

# GUIDANCE NOTES

## CONSTITUTION OF UNINCORPORATED ASSOCIATION

**This is only intended as a guidance note, if you have any specific queries please take independent legal advice.**

There is an LTA Template Constitution for an Unincorporated Association (**Constitution**) which should be read in conjunction with this guidance and amended to in accordance with your club's needs.

An unincorporated association is an aggregate of its individual members who are bound to each other on the terms of the Constitution.

**As an unincorporated association is not a separate legal entity it cannot enter into contracts or hold property. If your club intends to enter into contracts and/or hold property we strongly recommend that you incorporate a private company limited by guarantee.**

So, the key criteria for an unincorporated association are that it should:

- Consist of two or more persons with a common non-business purpose (**Members**).
- Have contractual relations between the Members (the contract in question is made between the Members, the terms of the contract are the association's Constitution, and the consideration for entering into contractual relations is the subscription paid by the Members).
- Be governed by rules.
- Be non-temporary.

There are no specific guidelines on the form or content of an unincorporated association's Constitution as long as they are not illegal. This means that there is ultimate flexibility as to what the Constitution can cover, which may attract some organisations to this type of entity. However, the Constitution should clearly establish the rights and obligations between the Members and how control is governed in the club.

Where an unincorporated association needs quite detailed and complex Constitution to govern some of its functions (for example the conduct expected of the Members, the subscription fee, the admission process and disciplinary procedures), it may be more practical to give the Management Committee power to make by-laws which can set out the more detailed provisions; these can then be changed in a normal Management Committee meeting if necessary, rather than being put to a vote at a general meeting of all the Members (which would be required every time the club changed its Constitution in accordance with Rule 28).

### Rule 1 – Interpretation

The Interpretation clause sets out certain defined terms which are then used throughout the document.

“Game” is defined as the game of tennis. If your club encompasses, or intends to expand to encompass, other racquet sports such as pickleball or padel, your Constitution will need to include wording to ensure that these sports are captured within the definition of “Game”.

### Rule 2 - Object

An unincorporated association must have an object or purpose which should be clearly stated in its Constitution. It is possible to have more than one object and for all the objects to carry equal weight or for there to be a principal object.

The Sport England Code for Sports' Governance (**Code**) states that the club should have a clear purpose - why the organisation exists and the area of work it is involved with.

The Constitution should include the clubs' long term goals, what you want to achieve and how you want to achieve it.

Please consider each of these and amend as necessary.

### **Rules 3 to 11 - Management Committee**

The Management Committee will have control of the day to day running of the club, however, the Members can direct the Management Committee to take or refrain from taking specified action (as set out in Rule 6).

Under the Constitution the Management Committee Members will be able to enter into contracts on behalf of the Members.

The additional wording in Rule 3.6 is included to clarify that the Management Committee Members have authority to enter into contracts as agent for the Members. This seeks to make all the Members a party to the contract being entered into and therefore personally liable rather than only the individuals signing the contracts.

The wording included in Rule 3.7 seeks to ensure that the Management Committee Members are unable to bind all the Members, however, it leaves the individuals signing the contract and the individuals authorising the entry into the contract (usually the Management Committee Members) personally liable.

Whether your club chooses to include the wording in Rule 3.6 or Rule 3.7 will depend on how your club wants to deal with liability. Please note that although this wording attempts to clarify who is liable, the specific circumstances will decide who is actually liable and therefore there is always a risk that the desired outcome is not achieved.

The Management Committee Members will be indemnified out of the assets of the club for all expenses and other liabilities properly incurred by them in the management of the affairs of the club. **Clubs are advised to take out insurance in respect of the indemnity provided.**

Should the liability be greater than the assets of the club, either the individual who signed the contract will be personally liable or all the Members will collectively be personally liable depending on the particular circumstances. **Please seek independent legal advice if a contract is being entered into.**

Rule 3.9 seeks to prohibit any Management Committee Member from entering into a contract which binds the club or its Members for any liability which exceeds the assets of the club. If this wording is included and a Management Committee Member knowingly enters into such a contract the club and/or the Members could try to argue that he or she was not authorised to enter into the contract and therefore did not bind the club/the Members. If this were found to be the case, the individual would be personally liable and not indemnified.

### **Number and Composition of Management Committee**

Please consider the minimum/maximum number of Management Committee Members required by your club. We recommend between 3 and 8 Management Committee Members.

Each club will be slightly different but it would be normal to specify which positions sit on the Management Committee. The template Constitution include a President, Chairman, Vice-Chairman, Secretary, Treasurer and a number of Independent Management Committee Members.

The Code requires that at least three of the Management Committee Members must be unrelated or non-cohabiting.

The Code also requires regular meetings (at least four times a year) decisions of which should be recorded.

The template Constitution includes an express obligation on the Management Committee to be bound by the Constitution, the LTA Rules and LTA Disciplinary Code. This has been included to ensure that the Management Committee Members are aware of their responsibilities to the club.

Please consider whether the Management Committee should be able to delegate their power. The club may want to establish committees for example safeguarding and disciplinary committees. Remove Rule 3.5 if the Management Committee should not be able to delegate their powers.

### **Appointing Management Committee Members**

The template Constitution requires the Members to appoint the Management Committee Members. The Code requires that in deciding who sits on its Management Committee the club considers the skills and diversity required.

### **Retirement of Management Committee Members**

The Code states that Management Committee Members should be subject to regular election and ideally should serve no more than 9 years.

Please consider how long each Management Committee Member should hold office and how many terms he/she can serve and amend as appropriate. You should allow Management Committee Members a chance to settle into the role and an opportunity to make a change before they are subject to re-election and it is common to see terms of 2 or 3 years.

### **Members' reserve power**

Please consider what decisions should require Member approval. The template Constitution suggest entry into large contracts or employing an individual with a significant salary. Amend as appropriate.

### **Quorum for Management Committee Meeting**

The quorum of a meeting is the number of Management Committee Members who must be in attendance (this can be in person/on the telephone/skype) for the Management Committee to be able to make decisions.

The Rule provides that in order for a meeting to be quorate there must be at least 50% of the appointed Management Committee Members in attendance (provided always that there are no less than 2 Eligible Committee Members) but this can be increased at your option.

### **Casting Vote**

Please consider whether the chairman of a Management Committee meeting should be entitled to a casting vote should the voting for and against be equal.

## **Management Committee Member's Conflicts of Interest**

The Code requires conflicts of interest to be recognised, managed by the chair and recorded.

## **Rules 12 to 18 - Membership**

### **Membership**

You need to decide who will be entitled to be a Member of your tennis club. Where an unincorporated association has subscription rules, a Member cannot acquire rights until he has paid that subscription.

The Code seeks to promote greater diversity and an inclusive approach. Your club should take all reasonable steps to ensure you are accessible and non-discriminatory to all sections of the community.

This Rule provides that no person shall become a Member of the club unless he has completed an application form approved by the Management Committee.

Sometimes, the Management Committee may wish to establish different classes of Members, for example, a club may have junior or associate Members who may pay a lesser subscription price and as a result do not have voting rights. Included here would be a definition of the various categories of Membership and the rights attaching to those categories.

These rights, amongst other things, enable the Members to censure decisions of the Management Committee.

In this section the club should include the costs of the Membership categories, how and when it should be paid to the club and the processes for joining the club as a Member.

### **Expulsion of Member**

It is sensible in this section to include when someone ceases to be a Member or has his or her Membership withdrawn.

The Rule refers to the club's disciplinary procedure, we would expect to see this in the Rules. This can be included here, however, it will be easier to amend and update if it is dealt with separately.

The Rule sets out some basic circumstances in which a Member can be expelled. Please consider whether you wish to amend these and/or add some further circumstances for instance:

- Failure to pay Membership fees; or
- Failure to attend three consecutive meetings.

Please use Rule 13 if the Management Committee should have the ability to expel a Member without the approval of the Members and delete Rule 14.

Please use Rule 14 if the Management Committee should require Member approval to expel a Member and delete Rule 13.

A Member facing expulsion is entitled to make representations in writing or in person as to why his or her Membership should not be terminated. The Management Committee/Members have to consider his or her views before coming to a decision. Once the Management Committee/Members have come to their decision there is no further right of appeal.

The Rule provides that an expelled Member will remain liable to pay any sums owed by him or her.

## **Rules 13 to 16 - Decision Making by Members**

Consider which categories of Members should have the right to vote.

### **Annual General Meetings (AGM)**

It is usual for a club to have an AGM where the Management Committee report to the Members about how the club is developing.

Please include any other business that should be dealt with at an AGM.

### **Extraordinary General Meeting**

Any other general meeting is called an extraordinary general meeting.

The quorum of a general meeting relates to how many Members must be in attendance for the general meeting to pass any resolutions. Please consider what the appropriate quorum is for the AGM and extraordinary general meeting.

The template Rule provides a quorum of 10 Members or 10% of the Membership (whichever is the greater). This can be increased or decreased at your option. Bear in mind that if you have a large membership base, you may find it difficult to get the minimum numbers required in order to reach the quorum level.

## **Rule 19 - Trustees**

An unincorporated association has no separate legal personality and therefore, cannot own property and any property must be held by individuals on behalf of the club.

Where the Constitution is silent, the courts have tended to determine that an individual is holding the property on a contractual basis for the Members subject to the Membership rights.

Usually, prominent Members of the club will hold property in their own names on bare trust for the current Members subject to the Constitution. They are contractually bound to the Members to deal with the property in accordance with the Constitution.

Alternatively, the club can appoint Trustees to hold property for the purposes of the Members. If your club wishes to appoint Trustees please keep Rule 19 and all references to Trustees. In addition delete Rule 27.4 to ensure the trust arrangement is valid.

A benefit of appointing Trustees is that if funds are misapplied, then Members would have recourse to the usual contractual remedies against the Trustee and would be able to take action against a third party who has received the property, however, further documentation will be required to effect this trust arrangement.

The Constitution includes an indemnity for the Trustees out of the assets of the club. **Clubs are advised to take out insurance in respect of the indemnity provided.**

**Whether appointing Trustees or relying on the contractual basis is the appropriate option for your club will depend on the nature of the club, the property held and whether it wishes to register as a CASC. If your club is going to hold property please seek independent legal advice as to how best effect this.**

## Rule 21 - Finances

It is important to provide in the Constitution how the assets of the club will be dealt with. Full accounts of the club's finances should be prepared each year. As the club is an unincorporated association, the accounts are only prepared for the Members and need not be filed anywhere where they can be publicly inspected. They may however be requested by the local authority, the LTA or other bodies in connection with grant applications.

It is up to each club to decide to what extent it would like its accounts audited. There is no requirement in law for the accounts to be audited by an independent auditor unless the club's Constitution provide for this. However as the club collects money from, and spends it on behalf of, the Members, those Members may like the comfort of knowing that the accounts will be independently audited.

## Rule 22 - Borrowing

Without an express power in the Constitution to borrow money, an unincorporated association cannot take out a mortgage, bank loan, loan from a third party or a loan from one of the Members.

With an express power in the Constitution, the club can mortgage real property. An alternative way of raising funds is to issue Debentures with the unincorporated association's premises as security. This is usually done by charging the premises to Trustees, who then hold the charge on trust for the debenture holders. If any undertaking to pay back the principal and interest is limited to the value of the funds held by the club, this will protect the individual Members and, in particular, Management Committee Members, from personal liability.

It will be for each club to determine how much the Management Committee may borrow without needing the Members' approval at a general meeting. This will depend on a number of factors such as the extent of the club's assets. Essentially it will be a balance between practicality and control of the club's finances.

## Rule 23 - Property

As previously mentioned the club is not a legal person in its own right and cannot hold property in its own name. Therefore individuals need to hold the property on trust for the Members.

As explained above (Rule 19 - Trustees) these individuals can be Members appointed as Trustees or a number of prominent Members of the club holding property on bare trust for the current Members subject to the Constitution. They are contractually bound to the Members to deal with the property in accordance with the Constitution.

The persons holding the property will be indemnified out of the assets of the club for all expenses and other liabilities properly incurred by them. **Clubs are advised to take out insurance in respect of the indemnity provided.**

Should the liability be greater than the assets of the club, either the individuals holding the property will be personally liable or all the Members will collectively be personally liable depending on the particular circumstances. **Please seek independent legal advice if your club will be holding property.**

## Rule 24 - Limitation of Liability

The Constitution includes indemnities to protect those individuals entering into contracts and/or holding property on behalf of the club. The indemnities given seek to limit the liability to the assets of the club to protect the other Members.

Although the Constitution seeks to protect the individuals being personally liable, there is always a risk that individuals will be found personally liable. In addition, should the liability be greater than the assets of the club, depending on the circumstances, either the individuals who signed the contracts and/or hold the property will be personally liable or all the Members will collectively be personally liable.

In addition the Members might become personally liable for a breach of a duty (known as tortious liability). This might arise if something happens on the club's premises (an injury for example) or because of the actions of Members (being a nuisance for example).

If an individual Member is found liable in tort, he will not be able to limit the liability to the funds held by the club as he can try in contract. Nor is he entitled to an indemnity from the other Members beyond the funds of the club.

**To best protect the club and the Members against tortious liability the club should obtain insurance. This will be issued to the Management Committee for the time being or a particular officer as a representative of the Members. If the insurance contains Member-to-Member indemnity then if one Member becomes liable he can claim on the policy.**

**We would advise that if your club is entering into contracts and holding property, the club should be incorporated to ensure liability is limited to protect both the individuals signing the contracts/holding the property but also the Members as a whole.**

## **Rule 27 - Dissolution**

An unincorporated association may be dissolved:

- in accordance with the Constitution;
- by agreement of all the Members;
- spontaneously where the association cannot fulfil its purpose any longer or when the Membership drops below two persons; and/or
- by court order.

The effect of dissolution is that the club's activities come to an end and any remaining assets are distributed.

It is important to have in the Constitution the power to dissolve and to set out the procedure for dissolution. It is entirely for each club to decide upon the majority required to pass a resolution to dissolve the club.

It is also important that the Constitution make provision for what happens to any surplus moneys on a winding-up.

If your club wishes to appoint a Trustee to hold property you will need to delete Rule 27.4 to ensure the trust arrangement is valid. Alternatively, if Trustees are not going to hold the property please delete Rule 27.3.

If the total assets of the club do not cover its debts, each Member is liable to the amount of his subscription. In addition, depending on the specific circumstances, if there are outstanding creditors and/or tortious liability either the individuals who signed the contracts and/or hold the property will be personally liable or all the

Members will be collectively personally liable. **Please take independent legal advice before winding up your club.**