

What a constitution is and why it is needed?

This resource is useful for voluntary and community groups to consider their governing document, specifically around the use of a constitution.

There are various types of governing document for an organisation to consider, ensure you choose the right one for your organisation structure. The constitution is the most commonly used governing document for groups starting out who do not plan to employ staff or purchase land. Other governing documents may need to be considered if you do decide to employ staff or own land. Further information is available on Charity Commission website: <https://www.gov.uk/government/organisations/charity-commission> .

A constitution is a set of rules that a group agree to follow. It outlines why you exist and how you will be governed to carry out the role you were set up to do.

Key things needed in a small group constitution

- **Name of your group.**
- **Legal status** should be made clear, legal status does not apply to a group that is only constituted, has less than £5,000 annual income and cannot own property or hire staff in its own name.
- **Charitable objects** are why a group is set up. Charitable outcomes you wish to achieve, how you will achieve those outcomes, the benefits and who will benefit should be in your constitution. Objects are classed as charitable if they are for public benefit or fall into the 'descriptions of purposes' in the Charities Act 2011.
- **Trustees** (management group), are a voluntary role, responsible for governance in the group. There must be at least three Trustees, the Chair, Secretary and Treasurer. Your constitution should show:
 - Powers – What will be within the Trustee's authority. This will include receiving and applying for funds to carry out the work or the charity, cooperating with charities of similar purpose and to carry out lawfully necessary actions to achieve the purpose.
 - Responsibility – What is the Trustees duty? When are Trustees accountable? What competence is expected in the role.
 - Eligibility – What requirements are there for a Trustee to be allowable in the role? e.g. age or commitment etc.
 - Delegation – What duties may be delegated by Trustees?
 - Term of appointment – How long can a Trustee serve before they have to step down (you may decide they can be immediately re-elected)?
 - Nomination – Who may nominate a person to be in a Trustee role and what formalities are included?
 - Election – Who may vote to appoint a Trustee and what majority vote is required to make the decision e.g. two thirds majority? What formalities are included?
 - Appointment of Trustees is to be done at the AGM.
- **Trustee benefits:** Your constitution should show the only payments allowable to Trustees and related people are to reimburse out of pocket charitable expenses such as travel.
- **Conflict of interest** and loyalty of Trustees and related persons is to be considered. To support this include a segment stating that the Trustees must uphold the best interest of the charity.
- **Membership** should be a part of your constitution. This includes:
 - The admission of members based on eligibility e.g. aged over 18 and supports the charity objects.
 - Decisions that members may be involved in making and the process of voting. E.g. Trustees must call a general meeting with a majority member request.

- Any membership fees.
- The process of renewing membership.
- Terminating membership and right to appeal accompanied by a friend.
- Transfer of membership and the process.
- **Voting** needs to be a part of the constitution. This includes:
 - Members votes.
 - What is expected in terms of non-members? This may simply be they have no vote.
 - May votes be made by proxy?
 - Must votes be in person at a meeting, or allowable by post or electronically?
 - What is each person's vote worth e.g. one vote per member?
 - What majorities will pass motions e.g. two thirds?
- **Structure** of the organisation is to be clear:
 - The board of Trustees will set the governance and hold responsibility. The Trustees are liable for small groups without a legal identity. (E.g. company limited by guarantee.)
- **Keeping of registers** is integral. Your constitution should show who will keep registers (this is usually the Secretary), where registers will be kept securely, who has access to registers. The registers will include:
 - Register of current and past Trustees, their full name and home address contact information.
 - A current membership register should be kept with full name and home address contact information.
- **Meetings** must be mentioned in your constitution outlining:
 - Trustee Meetings – How many per year? The first meeting after AGM will select the Chair, Treasurer and Secretary by majority vote.
 - General Meeting – Called with 14 days' notice; this type of meeting must be held if the group is to wind up, if a member majority requests a meeting in writing, to make changes to the constitution (this may not include making the group no longer a charity) or for the Trustees to consult the membership.
 - Annual General Meeting - 14 days' notice is recommended. This is a yearly meeting with a minimum number of members present. Trustees will present accounts. Members shall elect Trustees for the next 12 months, any member may stand or be re-elected.

For all meeting types there needs to be mention of notice required and invitation with consideration for those who are not local, frequency of meetings, ensuring you reach quorum (minimum number required to make decisions) and make clear processes around adjournment.

- **Keeping of minutes** is essential for every formal meeting. Minutes are a record of meetings including time, venue, meeting purpose, attendees, apologies, to show that a pre agreed agenda is followed, address of matters arising and actions agreed. Show in your constitution who will be responsible for keeping minutes. This is usually the Secretary although the duty may be delegated.
- **Matters of Finance** are to be very clear in the constitution. The Treasurer is the person responsible for finances and should ensure financial records are full, accurate, transparent and evidence such as invoices and bank statements kept secure. The bank account will require two signatories and any financial authorisations required should be securely in place with policy and procedure.
- **Applications of income and property:** A group that is constituted in this way has no legal identity of its own cannot enter agreements in its own name.
- **Reporting requirements and transparency:** You must be prepared to show the previous year's annual accounts to anyone by request. Records must be kept until the retention period and then destroyed. Any statutory law applicable must be followed.
- **Liabilities:** Although your group may have a constitution it does not make the group a legal identity. It is advised that Trustees may want to consider trustee indemnity insurance. Trustees should therefore be diligent in their responsibility and risk assess to make the safest possible environment for the project to operate for all concerned.
- **Amendments to the Constitution** must be agreed. The process to make changes to the constitution must be outlined within the current constitution; this includes only agreeing to make a change in an AGM or General Meeting. Also any changes to the constitution may not be to make any purposes not charitable.



- **Dissolution clause** should be stated in the constitution. Any funds or assets must be shown to be passed to a charity of similar values once wound down.
- **Disputes** may occur. The constitution should state that full policy and procedure be kept in place to refer to in this instance.
- **Signatures** and full names of the board including Chair, Treasurer and Secretary.
- **Date** the constitution once agreed. Show who the first members are and that these are the Trustees until the AGM which will be held within a year of the constitution date.

Support

If you need support to write a small group constitution and you are a VCSE based in Rotherham please contact email: triage@varotherham.org.uk or telephone 01709 829821.

For further information about writing a Small Group Constitution please visit the Charity Commission website: <https://www.gov.uk/government/organisations/charity-commission>

Website: <http://www.varotherham.org.uk/>

