



**Example Constitution,
Charity Guidelines
Field/Safety Rules
& Disciplinary Procedure Guidance
for BMFA Affiliated Clubs**

Reviewed 2013

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INTRODUCTION

In its capacity as a National Governing Body the BMFA has a duty to provide clubs with guidance and assistance relating to best practice in all matters.

The operation and running a model flying club can present a number of challenges and the cornerstone for any club should be a robust constitution document, this document provides a template on which clubs can base their own constitution.

The vast majority of model clubs are constituted as “private members clubs” and as such are free to govern their own affairs as they see fit, however it is important to note that such clubs are still subject to various aspects of UK legislation governing fairness and equality, and failure to adhere to these principles may present significant potential for legal action against the club and its officers. Whilst the insurance cover provided to BMFA affiliated clubs provides protection against such actions, it is of course preferable to prevent matters escalating to such excessive levels.

A robust and comprehensive constitution document is a hugely important “tool” and should represent the “go to” document for club committee’s facing problems of this nature.

Unfortunately we are assisting clubs involved in legal disputes with increasing regularity and often initial problems arise through the lack of an appropriate constitution, the importance of this document cannot be overstressed as it will establish the ground rules and way forward in any dispute.

The template is written to be as comprehensive as possible and to cover all points that may be pertinent to a model club, it is not anticipated that all BMFA affiliated clubs will adopt the document in its entirety but it is recommended that clubs consider all points carefully before deciding to exclude them.

A comprehensive constitution and a set of rules ensures that a club has well defined procedures and standards which enables the club to conduct its business lawfully and with due consideration for its members. In turn, the members know what is required of them and what their role and rights are within the club environment.

Also included in this document is an article from the Legal Panel of the Sport & Recreation Alliance entitled “Drafting of Constitutions and Rules of Unincorporated Organisations: An overview of the key issues” an excellent overview kindly reproduced with permission of the author Thomas Barnard, of Thomas Eggar LLP. See Appendix 2

Should your club require assistance with the implementation or updating of a constitution document then contact:

The Chief Executive, Development Officer or Club Support Officer
The British Model Flying Association
31 St Andrew’s Road
Leicester
LE2 8RE
Tel: 0116 2440028
Email: admin@bmfa.org

CONSTITUTION

Words of masculine gender should be taken to include the feminine gender unless the context indicates otherwise.

GENERAL

1. The club shall be called **XXXXXXXXXXXXXXXXXXXX** and will be affiliated to the British Model Flying Association.
2. The clubs principal aim shall be the promotion of safe and responsible model aircraft flying. **List particular types if your club has restrictions or promotes specific types.**
3. Alterations to this constitution can only be made at an Annual General Meeting or at a General Meeting called for that purpose. Any Proposed alterations must be submitted to the secretary in writing at least 14 days prior to the meeting.

MEMBERS

4. A "member" means any class of membership.
5. The Committee has the right to refuse membership to new applicants.
(BMFA Note:- As a private members club you can refuse membership to any individual, however the reason cannot be due to, race, gender, sexuality, disability etc It is important that the reasons are documented in meeting minutes.)
6. New members will be required to serve an initial probationary period of 6 months. During this time they will not be eligible to serve on the Committee and may have their membership terminated at the discretion of the Committee for unsatisfactory conduct.
(BMFA Note:-During this probationary period the member can be dismissed for misconduct without going through the disciplinary procedure.)
7. New members' subscriptions shall be dependent on membership class, plus the joining fee as decided at the Annual General Meeting.
8. Subscriptions are due by 1st January each year. Any member, who has not paid the subscriptions for the ensuing year by this date, in whole or in part, will not be permitted to fly until they have done so. BMFA membership must be in place before flying.
(BMFA Note:- A club cannot refuse a members renewal if received before any deadline specified in the constitution, to do so is classed as dismissal and the disciplinary procedure must be followed)
9. Members who have allowed their membership to lapse for less than **xxxxx** will not normally be asked to re-apply for membership or pay the joining fee, but will be required to pay a full 12 months subscription. Reduced subscriptions for new members will apply from September when they will be halved. The Committee reserves the right to ask for a formal membership application if it so wishes.
10. Members who have not renewed their membership by **xxxxx** will be deemed to have left the club and a renewal after this period will be treated as a new membership application.
(BMFA Note:- The time period specified in clauses 9 and 10 should be equal.)

11. All members must be members of the British Model Flying Association and must be able to provide evidence of such on request. The only exception to this is for those members who play no active part in the club whatsoever; i.e. social members only.
12. A member may be made a life member for extensive services to the club. Life members can only be created by a majority ballot of club members at a general meeting.
13. All members, without exception, must comply with all club rules. Failure to do so may result in disciplinary action by the Club which may lead to dismissal.
14. Members may invite guest fliers to the site on arrangement with the Committee but they must be BMFA insured and the club member must assume total responsibility for the actions and safety of the guest. ***(Your club may accept other insurances but you are advised to ensure you are satisfied they provide you with the cover you require)***. Guests must fly under the supervision of instructors if their ability requires it, and such arrangements must be made in advance of the visit.

RULES, DISCIPLINE AND SAFETY

(see Appendix 1, Pg 15 for disciplinary procedure guidance)

15. Additions and amendments to field safety rules and regulations can only be made by proposals at a General Meeting.
16. All field safety rules and regulations will be reviewed annually, and will be considered binding for 12 months, excepting where urgent action is required. This action must then be ratified by the members at the next general meeting.
17. Any complaint concerning any member must be made in writing and signed by the complainant(s). The written complaint must then be forwarded to the Secretary so that the matter can be addressed at the next Committee meeting.
18. Where an allegation of misconduct is made against a member, the member may be suspended from all club activities while an investigation is carried out.
(BMFA Note:- A suspension carried out in this matter is considered a neutral act and infers no blame or guilt and is purely to allow an investigation.)
19. The Committee may impose a suspension from club activities including attendance at the club flying site, not exceeding **XX** days upon any member in the event of misconduct. Any suspension must be accompanied by a verbal and/or written warning as deemed appropriate in accordance with Article 20.
20. The Committee may consider removal of membership where conduct on the field or elsewhere is considered to be prejudicial to the club. Dismissal will be in accordance with the following procedure in order to comply with the laws of natural justice:
 - a. The member is to be given a verbal warning by an authorised Committee Member in which the member is made aware of his misdemeanour and what he is reasonably required to do to make amends.

- b. If the member does not respond, he is to be given a written warning by an authorised Committee Member to advise him of his misdemeanour and what he is reasonably required to do to make amends.
- c. If he still fails to respond, the Committee should invite him in writing to meet with them at a previously agreed date and time to discuss the situation, advising they are considering withdrawal of his membership.
- d. If he still fails to respond to reasoning or fails to attend without reasonable cause, the Committee can advise him in writing that his membership is withdrawn, stating the reasons why this decision was reached.
- e. When the member is advised of withdrawal of his membership, he must be given the right of appeal. If he opts to appeal, this will be to the Club membership at an EGM which the Committee would call on his behalf at a previously agreed date and time. The motion to uphold the membership withdrawal or reverse it must be in accordance with the voting procedures set out in the Club Constitution.

In the event of gross misconduct, immediate dismissal without warnings may be considered but the member must still be accorded his rights to present his case to the Committee and be given a right of appeal in accordance with sub-paragraphs c, d and e above.

In the event of dismissal the Committee will arrange for the member's current membership fee (excluding BMFA subscription) to be reimbursed in full.

FLYING

21. The Committee, Officers and Instructors, will be responsible for the running of the flying field at all times. Appointment to the position of Instructor or Examiner can only be made by a Committee decision.
22. All flying members must attain the minimum standards of flying required under the **club name** training scheme before receiving the BMFA 'A' Certificate and before being permitted to fly indirectly supervised.
23. Any member whose flying standards drop below the minimum requirement solo standard will be required to rejoin the training scheme until the desired standards of flying are met.

COMMITTEE STRUCTURE AND APPOINTMENTS

- 24 The Committee of the Club shall comprise of not more than **XX** members.
- 25 The Officers of the committee shall be, Chairman, Vice Chairman, Secretary, Treasurer and Safety Officer.

26. One senior club member should be appointed annually as the clubs' BMFA Delegate who should represent the club at all relevant meetings. **List other Committee members, such as a Social Secretary, Safety Co-ordinator etc. here.**
27. Any Committee member or member who is involved in any organisational position within the Club, must hold membership of the British Model Flying Association.
28. Committee officers and members shall be elected at the Annual General Meeting from written nominations received no later than 28 days prior to the meeting, to serve for a period of one year. The Committee will be elected by majority vote by paper ballot from members present. All fully paid up members and life members are eligible to vote.
29. Should a committee position become vacant, the Committee may, by a majority vote, co-opt a replacement who will then serve until the following Annual General Meeting.

COMMITTEE ORGANISATION AND POWERS

30. Members elected to office will have full voting rights at all meetings. In the event of a tie the Chairman will have a casting vote in addition to his initial standing vote.
31. The Committee are authorised to carry out negotiations and make decisions in the interest of the club or on behalf of the membership where necessary without consulting the members. Approval from the membership at an ordinary meeting must be sought for expenditure greater than £xxx.xx
32. Each Committee officer is required to submit a sample of his signature for banking reference purposes.
33. Money may only be withdrawn from the club funds by cheque signed by not less than two Committee Officers.
34. The Secretary must be informed of any negotiations proposed by club members which affect the Club as a whole and copies of any written correspondence must be submitted to him for record purposes.
35. The Secretary will receive an annual honorarium to cover out of pocket expenses not covered under the normal conditions of withdrawal from club funds, the amount of which will be decided at the Annual General Meeting. He may also present a quarterly claim towards telephone costs for consideration by the Committee.
36. No member of the Committee or Officer of the club may be a Committee Member or Officer of another model flying club.
37. Any Committee Member or Officer wishing to resign must do so in writing.
38. Any member of the Committee who is absent from three consecutive Committee meetings without reasonable cause will automatically forfeit his seat on the Committee.
39. The Committee may pay accounts and incur any normal liabilities on behalf of the club.

VOTING AND CONDUCT OF COMMITTEE MEETINGS

40. All committee meetings will be agenda'd and minuted. Minutes of committee meetings will be made available to members on request to the secretary.
41. A quorum of any Committee meeting shall consist of a majority of Committee Members.
42. All proposals must be seconded and voted upon. A majority vote of those present is required to carry any proposal.
43. Voting will normally be by a show of hands, however a secret ballot must be taken should any committee member request that this be done. Proxy and postal votes will not be permitted.
44. An audio recording of committee meetings may be taken by the secretary only, for the sole purpose of producing accurate minutes. The audio recording must be deleted once the written minutes are approved.
45. Non committee members may attend committee meetings as observers by applying to the Secretary at least 14 days before the meeting. Any non Committee Member may be asked to leave the meeting subject to approval from the Committee.

VOTING AND CONDUCT OF GENERAL MEETINGS

46. All general meetings will be agenda'd and minuted. Any other business will only be accepted at general meetings if the Secretary is given at least 14 days notice in writing of the item to be discussed.
47. A quorum of any general meeting is to be at least one quarter of the membership.
48. All proposals must be seconded and voted upon. A majority vote of those present is required to carry any proposal including proposals to alter this constitution.
49. Voting will normally be by a show of hands, however a secret ballot must be taken should any member request that this be done. Proxy and postal votes will not be permitted.
50. Amendments to proposals must be voted upon first.
51. An audio recording of general meetings may be taken by the secretary only, for the sole purpose of producing accurate minutes. The audio recording must be deleted once the written minutes are approved.
52. Non club members may attend Club meetings as observers as invited guests of a club by applying to the Secretary at least 14 days before the meeting. Any non Club member may be asked to leave the meeting subject to approval from the Committee.

53. The Committee, through the Chairman has the power to ask a person to leave any meeting in the event of that person disrupting the meeting.
54. Patrons of the club have no voting rights but are free to attend all club meetings.

ANNUAL GENERAL MEETINGS

55. A date for the Annual General Meeting will be decided each year by the Committee. At least 28 days notice of the meeting will be given in writing to all Club members.
56. Annual subscriptions and the joining fee will be decided at the Annual General Meeting.
57. A competent individual (non-committee member) shall be elected by the Committee to carry out an independent examination of the accounts before the Annual General Meeting to verify that the balance sheet is correct and fairly represents the expenditure and receipts of the club, its assets and its liabilities.

EXTRAORDINARY GENERAL MEETINGS

58. The Secretary will convene an Extraordinary Committee Meeting within 14 days on request from any officer of the Committee, stating the business to be discussed.
59. The Secretary shall convene an Extraordinary General Meeting of the club by a resolution of the Committee stating the business to be brought before the meeting, of which 28 days notice has been given to all members in writing stating the business to be discussed.
60. The Secretary shall convene an Extraordinary General Meeting of the club on receipt of a request in writing signed by not less than **XX** members of the club, stating the business to be brought before the meeting.
The meeting must be called within 28 days of request and 28 days notice must be given to all members in writing stating the business to be discussed.
61. When a request for a meeting is made in accordance with Article 59 and it is not called within 28 days, the requisitioners may themselves convene an Extraordinary General Meeting of the Club by giving 28 days notice in writing to all members, duly setting out the purpose for which the meeting was called. Any resolutions passed at such a meeting shall have the same force and effect as if they were passed at a meeting convened by the Committee.

INSURANCE AND INDEMNITY

62. The club will hold both Civil and Employers Liability Insurance, provided through affiliation to the BMFA.
63. The club will indemnify all committee officers and committee members if they incur any liability on behalf of the club.
64. In the event of a Committee Member being awarded damages or costs in the course of proceedings taken by him in his representative capacity, such damages or costs will belong to the Club and not the Committee Member personally and upon receipt that Committee Member will pay them to the Club Treasurer.
65. When there is a joint meeting between ***the club name*** and another club, the participating club must be able to provide evidence of adequate insurance cover well in advance of the event.

DISSOLUTION OF THE CLUB

66. Should it be considered necessary or desirable to dissolve the Club, the Committee will call an Extraordinary General Meeting. Should a quorum fail to appear, the meeting will be adjourned and a further EGM must be called within 14 days. The second meeting will proceed even if a quorum is not present and the motion will then be carried by a simple majority vote.
67. On dissolution and after the sale of assets, settlement of all outstanding debts and the refund of subscriptions for the remaining part of the year to the paid up members; the funds remaining will be distributed in equal shares to the Club's charities. (See the Clubs' Charity Guidelines).
68. If the final accounts are less than required to refund the subscriptions to the members, the total money remaining will be ***donated to the Club's nominated charities / held in trust by the BMFA for a period of ten years.*** (delete as appropriate). All members will receive a final statement of accounts.

BMFA Note :- Upon dissolution where clubs place funds in trust with the BMFA it is held for up to 10 years and returned in the event the club is reformed. After 10 years the funds get transferred to the Development fund and used to further model flying in the UK. This procedure is acceptable where a club intends to apply for Community Amateur Sports Club status or intends to obtain grant funding. Contact the office for further details.

CHARITY GUIDELINES

1. The aim of these notes is to provide guidance to the Committee of the Club when considering making donations to charity.
2. The Club's charity guidelines are as follows :-
3. The Club should, wherever possible, support local charity events when asked. i.e. school summer fairs, firework displays, etc. whenever it is practicable to provide a relevant display of what we do. Whether or not money changes hands largely depends on the circumstances around which the event is based. These conditions should be finalised well before the day of such an event.
4. Only money raised at these events should be made available to donate to worthy causes. No money will be diverted from members' subscriptions.
5. In the event of the club being approached to donate money to a local worthy cause, the Committee will make a decision on the amount to be donated. The maximum sum available in this case will be **£XX**.
6. In the event that the Club is approached for sponsorship of a member or their close associate who is involved in a charity event, the Committee will make a decision on the amount to be donated. The maximum sum available for sponsorship in this case will be **£XX**.
7. The Club reserves the right to periodically donate funds to charities. The amounts and gaining charities must be agreed by majority vote at a general meeting.
8. The current nominated Club charities are :-

List the charities as required.

These are the charities referred to in the Club's Constitution Article 67.

FIELD / SAFETY RULES

1. All members must observe field discipline and comply with the Air Navigation Order, all relevant BMFA safety codes as contained within the BMFA Members' Handbook and Civil Aviation publication (CAP) 658.
2. On matters of field safety needing an immediate decision, the responsibility lies with instructors or a member of the committee in that order. Any instructions must be accepted without dissent. However, should a member believe the instructions to be wrong, then he should bring this to the attention of the Committee through Article 15 of the Constitution.
3. Any pilot not holding their solo qualification for the type of aircraft they are flying must not fly without the supervision of an instructor or their specially appointed deputy if the instructors are absent from the field. If no instructors are present at the site, any member holding the BMFA 'B' Certificate may act as an appointed deputy until an instructor arrives.
4. Due consideration must be given at all times to trainee or novice pilots in the circuit. In the event that the pleasure or concentration of a pilot is affected by the flying style of another, precedence will be given to the pilot who was airborne first. Intimidating flying of any sort is not permitted.
5. No more than XX aircraft shall be airborne at any one time.
6. All flying is to be done in the designated areas only. ***(It is useful to include a diagram of your site(s) depicting the positions of dead airspace, pits, flight lines, pilots' box, car parking, spectators' area etc.).*** Over-flying of the ***list any particularly sensitive areas here to emphasise them*** is not permitted.
7. All pilots must observe the established flight line and stand in the designated area whilst flying. Any variation to suit daily conditions may be made by the Club's safety officers. Any spectators must remain in the spectators' area whilst flying is in progress.
8. Any person wishing to enter or cross the runway area must seek clearance from any pilots flying at the time before doing so.
9. All vehicles must be parked in the designated area only.
10. The frequency allocation system in use is the ***describe your frequency control system here in detail.***
11. Before switching on, the pilot must ensure that he is operating on the frequency he believes he is on and must display the appropriate frequency pennant on his transmitter.
12. 35 MHz frequency numbers must be called out before the transmitter in question is switched on.

13. All 35MHz transmitter aerials must remain retracted unless the model is being flown. The flight is defined from the point of release to when the engine is stopped or the model is restrained.
14. Transmitters should not be taken away from the flight line when retrieving an aircraft, unless to do so would aid retrieval of the model. In this instance the matter should be brought to the attention of the safety officers so that this may be carried out without the risk of over-flying the transmitter.
15. Should an aircraft go out of control, the first priority must be the safety of persons with the second being avoidance of damage to property. A warning is to be shouted by the pilot which is to be taken up by other members.
16. Before starting an engine the model must be suitably restrained either by a tether or by an assistant.
17. In the interest of safety, assistance should be sought when running up engines and taking models to the runway for take-off. All helpers must have BMFA membership. The use of an assistant for pilots with IC Helicopters is mandatory for starting and carrying the model to the flight line.
18. Appropriate use should be made of all available pit area, and under no circumstances should engines be set up in the immediate vicinity of the pilots who are flying at that time. Where practical, models should face outward from the pit area.
19. Under no circumstances must an engine be run unless all persons are behind the line of the propeller with the exception of the person starting the engine. When carrying out power checks all persons including the pilot are to be behind the line of the propeller.
20. Models having their engines run in on the ground must not be left unattended whilst the engine is running.
21. All new or repaired models should be checked out by an instructor or their appointed deputy before being allowed to fly. All models are subject to random safety spot checks which will be carried out by an instructor. If in his opinion a model is unsafe to fly or does not conform to Club rules, it will be grounded until rectified.
22. Members must ensure that they comply with the D of E Noise Code for the Minimisation of Noise from Model Aircraft. "Add on" silencers and "quiet" propellers should be fitted unless the model emits below 82 decibels at 7 metres without them. Notwithstanding if in the opinion of the Committee a model is excessively noisy in the air, then it is to be grounded until rectified.
23. All operational failsafes in use on powered models operated from our Club site must set the throttle to tick-over, not hold, (stopped in the case of electric power) regardless of the other control operations governed by the failsafe. Failsafes are to be checked prior to flight by switching the transmitter off whilst the model is restrained.

24. No person shall attempt to retrieve a model from any land adjacent to the flying site without prior consultation with the appointed safety officers for the day, to ensure that the situation is properly assessed and minimal disruption caused. If it is considered by the safety officers that the landowner's permission should be sought before retrieving the model, it will be the owner of the model and one of the safety officers who must approach them for permission.
25. Mobile telephones must not be taken onto the flight line.
26. No smoking is permitted in the vicinity of inflammable fuels and materials.
27. Children must be closely supervised at all times and must not be allowed to run around the pit area or runways.
28. No dogs are permitted at the flying field unless kept on a lead or tethered.
29. Any incident involving a third party or another member must be reported to the Committee.

Note: The above is not definitive and in the majority of clubs additional rules will be required to ensure that other requirements, hazards and risks are managed.

GUIDE ON CARING FOR JUNIOR MEMBERS

This guide is not definitive and clubs should be aware it may have to be tailored to meet the club's requirements and possibly the individual needs of junior members. It does, however, provide a starting point for the formulation of club policy and identification of responsibilities.

It should be noted that any disclaimer concerning the care of any member, particularly junior members, is not acceptable in law.

Responsibility for junior members is shared between the parents/guardians and the club members and should be well publicised to ensure that all are aware of the division of responsibilities. The ideal medium is club rules but for these to be effective it is imperative that a copy of the rules is given to parents/guardians in addition to members and their attention is drawn to them.

Typically club rules concerning juniors could be:

1. A Junior Member is defined as being under 18 years of age.
2. A responsible adult is defined as a senior member or parent/guardian who has the experience commensurate with the type and degree of supervision required.
3. Junior members must be supervised at all times by a responsible adult. The level of supervision is to be commensurate with the junior member's age, maturity, capabilities and levels of experience.
4. Junior members under the age of 14 years shall not start an engine or carry a model with the engine running unless they are supervised by a responsible adult.
5. No junior member under the age of 14 years shall fly a model aircraft unless supervised by a responsible adult **or** the junior member holds the minimum of a BMFA Achievement Scheme "A" certificate **and** has been authorised to do so by the Club Committee.
6. No senior member is to be expected to assume responsibility for a junior member unless he/she has been specifically requested to do so by the junior member's parent/guardian. If required to do so, he/she is to assume complete and total responsibility for the junior member whilst he/she is in their charge.
7. Notwithstanding the requirements of Paragraph 6, should a member discover a junior member is unsupervised he/she must assume responsibility for the junior member's safety in the first instance. The situation should then be rectified as soon as possible by seeking out the junior member's parent/guardian/nominated supervisor. Any instance of such an occurrence is to be reported to the Committee as soon as possible.
8. Whilst supervising junior members, senior members should be aware of the requirements of The Children Act (1989) and avoid placing themselves in a position that could be open to misinterpretation or question. A leaflet giving advice is available from the BMFA Leicester Office or from the Club Secretary.

It is recommended the club also places the following or a similar statement on the membership application form to ensure the parent/guardian agrees to abide by club policy:

“Note to parents and guardians:

This Club does not undertake to supervise junior members other than for the actual act of model aircraft flying and associated pre-flight and post-flight procedures, unless specifically arranged. Our activities at the flying site do not finish at a regular time and it is therefore your responsibility to ensure the well being of your child over and above arranging a predetermined collection time. Should you wish to leave your child at the flying site, it is your responsibility to arrange for one of the senior members to supervise him/her during your absence.

In addition this Club has specific rules relating to junior members and you are required to study them carefully.

This membership form must be countersigned by the parent/guardian if the applicant is under 18 years of age, thereby signifying you accept the conditions of junior membership.”

Finally, caring for junior members is largely a matter of common sense provided everyone is clear on what is expected of them and a few simple principles are adhered to. It is not a responsibility to be feared but is nevertheless essential if we are to ensure we continue to attract youth into model flying.

Appendix 1

Disciplinary Procedure guidance

Minor faults or shortcomings in behaviour should normally be dealt with informally by a committee member with a view to reaching agreement on the improvement required. Informal warnings should not form part of the formal disciplinary procedure and the formal procedure would not be followed before an informal warning is given. If, however, the problem persists or if the matter is more serious, action under the formal disciplinary procedure outlined in the constitution should normally be taken.

The disciplinary procedure is intended to provide a formal framework to deal with the situation where an individual's conduct falls below acceptable standards and to ensure fair and consistent treatment of all members in such circumstances.

The procedure outlined is a good practice guide on how clubs should deal with disciplinary issues.

Invitation to a meeting

The committee should set out in writing to the member, the alleged conduct or other circumstances which have led them to contemplate formal action or dismissal and the member should be invited to a meeting to discuss the matter.

Disciplinary meeting

The meeting should take place before any action is taken (other than suspension, in the event of alleged gross misconduct or police investigation, to enable a full investigation to take place). The meeting should not take place until

- (i) the member has been informed of the basis for the grounds given in the original notice of formal action or dismissal and
- (ii) the member has had a reasonable opportunity to consider their response to such information.

At the meeting the committee should explain the complaint against the member concerned and go through the evidence that has been gathered.

The member must take all reasonable steps to attend the meeting.

After the meeting the member should be informed in writing of the committee's decision and their right of appeal against such decision to the members at a general meeting if they are not satisfied with it.

Appeal

If the member wishes to appeal they should inform the secretary in writing within the time frame stated in the decision notice.

The member should set out specific reasons for the appeal.

The Secretary should call an Extraordinary General meeting of the club to hear the appeal

The member must take all reasonable steps to attend the meeting.

The appeal general meeting may take place after the disciplinary action or dismissal takes effect.

After the appeal general meeting the member must be informed of the general meetings final decision.

At any meeting under the disciplinary procedure the member concerned should be given the right to be accompanied by another club member to act in a supporting capacity but such companion may not usually answer questions on behalf of the member subject to the procedure.

The member concerned also has the right to call witnesses or ask questions of any witnesses called by the committee

General principles for the operation of the disciplinary and dismissal procedure

- formal disciplinary action should not normally be taken until the matter has been investigated
- where an allegation of misconduct is made against a member, the member may be suspended from all club activities while an investigation is carried out
- the member should be informed that suspension is a neutral act, that it is not a disciplinary penalty and does not imply guilt
- the member should be advised of the allegations against them and have an opportunity to state their case before any formal disciplinary decision is made
- the member should be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting
- at every stage of the formal disciplinary procedure, the member will have a right to be accompanied at any disciplinary meeting by another club member
- a member should not be dismissed for a first breach of the rules, except in the case of gross misconduct, when the penalty will normally be immediate dismissal
- the member concerned will have the right to appeal against any formal disciplinary penalty
- although the disciplinary penalties which may be imposed under this procedure will normally be imposed in the order set out in the constitution, the procedure may be commenced at any stage if the seriousness of the members alleged misconduct justifies this

Disciplinary sanctions

As part of any disciplinary procedure, where the committee considers it appropriate to do so, they may impose a disciplinary sanction, which is a penalty. These will generally take the form of some type of warning.

- **Verbal warning notice**

If conduct does not meet acceptable standards, a member may be given a formal verbal warning. This should set out the conduct problem, confirmation of improvement required and time scale for improvement to be made, together with the assistance to be provided to meet the objectives.

A record of the verbal warning will be kept but the warning will be disregarded after

usually a six month period (the time frame is dependent on the committee's decision) provided conduct has been satisfactory.

- **Written warning**

If the offence is more serious or if there is insufficient improvement after a verbal warning or if a further broadly similar offence occurs whilst a verbal warning remains in force, a written warning may be given. This will set out the nature of the conduct problem and confirmation of improvement required and time scale for improvement to be made, together with the assistance provided to meet the objectives.

The warning should also inform the member that should your conduct fail to improve or you commit any further disciplinary offence over the next twelve months, (the time frame is dependent on the committee) then you will be issued with a final written warning. The written warning will be kept on file, and the member should be informed after what time period it will be disregarded providing their conduct, attendance or performance has been satisfactory.

- **Final written warning**

If there is still insufficient improvement after a verbal and/or written warning has been issued or if the misconduct is sufficiently serious to warrant only one written warning, a final written warning will be given. This will provide details of the complaint, the improvement required and the timescale for the improvement.

It will also warn that a failure to improve or any further disciplinary offences over the next period referred by your employer may lead to dismissal or some other action short of dismissal. The final written warning will be kept on file and the member should be informed when the warning will be disregarded provided your conduct, attendance or performance has been satisfactory.

- **Dismissal or other sanction**

If there is still further misconduct or a failure to improve conduct the final stage in the procedure may be dismissal.

Examples of misconduct

Examples of misconduct which may lead to disciplinary action being taken include, but are not limited to:

- failure to comply with field safety rules
- breach of club policies and practices

Examples of gross misconduct

The club may consider some types of misconduct to be so serious that a disciplinary warning would be an insufficient penalty. Such offences are known as offences of gross misconduct.

Where the offence is one of gross misconduct the normal penalty will be dismissal without a prior warning being issued (summary dismissal).

Dismissal for gross misconduct will not normally occur until a disciplinary meeting has taken place.

Matters which may justify summary dismissal include, but are not limited to:

- dishonesty, theft and fraud from the club or its members

- deception, for example making untrue statements in membership applications or falsifying expenses incurred on behalf of the club, etc.
- vandalism or sabotage of club equipment and property
- fighting, or seriously disruptive behaviour or offensive or abusive language
- serious misuse of computer, email and internet systems, including posting to club websites or emailing pornographic, offensive or obscene emails to members
- misuse of club financial or other confidential club information
- acts of bullying, harassment or discrimination
- model flying under the influence of drinks, illegal drugs or other intoxicants
- misconduct which may bring the club into disrepute
- serious breaches of the clubs policies, procedures and safety rules
- deliberate or serious damage to the clubs/landowners property or causing loss, damage or injury through serious negligence
- any criminal offence carried out at the club site or during club meetings/events where such offence impacts or may impact upon the club

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Drafting of Constitutions and Rules of Unincorporated Organisations: An overview of the key issues

Introduction

Whilst the majority of National Governing Bodies (NGBs) tend to be incorporated bodies, it is not unusual for a sports club within the membership, and under the jurisdiction, of an NGB to be established as an unincorporated association. Such an association, unlike a company incorporated under the Companies Act, does not have an identity distinct from that of its members. There is therefore no default constitution which can be adopted by the members of the association.

Special care is therefore needed when drafting the constitution. The purpose of this article is to set out and explain some of the key considerations to be borne in mind when drafting rules for a sports club. The same considerations are equally relevant to any club proposing amendments to its constitution/rules.

An Overview

The majority of issues facing unincorporated associations fall into two categories. Firstly, the association does not have its own identity and this causes problems when the association needs to contract with third parties. Members are afforded no special protection by virtue of their membership of the association. Secondly, issues arise as between members themselves. A well drafted constitution must deal with both of these issues. In addition, the constitution should make provision for:

1. The formation of the club. This will include:
 - The name of the club; and
 - The objects and purposes of the club.

2. The rights and duties of membership of the club, such as:
 - The election and admission of members to the club;
 - Resignation of membership of the club;
 - Suspension or expulsion of members;
 - The payment of subscriptions.

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3. The management of the club. This will include:

- Composition of the management committee;
- Management of the club's affairs;
- Ownership and control of financial affairs and property;
- Calling general meetings and procedure at such meetings;
- Alteration of the constitution;
- The power to create by laws.

The purpose of this article does not extend to a detailed review of all of the above, but instead bears focus on the key considerations:

Alteration of the Constitution

It is somewhat paradoxical to start drafting a constitution with the thought of later amendments in line. This consideration is nevertheless an important one. Without an express power to amend, any alteration, regardless of its nature, will require the unanimous consent of all members. As membership of the club grows, unanimous consent becomes increasingly difficult to obtain.

Such a provision may provide for alterations to be made by majority vote of all members for example, or reserve particular amendments to a defined majority of a particular class of membership. In the absence of statutory regulation of unincorporated associations, the founding members can determine without limit the controls that will apply to alteration.

Membership of the Club

The starting position is that all members of a club have the same rights and obligations. Given that nearly all clubs will wish to have different classes of membership this needs to be addressed in the constitution (whether to differentiate between, say, subscription levels or voting rights). It is particularly important to ensure that this matter is addressed at the outset because, as we have seen, once incorporated, it can be difficult to amend the constitution. Any amendment restricting a member's right is unlikely to receive consent.

Considerations should address:

Election and admission of members to the club

The constitution can define the criteria to be met by any prospective membership and, subject to laws on discrimination (in particular the Equality Act 2010) the club can set its own parameters for membership.

By default, a prospective member cannot become a member until subscription rules have been complied with and all dues paid.

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Suspension and expulsion of members

Again, unless the constitution provides for it, a member cannot be expelled from the club. It is with rules relating to expulsion that most care needs to be taken as for obvious reasons they are the provisions of the constitution most often challenged. The rules need to be clear and unambiguous as any ambiguity would be construed by the court in favour of the member.

That said, a court is unlikely to consider an appeal by a member against a club in circumstances where the decision to expel a member is provided for in the constitution. The majority of cases on expulsion concern a member seeking an injunction (preventing the club from expelling him) or damages (to the extent that the member suffers a loss as a result of the expulsion) where the expulsion is not permitted within constitution or the member alleges that the provision has been exercised in want of good faith.

Disciplinary matters

If disciplinary rules are to be included in the constitution, the draftsman needs to pay attention to the fact that such rules are, like expulsion provisions, often challenged.

Particular issues include:

- Jurisdiction (over members and temporary members);
- Clarity of drafting (to limit challenges to the correct interpretation of a particular rule);
- Consistency with NGB rules or rules of international governing bodies; and
- Consistency with the rules of natural justice (for example, is it right that the club act as judge, jury and executioner in application of the rules?).

The Management of the Club

It is fundamental that the constitution of a club addresses the way in which its affairs are to be governed.

Power to create by-laws

If the club wishes to delegate management of its affairs to a distinct body of members (a management committee, for example) then a power within the constitution for those individuals to create by-laws is the most common method by which a club devolves itself of day-to-day management.

The power to create by-laws should be express (it will never be implied) and clearly state the ambit of the body responsible for creating the by-laws.

Management committee

If the club is to allow a management committee to exercise day-to-day control, the constitution needs to address the makeup of the committee, the manner in which a valid meeting of the committee is called and subsequently held (issues such as quorum should be addressed) and valid decisions made. The draftsman should also consider how decisions of the committee are published.

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Ownership and control of property

Very few clubs will have no need to hold or manage property and, as an unincorporated association has no identity distinct from that of its members, this is a key consideration in nearly all cases. Legally, there are four ways in which property can be held for the benefit of the members and the club.

Various types of property may require a different ownership structure (i.e. it may not be workable to impose the same requirements for ownership of land as for petty cash, for example) but the constitution must address this issue. Relevant legal advice should also be sought on an on-going basis and at the time of any significant property acquisition.

Funding the club and the club's borrowing power

A sports club is unlikely to have an implied power to borrow to fund its activities. If a club needs, or anticipates that it will need to borrow at a later stage, then an express power needs to be included in the constitution. With an express power, a club has the option to use variety of funding options. Commonly, a club will issue debentures to raise funds, the club's real property standing as security. Mechanisms also exist to limit the personal exposure of the members.

Contracts

Where a club is eligible to receive a grant to fund its activities – as with many sports clubs or NGBs – the constitution must address the basis on which the club can contract with such funders. Any contract must be entered into by the officers of the club and, where a club receives a grant on a conditional basis (i.e. it is required to use the funds for a specific purpose or to utilise funds in tranches) the constitution must address the issues that this creates. Again, thought should be given to the contracting parties' personal liability.

Conclusions

This paper has sought to set out the key considerations for sports clubs and NGBs. It is apparent that there is a myriad of considerations to be borne in mind when founding members come to consider the club's constitutions. As we have seen, particular care is required in certain areas, such as disciplinary rules and the power to expel members.

However, with proper care and attention at the outset, clubs can go a long way to ensuring that their constitutions – and decisions made pursuant to the constitution and relevant by-laws - are beyond legal sanction. As with so many things, prevention is better than cure; the same is true of sporting constitutions and time should be invested wisely at the outset.

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