



Voluntary Sector Support

Guide to Voluntary and Community Legal Structures



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Volunteer Centre
Bucks



**Community
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PROMOTING EXCELLENCE IN VOLUNTARY AND COMMUNITY SERVICES

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Introduction

This guide has been produced primarily for people who are thinking about setting up a new voluntary or community group and outlines some of the key considerations and steps that need to be taken. It should also be a valuable resource for established groups who may be wishing to review their current status.

It is not intended to comprise specific legal advice, which, if required, needs to be sought from an appropriate source.

Charitable and voluntary organisations in England have a choice about the type of legal structure they adopt. Each type has its advantages and disadvantages. This information sheet describes the different types of legal structures, to help you decide which is most suitable for your organisation.

Before you start

It is important to undertake some research and do some networking prior to setting up a group.

This will help you to find out whether or not a similar group exists at a local, regional or national level and whether there is any available evidence of need

In the eyes of the law, an organisation is either:

A collection of individuals working together, such as an unincorporated organisation or charitable trust (Types of unincorporated organisations include: Association, Charitable Association, Charitable Trust and Friendly Societies)

Or

An incorporated organisation which exists as a separate legal entity from the individuals belonging to it. Types of incorporated organisations: Company Limited by Guarantee, Community Benefit Societies, Community Interest Companies and Charitable Incorporated Organisation.



Unincorporated and incorporated – What’s the difference?

Unincorporated	Incorporated
Unlimited personal liability (joint & several)	Limited personal liability (usually £1), i.e. committed to a maximum loss
Ownership of property by individual people	Ownership of property by the organisation
No statutory framework – no governing law (unless a charity)	Clear statutory framework (with penalties for non compliance & automatic fines for late returns)
No real accountability (unless a charity)	Clear accountability both to members/ shareholders and to a regulatory body
No automatic set up/running costs	Set up and ongoing costs (e.g. filing fees)

Unincorporated Associations

This structure is ideal for small groups with a membership, short-term goals, low incomes, and which do not intend to employ staff or acquire property.

Unincorporated Associations are quick and cheap to set up. Unless a group is applying for charitable status, no other agency need be involved.

However, an unincorporated association has no separate legal existence and remains for most purposes a collection of individuals. Any property or contracts would have to be held by individuals on behalf of the group, or any legal proceedings taken against the group would, in reality be against the individuals themselves, making them personally liable, as liabilities are held by committee members.

Most voluntary organisations begin as unincorporated organisations, and may stay that way, particularly if they are small. In practice, it is worth agreeing some basic rules and writing these down, so that everyone is clear about the aims for the organisation and how it will be managed. An unincorporated association is governed by its constitution accountable to members. If the voluntary organisation is developing into a larger organisation where they need to lease buildings or employ staff or enter into large contracts, they need to review their structure and look at a more appropriate structure.



Unincorporated organisations can take different forms such as Charitable Trusts, Friendly societies, registered charities, which are not registered as companies, and unregistered voluntary and community.

Listed below are the forms of unincorporated organisations explained in detail.

Unincorporated Association

This may be the best option for you if your group is small, has a limited or specific purpose, operates on a small budget, does not own property or need to employ staff or has no long term commitments or plans to enter into lease agreements for any equipment etc. It is a popular simple structure commonly used by small voluntary organisations.

Pros

- *Can be set up quickly and cheaply (no setting up fees unless you involve a solicitor)*
- *Cheap and relatively easy to run - no need to notify changes in office bearers to any public register*
- *Offers a democratic structure with reasonably flexible procedures*
- *If your group's aims and purposes are considered 'charitable' (as defined by law) you can apply to the Charity Commission to be registered as a charity (see section below)*

Cons

- *The group cannot hold property or enter into contracts in its own name*
- *Members may be held personally liable for the organisations debts*

Registered Charities

A charity is an entity that has been set up for purposes which are exclusively charitable and for the public benefit. Charitable purposes that are for the public benefit are set out in the Charities Act 2006. See Community Impact Bucks separate guide 'Q&A Guide to setting up a charity'.

In order to be a charity, an organisation must be able to demonstrate it is set up with aims that are charitable, and that these aims are carried out for the public benefit. It is a requirement that applies to each of an organisation's aims, so a charity cannot have some aims that are for the public benefit and some that are not. An organisation that is established for charitable purposes in England and Wales must register with the Charity Commission if it has income over £5,000 a year.



Pros and Cons of Registered Charities

Pros

- *Charities are readily recognised and enjoy considerable support from funders and other potential supporters.*
- *Charities attract considerable tax advantages including mandatory 80% relief from business rates.*
- *Are the stated purposes of the organisation charitable in law?*
- *There is a general presumption that charity trustees will serve in a voluntary capacity and not derive any personal benefit from their role.*

Cons

- *There are limits on the ability of a charity to raise funds by trading.*
- *Regulation by the Charity Commission involves a significant administrative burden.*
- *When a charity is wound up, surplus assets/funds must generally be transferred to a charity with similar purposes.*

Legal structures for charities

Charities may be established as:

- **An unincorporated association** – particularly used by small voluntary organisations and local groups. The governing document is a constitution or rules and there is usually a membership. The trustees are often referred to as the management committee. There is no protection from liability for the trustees
- **A trust** – also an unincorporated structure and commonly used by grant-making bodies and was a common structure used in the past. The governing document is a trust deed or a will. Again, there is no protection for trustees.
- **A limited company** – usually a company limited by guarantee. The governing document is a memorandum and articles of association for a company formed before September 2009 and articles of association for a company formed since then. The trustees (or directors) are protected in most circumstances against contractual liabilities. Charitable companies must register with Companies House and, usually, with the Charity Commission.



- **Charitable Incorporated Organisation (CIO).** Is a new legal form for a Charity. This will provide limited liability but will only require registration with the Charity Commission. The governing document will be a constitution. The trustees will be protected in most circumstances against contractual liabilities. CIOs need to register with the Charity Commission.

Please refer to the Charity Commission's guide to Registering as a Charity.

http://www.charity-commission.gov.uk/Start_up_a_charity/Guidance_on_registering/default.aspx

Charitable Trusts

A charitable trust is a special sort of unincorporated association, set up to administer money or property (or both), and which will usually be registered with the Charity Commission. Many trusts administer charitable bequests. Some voluntary organisations choose to have trusts to hold property for them, or to administer large amounts of money.

A trust is set up by a legal document called a trust deed. A model trust deed can be obtained free from the Charity Commission. The trust consists of a small group of trustees, who manage the money or property in accordance with the trust deed. There is no membership apart from them. Problems can arise when trustees die or resign, or if new trustees want to replace them or run the organisation differently from the founding trustees. Since a trust is unincorporated, trustees are personally responsible for its actions and liable if it runs into debt. There are ways of limiting this, but it is advisable to seek legal advice when the trust is set up.

Friendly Societies

Less popular nowadays, this structure dates from the 19th Century when it was designed to offer insurance benefits for members. To become a Friendly Society your group must have a 'benevolent' purpose and a minimum of 7 members.

Pros & Con's of Friendly Societies:

Pros

- *Simple to transfer property between trustees*
- *Access to arbitration in the case of disputes*
- *Eligible to apply for charitable status if your group's purposes are considered charitable (as defined by current law) and you can satisfy the Charity Test.*



Cons

- *Unincorporated which means personal liability of trustees/members for any debts of the organisation*
- *Regulations to abide by: - groups must comply with Friendly Societies Act 1974 and are liable to investigation by Registrar of Friendly Societies*
- *Not such a well known structure may complicate dealings with banks and funders*

Incorporated Organisations

An organisation that is a corporate body can enter into contracts, hold property, and take part in lawsuits, in its own right. It enjoys limited liability. This means that if it has more debts that it can pay and is wound up, its members as individuals are only liable for their shareholdings or the amount they have each guaranteed.

Incorporated organisations are more complicated to set up, and more closely controlled by the law, than unincorporated associations. There are four sorts of incorporated structure suitable for voluntary organisations:

- **Company Limited by Guarantee**
- **Community Interest Company (CIC)**
- **Charitable Incorporated Organisation**
- **Community Benefit Society (formerly the Industrial and Provident Society)**

Companies Limited by Guarantee

A Company Limited by Guarantee does not have shares or shareholders, and cannot distribute profits. Instead it has members, who may pay a subscription and are each liable for a limited sum if it is wound up (the guarantee). The members elect a board, or committee, or directors, and can remove them but the board has day-to-day control.

A limited company's rules are set out in a legal document called the memorandum and articles of association. This must be carefully drafted, preferably with legal advice, because the company has no power to do anything not covered by it. The Charity Commission has produced a model which is available free of charge.



The Companies Acts lay down rules about such things as Annual General Meetings, accounts, and audit. Setting up a company and meeting these rules, involves a lot of paperwork, is quite expensive and is therefore usually undertaken by larger organisations.

You can get more information from The Registrar of Companies at Companies House

Pros

- *The structure and its day to day operation are widely understood.*
- *Quick and easy to establish with low registration fees.*
- *Can be either charitable or non-charitable (e.g. as social enterprise). If charitable, all usual charity tax reliefs are available.*
- *Flexible as to number of members and whether subscriptions charged.*

Cons

- *No possibility of equity investment – cannot issue shares.*
- *Although filing with Companies House is straightforward, there are high penalties for delay/failure to file information.*
- *If charitable, it would be registered with both Companies House and the Charity Commission – need to file information/accounts with two regulators with different requirements.*

Community Benefit Societies (formerly Industrial and Provident Societies)

Incorporated Industrial and Provident Societies conduct business for the benefit of their community. These are not-for-profit organisations with charitable purposes and a built-in democratic structure. They must give all members an equal say in the running of the society. The society has corporate status, and can have a share and loan capital, but must pay only moderate interest on any loan capital.

Industrial and Provident Societies for the benefit of the community cannot register with the Charity Commission, but must register with the Financial Services Authority. They can apply to the Inland Revenue Charities Division to be classed as charitable for tax purposes. (for example a nursery school)

They are accountable to the Financial Services Authority FSA (see contact details at the end). The FSA can give information about registration as an industrial and Provident Society, including details of 'promoting societies', who provide model rules and offer the quickest way of registering.



Pros

- *Can be good for social investment: each member can buy up to £20,000 of shares in the society and other IPS could invest.*
- *Strongly recognised amongst particular sectors – particularly where the co-operative structure is valued.*
- *Can be charitable – but cannot be registered with the Charity Commission (subject to change with Charities Bill).*
- *If charitable, can obtain many of the tax breaks available to charities e.g. minimum 80% business rates reduction and Gift Aid on donations.*

Cons

- *Weak 'brand' – the existence of this structure and its key characteristics are poorly understood even in the charity sector. That lack of recognition can be more pronounced – and inconvenient – when dealing with commercial bodies such as banks.*
- *Administration – registration is with the Financial Services Authority rather than Companies House and administration procedures are quite different to those of companies.*
- *Cost – registration with the FSA can cost between £40 and £950-payable each year.*

Community Interest Company (CIC)

Community Interest Companies (CICs) are limited companies that exist to provide benefits to a community, or a specific section of a community. The CIC has the flexibility of the familiar company form, and access to a range of financing options, so maybe appropriate for those working for a social purpose.

Its key feature includes an asset lock and a community interest statement.

To register as a CIC you must also register as either a company limited by shares or a company limited by guarantee. CICs are subject to dual regulations by both the CIC regulator and Companies House. When registering with Companies House you will need to provide additional documents, including a community interest statement describing your social purpose.

CICs should not be confused with charities. CICs cannot have charitable status but a charity can own one.



Pros

- *Flexible – can be company either limited by guarantee or by shares.*
- *Flexibility to pay directors.*
- *If limited by shares it can pay dividends up to a 'dividend cap'; and can also have non-profit shares with no entitlement to dividend. Loan capital possible but with an interest cap.*
- *Not restricted to objects/purposes, which qualify as charitable.*

Cons

- *Does not receive the tax advantages extended to charities e.g. will not obtain business rate relief but may qualify for discretionary relief.*
- *The scope of the community interest test can be ambiguous.*

More information can be found on the CIC regulators website

<http://www.bis.gov.uk/cicregulator>

The CIC regulators: “Frequently Asked Questions Document” is also a good source of information and can be viewed by the attached link:

<http://www.bis.gov.uk/assets/cicregulator/docs/leaflets/09-1648-community-interest-companies-frequently-asked-questions-leaflet.pdf>

Charitable Incorporated Organisations (CIO)

A new special form of incorporated body for charities was created in 2012 called the Charitable Incorporated Organisation (CIO).

The legal framework for the CIO is set out in the Charities Act 2011 and came into force in 2012 following an Act of Parliament.

Further information on how to convert an unincorporated association or trust into a company charity or charitable incorporated organisation (CIO) can be found via the attached link:

<http://www.charitycommission.gov.uk/start-up-a-charity/as-your-charity-grows/becoming-a-charitable-company-or-cio/>

CIO will be registered and administered solely by the Charity Commission.

All information and documentation required or authorised to be sent or supplied by a CIO to the Commission must be done so electronically.

CIOs are probably most suitable for small & medium sized organisations who employ staff and/or enter into contracts.



Pros and Cons of CIOs

Pros

- *One regulator – the Charity Commission*
- *Conversion from a company limited by guarantee should be fairly straightforward.*
- *The members and trustees are usually personally safeguarded from the financial liabilities the charity incurs, which is not normally the case for unincorporated charities.*
- *The charity has a legal personality of its own, enabling it to conduct business in its own name, rather than the name of the trustees.*

Cons

- *It is not as straightforward as running an unincorporated association or charitable trust.*
- *All CIOs have to register with the Charity Commission regardless of their income, even if they have an income of less than £5,000*



Constitutions

Whatever legal status you choose for your business, it is very important that a properly drafted constitution is adopted at the outset. This should be drafted in plain English avoiding any vague or jargonistic words. A constitution is an agreed set of rules covering at the very least the following issues (note: this list is not exhaustive):

- *What the aims (“objects”) of the organisation are*
- *The powers of the organisation in achieving its objects*
- *Show how the organisation governs itself, e.g. through an elected management committee/board of directors*
- *What the powers of the management body are*
- *Who can be a member and on what terms*
- *How meetings are convened and conducted*
- *How the constitution can be amended*
- *How the organisation is wound up*
- *How surplus income is used e.g. Reserves policy, reinvested in the organisation*
- *Other principles which you want to apply to your organisation*



Model and standard constitutions

Before starting to develop a constitution it is important to think about whether the organisation will now, or at some point in the future, need to register with the Charity Commission. If this is likely to be the case then it is advisable to adapt one of the model constitutions approved by them. This is because it is more difficult to develop a charitable constitution and homemade ones may result in considerable objections or lengthening of the registration procedure with the Charity Commission.

Types of governing document for each legal structure

Legal Structure	Governing Document
Unincorporated Association	Rules of Association / Simple Constitution
Unincorporated Charitable Association	Model governing document from Charity Commission / Charity Law Association
Charitable Trust	Trust Deed from Charity Commission / Charity Law Association
Charitable Company	Memorandum & Articles of Association from Charity Commission / Charity Law Association
Company limited by guarantee/shares	Memorandum & Articles of Association from Charity Law Association
Community Interest Company (CIC)	Memorandum & Articles of Association from CIC regulator
Community Benefit Societies	Rules
Charity Incorporated Organisation (CIO)	Model constitution available from Charity Commission website

Model governing documents for a charitable company, a charitable trust and an unincorporated association together with guidance notes are available to members of the Charity Law Association. These model governing documents are recommended and approved by the Charity Commission

It costs £45 to obtain membership of the Charity Law Association. See attached link <http://www.charitylawassociation.org.uk/en/default.aspx>



Where to get information and advice

Community Impact Bucks.

For local information and advice

Email: info@communityimpactbucks.org.uk or phone 0845 389 0389

Further self help guides are also available on our website

<http://www.communityimpactbucks.org.uk/pages/selfhelpguides.html>

- Guide to Business Planning,
- Guide to Project Planning,
- Guide to Funding,
- Guide to Sustainable Funding and Financing Options,
- Good Practice Guide to Involving Volunteers
- Q & A Guide to Setting up a Charity

Charity Commission

Groups thinking about registering as a charity can obtain free advice and information from the Charity Commission. You can download model governing documents and wide range of leaflets and booklets from their website, which are available free of charge.

Website: <http://www.charity-commission.gov.uk/>

Tel: 0845 300 0218

Charity Law Association

Become a member and get access and updates to all legal and governance matters concerning charities.

Website: <http://www.charitylawassociation.org.uk/en/default.aspx>

Tel: 01634 373253

E mail: admin@charitylawassociation.org.uk

Companies House

Companies House Crown Way
Cardiff CF14 3UZ

Website: <http://www.companieshouse.gov.uk/#&panel1-1>

Tel: 0303 1234 500



Registering as an Industrial & Provident Society (Community Benefit Society)

Register with Financial Services Authority (FSA)

Website link

http://www.fsa.gov.uk/pages/doing/small_firms/msr/index.shtml

25 The North Colonnade

Canary Wharf

London E14 5HS

Tel: 0845 606 1234 (for registration enquiries)

Fax: 020 7066 1099

E-mail: consumerhelp@fsa.gov.uk

Registering as a Community Interest Company

The Community Interest Company (CIC) Regulator

Companies House

Crown Way

Cardiff

CF14 3UZ

Website: <http://www.bis.gov.uk/cicregulator>

Tel: 029 2034 6228.

