

Not-for-profit organisations

A brief guide to legal structures for not-for-profit organisations

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What is a not-for-profit organisation?

“Not-for-profit organisation” is a broad term for all independent organisations that do not make private profit for directors, members or shareholders. Many different types of organisation can be “not-for-profit”. It is not a legal structure in and of itself.

If you are setting up a new not-for-profit organisation, or making changes to an existing one, choosing the right legal structure will help you to run your organisation as you wish. This sheet aims to give you some basic information to help you think through what your options are. You can also use the *RouteMap* on our website, which provides a step by step process to help you work out what the best structure is for your organisation.

Not-for-profit organisational structures fall into two broad categories: Charities & community groups and Social enterprises.

The main difference between these two categories is to do with who has overall control of the organisation.

In general, charities and community groups are controlled by a committee of volunteers (although they may employ staff to do the day to day work). This committee may be elected from among the members, or appointed by the existing committee. Because the people running the organisation do not make any financial gain, these organisations are more likely to receive grant funding.

Social enterprises can be controlled by people who have invested in them and/or are paid to work for them. This could be one or two people who own the business, all the paid staff together, the customers, or a large number of people who have bought “community shares” in the enterprise and are therefore members of it. Social enterprises generally keep themselves going by selling goods and services, and by inviting people to invest in them, rather than by applying for grants and donations.

Charities & community groups

These types of organisation are run by a group of volunteers, known as a management committee or board of trustees. They exist to organise activities or run services for their members or the wider community, or to distribute funds for charitable purposes. Some of these types of organisation might engage in trade or own property to support their work, but this won't be their primary reason for existing.

Here are some examples of circumstances in which a charity or community group structure might be suitable for your organisation:

- ♦ You are a group of people working together on a voluntary basis to make something happen (e.g. to organise social events for your members, to run a campaign, to improve your local neighbourhood and represent local residents, or to raise money for a charity or school)
- ♦ You wish to provide services for the community, and will apply for grant funding to do this. You might employ paid staff, but the organisation will be controlled by volunteers.
- ♦ You are a group of volunteers wishing to manage property or money for charitable purposes (e.g. to give out grants).

There are four main structures available for charities and community groups. These are:

- ♦ Unincorporated Association
- ♦ Charitable Trust
- ♦ Charitable Incorporated Organisation (CIO)
- ♦ Charitable Company

Brief details of each of these are below.

(Note that any of these types of organisation can be called a “charity”. “Charity” isn't a single legal structure – charities can adopt different legal structures depending on their needs and the way they work.)

There is much more detailed information on these types of organisation in our information sheet *Finding a legal structure to suit your group*.

Unincorporated Association

An unincorporated association is a membership organisation. It can be whatever its members want it to be, and carry out whatever activity the members choose. It is the easiest, quickest and cheapest way for a group to set itself up. It is ideal for many small groups, especially those without staff or premises. A large number of groups fall into this category (sometimes without knowing it).

You do not have to seek approval of any kind before setting up and you are free to draw up your own constitution, setting out the rules under which your group will be run.

If your aims are not charitable you do not have to register with any regulatory body. If your aims are charitable (as set out in charity law) you will be a “charitable unincorporated association” (a type of charity), and you must register with the Charity Commission if your group has an income of over £5,000 per year.

Unlike a Charitable Incorporated Organisation or a Charitable Company, an unincorporated association does not have a “legal personality”, which means any contracts or liabilities are the responsibility of the trustees as individuals, rather than of the organisation itself.

This type of structure is often used by volunteer-run campaign groups, residents’ associations, PTAs and clubs.

More detailed information about unincorporated associations and charitable unincorporated associations is in our information sheet *Finding a legal structure to suit your group*.

Charitable Trust

A Charitable Trust is a type of charity usually set up to manage money or property for a charitable purpose. It is run by a small group of people, known as trustees. The trustees are appointed rather than elected, and there is no wider membership.

A Trust is fairly cheap and simple to establish.

Charitable Trusts must register with the Charity Commission if their income is over £5,000 per year.

Unlike a Charitable Incorporated Organisation or a Charitable Company, a trust does not have a “legal personality”, which means any contracts or liabilities are the responsibility of the trustees as individuals, rather than of the organisation itself.

This type of structure is often used by grant-giving charities.

More detailed information about Charitable Trusts is in our information sheet *Finding a legal structure to suit your group*.

Charitable Incorporated Organisation (CIO)

A Charitable Incorporated Organisation is a type of charity which is incorporated. It has “legal personality” which means the organisation can enter into contracts, buy or lease property, and employ people in its own right. The trustees are not personally liable for the debts of the organisation.

A CIO can be a membership organisation, in which the trustees are elected from among the members, or a trust-like organisation in which the trustees are appointed.

CIOs are registered with the Charity Commission^{Error! Bookmark not defined.}, and the accounting and reporting requirements are less demanding than those of a charitable company.

This type of structure is often used by charities which employ people or own property.

More detailed information about Charitable Incorporated Organisations is in our information sheet *Finding a legal structure to suit your group*.

Charitable Company

A charitable company is a limited company with charitable aims (a type of charity). It has “legal personality” which means the organisation can enter into contracts, buy or lease property, and employ people in its own right. The directors are agents of the company and are not personally liable for its debts.

Charitable Companies are membership organisations.

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

More detailed information about charitable companies is in our information sheet *Finding a legal structure to suit your group*.

Social Enterprises

A social enterprise is a business which makes its money from selling goods and services, and reinvests profits back into the business or the local community. Unlike charities and community groups, social enterprises can be owned and run by paid staff, or by people who have invested money in them. “Social enterprise” isn’t a single legal structure – social enterprises can adopt different legal structures depending on their needs and the way they work.

Even if your group does not plan to sell goods and services, or pay staff, one of the structures below might suit you if you would like your organisation to be incorporated. (An incorporated organisation has “legal personality”, which means can enter into contracts, buy or lease property, and employ people in its own right. The members or directors are agents of the organisation and are not personally liable for its debts.)

Here are some circumstances in which adopting one of the structures below might be the right choice for your organisation:

- ♦ You wish to be in control of the organisation *and* make a living from it
- ♦ Your organisation will make most or all of its income through trade and will not be reliant on grant funding
- ♦ You wish to ask members of the community to buy shares in your organisation to help fund it to get going
- ♦ You wish to sell goods or services to your members
- ♦ You wish to be incorporated but your aims are not legally charitable, so you cannot set up a Charitable Company or a CIO

There are a number of different legal structures a social enterprise can adopt. These include:

- ♦ Community Benefit Society and Cooperative Society
- ♦ Limited Company (including Community Interest Company (CIC))
- ♦ Limited Liability Partnership
- ♦ Development Trust and Social Firm

Community Benefit Society and Cooperative Society

Community Benefit Societies and Cooperative Societies are useful structures if you need to fund your organisation by selling shares to members. These types of Society are registered with and regulated by the Financial Conduct Authority¹.

A Community Benefit Society is owned by its members. Members hold shares and control the society democratically, on a one-member one-vote basis. The society must exist primarily for the benefit of the wider community, and members should not receive preferential treatment. Profits must be used for the benefit of the community (although interest on shares can be paid to members, up to a maximum rate).

If a Community Benefit Society has aims that are legally charitable, it can register as a Charitable Community Benefit Society. This allows the organisation to call itself a charity, although it is not regulated by the Charity Commission.

A Community Benefit Society is a useful structure if your community wishes to take control of an asset, such as a building. You can fund your organisation by selling “Community Shares”, and run the service to benefit the wider community.

A Cooperative Society is a similar structure to a Community Benefit Society, but the main purpose is to provide services to its members rather than the wider community. Cooperative Societies must be based on the co-operative values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In general, membership to a Co-operative Society is open to all people who use the services provided by the society, and profits may be distributed to members providing this is not the primary purpose of the organisation.

A Cooperative Society might be a suitable structure if your organisation plans to provide goods or services to its own members (e.g. a food co-op).

Co-operative Societies and Community Benefit Societies are incorporated, which mean they have “legal personality”. They can enter into contracts, buy or lease property, and employ people in their own right. The members are not personally liable for the Society’s debts.

To find out how to register a Community Benefit Society or Cooperative Society contact the Financial Conduct Authority. There is also very useful information about setting up these Societies on the Community Shares website².

¹ www.fca.org.uk

² <http://www.communityshares.org.uk/>

Limited Company, including Community Interest Company (CIC)

A Limited Company is incorporated, which mean it has “legal personality”. It can enter into contracts, buy or lease property, and employ people in its own right. The directors are agents of the company and are not personally liable for its debts.

A limited company is run by a board of directors, who can be paid (unless the company is also a charity, see Charitable Company, page 4).

A company can be Limited by Guarantee or Limited by Share Capital. Being Limited by Share Capital allows profits to be distributed to share-holders, so companies limited by share capital are unlikely to be not-for-profit organisations. Companies limited by guarantee can be not-for-profit, but if the directors are paid it can make it difficult to get grant funding.

Community Interest Company (CIC)

A CIC is a limited company with special features to ensure that it works for the benefit of the community.

CICs commit their assets and profits permanently to the community by means of an “asset lock”, ensuring that assets are used for the benefit of the community.

It differs from a charitable company in that it can be established for any purpose which benefits the community, whereas a charity must have exclusively charitable purposes.

Like other limited companies, the directors of a CIC may be paid. Bear in mind that some funders choose not to fund organisations with paid directors.

To register a new CIC, you have to apply to Companies House to register a company, and include with your application form CIC36, which you will use to describe how your company will benefit the community. You can also apply for CIC status for an existing limited company (including charitable limited company), but your organisation cannot be simultaneously a registered charity and a CIC.

For more information contact the Office of the Regulator of Community Interest Companies³.

Limited Liability Partnership (LLP)

A Partnership is a way that two or more people can run a business together, share responsibility and share the profits. A Limited Liability Partnership (LLP) is a type of partnership that has a separate legal personality similar to a company, so the partners are not personally responsible for the business’s debts.

An LLP is a much more flexible structure than a company. There is more freedom to control things like the way decisions are made and how profits are distributed. An LLP can be a social enterprise if the partners decide that they will invest a majority of the profits into a social purpose.

³ <https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>

Partners within an LLP generally take a salary from the business. Unlike Company Directors, however, their salaries are usually considered to be part of the profits of the business, rather than an operating cost. This can make it difficult to evidence that a majority of profits are going to a social purpose. The partnership agreement should outline very clearly the terms of partners' pay and how the partnership meets a social purpose. It still may not be considered not-for-profit for some purposes.

An LLP cannot guarantee its social purpose and not-for-profit status in the way that a Charitable Company, CIO or CIC can. This might make it harder to attract investment from organisations that make loans to social enterprises. An LLP will also struggle to attract grant funding because all the control is with partners who can take a salary from the business.

An LLP might be a structure to consider if you want a lot of flexibility and freedom, and will not need to rely on external funding.

LLPs are registered with Companies House⁴.

Development Trusts and Social Firms

These are two fairly common forms of social enterprise but neither is a legal structure in itself. Development Trusts are set up to bring about local regeneration and are often established as Limited Companies with a broad membership.

The Development Trust Association Wales⁵ provides useful information about setting up a Development Trust.

Social Firms are businesses set up specifically to provide employment or training to people who are disadvantaged by discrimination, such as disabled people. They are usually Limited Companies or Co-operative Societies.

Social Firms England⁶ provide useful information about setting up a Social Firm.

⁴ www.companieshouse.gov.uk

⁵ <http://www.dtawales.org.uk/>

⁶ <http://www.socialfirmsengland.co.uk/>

More information

For more help deciding which legal structure is right for you, have a look at the *RouteMap* in the Information section of our website, www.resourcecentre.org.uk.

If you are setting up a community group or charity, you may find more of our information useful, especially:

- ♦ *Starting a group*
- ♦ *Finding a legal structure to suit your group*
- ♦ *Constitutions*
- ♦ *Charity Registration and Requirements*

These are all available in the Information section of our website, or contact us for a hard copy.

If you are setting up a social enterprise, the Resource Centre is not able to offer more detailed guidance. For more help, see our list of other organisations that provide information for social enterprises and cooperatives, available on our website⁷.

⁷ <http://www.resourcecentre.org.uk/service/information-for-social-enterprises-and-co-operatives/>