

BGA CLUB MANAGEMENT GUIDES

Constitutional Matters

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Club Structure and Governing Document

Any club needs a clear framework of rules and procedures within which to operate. This is provided by the governing document, which governs the structure and management of the club.

The Governing document summary covers key attributes the different types of volunteer run, not-for-profit organisation, the terminology each uses and the overall anatomy of governing documents.

Most gliding clubs are either an 'Industrial and Provident Society' or a 'Company Limited by Guarantee'. Older clubs that pre-date the more modern 'Company Limited by Guarantee' structure may be a Company Limited by Share, where the shares are few and of low value. All are incorporated, which enables the club to enter into contracts, and limits the liability of club officers & members, provided they act within the law and the provisions of the governing document.

A few (rare) clubs may still be an Association. Associations are not able to enter into contracts.

However, at the outset of gliding, many gliding clubs began as Associations before the volunteer-run, not-for-profit incorporated organisation structures were invented. This is why the prevailing governance language in clubs is usually 'management committee' and 'committee members', even when the governing document sets out 'Board of Directors' and 'Directors'. An incorporated club may choose to put in a management committee below the Board of Directors, but this is usually unnecessarily complex and often results in energy wasted in miscommunications. If a club is large enough for this, it usually has professional staff to manage the day to day club operations.

The secret to good governance is elegance and simplicity, especially as one of the key tenets of good governance is transparency.

Democracy

The club members elect a small group to run the club on their behalf, so most of the time the authority is delegated to the committee or Board. Otherwise, the power lies with the club members. At all times the committee or Board are accountable to the membership.

The membership are kept up to date via Minutes of meetings, accounts & financial reports and major proposals.

Usually, the committee or Board has delegated authority to make decisions on policies and general operational matters, but the authority of the members should always be obtained for major policy and strategic decisions.

Conflicts of interest

When on club business, members of the committee or Board must act with the interests of the club as their primary motivator.

It is quite usual for people involved in an organisation to have a number of interests. When sitting in a meeting, the person should be wearing the organisation's hat and making decisions according to the interests of that organisation. If judgement, and subsequently, the decision-making process is clouded by a person's other interests, then that is a conflict. It is good practice to hold a '*Conflict Register*' and to have policies and practices for members of the governing body to follow, even if that person is confident that their judgement is not being clouded. It is good practise for all

committee meetings to have a fixed agenda item asking if there are any new conflicts of interest.

Connected Person The definition varies according to the context and the organisation(s) involved. It usually includes the following people and the companies, businesses and organisations that they control: immediate family members of the committee or Board member, including domestic partners and their immediate families. It is particularly important to consider if there is financial gain involved, such as payment to carry out work, or the awarding of a contract.

There should be no family domination of the Committee - at least three of the people on the governing committee should neither be related to, nor cohabiting with, other committee members.

Who should be committee members or Directors?

As these are the people taking policy decisions and responsibility for the finances of the club, in a company limited by guarantee it makes sense for all committee members to be directors of the company.

Any committee members who are not officially directors might in any case be considered to be 'shadow directors'. A shadow director is an individual who, while not listed as a director, is seen to have responsibility and authority for the club's management and finances. They may therefore be held liable in the case of problems, to the same extent as named directors.

A club should consider whether it should provide Director Insurance cover.

Principles to observe in appointing Directors or Committee members

The Committee on Standards in Public Life (the Nolan Committee) set out seven principles which should be observed by people holding office in public or voluntary organisations.

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life and have been set out for the benefit of all who serve the public in any way.

Using the governing document

The governing document is essentially the instruction book for running the club. The secretary is most likely to use it the most, especially in the run up to meetings to make sure they get the papers issued and circulated to the right people in the right time frame.

All club members should have a copy and should have read it, especially before a general meeting.

The committee members or Directors should use it to understand what decisions they can make, and how, and when they need to call a general meeting if a decision needs to be taken by the members.

Applying for funding

The governing document also sets the tone of the organisation, so in some instances it needs to be in step with wider society, for instance when in receipt of funding. This money is usually for public good, and safeguards must be in place to ensure that the money is not used for private gain. So the governing document makes provision for the club:

- being open to all, without discrimination;
- that accounts are kept and financial decisions are taken transparently;
- that any surpluses each year are kept within the organisation rather than being distributed to members;
- that on closing the club that any remaining assets go to another organisation that exists for public good.

This is why a copy of the governing document is often sent to potential funders – they want to see that their money will be used for public good.

Legal Requirements

A club registered under the Industrial and Provident Societies Act is listed at Companies House but is regulated by the Financial Services Authority. Clubs registered under the Companies Acts are registered and regulated by Companies House. The legal and administrative requirements are similar in both cases.

The principal requirements are:

- The Annual Return must be filed with the appropriate regulator within 28 days after the anniversary of the so-called ‘made-up date’, which is usually the anniversary of the company’s incorporation, or the made-up date of the previous annual return
- The Annual Accounts must be filed with the appropriate regulator within 9 months of the Company’s financial year end

- The details of the Club's Directors (usually the Committee members) and Secretary must be registered with the appropriate regulator and retiring Directors' names should be removed from the register.

Failure to comply with these requirements carries the risk of significant fines.

Limited liability protection

Members are not always keen to accept responsibility or office in a club. This is particularly so if the officer or director might be held personally and financially liable in the event of business failure resulting from a major uninsured loss or third party claim.

Setting the club up as a Company Limited by Guarantee provides protection for the individual members from debts and damages incurred by the club. In the event of a large claim against the club (for instance in the case of an under- or uninsured loss), a large error of judgement, defaulting on a loan or similar, the members as a group are financially liable. However, the Memorandum of Association provides that the personal liability of each member is limited, usually to £1.

There are some exceptions to this protection:

- If any management 'errors' involve any criminal activity, those responsible for the errors may be prosecuted and the limited liability protection will not apply.
- Following a number of fatal accidents in other sports and activities, it is possible for individuals to be prosecuted for criminal negligence if someone is fatally or seriously injured. However, adherence to normal Rules and Recommended Practices should protect clubs and their members from this risk.
- Members (particularly committee members and officers) can be held personally liable to pay if they have acted outside their normal authority as set out in the Club's governing document and have incurred debts or liabilities.

A club which is not incorporated as a company (under either form of regulation) does not benefit from limited liability protection.

In all cases, it is important to obtain suitable insurance to protect the club members and officers in the case of claims against the club.

Community Amateur Sports Club (CASC)

A high proportion of our gliding clubs have registered on the HM Revenue and Customs CASC scheme. Doing so provides a financially beneficial overlay in return for providing assurances that money is used for public good. The scheme is similar to, but different from, charitable status.

Like registered charities, CASCs can claim Gift Aid on donations, so are required to satisfy HMRC that any person with day-to-day control over the finances of a CASC, along with trustees, directors and board members, has no history of tax fraud or financial impropriety. This is achieved by applying a Fit and Proper Persons Test to managers of all CASCs during the appointment process.

There is a [help sheet, which includes the model declaration form](#) for managers, directors and trustees. Additional information is available from Gov.uk website:

- [Guidance on the fit and proper persons test](#)
- [Who can run charity finances](#)

Full information on CASCs for gliding clubs with links to the full HMRC scheme details, together with the affordable gliding policy, is available from the BAG website.