Resources for small groups

Legal structures

This factsheet summarises the main legal structures in use by community groups. However, it is recommended that any group gets more detailed information on this subject and if necessary seeks advice from outside organisations to help make a decision.

The main structures for voluntary groups are summarised here. Each of these has different levels of external regulation and personal liability for management committee members.

Unincorporated associations

- The main advantage of this structure is its simplicity. Unincorporated associations can usually be set up without involving solicitors and without any particular costs. Administrative tasks for complying with outside regulations are kept to a minimum (for registered charities, they must comply with the requirements of the Charity Commission). They are also fairly easy to wind up at the end of their existence, so long as their finances are in order.
- An unincorporated association is not a legal entity in its own right and its management committee members must instead take personal responsibility for all the activities of the group. Each committee member can be held individually liable for any debts that the group incurs.
- The group cannot enter into legal agreements (leases, contracts of employment, etc) or own property as a group. Instead, individual committee members must sign agreements or hold property on behalf of the group.

This structure might suit small organisations where there is likely to be little risk of the group going into debt, the group is unlikely to own substantial property or employ large numbers of people and there is no need to be burdened by administrative tasks and regulation.

Charitable trusts

- A charitable trust is another form of unincorporated association.
- Trusts share the advantages of unincorporated associations, in terms of simplicity.
- Each trustee is personally liable for any debts or contractual agreements
- All trusts must be registered with the Charity Commission.
- They can be run by a small board of trustees (as few as three people) who do not have to be elected

This structure tends to be used for groups which hold property or funds for the benefit of the public or a specific section of the public, rather than for groups with a large membership.

Incorporated organisations

- Incorporation enables an organisation to become a legal entity in its own right and involves the creation of a charitable company called a company limited by guarantee.
- The group can enter into contracts, own property, etc. in its own right, rather than requiring committee members as individuals to take responsibility for these.

- Typically the members of the management committee additionally become directors of the company.
- In most circumstances the liability of committee members (and the wider membership) is limited, usually to a maximum of £1 or £5. This means that in normal circumstances the individual committee members would not be liable for any debts incurred.
- The limit on individual liability could be removed if the debt is a result of fraud or mismanagement, or if the organisation continues to operate whilst insolvent.
- Setting up a company limited by guarantee tends to be more costly
- Incorporated organisations come under company law as well as charity law and are regulated by Companies House as well as the Charity Commission. This creates more administration and regulation. The company can be fined for not completing and returning paperwork on time, or not complying with company regulations.

This structure is likely to suit groups who intend to employ staff or own substantial property and feel that they need to give some protection to their committee members. A group can set up as an unincorporated association, then go through the process of incorporation at some future date, when required.

Charitable Incorporated Organisations

This new structure was launched in December 2012 and is being implemented in phases. It will provide the main advantages of a Charitable Company – a legal personality and limited liability – but it will be registered with and regulated by the Charity Commission only. Requirements for reporting and for annual accounts should be simpler and much cheaper, in particular for a smaller CIO. The Commission has produced model forms of constitution for CIOs.

Brand new charities have been able to register as CIOs since January 2013. Unincorporated associations can transfer to become a CIO during 2013 (phased based on level of income) and during 2014 (subject to further legislative changes) incorporated organisations may transfer to become a CIO.

Community Interest Companies

Social enterprises can register as a Community Interest Company (CIC). These companies:

- need only have 1 or 2 Directors and these can be paid a salary out of the profit of the company.
- are expected to generate 50% or more of their income through trading.
- cannot be registered charities or undertake political activities
- are required to have a community interest statement setting out the section of the community whom they will benefit
- must produce an annual public benefit report on how their work has benefited their community

Co-operatives and other form

Another form of incorporation sometimes used by community groups is an Industrial and Provident Society (IPS).

- it provides similar benefits to being a company limited by guarantee (limited liability for committee members, existence as a legal entity etc.). This is the legal structure adopted by co-operatives—all the members own the society and profits made.
- setting up an IPS can be costly and currently they are subject to tighter regulation than CICs.
- IPSs cannot become registered charities which can be a disadvantage when seeking funds from many grant-giving trusts.

To decide which legal structure will be most suitable for your group, you might consider:

- whether your organisation is likely to have a large membership to which it should be accountable;
- the possible risks to management committee members and whether they need the protection of limited liability;
- the ability of the group to comply with regulations, handle paperwork and deal with administrative tasks associated with managing a company;
- whether the group is likely to hold substantial funds or property, or to employ staff;
- to what extent the group will be able to generate income through trading.