

# Finding a legal structure to suit your group

In this sheet we look at legal structures which are suitable for community organisations, ranging from small neighbourhood groups run by local people to larger voluntary agencies with staff.

If you are setting up a new community group or organisation, you might want to consider the following types of legal structure:

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Whichever structure you choose, you must draw up a set of rules stating how your group will work (known as the governing document). There is a different type of governing document for each structure.

A few groups that think of themselves as community organisations may find that a business structure, such as a Co-operative, Community Interest Company, or (non-charitable) Limited Company, is more appropriate than one of the four structures above.

For more information about Co-operatives, Community Interest Companies and Limited Companies see our information page on *Legal structures for not-for-profit organisations*.

You could use our RouteMap<sup>i</sup> to help choose a legal structure for your group. For more help, look at our list of other online tools to help choose a legal structure<sup>ii</sup>, and our list of other organisations that provide information about legal structures<sup>iii</sup>.

# Unincorporated association

An unincorporated association is a membership organisation. It can be whatever its members want it to be, and carry out whatever activity you choose. It is the easiest, quickest and cheapest way for a group to set itself up. This structure is suitable for groups such as playgroups, pensioners associations, film clubs, arts groups and campaigning groups. Many groups fall into this category (sometimes without knowing it).

You do not have to seek approval of any kind before setting up an unincorporated association, nor do you have to register with any regulatory body, if your group's aims are not charitable.

You are not obliged to keep a membership list unless there is a membership fee – anyone who is entitled by your rules to be a member can simply turn up and take part. However, it can be useful to keep a list so you can inform all your members of meetings, and know who is entitled to vote.

You are free to draw up your own democratic constitution setting out the rules under which your group will be run. For more details about how to write a constitution see our information sheet: *Constitutions – step by step help with writing a constitution*.

If your group's aims, as outlined in your constitution, are **charitable**, this makes you a Charitable Unincorporated Association (see below).

## Advantages

- ♦ This structure is simple and flexible. You do not need to have your constitution approved by any outside body.
- ♦ An unincorporated association is cheap to run. If your aims are not charitable, and you don't get any grant funding, you won't need to submit accounts or reports to anyone outside your group.
- ♦ If your aims are not charitable, you have no obligation to any regulatory body and there are no particular rules about how you should run your group (so long as your activities are generally lawful).

## Disadvantages

- ♦ Some funders only give money to charities. You can overcome this problem by being a charitable unincorporated association (see below).
- ♦ Your group has no separate legal existence – it is a collection of individuals. This means that:
  - ◇ individual members of your management committee are personally responsible for the group's obligations and debts, and are liable if, for example, it is sued. While it is possible to insure against this liability it is often difficult to claim on such insurance. If you feel you may need insurance you may be better to look again at your structure and choose some form of incorporation.
  - ◇ the group cannot enter into contracts – if it wants to rent premises or employ people, this is done, in the eyes of the law, by individuals on behalf the group
  - ◇ the group cannot own property in its own right.

## Charitable unincorporated association

A charitable unincorporated association is a type of charity. It is just the same as a non-charitable unincorporated association except that its aims are legally charitable and it can demonstrate that its work is for public benefit.

Charitable unincorporated associations with annual income over £5,000 are required to register with the Charity Commission, and submit information to them each year.

To set up a charitable unincorporated association you need to ensure that your aims are legally charitable. This must be set out in your constitution. It may be best to adopt the Charity Commission's own model constitution for a charitable unincorporated association or model constitution for small charities<sup>iv</sup>.

### Advantages

- ♦ Charities are recognised publicly as being for the wider good (not just the good of their own members). Being a charity gives you that public recognition.
- ♦ Some grant funds are only open to registered charities.
- ♦ This structure is simple to set up and cheap to run compared to other types of charity. If your income is under £5,000 you don't need to register with any external organisation. If your income is under £25,000 the reports to the Charity Commission aren't too long or difficult to prepare, and don't require that you have your accounts independently examined.

### Disadvantages

- ♦ As a charity, your group has obligations. Among other things, you must draw up your annual accounts and report in a particular way. If your income is over £5,000 a year you have to send a copy to the Charity Commission. For more information on annual reports and accounts see our information sheet: *Charity Reports and Accounts*.
- ♦ Your group has no separate legal existence – it is a collection of individuals. This means that:
  - ♦ individual members of your management committee are personally responsible for the group's obligations and debts, and are liable if, for example, it is sued. While it is possible to insure against this liability it is often difficult to claim on such insurance. If you feel you may need insurance you may be better to look again at your structure and choose some form of incorporation.
  - ♦ the group cannot enter into contracts – if it wants to rent premises or employ people, this is done, in the eyes of the law, by individuals on behalf the group
  - ♦ the group cannot own property in its own right.
- ♦ All charities have to comply with charity commission guidelines on political and campaigning activities<sup>v</sup>.

## Charitable trust

A charitable trust is not a membership organisation but is run by a small group of people, known as trustees. It is set up by means of a trust deed. A trust is usually set up to manage money or property for a charitable purpose.

The aims of the trust must be charitable and the trust will need to register with the Charity Commission if it has an income over £5,000 per year. To make sure your aims are charitable you can use the Charity Commission model trust deed<sup>iv</sup>.

Trustees can be appointed for life when the trust is set up, or can be changed regularly. This means, for example, a representative of the local authority, or people with particular skills could be invited to become trustees.

Like an unincorporated association, a charitable trust does not have its own legal existence. This means that actions taken by a charitable trust are the responsibility of the individual trustees. The trustees make all the decisions and have all the responsibility.

### Advantages

- ♦ It is fairly cheap to establish and there is no registration fee.
- ♦ It is fairly simple to set up. The Charity Commission publishes a model declaration for a charitable trust (trust deed). However if you are at all uncertain about the trust deed it is sensible to get legal advice, as the deed is a formal document.
- ♦ Charities are recognised publicly as being for the wider good (not just the good of their own members). Being a charity gives you that public recognition.
- ♦ Some funders will give grants only to registered charities.

### Disadvantages

- ♦ As a charity, your group has obligations. Among other things, you must draw up your annual accounts and report in a particular way. If your income is over £5,000 a year you have to send a copy to the Charity Commission. For more information on annual reports and accounts see our information sheet: Charity Reports and Accounts.
- ♦ Your group has no separate legal existence – it is a collection of individuals. This means that:
  - ◇ individual members of your management committee are personally responsible for the group's obligations and debts, and are liable if, for example, it is sued. While it is possible to insure against this liability it is often difficult to claim on such insurance. If you feel you may need insurance you may be better to look again at your structure and choose some form of incorporation.
  - ◇ the group cannot enter into contracts – if it wants to rent premises or employ people, this is done in the eyes of the law, by individuals on behalf the group
  - ◇ the group cannot own property in its own right.
- ♦ There is not generally any formal method for users of your services to influence the work of the organisation. All decisions are made by a small group of people (the Charity Commission suggests having between 3 and 9 trustees). So it is not a suitable structure for a group which wants to encourage a large and active membership.
- ♦ All charities have to comply with charity commission guidelines on political and campaigning activities<sup>v</sup>.

# Charitable Incorporated Organisation (CIO)

A CIO is a charity which is also incorporated. In law it is recognised as a legal entity, which can enter into contracts, buy or lease property, and employ people. The trustees/committee members benefit from having limited liability.

This is a new structure which came into being in 2013. Many existing unincorporated charities have chosen to become CIOs so they can have the benefit of limited liability.

There are two different types of CIO:

- ♦ An Association CIO is suitable for groups that have a wider membership who have voting rights.
- ♦ A Foundation CIO is run solely by its trustees and doesn't have voting members.

Registration for a new organisation wishing to be a CIO is fairly straight forward if you use a model constitution created or approved by the Charity Commission. The Charity Commission states that it will complete the process in 40 days in the most straight forward cases.

An existing unincorporated charity can become a CIO, but the process is a little more complex. We estimate it will take 12 – 18 months for many organisations. It is not possible to simply convert your existing charity into a CIO, as you are creating a new legal entity. You will therefore have to create and register your CIO, then transfer all your activities, assets and liabilities from the unincorporated charity to the CIO.

The Charity Commission website includes advice about changing your charity structure<sup>1</sup>. For more information on this process we recommend *Charitable Incorporated Organisations* by Gareth Morgan, which is available in the Resource Centre reference library.

If you choose this structure you will have to submit your annual accounts and trustees annual report to the Charity Commission every year. For more information on annual reports and accounts see our information sheet: *Charity Reports and Accounts*.

## Advantages

- ♦ A CIO is an incorporated organisation which means that it has a legal identity separate from its members – it can employ staff, lease/own property, or enter into other contracts.
- ♦ Trustees have some protection, as they have 'limited liability' and any claim is made against the CIO rather than the individual trustees.
- ♦ Charities are recognised publicly as being for the wider good (not just the good of their own members). Being a charity gives you that public recognition.
- ♦ Some funders will give grants only to registered charities.
- ♦ It is free to register a CIO, and there are no fines for late submissions to the Charity Commission.

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<sup>1</sup> <https://www.gov.uk/change-your-charity-structure>

- ♦ Accounts can be kept on a 'receipts and payments' basis for CIOs with an income below £250,000, enabling groups to use a simpler accounting system and reducing accountancy fees, (compared to Charitable Companies).
- ♦ CIO structure is available to organisations which do not have members (unlike charitable companies, which have to be membership organisations).

### Disadvantages:

- ♦ The registration process is lengthy. This structure is not recommended for organisations wanting to set up rapidly, e.g. to respond to crises.
- ♦ It may be difficult to get loans from banks because, unlike charitable companies, CIOs don't need to keep a public record of liabilities.
- ♦ If a CIO stops being charitable, under the Charity Commission's criteria, it will cease to exist and be forced to close, unlike a charitable company, which would still continue to be a non-charitable company even if it lost its charity registration.
- ♦ All charities have to comply with charity commission guidelines on political and campaigning activities<sup>2</sup>.

Go to the Charity Commission website for more information about CIOs and updates on the registration process<sup>2</sup>.

## Charitable Company

A charitable company is a limited company with charitable aims. It is an incorporated organisation which means that it has a legal identity separate from its members. In law, a limited company is considered to be a person and it can therefore own land or enter into contracts. The directors are agents of the company and are not personally liable for its debts.

Establishing a charitable company involves registering with both Companies House and the Charity Commission, and then submitting your annual report and accounts to both bodies annually.

Until 2013 this was the only option for an organisation which had charitable aims and also wanted the benefits of being incorporated. Such organisations can now choose between being a charitable company or a CIO. (In the future it will be possible for an existing incorporated organisation such as a charitable company, to convert to a CIO structure, but this is not yet available.)

A company is a membership organisation. However, unlike an unincorporated association, members must be named and a list of members forms part of the Company Register.

There are two types of limited company:

- ♦ **Company limited by guarantee**  
There are no shareholders and any surplus is reinvested in the company. This type is recommended by the Charity Commission, and is likely to be the best structure if you want to form a charitable company.
- ♦ **Company limited by shares**  
This type of company is more usually found in the commercial sector, where its members (shareholders) are investing money in the hope of gaining a profit. It is

<sup>2</sup> <https://www.gov.uk/running-charity/setting-up>

unusual for a charitable company to be limited by shares, because charities must not distribute money to members (so shareholders cannot make a profit from the company).

To be classified as “charitable”, a company must demonstrate, through its Memorandum & Articles of Association (its governing document), that it has charitable aims and that its work is for public benefit. The directors of a Charitable Company are also its trustees and perform the role of the management committee.

The Charity Commission provides a model Memorandum & Articles of Association<sup>iv</sup> for a Charitable Company limited by guarantee, but you would be well advised to seek legal help in drawing these up.

To find out more see our list of organisations that provide information on setting up a company.

### Advantages

- ♦ A company is an incorporated organisation which means that it has a legal identity separate from its members – it can employ staff, lease/own property, or enter into other contracts.
- ♦ Trustees have some protection, as they have ‘limited liability’ and any claim is made against the company rather than the individual trustees.
- ♦ Charities are recognised publicly as being for the wider good (not just the good of their own members). Being a charitable company gives you that public recognition.
- ♦ Some funders will give grants only to registered charities.
- ♦ A charitable company may be more likely to get a bank loan than a CIO as it is obliged to keep a public record of its liabilities.

### Disadvantages

- ♦ A charitable company is regulated by both Companies House and the Charity Commission. You have to notify them of every change of directors/trustees and submit annual accounts and reports to both bodies. For more information on annual reports and accounts see our information sheet: *Charity Reports and Accounts*.
- ♦ You have to pay Companies House to register a company. They also charge a small fee for submission of annual accounts and reports, and impose fines if they are submitted late.
- ♦ All charitable companies have to keep accruals accounts, regardless of their size. These are more complex than the ‘receipts and payments’ accounts required for smaller CIOs and charities, and can therefore lead to higher costs for book keeping and accountancy fees.
- ♦ All charities have to comply with charity commission guidelines on political and campaigning activities<sup>v</sup>.

## Other legal structures

If none of these structures seems entirely suitable for your group, then it is worth considering one of the other legal structures available, such as a Co-operative, Community Interest Company or other social enterprise. Details of these are in our information page on *Not-for-profit organisations: A brief guide to legal structures for community and voluntary organisations and social enterprises*.

You can also use our *RouteMap*<sup>i</sup> to help you consider some of the different options.

The Resource Centre's Reference Library holds several books and other information on legal structures.

## Further information

### **<sup>i</sup> Resource Centre RouteMap**

<http://www.resourcecentre.org.uk/information/routemap/>

### **<sup>ii</sup> Organisations that provide online tools to help choose a legal structure**

<http://www.resourcecentre.org.uk/service/online-tools-to-help-choose-a-legal-structure/>

### **<sup>iii</sup> Organisations that provide information on legal structures**

<http://www.resourcecentre.org.uk/service/information-on-legal-structures/>

### **<sup>iv</sup> Charity Commission model governing documents**

<https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents>

### **<sup>v</sup> Charity commission guidance on political and campaigning activities**

<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>