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Setting up a Group – choosing status and structure

When you're thinking about setting up a new voluntary or community group or non-profit organisation, 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 consider:

Whether to be incorporated or unincorporated

An unincorporated organisation is legally viewed as a collection of individuals so if your group is unincorporated, the organisers or committee members are personally entering into any agreements, contracts or leases and will be personally liable for any debts incurred. So unincorporated status might be useful for groups when they start out and longer term if they remain relatively small, don't undertake any risky activities and don't intend to take on any major or long term financial commitments.

However, many groups will find it that incorporated status is better suited to their needs. Incorporation means that the organisation has a legal identity of its own and it's the organisation that enters into agreements and contracts, providing some level of protection for the individual directors or trustees. This can be preferable for groups which are likely to employ staff, rent or buy buildings or undertake more risky activities.

Whether to be charitable or non-charitable

Not all voluntary and community organisations are charities – a charity is a specific type of voluntary organisation all of whose activities must be exclusively charitable and which must conform to the regulations set out in charity law.

It's important to weigh up the advantages of being a charity, for example certain tax and business rates relief and the ability to apply for Gift Aid to recover tax on donations, against the disadvantages, for example restrictions on paying trustees – meaning that generally you can't be a member of the governing body of a charity and also a paid employee of that charity – and restrictions on trading and campaigning.

How will your organisation be funded?

You'll also need to think about how your organisations will be funded. If you expect to fund your work mainly through grants and donations, a community group constituted as an unincorporated association or charity might be most suitable. If you're intending to generate most of your income through contracts trading activities, for example selling services for a fee, then a Community Interest Company might be a better option.

Who will have overall responsibility for running you organisation?

Each organisation will have a governing body – that's the group of people who have overall responsibility for the running of the organisation and have the power to make decisions about how the organisation functions and develop. In a community group this will probably be called a management committed and its member will be volunteers. Charities are run by boards of trustees, who are also volunteers. Community Interest Companies are run by a board of directors, who may be paid or unpaid.

Which legal structure should you choose?

Once you've decided on your status, there are different legal structures to choose from. The legal structure you choose will determine what sort of governing document (the document setting out what your organisation is set up to do and the rules and decision making structures that you will work to) your charity will adopt.

Here are some of the most common forms for Voluntary, Community and Social Enterprise (VCSE) sector organisations:

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

Unincorporated Association

Many small community organisations that have a small budget and are quite limited in their purpose start out as an Unincorporated Association because it can be set up quickly and cheaply. It's ideal for small groups with low incomes who are not intending to employ staff or acquire property. If the organisation is charitable and reaches an annual income of £5000 it must register with the Charity Commission and might convert to an incorporated structure as appropriate.

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)

Company Limited by Guarantee (CLG)

They have to abide by Company Law so have to register with Companies House, then apply to register with the Charity Commission if they want to have charitable company status. Further details about starting up a company can be found on the Companies House website:

Pros	Cons
• Registration is straightforward with relatively low fees • If registered with the Charity Commission to form a charitable company, benefits include charity tax relief and reduced business rates • Can have employees and own land/property • Can enter into contracts to deliver services • Liability for trustees is limited (about £5)	• If your CLG is a charitable company it will be 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.)

The charitable company has the disadvantage of having to report to two regulators – the Charity Commission and Companies House – so has largely been replaced by a newer incorporated form, the CIO:

Charitable Incorporated Organisation (CIO)

This is the newest form of incorporated legal structure, created in 2012. As with charitable companies, they can enter into contracts in their own name and their trustees have limited liability for the charity's debts. However, they are not companies and do not have to register with Companies House.

There are two types of CIO: the foundation model, whose only members are the trustees; and the association model, which has a wider voting membership. In an association model CIO the members can vote on important matters, for example appointing committee members who will run the charity (usually for fixed terms) or making changes to the charity's governing document.

Pros	Cons
• Only regulated by the Charity Commission • Can enter into contracts and employ staff • Limited liability for trustees	• Must 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).

Charitable Trust

A **charitable trust** is a type of **charity** run by a small group of people known as trustees. The trustees are appointed rather than elected, and there is no wider membership. A **charitable trust** is not incorporated, so it cannot enter into contracts or own property **in** its own right. It is generally set up as a way to manage assets such as money, investments, land or buildings.

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

Community Interest Company

An alternative to setting up a charity is a Social Enterprise. These do not have charitable status, but are businesses that exist to provide benefits to a community.

A Community Interest Company is the most common legal structure for Social Enterprises. Its governing document is a Memorandum & Articles of Association available from the CIC regulator's website:

http://www.bis.gov.uk/cicregulator

CIC's are subject to an 'asset lock' which ensures the company's profits are used for the benefit of the community rather than shareholders. Like charitable companies they are regulated by two bodies, the CIC regulator and Companies House.

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 of charities or business rate relief • Must pass a 'community interest test' • Regulated by two bodies

There is more detailed information on the NCVO website: Choosing your legal structure | NCVO