Museum Constitutions and how to amend them

South East Museums Development Programme

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Museum Accreditation 2018

- Must have a governing body that is constituted under the constitution
- Objects to include running a Museum
- Long-term purpose
- Powers to manage a Collection
- Ownership of Collection
- Agreements in writing, eg loan agreements, licences to occupy
- Public access - public benefit
Museum Accreditation 2018

- Restriction on distribution of assets/private gain
- Charitable dissolution clause
- Insurance and security
- Influence of external organisations/3rd parties
- Security of tenure of property - leases or licences

Constitutions

CONSTITUTION
Reasons to update constitutions

- Ensuring constitution is fit for purpose and objects relevant and valid
- Good practice - well run charity, good impression to potential funders
- Include latest legislation - Companies Act 2006 and Charities Act 2011
- Ensure have express powers and acting within powers - implication for personal liability of trustees, even of limited liability charities

Current governing document

- Check governing documents:
  - Companies - Articles of Association
  - Trust - Trust Deed
  - Association - Constitution
  - CIo (Foundation and Association) - Constitution
  - Royal Charter - Royal Charter and Bye-Laws
  - Legislation
  - Other - Charity Commission Scheme

- Check using latest version - Charity Commission website
  - Companies House website
Current governing document - content

- Governing document - the rule book for your charity
  - Objects
  - Powers
  - Meetings - notice, quorum - check whether members or trustees
  - Decisions - how they are made and recorded (conflicts of interest)
  - Trustees and Members - who they are, how many, how appointed, and removed
  - Power to amend governing document or requirement to obtain consent
  - Trustee liability
  - How to close the charity down
  - A living, legal document - keep under review, follow correct procedure and wording to amend and obtain appropriate legal advice

Amending the Objects.

- Requires Charity Commission consent
- Must fall within heads of charity
- Public benefit requirement - large enough section of society to benefit and poor not excluded
Heads of Charity

- The prevention or relief of poverty;
- The advancement of education;
- The advancement of religion;
- The advancement of health or the saving of lives;
- The advancement of citizenship or community development;
- The advancement of the arts, culture, heritage or science;
- The advancement of amateur sport;
- The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;

Heads of Charity

- The advancement of environmental protection or improvement;
- The relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- The advancement of animal welfare;
- The promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance service;
- Any other analogous purposes.
Powers

- Need to have express powers
- Check powers every time entering into new activity
- Need to have sufficient powers to manage the Collection
- Typical powers:
  - take on loan and lend out artefacts
  - purchase additional artefacts
  - insurance/security
  - investments
  - employ staff
  - charge admissions
  - run shop/trade

Power to amend constitutions

- Express power - check governing document

- Statutory power - unincorporated charity:
  - Small unincorporated charities (under £10k) - amend everything, including objects
  - Other unincorporated (including Scheme) - amend administrative provisions

- Companies - regulated by Companies Acts and section 198 Charities Act 2011
Power to amend constitutions - companies

- Regulated Alterations requiring prior Charity Commission consent:
  - Change of objects
  - Change of dissolution clause
  - Any change to trustee remuneration (or connected persons), unless sufficient non-conflicted members to pass resolution

- Not requiring consent - change of name (all charities)

Procedure to amend constitutions

- CIO - depends upon whether Foundation or Association
  - If Foundation - trustee decision
  - If Association - members’ decision

- Scheme - follow any express provisions in the Scheme
  - If administrative can be passed by trustees (or members)
  - Otherwise may require another Scheme

- Charitable Trusts - resolution of the trustees following any procedure in the trust deed
Procedure to amend constitutions

- Companies - special resolution at meeting
  - must be members' meeting - can be AGM or other general meeting
  - meeting convened with proper notice
  - quorum satisfied (note proxies)
  - 75% of those attending and voting
  - can be by written resolution if small number of members
  - must record in minutes of meeting

Procedure to amend constitutions

- Companies - written special resolution
  - must be written resolution of members
  - statutory power if not in Articles
  - must be circulated to all members
  - particular format for resolution
  - must return to office within 28 days
  - 75% of members must sign and return within the 28 day period for resolution to be passed
  - Date of resolution is date that last trustee signed within the 28 day period
Filing updates

• All charities - must file updated constitution with Charity Commission
• Charity Commission register is the version considered to be the current legal constitution
• For charitable companies - must file with Companies House first and then with Charity Commission
• For CIO the resolution is not valid until accepted by Charity Commission

Examples of restructuring

• Incorporation of unincorporated charity
• Conversion of Charitable Company to CIO
• Conversions between charities and social enterprises (CICs)
• Trading subsidiaries
• Other charities as subsidiaries/affiliates
• Mergers
• Collaborations
Incorporations

- Where trustees of an unincorporated charity seek limited liability

- Unincorporated - includes Trust, Association and CC Scheme

- Now choice of Company Limited by Guarantee or Charitable Incorporated Organisation (CIO) - Pros and Cons

Incorporations - process

- Pass resolution of trustees/members
- Obtain any necessary consents
- Register new charity
- Set date for transfer
- Sign transfer agreement
- Notifications
- Novate contracts/loan agreements
- Arrange for transfer of assets
- Either retain old charity or wind up
- Charity Commission Mergers Register
Incorporations - issues

- Unable to identify membership
- Unable to satisfy quorum for members’ meeting
- Assets that cannot transfer
- Permanent endowment
- Future legacies
- Transfer of staff (TUPE)
- Substantial property transactions
- Benefit re: property, eg overage agreement
- Issues with bank - renegotiate terms
- - new bank account: standing orders

Conversions

- Company to CIO - as of January 2018
- CIC to CIO - as of September 2018
- Company limited by shares to company limited by guarantee - cannot convert
Trading Limits - revised 1 April 2019

- HMRC limits
- Limit of 25% of gross annual income from non-primary purpose trading.
- Maximum of £80K for charities with annual gross income over £320K
- De minimis of £8K per annum

Trustees
Types of Trustees

- Charity Trustees
- Can be described as trustees/directors/committee members - terminology confusing
- Holding Trustees
- Official Custodian
- Ex-officio Trustees
- Nominated/Appointed/Elected/Co-opted

Appointment of Trustees

- Members’ charity - appointed by members at AGM
- Trustees only charity - appointed by trustees at trustee meeting
- Can be appointed by third parties - Churches, Councils
- Charitable Trusts - either in accordance with Trust Deed or using statutory power in Trustee Act 1925 - Deed of Appointment and Retirement of Trustees
- If appointed at a meeting, must note in minutes
- If trustees not validly appointed, any decision-making could be invalid - saving provision
Checks on new Trustees

- Charity Commission - disqualified as a trustee
- Companies House - disqualified as a director
- Insolvency Service
- DBS checks
- Fit & proper persons - HMRC
- Self - declaration

Trustee Code of Conduct

- Integrity and honesty
- Protect reputation of charity
- Confidentiality
- Personal gain
- Personal relations - Staff, CEO, Volunteers
- Attendance at board meetings
- Sign and date to agree terms
- Ensure governing document gives power to back up
**Trustees - Remuneration**

- Expenses
- Honoraria
- Trustee Indemnity Insurance
- Payment for services - if in constitution
- Statutory power if not prohibited in constitution
- Salaried roles
- CC 11 - trustee taking up salaried role
- Manage conflicts of interest
- Connected persons
- Breach of rules - reimbursement of charity

**Conflicts of Interest**

**Charity Commission Definition**

"A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity"
Conflicts of interest

- Major issue for Charity Commission
- What is meant by a conflict of interest?
- Can it be authorised?
- Conflicts of interest policy
- Conflicts of interest register
- Meeting procedure

Conflicts of interest

Doesn't matter whether:
- Any actual conflict arises - is there a reasonable perception of a conflict?
- Any action is taken as a result of the conflict
- A trustee acts in good faith
- Any advantage exists for the trustee
- The charity has not been disadvantaged
How to deal with conflicts of interest

- Identify
- Manage or eliminate?
- Record - register, agenda, meeting minutes
- Procedure for trustee remuneration

Charity Commission
Charity Commission New Powers

- Warnings
- Action Plans
- Directions
- Waivers of Disqualification of Trustees

Serious Incident Reporting - Definition of a Serious Incident

"An adverse event, whether actual or alleged, which results in or risks significant harm, damage or loss"

Significant means in the context of your charity, taking account of its staff, operations, finances and/or reputation.
Serious Incident Reports

- Annual Report and Trustee Declaration
- Loss of money or property
- Harm to Charity’s work, reputation or beneficiaries
- Charity Commission table of examples
- Suspicions, allegations and incidents
- Charity Commission digital research/cross-referencing/other agencies

Serious Incident Reports to include:

- Who you are and your authority;
- A summary of the facts, allegations or suspicions;
- When the charity first became aware;
- Who was involved and their role or link to the charity;
- What action has been taken by the trustees to date;
- Whether the trustees have undertaken an investigation and the outcome;
- Whether there is a relevant internal policy and if it has been followed;
- Whether there has been a report to the police, local safeguarding board or other authority including Ref Nos;
- Whether there has been any publicity and your media policy.
Whistleblowing

- Complaints Policy and Procedure
- Whistleblowing
- Charity Commission Report on auditors and independent examiners
- MOU with Association of Chartered Certified Accountants
- Charity Commission Portal with HMRC

Charity Commission Guidance

- CC3: The essential trustee: what you need to know, what you need to do
- CC8: Internal financial controls
- CC11: Trustee expenses and payments
- CC14: Charities and Investment Makers: a guide for trustees
- CC20: Charities and Fundraising
- CC26: Charities and risk management
- CC27 It’s your decision: charity trustees and decision making
- CC29: Conflicts of Interest: a guide for charity trustees
- CC35: Trustees trading and tax: how charities may lawfully trade
Other Sources of Information

- Regulators:
  - Charity Commission
    - PO Box 211, Bootle L20 7YX
    - Tel No: 0300 066 9197
    - https://www.gov.uk/government/organisations/charity-commission
  - Companies House
    - Crown Way, Cardiff CF14 3UZ
    - Tel No: 0303 123 4500
    - https://www.gov.uk/government/organisations/companies-house

Other Sources of Information

- Charity Umbrella Organisations:
  - NCVO
    - Society Building, 8 All Saints Street, London N1 9RL
    - Tel No: 020 7713 6161
    - https://www.ncvo.org.uk/
  - NAVCA
    - NAVCA, The Workstation, Paternoster Row, Sheffield S1 2BX.
    - Tel No: 0114 278 6636
    - https://navca.org.uk/
  - Small Charities Coalition
    - 9-10, 83 Crampton St, Walworth, London SE17 3BQ
    - Tel No: 020 7358 6490
    - http://www.smallcharities.org.uk/
Other Sources of Information

- **Museum Organisations:**
  - Museum Association
  - 42 Clerkenwell Close, Farringdon, London EC1R 0AZ
  - Tel No: 020 7566 7800
  - [https://www.museumsassociation.org/home](https://www.museumsassociation.org/home)

- **South East Museums Development Programme**
  - South East Museum Development Programme, Brighton Pavilion & Museums, 4/5 Pavilion Buildings, Brighton, BN1 1EE
  - Tel No: 01273 292864
  - [https://southeastmuseums.org/](https://southeastmuseums.org/)

Other Sources of Information

- **Governance:**
  - Charity Governance Code - website
  - [https://charitygovernancecode.org/](https://charitygovernancecode.org/)

- The Arts Council’s Constitutional Guidance document
  - [https://www.artscouncil.org.uk/accreditation-scheme/support-and-advice#section-3](https://www.artscouncil.org.uk/accreditation-scheme/support-and-advice#section-3)
Any Questions?

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