

## **Good Governance. A Guide. Resource Pack**

### **Section One. Setting up a voluntary group**

#### **1.1 What to do first**

Any group of people can meet together to pursue a common interest or purpose as long as it is a legal purpose. They do not need permission from any authority to do this. When people intend to form a group like this (other than for profit), the law calls such a group an 'unincorporated association'.

A voluntary group is simply a type of group which will be managed by a group of unpaid volunteers. The legal term for such a group is an 'unincorporated association'. Later in this resource pack, there is information about what it means in practice to be a member of an unincorporated association.

Before a group of people can set up as a voluntary organisation, they will need to call a meeting of all interested parties. It might be a good idea to advertise the meeting so that you get as many interested people to come along as possible. The more people who get involved, the more chance there is of getting a good balance of skills and ideas

This first meeting should decide some important basics, such as:

- (i) Is a new group needed? Are there any existing groups through which the people could work to achieve their aims?
- (ii) Is the group to undertake one clear cut project, or is it to have a number of different purposes?
- (iii) Does the group intend to complete its work in a limited period (eg a 'short-life campaign') or is it likely to last for a long time?
- (iv) Are the people at the meeting all agreed broadly on the purpose of the group and willing to work together to get the group up and running?

It is important that the meeting discusses and agrees the main aims right at the start, so that everybody works together with a common purpose.

Having decided what the group's purpose or purposes will be, the group should then elect from among the people present a steering committee to draw up a draft constitution. It is usually a good idea to base the draft constitution on a 'model' constitution which has already proved useful to other groups. The Charity Advice Service can often provide new groups with a suitable model constitution on which they can begin to draft a constitution for their group.

A first priority for the steering committee is to decide whether the organisation should be a charity or not. If the answer to this is yes, particular care will be required in preparing a draft constitution.

## **1.2 Governing document**

A governing document is needed by new organisations, and it is usually a constitution that is required when establishing a new voluntary organisation. It is advisable to have a constitution whether or not the organisation wants to seek charitable status.

A constitution is a set of rules suitable for establishing an unincorporated association of members. The constitution (once it is agreed by the members) will be a fixed reference point for the organisation. It cannot be changed by an individual, or by a clique, or by the board. Only a clear majority of the members can agree to change the constitution. The constitution could be described as a framework or foundation upon which an organisation is built.

The constitution holds the answers to many questions, so make sure you read your group's constitution!

The board and members of a group can, at any time, look to the constitution to guide them as to the purposes of the group, who is responsible for managing the group, how they are to be elected, who is eligible to join the group, and even how the group can be wound up if it is no longer needed.

When writing a draft constitution, it is worthwhile to take the trouble to ensure that it takes into account not only what your group intends to do in the first year, but that it also allows for the future development of the group.

The constitution is a legal document. Once it is formally adopted (by the group members), it requires quite a lengthy formal procedure to alter it. It is sometimes described as being 'like a contract' between the group's members.

An unincorporated association is a simple type of organisation, and by far the favourite legal structure chosen by new voluntary groups. It is easy to set up and run. Other types of legal structures that may be chosen by voluntary groups are:

- (i) a trust;
- (ii) a company limited by guarantee; or
- (iii) an Industrial and Provident Society.

For further information, see *Notes on Legal Structures* in section 2 of this resource pack. It explains the features of the different structures, and compares the pros and cons of each of the legal structures that voluntary groups may choose from.

## **1.3 What is in a constitution?**

A constitution (or other type of governing document) usually includes the following:

- (i) Date and record of adoption - it is important to record if and when a draft constitution was formally adopted by the members of a group. It is only when the constitution is formally adopted in this way that it becomes legally binding on the group
- (ii) Name of the group
- (iii) Administration - a short paragraph simply stating with whom the responsibility for administering or managing the group rests (usually the elected management board). Affiliation explains if the group is managed by another body or linked closely
- (iv) Objects - the aims or purposes of the organisation. It is important that these are written in such a way as to cover everything a group wants or may want to do. When writing the objects of a charity, particular care is required to make sure the objects are exclusively charitable in law, and not a mixture of charitable and non-charitable objects. Some groups do not want to be bound by the 'legal' language of charitable objects, and are prepared to forego the benefits of charitable status so that they can use their own words in the objects
- (v) Membership states who is eligible to apply for membership of a group (or to automatically consider themselves a member). It may also say that there are different categories of membership, eg full members, associate members, group members. This clause can also provide for termination of membership
- (vi) Management describes how the organisation will be managed (it is usually by a management board); how and when they are elected, and by whom; the number of co-opted members; the minimum number of times they should meet in a year; and what a quorum for their meeting should be. If it is the intention of the organisation at some stage to appoint sub-boards, then reference to this should be included
- (vii) General meetings states when the Annual General Meeting will be held and what business is to be transacted at it, which should always include:
  - Receiving from the board an annual report and statement of accounts
  - Electing the board, and appointing an auditor or an independent person to examine the annual accounts in the coming year

The second part of this clause should make provision for extraordinary or special general meetings of the membership of the organisation - these are usually called when some special business has to be considered

- (viii) Rules and procedures at meetings - this clause may or may not be included but, if it is, it should state:
- Who chairs meetings in the absence of the Chair
  - Whether the Chair has a casting vote
  - That records (minutes) of all meetings should be kept by an office-bearer
- (ix) Finance - this clause should make clear that the funds of the organisation can only be used to further the objects of the association and for no other purpose. It should also state that a bank account should be opened and who is authorised to sign cheques on behalf of the organisation
- (x) Trustees - an unincorporated association cannot hold property in its own name because it does not exist in the eyes of the law. If such a body wishes to own buildings or land, it will need to appoint trustees. Trustees are people who hold property which is not their own, but has been entrusted to them
- (xi) Amendments to the constitution - a constitution may be altered, but only at a special general meeting of which proper notice has been given to the members. In the case of an organisation which is a charity, no changes should be made which would alter the charitable nature of the organisation
- (xii) Dissolution - this states what happens if the organisation decides to wind up, in particular what will be done with any funds remaining after all liabilities have been met
- (xiii) Indemnity - this says that the group will cover or 'indemnify' members or volunteers or employees who suffer a loss (eg are successfully sued by a third party) as a result of work they carried out on behalf of the group. However, to prepare for the event that the group does not have the means to indemnify a person, a suitable insurance policy should be taken out by the group to protect it from obvious risk.

#### **1.4 Potential liabilities<sup>1</sup>**

Any group of people coming together to pursue a joint activity becomes accountable for its actions, and the individuals concerned may be held responsible individually for any group action which results in a civil or criminal offence. This is especially true of unincorporated associations. A good constitution can help to protect individuals because it can be a safeguard against things going wrong so long as members follow its rules!

It is important to consider the issue of liability and responsibilities in the process of adopting a constitution.

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<sup>1</sup> Extract from 'How to compile, adopt and use a constitution - Guide notes for community organisations', published by **ICOM**.

Many community groups only deal with small amounts of money necessary to carry out fairly modest activities and in such circumstances it is unlikely that anything will go wrong as long as there are strict controls on handling cash and proper accounting procedures.

If, however, a group raises large amounts of money, or has responsibility for buying or leasing a building, or employs a worker, these are commitments which carry a higher risk of liability. At the present time, there are increasing numbers of voluntary groups which are taking on responsibilities which are quite daunting. Even if they have paid staff, these groups are managed ultimately by the board members who are unpaid volunteers. In such cases, the members of a group, and especially the management board members, need to be sure of several important aspects of their situation.

The liability of an individual for the actions of a group depends on his/her position and role as a member of that group:

- A general member of a group, whether or not he/she is listed as a member, or whether or not he/she pays a subscription, cannot be held responsible for the actions of a board, even though he/she may have taken part in voting for that board
- A board member cannot expect the general members of a group to help meet a liability which results from the actions of a board. If a General Meeting takes action itself which results in liability, then the members at that General Meeting may be held liable for that action
- Individuals who are elected or appointed as voting members of a board of a group become legally liable for the actions of that board along with the other voting members of that board
- Individuals who represent constituent or affiliated groups, and who are voting members of the board, carry as individuals the same liability as other voting members of the board. A group which appoints a representative to the board of another group may indemnify (or cover) its representative against liability by taking out appropriate insurance and/or may, in its own constitution, take responsibility for any liability incurred by a representative appointed to it from another group
- Whether or not co-opted members have the right to vote should be stated in the constitution so that the voting status and, therefore, the potential liability of those persons, is made absolutely clear. Individuals attending board meetings in an advisory capacity (without the power to vote) do not normally incur a liability for the actions of the board which they attend. Such advisory members may, of course, be held responsible for difficulties arising with an organisation as a result of incorrect advice which they might give

(For further information on liability and how to avoid it, or cope with it, please look at Part 1, Section 4 of this guide.)

## **1.5 Final steps in the process of setting up a new group**

As already discussed, a new community group usually starts because a small group of people met together to deal with a problem, or to discuss ideas for meeting a need, and have decided that the best way forward is to start a group.

The small group may decide to go ahead and work out a constitution and a plan of action to present to a public meeting immediately. More usually, a general public meeting will be called, and that meeting will appoint a temporary board (steering board) to do some preliminary work on organising things, particularly the constitution.

If this model is followed, the temporary (or steering) board will report back to another public meeting having taken action on certain issues or plans, and having produced a draft constitution. The second public meeting can then discuss all suggestions and perhaps formally adopt the constitution.

When a steering group has a draft constitution which is suitable (ie reflects accurately the group's objects, management and membership systems), it may be a good time to call an inaugural meeting.

When all of the members of a group formally agree to the constitution, as prepared by a steering board, the next step will be to submit it for approval to the Inland Revenue if charitable status is deemed desirable (see below). If charitable status is not desired, the organisation can proceed to carry out its work under the management of its elected board without further ado. In other words, without charitable status, the organisation can:

- raise money through membership fees, jumble sales, etc
- organise street or house to house collections, or flag days, as long as the prior permission of the local police is secured
- spend the proceeds on out of pocket expenses, stationery and organising special events in pursuit of the aims of the organisation

However, accurate accounts of all income and expenditure must be kept for presentation at an Annual General Meeting.

<sup>1</sup>Extract from 'How to compile, adopt and use a constitution - Guide notes for community organisations', published by ICOM