

## *An introduction to structures for groups*

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Maybe you are part of an informal social group that now wants to formalise itself, perhaps you are part of an unincorporated group that has expanded and needs to register with the Charity Commission! Whatever the reason for deciding on a structure for your group, you need to be sure that it is the right one for you and for the purpose of the group.

Remember, you do not need to register with the charity commission (in fact they discourage it) unless your group's income exceeds £5,000, so this may affect your decision.

Most groups start out as unincorporated groups and then as they expand become more formalised to keep in line with current regulations on income etc...

### *Unincorporated groups*

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An unincorporated group is the simplest type of organisation and the favoured legal structure chosen by new groups. The [attractions](#) are that it is cheap to set up and run and you do not need anyone's permission to form an 'unincorporated' group.

An unincorporated group is defined as being an informal 'collection of individuals working together' and as such it has limitations over what it can and cannot do. For example, an unincorporated group cannot own property or enter into contracts in its own right as it is only the sum of its trustees and has no legal personality of its own.

If you are considering doing something more major within your group, for example, employing a worker or managing a building, you may well need a structure which gives the group a legal existence and gives members more individual protection (see below for more info on trustee liability). As such, the trustees or members of the management committee take on a certain amount of [personal liability](#) and shared responsibility for the group's actions. Changes made recently by the Charity Commission mean that it would be extremely rare for a trustee/member of a management committee to be brought to account for the actions of a group if they have acted in a responsible manner and in line with any governing document.

An unincorporated group should have a governing document even if it does not intend to apply for charitable status in the future. Otherwise known as a constitution, a governing document sets out the rules by which the group is to be run. Such a document usually includes (at the very least)

- aims of the group
- what powers trustees and committees can use to achieve these aims
- the membership of the group
- any specific procedures that should be taken to ensure that the group is run efficiently

The constitution of an unincorporated association is deemed in law to be like a 'contract' between the individual members who sign up to it.

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There is a model constitution for unincorporated groups further on in this Website

## Trusts

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A charitable trust is a special unincorporated group, usually set up to administer money and/or property for the benefit of the community or for another clearly defined charitable purpose.

Charitable trusts do not normally have a membership other than management committee/trustees; they may employ a few staff and will usually be registered with the Charity Commission. Like an unincorporated group, trusts make their own governing rules, normally known as a trust deed, which outline and protect their social objectives

Trusts normally establish a formal relationship between three parties:

- the donors of money or property
- the Trustees who become the nominal owners of the trust property
- and the beneficiaries (the people who will benefit from the trust)

Trusts can be set up **quickly and cheaply**, they are essentially non – democratic organisations because there is generally no membership structure which can make decision making easier on occasions. On the down side, because a Trust has no legal identity of its own, trustees can be **personally liable** for contracts entered into and Trusts registered with the Charity Commission must submit annual reports and accounts.

## Incorporated groups

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While it is "unincorporated" (without a legal personality) a *group* cannot do certain things such as own property in its own right or enter into contracts as mentioned earlier it is possible for a particular individual Trustees/committee members in the group to take such responsibilities as entering into contracts personally. You should, however, always seek advice before entering into any contracts as it may be more suitable for your group to become incorporated.

Being **incorporated** gives the group itself a legal personality, and the trustees a wider range of powers to achieve growing needs of the group. It also means that trustees and committee members have **considerable protection** under the law from personal liability for the group's debts, any breaches of employment law, contractual obligations and so on.

There are two commonly used structures for Community groups wishing to become incorporated, each with its advantages and disadvantages. Both involve a cost in set-up, and will require a legal governing document that lays out certain things you must or must not do.

### 1. Company Limited by Guarantee

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Becoming a company limited by guarantee will offer **limited liability** for debt in the event of the company winding up. Each trustee or member pays a 'membership' fee of an agreed amount (this can be anything

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from £1 to normally £5) and it is this that acts as the guarantee in the event of the company winding up. Decisions on how the company is run are voted for by the trustees or management committee of which there must be a minimum of three (good practice to have more)

A company limited by guarantee has a governing document/constitution but it is normally called the Memorandum & Articles of Association. This is a legal document and legal advice should be taken when writing and adopting it.

A community group that establishes itself as a company limited by guarantee is usually set up either to benefit members only or to benefit members and a wider community. This structure is relatively cheap to register and run, flexible in terms of what it can do, who its members are and in setting up financial structures such as bank accounts is relatively easy.

Although it is relatively easy to set one up, there are some **disadvantages** to setting up a community group or charity as a company limited by guarantee. The group would have to register with and then be subject to Company Law and if the company is a charitable company they must *also* register and meet the requirements of the Charity Commission. This means that annual accounts and reports must be compiled and submitted twice in accordance with both sets of requirements. The form of which the accounts must take depends on the amount of annual income.

## **2. Community interest companies (CIC)**

Community interest companies (CIC's) are limited companies with **additional features**. They were originally created for businesses that carry out work benefiting the community and those that are not purely for profit. To register as a CIC, a group must register as either a company limited by shares or a company limited by guarantee (see above). CIC's are assessed and approved by the CIC's own regulators who continue to monitor them after the CIC is approved for the needs of Companies House. CIC's need to have a statement that describes the social purpose; this is normally called a 'Community Interest Statement'. This type of structure enjoys a certain amount of flexibility; they can have shareholders and can pay their directors but they all have an 'assets lock'. An **asset lock** ensures that the assets of a CIC (including any profits or other surpluses generated) are, after any expenditure that meets their obligations, either used for the community purposes outlined in their community interest statement or transferred to another 'asset locked' body or Charity.

## **Industrial & Provident Society (also known as a Community Benefit Society)**

An industrial and provident society is an organisation conducting an **industry, business or trade**, either as a **co-operative** or for the benefit of the community. It has to register with the Financial Services Authority (FSA) and carries an annual charge which is calculated on a group's income.

Societies run for the benefit of the community and provide services for people other than their members which is usually a specific geographical community or a community of interest. There are usually special reasons why the society is not required to register with Company's House as a company and a group must demonstrate their social objectives to be set up as an industrial & provident society.

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Other types of Industrial and provident societies run as co-operative societies and are run for the mutual benefit of their members, with any surplus income going back into the society to further their cause.

### **Becoming a registered charity**

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Charitable status is not a legal structure in its own right; it is separate from the legal structure of a group.

You can adopt charitable status after setting up a legal body; even if your group is unincorporated you can still apply for charitable status, although they will now not normally accept any group whose income is less than £5,000 and by this time.

Once a registered charity is approved it is given a number by the Charity Commission.

The **advantages** of seeking charitable status are mainly financial and include:

- Relief from certain tax.
- Relief from stamp duty.
- Probable rates relief on premises.
- Recovery of income tax on 'Gift Aid' donations.
- Only registered charitable organisations are eligible to certain receive grants from some charitable trusts or funding streams
- The general public usually has more confidence in a body which is formally recognised as charitable.

**Disadvantages** can include, cost to set it up and the regulations and accounting requirements that accompany the status can sometimes be daunting. Recent changes from the Charity Commission have gone some way to making the process more accessible, such as the introduction of charitable incorporated organisations (see above). Charities are sometimes limited in what they can do and trading may present complications and once you have adopted charitable status it is difficult to get rid of, so think carefully about if it's the right thing for you group.

This is designed only as a brief guide to the different types of structures that a group can adopt. The Charity Commission has comprehensive guidelines covering the registration of a charity as have other local CVS's.

### **Governing Documents**

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The Charity Commission produces some excellent models of the following types of governing document:

- Charitable Companies - Articles of Association
- Charitable Trusts - Trust Deed
- Charitable Associations - Model Constitution
- Small Charity - Constitution.

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## THE FUTURE...

### *Charitable incorporated Organisations CIO*

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This is a new legal form of incorporated structure which, unlike the structure of charitable companies, has been designed specifically for the needs of charities. It is being introduced by the Charity Commission sometime in 2011.

Charitable incorporated organisations (CIO's) will combine the advantages of charitable status with those of an incorporated company structure whilst only being required to report to the Charity Commission. This means that they will benefit from reduced risk of personal liability without having to register and comply with the regulations of both Companies House and the Charity Commission. Having to comply with only one regulating body means that CIO's will only have to prepare and submit one annual report and set of accounts making the administration of the group much more user friendly.

Like Community interest Companies, CIO's will also have an assets lock in place, they will also be unable to distribute profits or assets amongst their members.

Existing charitable companies, community interest companies and industrial & provident societies will be able to apply for conversion into CIO status with the Charity Commission, who has said that it should be relatively easy to do so. Unincorporated groups, however, would need to become incorporated.

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