Constituting Your Group

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Session overview

In today's session we'll look at:

- What constituting a group means
- Why constitute?
- Things to think about before constituting
- Common structures / pros and cons
- Costs, funding, legal responsibilities, time commitment

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What does ‘constituting a group’ mean?

- Writing and adopting rules about what your group aims to do and how it will operate

- These rules will be set out in a constitution or other governing document, depending on the type of structure you choose for your group

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Why constitute a group?

There are many things groups of people work together on in their communities without any formal structure – so why constitute?

- Clarity of purpose
- Sets out how the group will run, eg how trustees / directors / committee members are elected / appointed, membership arrangements
- Majority of funders will only fund formally constituted groups

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Things to think about before constituting your group

- When you're thinking about setting up a new voluntary or community group , there's a lot to think about, including what will be the most appropriate status and structure. When thinking about status you'll need to decide:
  - Whether to be incorporated or unincorporated
  - Whether to be charitable or non-charitable
  - Which legal structure to choose

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Before you constitute - recap

- Incorporation
  - Gives legal structure and clarity
  - Directors do not have individual liability if they act lawfully
  - Can enter into contracts as a legal entity
  - Regulation

- Charitable status
  - A charity is a particular type of organisation all of whose activities must be exclusively charitable and which must conform to the regulations set out in charity law
  - Certain tax advantages and ability to claim Gift Aid, but trustees can’t usually be paid and there are restrictions on campaigning and trading

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Common structures for Voluntary, Community and Social Enterprise (VCSE)sector groups

- Unincorporated structures
  - Unincorporated association
  - Charitable trust
- Incorporated structures
  - Company Limited by guarantee
  - Charitable Incorporated Organisation
  - Community Interest Company

To set up any of these you need to write and adopt a governing document and may then need to apply to register with a regulatory body such as the Charity Commission.

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Governing documents

A governing document sets out what your organisation aims to do and the rules for how it will operate. Different structures have different governing documents:

Legal Structure	Governing Document
Unincorporated Association	Rules of Association/Simple constitution
Charitable Trust	Trust deed
Company Limited by guarantee/shares	Memorandum & Articles of Association
Charitable Incorporated Organisation	Model Constitution
Community Interest Company	Memorandum & Articles of Association

Unincorporated Association

Pros	Cons
• Fast and cheap to set up • No set-up fees unless you decide to involve a solicitor • Offers a flexible and democratic structure • Relatively easy to run at little cost	• Members and trustees are personally liable for any organisational debt • Could in theory be liable to corporation tax (but unlikely because of "mutual trading" arrangements) • If charitable, can't register with the Charity Commission unless they have annual income of £5000

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Charitable Trust

Pros	Cons
• **Qualifies for the same tax benefits as charitable companies**	• Trustees are responsible for any debt • Can't employ staff or enter into contracts • Does not have any separate legal status

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Company Limited by Guarantee

Pros	Cons
• Registration is straightforward with relatively low fees • Can have employees and own land/property • Can enter into contracts to deliver services • Liability for directors is limited	• High penalties for failing to file information to Companies House on time (between £150 and £1500 depending on how late the annual return is filed.)

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Charitable Company

Pros	Cons
• Registration is straightforward with relatively low fees • Certain tax reliefs, reduced business rates, can claim Gift Aid on donations • Can have employees and own land/property • Can enter into contracts to deliver services • Liability for trustees is limited	• Regulated by two bodies – Companies House and the Charity Commission • High penalties for failing to file information to Companies House on time (between £150 and £1500 depending on how late the annual return is filed.) • Restrictions on trading and campaigning

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Charitable Incorporated Organisation (CIO)

Pros	Cons
• **Only regulated by the Charity Commission** • **Can enter into contracts and employ staff** • **Limited liability for trustees**	• CIO’s have to register with the Charity Commission even if their income is less than £5,000 • The organisation doesn’t exist until registration with the Charity Commission is complete (unlike a CLG which can set up and start trading while the application to register with the Charity Commission is ongoing). • Restrictions on trading and campaigning

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Community Interest Company

Pros	Cons
• The company can be either limited by guarantee or shares • It can pay directors • It's not restricted to charitable purposes • Can access certain funding available to social enterprises	• Doesn't have the same tax advantages or business rate relief as charities and can't claim Gift Aid • Must pass a 'community interest test' and have a suitable asset lock • Regulated by two bodies, Companies House and the CIC Regulator (both the annual accounts and the CIC Report are filed at the same time with Companies House)

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Other structures

Community Benefit Society
Incorporated; can have paid directors
Can be a charity but does not have to be
Owned by its members and controlled democratically
Exists for the benefit of the wider community and members cannot receive preferential treatment
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.
Regulated by the Financial Conduct Authority

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Other structures

Cooperative Society
Incorporated; can have paid directors
Cannot be a charity
A Cooperative Society is a similar structure to a Community Benefit Society, but its main purpose is to provide services to its members rather than the wider community.
Regulated by the Financial Conduct Authority

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Costs

Whichever structure you choose for your group there are likely to be costs involved, to cover:

- Registration
- Annual reporting - annual accounts, annual return / report
- Accountancy fees

Costs will vary according to the type of organisation you set up and your annual turnover e.g. for a CIO there are no registration fees, but you will pay a fee to register a limited company or CIC and to file your annual confirmation statement.

For limited companies and charities, accounts may need to be independently examined or audited depending on turnover.

Funding

- Funding for non-profit organisations comes from a range of sources:
  - Donations, memberships, fundraising events
  - Corporate sponsorship
  - Grants
  - Contracts
  - Trading
- Generally charities expect to get most of their income from donations and grants; companies mostly from trading including contracts, although charities can trade and take on contracts and there are grants available to CICs. Some trusts and foundations will fund charities but not CICs, but more funders recognise and will fund CICs now compared with a few years ago when the form was very new.

Legal responsibilities of charity trustees

As a trustee you must:

- Ensure your charity is carrying out its purposes for the public benefit
- Comply with your charity's governing document and the law
- Act in your charity's best interests
- Manage your charity's resources responsibly
- Act with reasonable care and skill
- Ensure your charity is accountable

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Legal responsibilities of company directors

Company directors have a series of duties under the Companies Act 2006 which are very similar to those of trustees. Like trustee duties, these arise because they are directors of an incorporated body and can be enforced against them personally. These can be summarised as

- duty to act within the powers of the governing document
- duty to achieve the charitable purposes of the company but having regard to other factors such as the consequences for employees
- duty to exercise independent judgement
- duty to exercise reasonable care, skill and diligence - this means not just being careful, but using the general knowledge, skill and experience that would be reasonably expected of someone carrying out your functions as well as any special skills or knowledge that you had
- duty to avoid conflicts of interest

Legal responsibilities of company directors

- duty not to accept benefits from third parties by reason of being a director and doing or not doing something
- duty to declare an interest in any proposed transaction or arrangements

In addition to these general responsibilities CIC directors are also responsible for ensuring that the company is run in such a way that it will continue to satisfy the community interest test. In practice, this will mean having regard to the interests of the community the CIC is intended to serve, and in some cases giving more weight to those interests than to generating financial returns for investors in the company.

Time commitment

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Thank You

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