

1

Constitutions

Contents

- ▶ Introduction
- ▶ Why should your centre have a Constitution?
- ▶ The legal structures a centre can adopt
- ▶ The essential elements of a Constitution
- ▶ A checklist of what a Constitution should contain
- ▶ Charitable Status
- ▶ Glossary of Terms

Introduction

The advice^{UK} Membership criteria requires you to have a means by which your centre is accountable to the community and also to be able to demonstrate that the centre is independent of central or local government control. The governing document of a centre will detail some of the key information, which provides the assurance that the centre meets these criteria.

As a network organisation we also have concerns that each individual centre operates in an environment which protects Management Committee members, staff and users of a centre. Each centre will have a legal status simply by virtue of operating a service. This briefing provides details of the formal legal structures for advice centres which can protect centres and outlines what advice^{UK} looks for when we consider your centre's Constitution and the Management Committee.

The briefing also provides details about registering as a charity.

Throughout this briefing we use the term "Constitution" to also include Memorandum and Articles of Association and "Management Committee" to include the Directors of a company.

Why should your centre have a constitution?

- ✓ It provides a structure for the centre
- ✓ It clarifies the aims of the centre
- ✓ It provides a framework for running the centre effectively
- ✓ It provides a reference point for decisions about activities and the resolution of disputes.
- ✓ It sets clear structures for accountability
- ✓ It clarifies your role to others
- ✓ It increases your credibility
- ✓ It makes it possible to apply for charitable status

Choice of Legal Structure

Advice centres often start life as a steering group - a group of people who come together to establish the need for an advice centre and who find the initial funding etc. Once their work is finished the centre will need a committee to manage the on-going organisation. It is quite likely that some of the steering

group will remain and invite others to join the committee. If you require further information about starting an advice centre contact advice^{UK} for a copy of our briefing - "Starting an Advice Centre" which will be available from September.

The choice of legal structure for your centre affects the personal liabilities of members and trustees and the legal, administration and accounting practices of the centre. Whatever the structure of the centre it is beneficial to have a governing document setting out your purpose, objectives and rules of conduct - having either a Constitution or Memorandum and Articles of Association will offer a framework for governance and protect the members of the centre.

What legal structures can advice centres adopt?

THE UNINCORPORATED ASSOCIATION

An unincorporated association is a group of people who have come together to a shared aim and has no distinct legal identity. They are known as the Management Committee.

Once a centre has formalised, its leases, contracts etc. will have to be in the name of one or more of these individuals. These individuals are known as trustees, and the trustees of an unincorporated centre are likely to be personally liable to third parties for the centre's debts.

This structure is used by newly formed groups as it is cheap and quick to set up and it is flexible. It can also be appropriate for centres who have limited liabilities - i.e. they do not employ staff, do not own buildings and do not administer large grants.

The governing document of an unincorporated association is known as a constitution. Use the checklist in this briefing as a guide to what should be included in a Constitution.

THE COMPANY LIMITED BY GUARANTEE

The other most common structure is that of a company limited by guarantee - an incorporated structure. The centre is a company and therefore there is a separate distinct legal identity. The company enters into leases and contracts in its own name. The members of the company have a specified limited liability - usually guaranteeing debts up to a nominal amount - such as a £1.

This structure is appropriate for centres who have commitments such as staff salaries, rent or property costs. There is more administration involved in an incorporated structure, as you will need to:

- ▶ fill in and send back Annual Returns from Company House

- ▶ keep registers of who your members and directors are
- ▶ send an annual Directors' report and accounts to Companies House.

There are other requirements. General enquiries about companies and company registration should be directed to:

Companies House
Crown Way
Cardiff
CF14 3UZ
Tel. 0870 3333636

The governing documents of an incorporated organisation are the Memorandum and Articles of Association.

The Management Committee members are usually called Directors of the Company.

TRUSTS

A Trust is created when money or property is given to be used for an identifiable beneficiary or for a charitable purpose. It usually establishes a relationship between 3 groups of people – the **DONERS** agree to entrust money or property in the hands of **TRUSTEES** who must apply it to benefit **BENEFICIARIES**. Advice centres who choose to create a Trust will usually have a Trust, which is intended to benefit “the public” or a section of the public. This Public Trust must be charitable and must benefit the public. The Trust must have a stated purpose.

Centres may choose this structure as it is simple and relatively cheap to set up and has the same simplicity as an unincorporated association. It also brings with it the same personal liability for the Trustees. Very few advice centres choose to create a Trust as it can be undemocratic – Trustees are usually appointed rather than elected. If you wish to pursue this model and require further information please contact the advice^{UK} Membership Team on **020 7407 4777**.

What are the essential elements of a Constitution?

Whatever legal structure your centre chooses to have, including the following elements will help you have a clear document for governance. Remember that you should be able to use your Constitution as a point of reference for any areas of uncertainty or disagreement about the governance of your centre. Try and anticipate any such issues whilst you are drawing up your Constitution - it is much easier to do it at this time than to be constantly changing your Constitution - if you are a charity the Charity Commission will not welcome this practice.

If you are a new centre developing a Constitution think about adopting a model already agreed by the Charity Commission. Should you wish to register as a charity, this will speed up the process. See the section on Charitable Status for further information.

We have listed below the essential elements of a Constitution and provided details of what advice^{UK} looks for in a Constitution.

Name of centre

For an incorporated body you should also state where the registered office is.

Objects

Purpose(s); beneficiaries; area of benefit.

You should be sure that all your activities are within the Objects and Powers set out in your Constitution - if you are a charity you must get Charity Commission consent to do anything else. If you are a charity or intend to register as a charity some time in the future you should be mindful of charitable objects.

It is important that the objects are general enough to encompass changes in your activities as the environment changes.

Powers

This section describes what the organisation can do.

Some powers are given by statute and this section can relate to any of the following:

- ▶ Powers relating to money
- ▶ Powers relating to property

If the centre is ever likely to own land or vehicles the governing document should include the power to buy, let, mortgage, sell etc.

- ▶ Power to employ
- ▶ Ancillary powers
- ▶ Powers to undertake joint activities

We will want to see that the powers do not provide for individual members of The Management Committee to benefit financially from any of the centres activities.

Restrictions

All of income & property must be used only to promote Objects.

No money can be given to or paid as a dividend, bonus or profit to any member.

Professional fees can be paid to members of the governing body, such as a solicitor or accountant provided the person being paid does not take part in the decision.

Conflict of Interest

We would like to see a clause regarding avoiding conflicts of interest.

Membership

If you choose to be a membership organisation you will need to define

- ▶ who can join
- ▶ termination of membership
- ▶ subscriptions and what happens if they aren't paid

advice^{UK} is concerned that membership is accessible and if membership subscriptions are charged we will expect them to be a token payment or have a clearly stated maximum. We would also expect there to be discretionary exceptions for people who are unwaged.

General Meetings

This will include:

- ▶ Annual General Meeting
- ▶ AGM and amount of notice and business.
- ▶ Chairing and procedures.
- ▶ Special or extraordinary.

Governing Body

- ▶ Who the first members are and how they are selected.
- ▶ Who is eligible
- ▶ Maximum & minimum members, i.e. the quorum.
- ▶ adviceUK like to see a minimum of 6 and maximum of 18.
- ▶ How they are elected, how long they can serve,
- ▶ Whether they can be re-elected and how they can be removed.
- ▶ How vacancies are filled.
- ▶ Whether and how others can be appointed - this will include co-opted members.

advice^{UK} asks its members to provide a list of their Management Committee. This is so that we can see that no one body of people dominate, and that the centre has a means by which it is accountable to the community.

Hence we look for the following:

- ▶ Those local authority councillors, officers or funders' representatives are not in the majority.
- ▶ That the committee includes representatives from community groups and organisations who have similar remit to the centre.
- ▶ That the Management Committee membership is not predominantly made up of one constituency, for example, all male.

Observer Status

We expect that members of staff and representatives of staff attend as observers and are not able to vote.

Governing body meetings

We need to see 4 which can include the AGM

A minimum of four meetings will reassure advice^{UK} that the Management Committee are carrying out their duties in relation to overseeing the running of the centre. Any less and we doubt that the Management Committee are able to keep in touch with what is going on.

Sub committees & delegated powers

Check extent of powers.

It is important that this section defines what powers are delegated to a Sub Committee.

Officers

We like to see Chair, Vice Chair & Treasurer appointed and maximum term specified.

We like to see a maximum term specified, as there is a danger that an individual can have a stronger identity than the centre. This can cause problems with the day to day management but also leave the centre at a loss if that one person is absent or resigns.

Minutes

This clause is not always in constitutions but as a matter of good practice all meetings of the Management Committee should be minuted.

The Seal

This applies to incorporated bodies and although it is no longer a requirement it is usually included in the Articles of Association.

Accounts & Audit

It is useful to include here that the organisation will comply with relevant legislation. This prevents the Constitution specifying more rigorous requirements than company or charitable law.

Branches

If the centre has branches it is useful to define how these might be set up and whether they are autonomous or will be controlled by the parent body.

Amendment

Must include clause to amend, although this is implicit in company law and does not have to be included in incorporated bodies.

Dissolution

This section specifies what happens when the centre is wound up or dissolved and has assets to dispose of. It is usual to include a clause that you will pass assets onto a similar body, especially if the centre is a charity. For further details refer to advice^{UK}'s briefing on "Closing A Centre".

Remember to refer to the Glossary if you are not familiar with any of the terms used in this section.

A checklist of what a Constitution should contain

- Have you included the name of your centre?
- Have you laid out the objectives of your centre?
- Have you provided for the powers your organisation needs to bring about its aims, now and in the future?
- If you are a membership organisation, have you defined who is eligible to join?
- What are the conditions of membership?
- Under what circumstances will membership be terminated?
- How will Committee Members be elected at the Annual General Meeting?
- What quorum is needed to validate a meeting?
- How will vacancies on the Management Committee be filled?
- What are the functions and powers of the Management Committee?
- What procedures are to be followed in meetings?
- Does the committee meet at least four times a year?
- How can members be removed?
- Have you included a special or extraordinary clause to call meetings to discuss a particular issue?
- Have you included a clause to appoint Sub-Committees, and defined their powers?
- Have you laid down the procedures for keeping accounts?
- What are the procedures for selecting auditors?
- Have you enclosed a clause that allows you to change the Constitution if you are incorporated?
- Are there provisions for dissolving the Constitution?

Charitable Status

Any centre - whether unincorporated, incorporated or a trust - which is set up for purposes which are wholly charitable is a Charity. Charitable status is separate from the centre's legal structure.

To access the benefits associated with a charity the centre will need to register with the Charity Commission and/or have its charitable status recognised by the Inland Revenue.

THE ADVANTAGES OF CHARITABLE STATUS INCLUDE:

- ▶ Exemption for many taxes (with the exception, apart from a very few cases, of VAT).
- ▶ For a charity which is registered for VAT, the right to charge zero rate VAT instead of standard rate for goods and services provided by the charity and eligibility for zero rated VAT for some goods and services provided by the charity.
- ▶ Many funders choose to give money only to charities.
- ▶ It is clearer to the public what kind of organisation you are.
- ▶ Although being a charity does bring several obligations and restrictions, in most cases it is an advantage.

SOME OF THE RESTRICTIONS A CHARITY MUST COMPLY WITH INCLUDE:

- ▶ Limits to the kinds of trading that charities can undertake.
- ▶ Political or campaigning activities are restricted - although charities can undertake political activities which are directly related to their objects.
- ▶ There are a number of additional responsibilities for the Management Committee who are the Trustees of the charity.

REGISTERING AS A CHARITY

A new registration process was introduced in March 1996. For new organisations there is a registration pack and you apply once you have adopted your governing documents.

The registration pack includes guidance on the minimum requirements for a governing document and suggests that adopting a model will make the registration process quicker and easier. The registration pack is available from the Charity Commission, and the address can be found later in this briefing in the section on useful addresses.

USEFUL ADDRESSES

**Charity Commission
St Albans House
57-60 Haymarket
London
SW1Y 4QX
Tel: 0171 210 4477
Tel: 0171 210 4432/4548
(Registration)**

This office deals with centres in Greater London, Bedfordshire, Buckinghamshire, Cambridgeshire, East Sussex, Essex, Hertfordshire, Kent, Norfolk, Northamptonshire, Suffolk, Surrey and West Sussex.

**Charity Commission
20 Kings Parade Queens
Dock
Liverpool
L3 4DQ
Tel: 0151 703 1500
Tel: 0151 703 1654
(Registration)**

This office deals with centres in Cheshire, Cleveland, Clwyd, Cumbria, Derbyshire, Durham, Greater Manchester, Gwynedd, Humberside, Lancashire, Leicestershire, Lincolnshire, Merseyside, Northumberland, North Yorkshire, Nottinghamshire, Powys, Shropshire, South Yorkshire, Staffordshire, Tyne & Wear, Warwickshire, West Midlands and West Yorkshire.

**Charity Commission
Woodfield House
Tangier,
Taunton, Somerset
TA1 4BL
Tel: 01823 345000
Tel: 01823 345003
(Registration)**

This office deals with centres in Avon, Berkshire, Cornwall, Devon, Dorset, Dyfed, Gloucestershire, Gwent, Hampshire, Hereford & Worcester, Isle of Wight, Mid Glamorgan, Oxfordshire, Somerset, South Glamorgan, West Glamorgan and Wiltshire.

ONCE THE CENTRE IS A CHARITY

- ▶ If your annual income is over 10K you must include a statement to say that the centre is a registered charity on cheques, financial transaction documents etc.
- ▶ Charity trustees have special responsibilities and the management committee should familiarise themselves with these.

Glossary

- Unincorporated** ♦ An association which is not registered as a company.
- Incorporated** ♦ Process whereby association becomes a company.
- Company Limited by Guarantee** ♦ A company where the members guarantee to contribute a sum (usually £1.00-10.00) if the company becomes insolvent and is wound up.
- Company Limited by Shares** ♦ A company where people are invited to invest by buying shares, which they hope, will pay a dividend (proportion of profits paid to the shareholder).
- Objects** ♦ The purposes for which an organisation is established.
- Powers** ♦ The activities which can be undertaken in order to achieve objects.
- Conflict of Interest** ♦ Where someone has another interest which could be prioritised over that of the organisation.
- Membership Organisation** ♦ An organisation where individuals or organisations are involved in the democratic processes of the organisation.
- Annual General Meeting** ♦ An Annual Public meeting – defined in the governing document.
- Extraordinary General Meeting** ♦ A meeting which can be called to conduct specific extraordinary business.
- The Governing Body** ♦ The body according to the governing document which is responsible for managing the affairs of the organisation. Can be called Management Committee, Board Of Directors and Board Of Trustees.
 - Officers** ♦ The Chair, Vice Chair, Treasurer, Secretary
 - Quorum** ♦ A defined minimum number of people. An activity will not be quorate if it proceeds without the quorum.
 - The Seal** ♦ A stamping device to show that an incorporated body has entered into a legally binding agreement – it is no longer required.
 - Audit** ♦ An independent scrutiny of financial records.
- Indemnification** ♦ The right to be repaid for any liability incurred.
- Standing Orders** ♦ The rules for conduct of meetings etc.
- Amendment** ♦ Changes to the governing document.
- Dissolution** ♦ When the organisation is wound up and its business terminated.

terminated.