



8 Holyrood Street, London SE1 2EL
 020 7939 6030
 info@makingmusic.org.uk
 www.makingmusic.org.uk

Model constitution and guidance notes

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Introduction

The new Making Music model constitution has been developed with the Charity Commission for England and Wales, and designed specifically for amateur music groups. The Office of Scottish Charities Register (OSCR) has also approved the constitution for use by Scottish charities.

The constitution will put your music group on solid footing in terms of charity structure, regulation and governance and will be hugely valuable in helping you run your group.

This information sheet explains more about what a constitution is and explains why and how you should use our model constitution, including some notes on creating a separate rules and regulation document to go alongside it. At the end of the sheet you will find the model constitution itself with notes providing more detail on the key clauses.

Contents

What is a constitution?	2
Who can use our constitution?	2
Charities in Scotland and Northern Ireland.....	3
How to use our model constitution	3
Why must you use it as it is?	3
Fast track to registration	3
Key criteria.....	3
Trustees.....	4
A Separate 'Rules and Regulation Document'	4
Model Constitution.....	5
Notes on the model constitution	11
Useful links	18

What is a constitution?

A constitution, also called a governing document, is a legal document that establishes what sort of organisation your charity is and acts as a rulebook to help you run your charity. Specifically it sets out:

- The charity's purposes ('objects')
- Who can be a member, and how the membership is managed
- Who runs the charity
- How to recruit and elect trustees
- Rules about paying trustees
- What trustees can do to carry out the charity's purposes ('powers'), such as borrowing money
- How trustee meetings will be held
- How decisions should be taken
- How to look after your charity's money, land, property or investments and keep accounts
- How the governing document can be changed
- How to close the charity

A constitution should set out the general framework and principles of how your charity will be run. However, it should not go into specific detail about how your group is run. A good way to look at it is that it should be able to be used by a similar charity in terms of setting out the governance and structure of the charity. However, we do realise documenting specific details relating to your group is important. See the 'Separate rules and regulation documents' section below to find out more about how to do this.

Who can use our constitution?

There are a number of different charity structures. Our model constitution is for use by:

- Unincorporated associations with a wider membership in England and Wales – this is the structure the majority of Making Music members fall under. (For groups based in Scotland and Northern Ireland see over leaf.)

The other types of charity structure are:

- Charitable incorporated organisation (CIO)
- Charitable company (limited by guarantee)
- Trust

Our model constitution cannot be used by these other types of charity. If your group fits into one these you can find further details on the [different types of charity structure](#) as well as [model constitutions for different structures](#) on the Charity Commission website.

Charities in Scotland and Northern Ireland

The Charity Commission does not regulate charities in Scotland. This is done by the **Office of the Scottish Charity Regulator** (OSCR). OSCR have approved our model constitution for use by Charities in Scotland. In the model constitution you will see some notes specific to groups in Scotland; you should include the wording in square brackets to meet the requirements of charity law in Scotland.

If you are based in Northern Ireland please contact the Making Music office for more information on using our model constitution (info@makingmusic.org.uk)

How to use our model constitution

Our model constitution has been developed with the Charity Commission and is designed to be used exactly as it is.

You should not make any alterations, additions or deletions. The only exception to this is:

- Clause 1 – where you enter the name of your charity
- Optional additional Clause at 2(Objects) (2)
- Clause 13 (Finance) (1) where you put in your financial year end.

There are further notes on this in the model below.

Why must you use it as it is?

It is a Charity Commission approved document and so is a robust and solid governing document that will stand your group in excellent stead when it comes to matters of charity regulation. Changing the document will jeopardise this.

Fast track to registration

A big advantage of using our constitution is that it will put you on the fast track for registering with the Charity Commission. Remember if your income is over £5000 a year you **must register** with the Charity Commission. If you use our model constitution exactly as it is, and provide a full and complete application, your registration will be fast tracked making the process easier and quicker. If you do use our model constitution exactly as it is, we will give you a code and notes to make sure you are fast tracked.

Detailed guidance on how to register a charity can be found on the Charity Commission web site here: [CC21b How to register a charity](#). Please read this guidance before you begin your application.

Key criteria

Whilst all the clauses in the constitution are important in running your group there are three key clauses that are the essence of charitable status:

- 1 – Objects: the society is set up for charitable purposes and for the benefit of the public
- 13 – Finance: how the charities money should be applied. The key point here is that the charity is a not for profit organisation and all income should be applied solely to achieving its charitable objectives.
- 19 – Dissolution: this is related to the application of income and sets out that on winding-up of the society any assets shall be transferred to charitable institutions with similar aims.

Trustees

Another key aspect of any charity is management structure – the people responsible for running the charity. These are the trustees and should be elected by the membership.

The important thing to understand about trustees is that **all committee members are trustees and all trustees are committee members**. You will see both terms used and they are essentially the same thing. Without wanting to labour the point - it is not just officers on the committee (e.g. Chair, Secretary etc.) who are trustees - it is **all** committee members. There is no exception to this or way around it – it is Charity Commission regulation.

The trustees are responsible for the running and overall direction of the charity. They should ensure that it is; being well run, delivering its charitable objects for public benefit and that income is being used correctly (i.e. to promote and meet the objects).

Our model constitution includes rules about who can be a trustee and how trustees should be elected. You may also find the links below useful for further information on the role of trustees and being a trustee.

- Our [Trustee Handbook](#) (this is a document produced by Making Music and Charity Commission specifically for our members)
- Charity Commission Guidance - [The essential trustee: what you need to know \(CC3\)](#).

A Separate ‘Rules and Regulation Document’

We do appreciate that all music groups are different and have their own ways of doing things that are important to them. As discussed above, a constitution is not the right place for these sorts of specific details and *if you are using our model you should not change anything*.

Instead we recommend having a separate ‘Rules and Regulation Document’ (this could also be known as a Members Handbook) to go along side your constitution (see Clause 12 (Rules) in our model constitution).

This can set out the particular rules of your group and could expand on some of the constitution clauses. A big advantage of a separate ‘Rules and Regulation’ document is that it can be easily changed by the committee, unlike amending the constitution which requires a member vote at an AGM/SGM. By keeping the specifics out of the constitution and including them in a ‘Rules and Regulation’ document, you have more flexibility in the day to day running and administration of your group.

The important thing to remember is that **your separate ‘Rules and Regulation’ document should not contradict anything in your constitution**, as the constitution is the legal governing document. A ‘Rules and Regulation’ document could (but doesn’t have to) include such things as:

- Membership admission and termination rules
- Subscription fees and other payments to be made by members
- What members can expect as part of their membership
- What is expected of members (e.g. rehearsal rules, timekeeping, concert dress, absence or illness policies etc.)
- A code of conduct – how members should behave towards one another
- Details of any instrument/property loan between the society and its members
- Rules about borrowing music for practice
- How the Society’s property and premises are to be used

- Expanding on the specific aims and objectives of the society
- Expanding on the specifics of how income is to be used.
- Rules around the trustee election process
- How the committee will communicate with the membership
- Mechanisms for the membership communicating with the committee – including committee contact details
- Policies for safeguarding, volunteer management, health and safety
- Rules about how, how often and by whom the ‘Rules and Regulation’ document will be updated
- Where the document, and any changes made, can be found and/or will be disseminated.

In our model constitution below you will see notes providing further explanation on various clauses as well as suggestions of where clauses could be expanded on in a separate ‘Rules and Regulation’ document

Model Constitution

YOU SHOULD ADOPT THE ENTIRE CONSTITUTION WITHOUT VARIATION AND ONLY ADD YOUR PARTICULAR DETAILS WHERE INDICATED.

1. Name

The name of the Society shall be hereinafter referred to as the Society.

2. Objects (see note 1)

The objects of the Society shall be:

1. to advance, improve, develop and maintain public education in, and appreciation of, the art and science of music in all its aspects by any means the trustees see fit, including through the presentation of public concerts and recitals;
2. [Optional] To provide facilities which promote the practice or enjoyment of the art of music for recreation or other leisure time occupation and to make them available in the interests of social welfare to individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large with the object of improving conditions of life.

3. Membership (see note 2)

- (1) Membership is open to individuals who are approved by the trustees.
- (2) (a) The trustees may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the Society to refuse the application.
(b) The trustees must inform the applicant in writing of the reasons for the refusal within twenty-one days of the decision.
(c) The trustees must consider any written representations the applicant may make about the decision. The trustees’ decision following any written representations must be notified to the applicant in writing but shall be final.
- (3) Membership is not transferable to anyone else.
- (4) The trustees must keep a register of names and addresses of the members which must be made available to any member upon request
- (5) Every member shall have one vote.

4. Termination of membership

Membership is terminated if:

- (1) the member dies;
- (2) the member resigns by written notice to the Society unless, after the resignation, there would be less than two members;
- (3) any sum due from the member to the Society is not paid in full within six months of it falling due;
- (4) the member is removed from membership by a resolution of the trustees that it is in the best interests of the Society that his or her membership is terminated. A resolution to remove a member from membership may only be passed if:
 - (a) the member has been given at least twenty one days' notice in writing of the meeting of the trustees at which the resolution will be proposed and the reasons why it is to be proposed;
 - (b) the member or, at the option of the member, the member's representative (who need not be a member of the Society) has been allowed to make representations to the meeting;
 - (c) the decision to terminate the membership is communicated to the member in question in writing within 7 days of the meeting taking place;
- (5) any decision made by the committee to terminate a membership is final.

5. Officers and trustees (see note 3)

- (1) The Society and its property shall be managed and administered by a committee comprising the officers and other members elected in accordance with this constitution. The officers and other members of the committee shall be the trustees of the Society.
- (2) The Society shall have at least the following officers:
 - (a) A chair,
 - (b) A secretary,
 - (c) A treasurer.More officer roles can be appointed if deemed necessary by the trustees
- (3) A trustee must be a member of the Society
- (4) No one may be appointed a trustee if he or she would be disqualified from acting under the provisions of clause 8.
- (5) The number of trustees shall be not less than three but shall not be subject to any maximum.
- (6) The first trustees (including officers) shall be those persons elected as trustees and officers at the meeting at which this constitution is adopted.
- (7) A trustee may not appoint anyone to act on his or her behalf at meetings of the trustees.

6. Payment of trustees (see note 4)

- (1) Trustees can be paid legitimate expenses incurred on behalf of the Society
- (2) Any other trustee payments, or payments to connected persons of trustees, must be with the approval and/or permission of the Charity Commission and in accordance with the Trustees Act 2000 and section 185 of the Charities Act 2011 where appropriate.

[SCOTLAND: payment of trustees must be in accordance with Section 67 of the Charities and Trustee Investment (Scotland) Act 2005] (See note for charities in Scotland)

7. Appointment of trustees (see note 5)

- (1) The Society in a general meeting shall elect the trustees and may elect the officers.
- (2) The trustees may appoint any person who is willing to act as a trustee. They may also appoint trustees to act as officers.
- (3) At each annual general meeting a third of committee members shall retire and be eligible for re-election up to a fixed number of three-year terms as set out in the Society's rules and regulations.
- (4) In case of a vacancy arising on the committee, the committee may co-opt a new trustee who shall then stand for election by members at the next annual general meeting.

8. Disqualification and removal of trustees (see note 6)

A trustee shall cease to hold office if he or she:

- (1) is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision);
- (2) ceases to be a member of the Society as detailed in section 4
- (3) in the written opinion, given to the Society, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;
- (4) resigns as a trustee by notice to the Society (but only if at least two trustees will remain in office when the notice of resignation is to take effect); or
- (5) is absent without the permission of the trustees from all their meetings held within a period of 12 consecutive months and the trustees resolve that his or her office be vacated.

[SCOTLAND: A trustee shall cease to hold office if he or she:

- (1) is disqualified from acting as a trustee by virtue of sections 69 and 70 of the Charities and Trustee Investment (Scotland) Act 2005 (or any statutory re-enactment or modification of that provision)] (See note for charities in Scotland)

9. Powers (see note 7)

In furtherance of the objects but not otherwise the Committee may exercise the following powers:

- (1) power to raise funds and to invite contributions provided that in raising funds the Committee shall not undertake any substantial permanent trading activities and shall conform to any relevant requirements of the law;
- (2) power to buy, take on lease or in exchange any property necessary for the achievement of the objects and to maintain and equip it for use;
- (3) power subject to any consents required by law to borrow money and to charge all or part of the property of the Society with repayment of the money so borrowed;
- (4) power to employ such staff as are necessary for the proper pursuit of the objects and to make all reasonable and necessary provision for the payment of pensions and superannuation for staff and their dependents;
- (5) power to co-operate with other charities, voluntary bodies and statutory authorities operating in furtherance of the objects or of similar charitable purposes and to exchange information and advice with them;
- (6) power to establish or support any charitable trusts, associations or institutions formed for all or any of the objects;
- (7) power to appoint and constitute such advisory committees as the Committee may think fit;
- (8) power to do all such other lawful things as are necessary for the achievement of the objects.

10. Meetings and proceedings of the committee (see note 8)

- (1) The trustees may regulate their proceedings as they think fit, subject to the provisions of this constitution.
- (2) The committee shall hold at least 2 ordinary meetings each year. A special meeting may be called at any time by the chairman, or by any 2 members of the committee, upon not less than 4 days' notice being given to the other members of the committee of the matters to be discussed, but if the matter includes the appointment of a co-opted member then not less than 21 days' notice must be given.
- (3) Any trustee may call a meeting of the trustees.
- (4) The secretary must call a meeting of the trustees if requested to do so by a trustee.
- (5) The chairman shall act as chairman at meetings of the committee. If the chairman is absent from any meeting, the members of the committee present shall choose one of their number to be chairman before any other business is transacted.
- (6) There shall be a quorum when at least one third of the number of members of the committee for the time-being, or three members of the committee (whichever is the greater), are present at a meeting.
- (7) No decision may be made by a meeting of the trustees unless a quorum is present at the time the decision is purported to be made.
- (8) A trustee shall not be counted in the quorum present when any decision is made about a matter upon which that trustee is not entitled to vote.
- (9) If the number of trustees is less than the number fixed as the quorum, the continuing trustees or trustee may act only for the purpose of filling vacancies or of calling a general meeting.
- (10) Questions shall be determined by a majority of votes of the members of the committee present and voting on the question, but in the case of equality of votes, the chairman of the meeting shall have a second or 'casting' vote.
- (11) The committee shall keep minutes of the proceedings at meetings of the committee and any sub-committee, and shall ensure that these are stored safely, and that they are available for inspection as required.
- (12) The committee may appoint one or more sub-committees, consisting of three or more members of the committee, for the purpose of making any enquiry or supervising or performing any function or duty which, in the opinion of the committee, would be more conveniently undertaken or carried out by a sub-committee: provided that all acts and proceedings of any such sub-committee shall be fully and promptly reported to the committee.
- (13) Where the Society has a paid conductor or musical director, he or she may attend committee meetings except when his/her position is being considered. He/she shall not be eligible to vote in a committee meeting.

11. Conflicts of interests and conflicts of loyalties (see note 9)

A Society trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Society or in any transaction or arrangement entered into by the Society which has not been previously declared; and
- (2) absent himself or herself from any discussions of the Society trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Society and any personal interest (including but not limited to any personal financial interest).

Any trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the trustees on the matter.

12. Rules (see note 10)

- (1) The trustees may from time to time make rules or bye-laws for the conduct of their business.
- (2) The bye-laws may regulate the following matters but are not restricted to them:
 - (a) the admission of members of the Society (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
 - (b) the conduct of members of the Society in relation to one another, and to the Society's employees and volunteers;
 - (c) the setting aside of the whole or any part or parts of the Society's premises at any particular time or times or for any particular purpose or purposes;
 - (d) the procedure at general meeting and meetings of the trustees in so far as such procedure is not regulated by this constitution;
 - (e) generally, all such matters as are commonly the subject matter of the rules of an unincorporated association.
- (3) The trustees must adopt such means as they think sufficient to bring the rules and bye-laws to the notice of members of the Society.
- (4) The rules or bye-laws shall be binding on all members of the Society. No rule or bye-law shall be inconsistent with, or shall affect or repeal anything contained in, this constitution.

13. Finance (see note 11)

- (1) The financial year shall end on.....
- (2) A banking account shall be opened in the name of the Society and payments shall be authorised by any two officers.
- (3) The income and property of the Society whencesoever derived shall be applied solely towards promoting the objects of the Society as set forth above. No portion thereof shall be paid or transferred either directly or indirectly to any trustee except in payment of legitimate expenses incurred on behalf of the Society or with approval and/or permission from the Charity Commission

[SCOTLAND: Nothing in this constitution shall authorise an application of the property of the charity for purposes which are not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005.] (See note for charities in Scotland)

14. Annual General Meeting (see note 12)

- (1) The Society must hold a general meeting within twelve months of the date of the adoption of this constitution.
- (2) An annual general meeting must be held in each subsequent year and not more than fifteen months may elapse between successive annual general meetings.
- (3) At least 21 days' written notice of an AGM shall be given to all members.
- (4) The committee shall present to each AGM the report and accounts of the Society for the preceding year.
- (5) Nominations for election to the committee must be made by members of the Society in writing. Should nominations exceed vacancies, an election shall be held.

15. Special General Meeting (see note 12)

- (1) All general meetings other than annual general meetings shall be called special general meetings.
- (2) The trustees may call a special general meeting at any time.
- (3) At least 21 days' written notice of an SGM shall be given to all members.

(4) The trustees must call a special general meeting if requested to do so in writing by at least ten members or one tenth of the membership, whichever is the greater. Where the Society has less than 30 members, the trustees must call a special general meeting if requested to do so in writing by at least five members. The request must state the nature of the business that is to be discussed. If the trustees fail to hold the meeting within twenty-eight days of the request, the members may proceed to call a special general meeting but in doing so they must comply with the provisions of this constitution.

16. Procedure at General Meetings (see note 12)

(1) No business shall be transacted at any general meeting unless a quorum is present.

(2) A quorum is:

(a) 3 members entitled to vote upon the business to be conducted at the meeting; or

(b) one tenth of the total membership at the time, whichever is the greater.

(3) If:

(a) a quorum is not present within half an hour from the time appointed for the meeting; or

(b) during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the trustees shall determine.

(4) The trustees must re-convene the meeting and must give at least seven clear days' notice of the re-convened meeting stating the date time and place of the meeting.

(5) If no quorum is present at the re-convened meeting within fifteen minutes of the time specified for the start of the meeting the members present at that time shall constitute the quorum.

(6) The secretary or other person specially appointed by the committee shall keep a full record of proceedings at every general meeting of the Society.

17. Accounts (see note 13)

The financial accounts shall be audited or examined to the extent required by legislation or, if there is no such requirement, scrutinized by a person who is independent of the Committee and then submitted to the members at the Annual General Meeting.

18. Alterations to the constitution (see note 14)

(1) The constitution may be altered by a two-thirds majority of the members present and voting at any General Meeting, provided that fourteen days' notice of the proposed alteration has been sent to all members and provided that nothing herein contained shall authorise any amendment which shall have the effect of the Society ceasing to be a charity.

(2) No amendment may be made to clause 1 (the name of the Society), clause 2 (the objects), clause 13 (finance), or clause 19 (dissolution), without the prior written consent of the Charity Commission. The committee shall send the Charity Commission a copy of any amendment made under this clause. Where a society is too small to register with the Charity Commission only sub clause (1) of this clause will be applicable.

19. Dissolution (see note 15)

In the event of the Society being wound up, any assets remaining upon dissolution after the payment of proper debts and liabilities shall be transferred to a charitable institution or institutions having similar objects to those of the Society.

Notes on the model constitution

Note for Charities in Scotland

If the charity will operate in Scotland you should include the wording in square brackets at clauses 6, 8 and 13 to meet the requirements of charity law in that country.

[Click here to go back to Constitution](#)

Note 1

(Clause 2. Objects)

Objects (1) this Object is mandatory and deliberately 'catch-all' for music groups. It is worded to comply with the key charitable criteria of public benefit and with charity law. As such you should not change the wording or add any additional wording.

Objects (2): The second clause is optional and should be included if your music group has a membership restricted to people who share a [protected characteristic](#) as provided for in the Charities exception in the Equality Act 2010 (provided membership is not based on someone's colour). For example this could be a male voice choir or gay orchestra. You can find out more about in the [Charity Commission's guidance on the Equality Act 2010](#).

It should also be used for a group whose membership is individuals from a disadvantaged socio-economic background or whose aims are to improve conditions of life for a particular socio-economic group(s). This could include, for example:

- A Samba band for homeless people
- A choir for ex-offenders
- An orchestra for disadvantaged young people

Although you can limit membership in this way your music group must still provide public benefit. Refer to the Charity Commission [guidance on public benefit](#) for more information.

Expanding on Objects: The object sets the charitable purpose in advancing education in and appreciation of music. The means to do that is a matter for the trustees' decision. Some groups have identified detailed and specific means to further the purpose, for example by 'encouraging the playing of traditional English folk music in Lancashire'.

The detail of the means to further the purpose does not need to be included in the constitution objectives. The means can be set out elsewhere such as in a separate 'Rules and regulation' document. This will allow you to go in to more detail about exactly what these are and how you aim to meet them, this could include a business plan and strategic approach for your charity and furthering charitable purpose.

In using our model constitution you should therefore, not make any alterations, additions or deletions to the objects other than in deleting object clause 2 if this is not required for your particular music group.

[Click here to go back to Constitution](#)

Note 2 **(Clause 3. Membership)**

Sub clause 2 (a): in “acting reasonably and properly” trustees must comply with the [discrimination guidance in the Equality Act 2010](#), ensuring they do not discriminate against individuals in the membership application process.

Please note: if you have included the optional Object in Clause 2 (Objects) for restricted membership then membership applications can be processed in accordance with the [Charites exception in the Equality Act 2010](#).

Sub clause 2 (a) will also cover you if you refuse membership on the grounds of an audition process.

Expanding on membership and termination of membership: the constitution sets out the general principles of membership and termination of membership, you may want to expand on these in a separate ‘Rules and regulation’ document. This might include things such as:

- Who is in charge of membership admin (e.g. membership secretary)
- The cost of subscription fees and how they are to be paid
- What is expected of members (attendance, payment of subs etc.)
- A code of behaviour
- How members can expect to be contacted by the committee

Sub clause 4: a full list of members' names and address should be kept on file by the trustees. The constitution states this information should be available to members. However, to ensure data protection rules are followed, it is acceptable for the names only to be made available on request.

[Click here to go back to Constitution](#)

Note 3 **(Clause 5. Officers and trustees)**

The key point here is that all committee members are trustees and all trustees are committee members (i.e. it is not just the officers that are trustees). As such all committee members are responsible and liable for the management of the charity. You can find out more about the role of trustees in our trustee hand book and on the Charity Commission website.

[Click here to go back to Constitution](#)

Note 4 **(Clause 6. Payment of trustees)**

The issue of paying a trustee is one of the most common queries we receive from member groups. Specifically the issue of having a paid Musical Director/Conductor (MD) who is also on the committee and therefore a trustee can lead to difficult and delicate situations and is one of the most frequent problems raised by amateur music groups.

The official position: it is possible for trustees to be employed by a charity or to be paid for providing a service. Our model constitution does allow for the possibility of this happening. It must be with the permission of the Charity Commission (whether you are a registered charity or not) and in line with the [Charity Act 2011 – Section 185](#).

The Making Music position: we strongly advise that you **do not have a paid MD on the committee**. Our experience has taught us that it can lead to difficult situations for committees and groups. We encourage you to avoid it as far as possible.

Why do we advise this so strongly? there is a very clear conflict of interest in having a paid MD on the committee. Trustees are responsible for the best interests of the charity, a trustee being paid by the charity creates a conflict of interest between their duties as a trustee and their own personal interests. It can also lead to problems relating to how the committee functions and how the group is run from both an administrative and musical point of view.

Don't make it any harder than it has to be: safeguards and checks can of course be put in place to avoid conflicts of interest. However, by far the best way to deal with conflict of interest is to avoid them in the first place. You are all amateur musicians, giving up your own time to run a music group - it should be enjoyable and as stress-free as possible. Avoiding conflict of interest issues and having clear lines around who is responsible for what will make your life easier and the management of the charity simpler. Why give yourselves the headache? The more straightforward it is to run, the better for everyone concerned - and the more you can focus on making music.

What we recommend: the ideal situation is to have a MD who is:

- an employee of the charity or contracted on a freelance basis,
- not a member of the committee,
- allowed to sit in on certain committee meetings in an advisory capacity,
- is not allowed to vote at committee meetings,
- not present when their role/contract is being discussed (or indeed at any other meetings/agenda items the committee sees fit).

These terms and conditions should be laid out clearly in your contract with them. This approach keeps it simple, easy and fair. It avoids any conflict of interest issues, draws clear lines of power and responsibility but also allows the MD to contribute their knowledge and experience in an advisory capacity – which can only be good for the group.

However, as mentioned, it is possible for an MD to be paid and on the committee, and we do realise that sometimes it might be in the best interests of the group to do so. If you think this might be the case for your group here is what you need to think about and do:

- Firstly make sure that it is necessary and in the best interests of the group.
- What in particular will the MD bring to the committee that other committee members can't or the MD can't in an advisory capacity?
- Is there a viable alternative?
- If you are an MD starting up your own group and you want to be on the committee you should ask yourself if a charity structure is the right one for you. A charity structure inherently means giving up control. A charity has to be run by a committee and not an individual, in the best interests of the charity and fulfil its objectives. You will also be subject to charity regulation. Maybe a non-charity structure is better suited to your needs.

If you are happy that a charity structure is right for you and you can justify having a paid MD as trustee then the next step is to get permission from the Charity Commission (see next page).

Getting Permission from the Charity commission

The [Charity Commission have an online tool for getting permission to pay a trustee](#). There are a number of options and questions to fill in and you will either receive online approval or submit your request to the Charity Commission who will look at your particular case. If you receive online approval you must print out the PDF provided to use alongside clause 6 in our model constitution. Please see the notes below on how to fill in the [online permission form](#).

Read the information on the first page to ensure you have all the information you need to complete the form. Once you are happy click on the link 'Request permission to pay a trustee'.

On the next page you will be asked what you want to do (i.e. – in what way you would like to pay a trustee). In our experience the most likely options for our members are:

- a) 'Pay a trustee for providing a service to the charity' – this will apply if a trustee in the role of MD on a freelance basis – including appointing a freelance MD as a trustee.
- b) 'Appoint a member of staff as a trustee' – this will apply when an existing employed (not freelance) MD wants to join the committee
- c) 'Employ a trustee' – this will apply when appointing an existing trustee as an employed MD

Below you will find further instructions on how to fill in the form for the above three options, assuming you are using our model constitution without any changes. Please note: if you are not using our exact model constitution the instructions below do not necessarily apply to you.

a) Pay a trustee for providing a service to the charity

1. Fill in the form with the relevant details.
2. When you are asked 'Is there a power to pay trustees within the governing document?' you should answer 'no'
3. When you are asked 'Does the charity's governing document prohibit trustee benefit?' You should answer 'no'
4. This will take you to a summary page detailing the conditions under which you can pay a trustee for providing a service. If you meet these conditions you can pay a trustee. You must print out the authorisation notice from the Charity Commission to go with clause 6 of your constitution.

b) Appoint a member of staff as a trustee

1. Fill in the form with the relevant details.
2. If you are asked 'Do the trustees have the power to appoint a paid member of staff as a trustee?' you should answer 'no'
3. This will then bring up some new questions – answers these questions and click 'next'
4. This will take you to the final page – once you are happy with the details click 'submit'
5. The Charity Commission will then review your case and get back to you.

c) Employ a trustee

1. Fill in the form with the relevant details.
2. If you are asked 'Does the governing document permit the payment of trustees in these circumstances and can the trustees comply with any conditions attached to the power?' you should answer 'no'
3. This will then bring up some new questions – answers these questions and click 'next'
4. This will take you to the final page – once you are happy with the details click 'submit'
5. The Charity Commission will then review your case and get back to you.

[Click here to go back to Constitution](#)

Note 5 **(Clause 7. Appointment of trustees)**

Sub clauses (1) and (2): The constitution sets out that members must elect trustees at an AGM. The constitution allows for two possible approaches for electing officers. Either:

- a) the membership may appoint someone directly to an officer role on the committee – i.e. the membership elect a chair, treasurer etc.
- b) the membership appoint committee members – the committee then decide which committee members will fill which officer roles
- c) A combination of both could be used – i.e. members elect the chair (for example) directly but other officer roles are decided by the committee from those elected to the committee

We recommend setting out how this process will work in the separate 'Rules and Regulation' document.

Sub clause (4): this clause allows the easy appointment of committee member if a vacancy arises. The new committee member must meet the criteria in clause 5 (3) and (4). The wider membership must also be notified of the decision and a co-opted committee member must stand for formal election at the next AGM.

[Click here to go back to Constitution](#)

Note 6 **(Clause 8. Disqualification and removal of trustees)**

Sub clause (1): You can find more details on who is disqualified from being a trustee in the [Charities Act 2011 – section 178](#). To help ensure due diligence and best practice is being followed you can find our more in our Trustee handbook [link to follow] and use the [Charity Commission's Trustee Eligibility Form](#).

[Click here to go back to Constitution](#)

Note 7 **(Clause 9. Powers)**

This clause sets out the powers that the trustees can use in promoting the charity's objects. It may be that not all of the powers are relevant to your charity at the time of writing. However all clauses should be included as it means that if the powers are needed your constitution allows for their use and sets out the conditions trustees must meet in exercising the powers.

Sub clause (1): This sub-clause provides a general power to raise funds through a variety of methods. The clause does not prevent trading in order to carry out the charity's object (known as primary purpose trading) - for example, the sale of concert tickets.

Trading profits and some other forms of charity income may be liable for tax. Charity trustees need to ensure that they understand their responsibilities. Further information is available from the Charity Commission web site - [how charities may lawfully trade](#)

Detailed information on the taxation of trading profits earned by charities can be obtained from the HMRC website - '[Detailed Guidance notes for Charities](#)' with particular reference [Annex iv: trading and business activities - basic principles](#)

[Click here to go back to Constitution](#)

Note 8

(Clause 10. Meetings and proceedings of the committee)

Further guidance can be found in the Charity Commission guidance [Charities and meetings \(CC48\)](#)

Sub clause (11): inspection here refers to inspection from a professional body (e.g. auditors). Minutes of committee meetings do not have to be made available to the wider membership or for public inspection.

Sub clause 13: this refers to paid Conductors/Music Directors who are not trustees. See Notes on Clause 6 – Payment of Trustees for a full explanation of this.

[Click here to go back to Constitution](#)

Note 9

(Clause - 11. Conflicts of interests and conflicts of loyalties)

Further guidance can be found in the Charity Commission guidance [Conflicts of interest: a guide for charity trustees \(CC29\)](#)

[Click here to go back to Constitution](#)

Note 10

(Clause 12. Rules)

This section refers to the separate 'Rules and Regulations' document mentioned on page 4, and throughout this document. This document should set out the internal procedures adopted by the committee to ensure the effective administration of the charity. The important thing about this document is that it should not contradict anything in the constitution.

[Click here to go back to Constitution](#)

Note 11

(Clause 13. Finance)

Sub clause (1): enter your financial year end date here

Sub clause (3): this is a key clause in terms of setting up as charity and establishing the not for profit status of the charity. The clause reflects charity law requirements that income and property of the charity must be applied solely towards the promoting the objects as detailed in clause 2 (objects) and not to benefit the members and trustees. The clause also allows for the possible payment of trustees in line with clause 6 (Payment of trustees).

The trustees have a duty to ensure that the funds are used correctly and applied in accordance with the principle.

Expanding on finance; this clause sets out the principle of not for profit and how income is to be applied. You may want to expand on this in a membership handbook by detailing how income will be used and what it will be spent on. This could be specific details or general principles. It is important to remember to justify how the use of income is promoting the charity's objects.

[Click here to go back to Constitution](#)

Note 12

(Clauses 14. Annual General Meeting, 15. Special General Meeting and 16. Procedure at General Meetings)

Further guidance can be found in the Charity commission guidance [Charities and meetings \(CC48\)](#)

16. Procedure at General Meetings

Sub clause (6): Note that this provision permits the re-scheduled meeting to proceed without a quorum being present within 15 minutes of the specified start time. It also means that the number of members present 15 minutes after the scheduled start of the meeting will form the quorum if the quorum required at sub-clause 12(2) is not achieved.

[Click here to go back to Constitution](#)

Note 13

(Clause 17. Accounts)

Gross annual income up to £25,000: no formal external scrutiny is required by legislation. However, accounts should be scrutinised by someone independent of the committee. This does not have to be an accountant but should ideally be someone with some financial knowledge and experience. It could be someone from the wider membership or someone a member knows, or you could find another local music group and arrange to swap accounts – you can use our [Find a Group tool](#) to do this.

Gross annual income above £25,000 and up to £500,000 and gross assets up to £3.26m: external scrutiny is required by legislation. This can be an Independent Examination of accounts by an approved person or a full audit. If you require an Independent Examination the best thing to do is contact a local charity accountant.

Either gross income above £500,000 or gross assets above £3.26m (and income above £250,000): a full audit is required.

You can find out more about accounting in the Charity Commission Guidance: [Charity reporting and accounting: the essentials \(CC15b\)](#)

[Click here to go back to Constitution](#)

Note 14

(Clause 18. Alterations to the constitution)

All groups must notify Making Music if they make changes to any of clause 1 (the name of the Society), clause 2 (the objects), clause 13 (finance), or clause 19 (dissolution)

[Click here to go back to Constitution](#)

Note 15

(Clause 19. Dissolution)

This is an important clause for setting up a charity – the key point being that assets are transferred to an organisation with similar objects – i.e. music for the public benefit. You can expand on this in your separate 'Rules and Regulations document' if you would like – either establishing a process of how this will be decided or naming an organisation.

[Click here to go back to Constitution](#)

Created by Making Music

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Useful links

Charity Commission Guidance

- **Charity Structure:** www.gov.uk/charity-types-how-to-choose-a-structure
- **Model constitutions:** www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents
- **Trustee essentials:** www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3
- **Permission to pay trustees tool:** <https://forms.charitycommission.gov.uk/trustee-payments/>
- **Trustee eligibility form:** www.gov.uk/government/uploads/system/uploads/attachment_data/file/316308/trustee-declaration-v4.pdf
- **Conflict of interests:** www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29
- **Meetings and procedures:** www.gov.uk/government/publications/charities-and-meetings-cc48
- **How to register a charity:** www.gov.uk/how-to-register-your-charity-cc21b
- **Public benefit:** www.gov.uk/government/collections/charitable-purposes-and-public-benefit
- **Annual reports:** www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-cc15b
- **Charities and trading**
 - Trustees and trading: www.gov.uk/government/publications/trustees-trading-and-tax-how-charities-may-lawfully-trade-cc35
 - Detailed guidance: www.gov.uk/government/publications/charities-detailed-guidance-notes

Equal opportunities

- Protected characteristics: www.equalityhumanrights.com/private-and-public-sector-guidance/guidance-all/protected-characteristics
- Charity commission Guidance on Equalities Act 2010 www.gov.uk/government/publications/equality-act-guidance-for-charities
- Rights and Discrimination: www.gov.uk/discrimination-your-rights/types-of-discrimination

Charities Act 2011

- Section 185 (paying trustees) www.legislation.gov.uk/ukpga/2011/25/section/185/enacted
- Section 178 (Disqualifying trustees): www.legislation.gov.uk/ukpga/2011/25/section/178

Making Music links

- **Trustee handbook:** services.makingmusic.org.uk/services1/MembersArea/showInfoSheet.aspx?id=144&cubikguid={2f16b616-6f9a-4084-bb00-a6cd0b146923}
- **Find a Group tool:** services.makingmusic.org.uk/services1/maps/mapsgoogle.aspx?cubikguid=%7bd3f72824-9fdf-45d8-8e12-66e1bf88371c%7d&tkn=3dd6cbc543

If you would like us to make this information sheet more accessible, please phone Making Music on 0207 939 6030.

We hope you find this Making Music document useful - it is intended to give a reasonable summary of the position at the time of writing. If you are aware of any changes to the situation described or have suggestions for further information to be included please contact the Membership Services Team at Making Music 0207 939 6030 or info@makingmusic.org.uk. Please note that no responsibility for loss occasioned to any person or group acting or refraining from action as a result of any of the contents of this information sheet can be accepted by any of the authors or by Making Music, the National Federation of Music Societies. Members of Making Music can download this and other information sheets from our website, www.makingmusic.org.uk, where the latest version will always be available.