memorandum of association contains the aims and objectives of

the organisation, and second, the articles of association describe the rules of a company, which is the most common form of incorporated organisation adopted by community organisations.

Please note that charitable companies need to register as a charity once they have registered as a company. If you were already registered as a charity and you want to become a charitable company you will need to close down the existing charity, then register as a company and then register that company as a charity.

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