

**CONSTITUTION**

**GENERAL**

**Type of organisation**

- 1 The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO).

**Scottish principal office**

- 2 The principal office of the organisation will be in Scotland (and must remain in Scotland).

**Name**

- 3 The name of the organisation is “CAPS Independent Advocacy”, hereafter referred to as CAPS.

**Purposes**

- 4 The organisation’s purposes are to advance and promote human rights; facilitate community development and educate people in Scotland about mental health issues through the provision of:
  - i. independent individual and collective advocacy to people who use, or have used, mental health services;
  - ii. education and information sessions, informed and led by people with experience of mental health issues.

**Powers**

- 5 CAPS may carry out any legal activity in pursuance of our purposes.
- 6 Income or property belonging to CAPS may not be paid or transferred (directly or indirectly) to the members, unless this is done to directly further the organisation’s charitable purposes.

**Liability of members**

- 7 The members of CAPS have no financial liability for any debts (or

other liabilities) of the organisation during its operation or upon being wound up.

- 8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

## **General Structure**

- 9 The structure of the organisation consists of:
- 9.1 the MEMBERS
- members have the right to attend members' meetings (including any annual general meeting)
  - members have important powers under the constitution such as appointing people to serve on the Management Committee
  - members have a right to make decisions about changes to the constitution
- 9.2 the MANAGEMENT COMMITTEE
- holds regular meetings;
  - controls the activities of the organisation, including monitoring and controlling finances.
- 10 The people serving on the Management Committee are referred to in this constitution as Charity Trustees.

## **Qualifications for membership**

- 11 Membership is open to any individual who lives in Scotland aged 16 or over, who is in agreement with the Purposes of the organisation.

Employees of the organisation are not eligible for membership.

## **Application for membership**

- 12 Any person who wishes to become a member must sign a written application for membership which will be considered by the Management Committee.
- 13 The Management Committee may refuse an application for

membership of CAPS.

- 14 CAPS will inform individuals of their confirmation, or otherwise, of membership.

### **Membership subscription**

- 15 There is no membership fee.

### **Register of members**

- 16 CAPS must keep a register of members. The register will contain:

- 16.1 the full name and address of each current member and the date of registration as a member;

- 16.2 the full name of former members for the previous six years and the date on which membership ceased.

- 17 CAPS must make sure that the register of members is updated within 28 days of any change which it knows about.

- 18 If a member or charity trustee of the organisation requests a copy of the register of members, CAPS must issue a copy within 28 days, providing the request is reasonable.

- 19 If the request is made by a member (rather than a charity trustee), CAPS may provide a copy which has the addresses blanked out.

### **Termination of membership**

- 20 If a member no longer wants to be a member of CAPS they should write to CAPS in person and say so. The membership will end when the notice is received by CAPS.

### **Transfer of membership**

- 21 A member of CAPS cannot transfer their membership to another individual.

### **Re-registration of members**

- 22 CAPS may sometimes write to members to check that they wish to remain as members of the organisation. Members should reply within 28 days.

- 23 If a member does not reply within 28 days, then CAPS will assume that they no longer wish to be a member and the membership will be cancelled.
- 24 Any notice under clause 22 will only be valid if it makes it clear to the member that failure to reply within 28 days will result in the cancellation of the membership.

### **Removal of membership**

- 25 A resolution may be passed to terminate someone's membership. Not less than two thirds of those present and voting at a members' meeting must vote for the resolution. The following procedures must be followed:
  - 25.1 at least 21 days notice of the intention to propose the resolution must be given to the member concerned, setting out the reasons for the proposed termination of membership;
  - 25.2 the member concerned will be entitled to speak at the meeting, or may be represented by a person chosen by them at the meeting, or may provide a written statement which will be read out on their behalf at the meeting where the resolution is put forward.

## **DECISION-MAKING BY THE MEMBERS**

### **Members' meetings**

- 26 The Management Committee must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.
- 27 The gap between one AGM and the next must not be longer than 15 months.
- 28 An AGM does not need to be held during the first calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.
- 29 The business of each AGM must include:
  - 29.1 a report by the Chair on the activities of the organisation;
  - 29.2 consideration of the annual accounts of the organisation;

29.3 the election/re-election of charity trustees, as referred to in clauses 58 to 61.

30 The Management Committee may arrange a special members' meeting at any time.

### **Power to request the Management Committee to arrange a special members' meeting**

31 The Management Committee must arrange a special members' meeting if they are requested to do so by a notice which is:

- signed by at least four members **or**
- signed by 5% or more of the total membership of the organisation at the time, (whichever is the greater), providing:

31.1 the notice states the purposes for which the meeting is to be held; **and**

31.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.

32 If the Management Committee receives a notice under clause 31, they must arrange a meeting within 28 days from receipt of the notice.

### **Notice of members' meetings**

33 At least 28 clear days' notice must be given of any AGM or any special members' meeting.

34 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and

34.1 if there is a resolution to alter the constitution, this must be clearly explained in the notice; or

34.2 in the case of any other resolution falling within clause 45 (requirement for two-thirds majority) it must set out the exact terms of the resolution.

35 The reference to "clear days" in clause 33 shall be taken to mean that, in calculating the period of notice:

35.1 the day after the notices are posted (or sent by e-mail) should be excluded; and

35.2 the day of the meeting itself should also be excluded.

- 36 Notice of every members' meeting must be given to all the members and charity trustees of the organisation, but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 37 Any notice which requires to be given to a member under this constitution must be:
- 37.1 sent by post to the address last given by the member to CAPS; or
- 37.2 sent by e-mail to the e-mail address last given by the member to CAPS.

### **Procedure at members' meetings**

- 38 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 39 The quorum for a members' meeting is 15 members, present in person.
- 40 If 15 members are not present, the meeting cannot proceed and a new meeting must be organised following the procedures set out by the constitution.
- 41 The Chair of CAPS should act as chairperson of each members' meeting.
- 42 If the Chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

### **Voting at members' meetings**

- 43 Every full member has one vote, which must be given in person.
- 44 All decisions at members' meetings will be made by majority vote, with the exception of the types of resolution listed in clause 45 which require a two-thirds majority.
- 45 The following resolutions must be passed by not less than two-thirds of those voting on the resolution at a members' meeting (or if

passed by way of a written resolution under clause 49):

- 45.1 a resolution amending the constitution;
  - 45.2 a resolution expelling a person from membership under article 25;
  - 45.3 a resolution directing the Management Committee to take any particular action (or directing the Management Committee not to take any particular action);
  - 45.4 a resolution approving the amalgamation of CAPS with another SCIO (or approving the constitution of any new SCIO created by such an amalgamation);
  - 45.5 a resolution to the effect that all of CAPS' property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
  - 45.6 a resolution for the winding up or dissolution of CAPS.
- 46 If there are an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 47 A resolution put to the vote at a members' meeting will be decided on a show of hands, unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.
- 48 The chairperson will decide how any secret ballot is to be conducted, and he/she will declare the result of the ballot at the meeting.

### **Written resolutions by members**

- 49 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting. The date of the resolution will be taken to be the date on which the last member agreed to it.

### **Minutes**

- 50 The Management Committee must ensure that accurate minutes are kept of all members' meetings.
- 51 The minutes of members' meetings must include the names of all those present and should be approved at the subsequent members' meeting or Management Committee meeting, whichever is the sooner.

- 52 Copies of the minutes will be available to any member of the public who requests them but CAPS may exclude confidential material as permitted under clause 96.

### **Number of charity trustees**

- 53 The maximum number of charity trustees is 10.
- 54 The minimum number of charity trustees is 3

### **Eligibility**

- 55 Only members of the organisation can be elected or appointed to the Management Committee.
- The majority of the Management Committee members should have lived experience of mental health issues.
  - A maximum of 2 people without lived experience may be co-opted but they must not normally have an overall majority.
- 56 A person cannot be elected or appointed to the Management Committee if they are:
- 56.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; **or**
- 56.2 an employee of the organisation.

### **Initial charity trustees**

- 57 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the organisation.

### **Election, retiral, re-election**

- 58 The Management Committee may at any time appoint any member to be a charity trustee (unless they are debarred from membership under clause 55).
- 59 At each AGM, all of the charity trustees must retire from office, but may then be re-elected by the membership.
- 60 A charity trustee retiring at an AGM will be deemed to have been re-elected unless:



- 60.1 they tell the Management Committee prior to the conclusion of the AGM that they do not wish to be re-appointed as a charity trustee; or
- 60.2 an election process was held at the AGM and they were not among those elected/re-elected through that process; or
- 60.3 a resolution for the re-election of that charity trustee was put to the AGM and was not carried.

### **Termination of office**

- 62 A charity trustee will automatically cease to hold office if:
  - 62.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
  - 62.2 they cease to be a member of the organisation;
  - 62.3 they become an employee of the organisation;
  - 62.4 they give CAPS a signed notice of resignation;
  - 62.5 they are absent (without good reason, in the opinion of the Management Committee) from more than three consecutive committee meetings, and the Management Committee agree to remove him/her from office;
  - 62.6 they are removed from office by resolution of the Management Committee on the grounds that he/she is considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 79);
  - 62.7 they are removed from office by resolution of the Management Committee on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
  - 62.8 they are removed from office by a resolution of the members passed at a members' meeting.
- 63 A resolution under paragraph 62.6, 62.7 or 62.8 shall be valid only if:

- 63.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed;
- 63.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
- 63.3 (in the case of a resolution under paragraph 62.6 or 62.7) at least two-thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

## **Register of charity trustees**

- 64 CAPS must keep a register of charity trustees, setting out:
  - 64.1 for each current charity trustee:
    - 64.1.1 their full name and address;
    - 64.1.2 the date on which they were appointed as a charity trustee; and
    - 64.1.3 any office held within the organisation.
  - 64.2 for each former charity trustee, for at least 6 years from the date on which they ceased to be a charity trustee:
    - 64.2.1 the name of the charity trustee;
    - 64.2.2 any office held within CAPS; and
    - 64.2.3 the date on which they ceased to be a charity trustee.
- 65 CAPS must ensure that the register of charity trustees is updated within 28 days of any change:
  - 65.1 which arises from a resolution of the Management Committee or a resolution passed by the members of the organisation;  
or
  - 65.2 which is notified to CAPS.
- 66 If any person requests a copy of the register of charity trustees, CAPS must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable. If the request is made by a person who is not a charity trustee of the organisation, CAPS may provide a copy which has the addresses blanked out, if CAPS thinks that including that information is likely to jeopardise the safety or security of any person or premises.

## **Office-bearers**

- 67 The charity trustees will elect (from amongst themselves) a Chair, a Vice Chair and a Treasurer.
- 68 In addition to the office-bearers required under clause 67, the charity trustees may elect (from amongst themselves) further office-bearers if they consider that appropriate.
- 69 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 67 or 68.
- 70 A person elected to any office will automatically cease to hold that office:
- 70.1 if they cease to be a charity trustee; or
  - 70.2 if they give CAPS a signed notice of resignation from that office.

## **Powers of the Management Committee**

- 71 Except where this constitution states otherwise, CAPS (and its assets and operations) will be managed by the Management Committee; and may exercise all the powers of the organisation.
- 72 A meeting of the Management Committee at which a quorum is present may exercise all the powers that the Management Committee has.
- 73 The members may, by way of a resolution passed in compliance with clause 45 (requirement for two-thirds majority),
- direct the Management Committee to take a particular action; or
  - direct the Management Committee not to take a particular action; and
  - the Management Committee shall give effect to any such direction accordingly.

## **Charity trustees - general duties**

- 74 Each of the charity trustees has a duty, to act in the interests of the organisation; and, in particular, must:
- 74.1 seek, in good faith, to ensure that CAPS acts in a manner

which is in accordance with its purposes;

74.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

74.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party;

74.3.1 put the interests of the organisation before that of the other party;

74.3.2 disclose the conflicting interest to CAPS and not take part in any discussion or decision with the other charity trustees about the matter in question;

74.4 ensure that CAPS complies with any direction, requirement, notice or duty imposed under, or by virtue of, the Charities and Trustee Investment (Scotland) Act 2005.

75 In addition to the duties outlined in clause 74, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring:

75.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and

75.2 that any charity trustee who has been in serious and persistent breach of those duties is removed.

76 A charity trustee will not be prevented from entering into an arrangement with the organisation in which they have a personal interest, provided the interest has been declared, and the charity trustee has not had a vote on the issue.  
Subject to clause 77 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005, the charity trustee may retain any personal benefit which arises from that arrangement.

77 No charity trustee may serve as an employee (full time or part time) of CAPS; and no charity trustee may be given any remuneration by CAPS for carrying out their duties as a charity trustee.

78 The charity trustees may be paid all travelling and other expenses

reasonably incurred by them in connection with carrying out their duties. This may include expenses relating to their attendance at meetings/events.

### **Code of conduct for charity trustees**

- 79 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Management Committee.
- 80 The code of conduct referred to in clause 79 shall be additional to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005. All relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct.

## **DECISION-MAKING BY THE CHARITY TRUSTEES**

### **Notice of Management Committee meetings**

- 81 Any charity trustee may call a meeting of the Management Committee *or* ask CAPS to call a meeting of the Management Committee.
- 82 At least 7 days' notice must be given of each Management Committee meeting, unless there is a degree of urgency which makes that inappropriate.

### **Procedure at Management Committee meetings**

- 83 No valid decisions can be taken at a Management Committee meeting unless a quorum is present. The meeting may proceed with discussion and information exchange. Any decisions in principle must be ratified at a future quorate meeting. The quorum for Management Committee meetings is half of the number of charity trustees who currently make up the Management Committee, or three, whichever is the greater.
- 84 If at any time the number of charity trustees in office falls below three members, the remaining trustees will have power to fill the vacancies or call a members' meeting, but will not be able to take any other valid decisions.
- 85 The Chair should normally act as the chairperson of each

Management Committee meeting.

- 86 If the Chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting. This may normally be the Vice Chair.
- 87 Every charity trustee has one vote, which must be given in person.
- 88 All decisions at Management Committee meetings will be made by majority vote.
- 89 If there are an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 90 The Management Committee may allow any person to attend and speak at a Management Committee meeting even if they are not a charity trustee, but on the basis that they must not participate in decision-making.
- 91 A charity trustee must not vote at a Management Committee meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of CAPS. They must withdraw from the meeting while an item of that nature is being dealt with.
- 92 For the purposes of clause 91:
- 92.1 any interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 92.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if they are an employee, director, member of the management committee, officer or elected representative of a body which has an interest in that matter.

## **Minutes**

- 93 The Management Committee must ensure that accurate minutes

are kept in relation to all Management Committee meetings and meetings of sub-committees.

- 94 The minutes to be kept under clause 93 must include the names of those present; and should be approved at the subsequent meeting.
- 95 The Management Committee shall (subject to clause 96) provide copies of the minutes referred to in clause 93 to any member of the public requesting them, if that request is reasonable.
- 96 The Management Committee may remove from any copy minutes made available to a member of the public under clause 95 any material which CAPS considers ought properly to be kept confidential, on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation **or** on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

## **ADMINISTRATION**

### **Delegation to sub-committees**

- 97 The Management Committee may delegate any of their powers to sub-committees. A sub-committee must include at least one charity trustee, along with other people.
- 98 The Management Committee may also delegate to the Chair of the organisation (or the holder of any other post) any of their powers as they may consider appropriate.
- 99 When delegating powers under clause 97 or 98, the Management Committee must set out appropriate conditions (which must include an obligation to report back regularly to the other members of the Management Committee).
- 100 Any delegation of powers under clause 97 or 98 may be removed or altered by the Management Committee at any time.
- 101 The rules about procedure and membership of each sub-committee, shall be set by the Management Committee.

### **Operation of accounts**

- 102 The Management Committee will decide which charity trustees and/or CAPS employees will be signatories to CAPS bank accounts. The Management Committee will set and review operational policy in accordance with good practice and in the best interests of the organisation.
- 103 Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 102.

### **Accounting records and annual accounts**

- 104 The Management Committee must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 105 The Management Committee must prepare annual accounts, complying with all relevant statutory requirements. If an audit is required under any statutory provisions (or if the Management Committee consider that an audit would be appropriate for some other reason), the Management Committee should ensure that an audit of the accounts is carried out by a qualified auditor.

## **MISCELLANEOUS**

### **Winding-up**

- 106 If CAPS is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 107 Any surplus assets available to CAPS immediately preceding its winding up or dissolution must be used for purposes which are the same as, or which closely resemble, the purposes set out in this constitution.

### **Alterations to the constitution**

- 108 This constitution may (subject to clause 109) be altered by resolution of the members passed at a members' meeting (subject to achieving the two-thirds majority referred to in clause 45) or by way of a written resolution of the members.



- 109 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g. change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

## **Interpretation**

- 110 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include:
- 110.1 any statutory provision which adds to, modifies or replaces that Act; and
  - 110.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 110.1 above.
- 111 In this constitution:
- 111.1 “charity” means a body which is either a “Scottish Charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;
  - 111.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.
  - 111.3 “Management Committee” means the governing body of the organisation, referred to in the Charities and Trustee Investment (Scotland) Act 2005 and the SCIO Regulations 2011 as the “Board”.
  - 111.4 “approved” means proposed and seconded by members who were present at the original meeting.