

Advice and Information

Constitution

Legal Structures

Contents

Introduction	Community Interest Company
Legal structures	Registered Charity
Unincorporated body with a constitution	Charitable Incorporated Organisation
Incorporated body with a constitution	Scottish Charitable Incorporated Organisation
Industrial and Provident Society	
Company Limited by Guarantee	

Introduction

The successful operation of any voluntary organisation requires a sound organisational structure and clarity about the group's legal status. Without this, people who are involved in the group might have liabilities of which they are unaware, and funders may be unable to accept applications for financial support. It is also vital that you consider which forms of insurance (other than motor insurance) are appropriate to protect your organisation, its members and its directors and staff. This advice leaflet provides a brief outline of some of the main points that you should consider.

Legal structures

Many groups start life on an informal basis, especially when people already know each other and have a common purpose in coming together. This is often the case when a group is formed to discuss what

needs to be done about a particular issue. Decisions are often arrived at by mutual consent, but there is no formal structure. Such a group has no legal status: the group is simply everyone who is involved in the meetings. Similarly, everyone could be held liable for any action taken in the name of the group.

As soon as a group decides to do something (e.g. raise funds for a minibus) it will be necessary to regulate its affairs. Even if it is thought that there will never be any disputes in the group because everyone knows and understands each other, it is possible that things may change in the future. New people may become involved in the organisation, or the group may take on new aims and objectives. It will be important to have a clear understanding of the duties, responsibilities and liabilities of the people involved in the organisation. A constitution can resolve these issues.

Unincorporated body with a constitution

A group will need to be constituted if it wishes to open a bank account, seek grants from trusts and public bodies, employ people or provide services. A constitution defines:

- The aims and objectives of a group.
- The powers that can be exercised to achieve the aims and objectives.
- The eligibility criteria for membership of the group.
- How the formal business of the group should be conducted (e.g. the election of a management committee)?
- How the group is answerable to its members (e.g. through general meetings and keeping accounts).

A constitution should be clear and precise. Adopting or adapting a model constitution is often the best way forward for a new group. Model constitutions can be obtained from the relevant Regulators.

Becoming an unincorporated group governed by a constitution is probably the quickest and least expensive way to get established. There is no requirement to be registered with a regulatory authority, unless the group also becomes a charity. However, this type of group does not have any legal status: this means that the management committee (and sometimes the membership) has individual liability

for any claims or debts that cannot legitimately be met by the organisation's assets. It also means that property can only be held by individuals acting on behalf of the group. Similarly, the liability for any contracts entered into by the group rests with the individuals of the management committee.

Whilst insurance and good management should offer some protection for management committee members, personal liability cannot be avoided if things go wrong. For example, if a group has a five-year lease on premises and unexpectedly has its annual grant terminated after three years, the members of the management committee may be liable for the costs of the remaining period of the lease if the group has insufficient funds to meet its obligations. Becoming an incorporated group can solve some of these problems.

Incorporated body with a constitution

Personal liability can never be completely eliminated, limited liability means that, provided that there has been no negligence or impropriety, an individual's personal liability for the debts of an organisation can be restricted to a fixed amount, usually £1.00. An incorporated body has its own legal identity. This means that it can hold property, enter into contracts, and employ people in its own name.

There are four suitable types of incorporation that offer limited liability for management committee members and the wider membership of the group:

- An Industrial and Provident Society
- A Company Limited by Guarantee
- A Community Interest Company
- A registered charity
- A Community Incorporated Organisation
- A Scottish Charitable Incorporated Organisation

Industrial and Provident Society

A group can register as an industrial and provident society if it is formed for the purpose of carrying on an industry, business or trade, and it is either a bona fide co-operative or a society for the benefit of the community. In the latter case, a group will have to show that there are special reasons why it should be registered as an industrial and provident society instead of as a company under the Companies Acts.

A bona-fide co-operative is an organisation that is run for the mutual benefit of the members. The members should have a common interest or a common economic, social or cultural need.

Company Limited by Guarantee

A company limited by guarantee is registered at Companies House and is regulated by company law as set out in the Companies Acts of 1985 and 1989. Failure to comply with company law is a serious offence and can lead to significant penalties. For example, failing to lodge the company's accounts with Companies House by the due date will result in an automatic fine, starting at £100, and rising to £1,000, depending on how late the return is made.

Members of the management committee are known as directors. The directors appoint a company secretary, who is responsible for ensuring that the company meets its obligations under company law and in accordance with the memorandum and articles of association. Failure to comply with these obligations can lead to the imposition of automatic fines. The company secretary is, therefore, a key appointment: the person must be qualified or sufficiently experienced to carry out his or her duties.

Apart from the more obvious tasks such as keeping a record of the company's minutes and ensuring that general meetings (including the AGM) are convened in accordance with memorandum and articles of association, the company secretary is also responsible for:

- maintaining the Register of Members
- maintaining the Register of Directors and Secretaries
- maintaining the Register of Directors' Interests

- making the Annual Return to Companies House
- ensuring that the audited accounts are lodged with Companies House

Although this form of incorporation is attractive because it offers limited liability, it is important to understand that such cover is lost if a company trades recklessly, or continues to operate whilst insolvent, or the directors act dishonestly, fraudulently, negligently or without proper authority.

The standard fee to register a company with Companies House is £20.00, and £15.00 to submit the Annual Return using the Software Filing or WebFiling services or £30.00 if posting the Annual Return.

Community Interest Company

A CIC is a legal form specifically designed for social enterprises, it can be limited by guarantee or by shares, it has members and directors and will need to comply with the Companies Acts just as other companies do. It has been specifically formulated for organisations that pursue social rather than simple commercial goals as it has some special features:

- **Community Interest Test** - Community interest is the heart of the CIC and the community interest test is what differentiates CICs from other not-for-profit organisations. Demonstrating community interest is of value to those seeking grant funding or philanthropic investment. To become a CIC, an organisation would need to satisfy the regulator that its purposes could be regarded by a reasonable person as being in the community or wider public interest.
- **Asset Protection** - Protecting the assets of a CIC would not mean that the company was protected against take-over, or that it could never be dissolved. But if a CIC were closed down or taken over, the proceeds from the sale would have to be used for similar public interest purposes – either by an existing organisation, or by a new body.
- **Asset Lock** - This is a general term used to cover all the provisions designed to ensure that the assets of the CIC (including any profits or other surpluses generated by its activities) are used for the benefit of the community.

- Ability to pay Directors/Trustees - This can only happen if the constitution permits it. It means that social entrepreneurs who need a salary from their new CT project do not need to hand it over to a volunteer board as if it were a charity.

Registered Charity

Although charitable status is not a legal necessity, it does bestow a considerable number of advantages, including:

- Many trusts only make donations or grants to a charity.
- Bank interest is exempt from tax, provided that it is used for charitable purposes.
- Mandatory 80% relief on non-domestic rates for premises that are wholly or mainly used for charitable purposes (with possible discretionary relief for the remaining 20%).
- Tax paid on donations through a gift aid scheme is recoverable from the Inland Revenue.
- Possible exemption from, or zero rating of, VAT on some purchases.
- Exemption from corporation tax.

Both an unincorporated and an incorporated body can be a charity.

Eligibility to become a charity is determined by the aims and objectives of an organisation. A group must be constituted for one or more of the following purposes:

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;

- i) the advancement of environmental protection or improvement;
- j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
- l) the promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services;
- m) other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

A community transport group is likely to exist in order to be of benefit to the local community and should, therefore, be eligible for charitable status.

The process of obtaining charitable status varies in the different constituent countries of the UK.

A charity's constitution (or memorandum and articles of association) may not be varied so as to make the body non-charitable. In the event of the charity being wound up, its assets, after payment of all debts and liabilities, must be distributed to some other charitable body

All of a charity's income must be used in furtherance of the body's aims and objectives. This may lead to difficulties for a group that undertakes additional work when the primary aim is trading with a view to profit. In such circumstances, the normal way forward is for the charity to set up a wholly owned trading company. This is a complex issue and any group considering such action should see the advice leaflet Trading and Contracts and take legal advice.

Charitable Incorporated Organisation

A CIO is a legal structure that has been designed specifically with charities in mind. It is not a company. However, there are significant similarities. Like a company, a CIO has trustees and members (akin to shareholders in a company). Members have the final say in constitutional changes and have a range of other rights including the ability to appoint and remove trustees and to vote at general meetings. Like a company, the CIO has its own legal personality and the members have limited liability.

CIO trustees, like company directors, are not directly liable for the debts or performance of the charity's obligations. The CIO enters into contractual arrangements itself rather than through the trustees personally.

Also, whereas a charitable company limited by guarantee comes into existence when it is formed at Companies House, a CIO does not come into existence until the Charity Commission has approved the constitution and registered it as a charity. So, for example, the founders of the charity cannot set up a bank account until the CIO is registered.

CIOs will appear in the Registrar's Index of Company Names, which is maintained by Companies House. Charities that are incorporated as companies already appear on the index.

Another difference is that there is an express legal duty on those members of a CIO who are not directors to act in the interests of the CIO. This is not the case for companies and because of this internal disputes between members of charitable companies can be particularly difficult to manage.

Scottish Charitable Incorporated Organisation

A Scottish Charitable Incorporated Organisation (SCIO) is a legal structure that has been designed specifically with Scottish charities in mind.

A SCIO is a corporate body which means it has many of the same rights, protections, privileges, responsibilities and liabilities that an individual would have under the law. As a legal entity, the SCIO may enter into contracts, employing staff, incurring debts, owning property, suing and being sued. As the transactions of the SCIO are undertaken by it directly, rather than by its charity trustees on its behalf, the charity trustees are in general protected from incurring personal liability. However, as with any other type of corporate body, this protection is not absolute; in some circumstances, charity trustees individually may be held responsible for the actions of the SCIO. Such circumstances are rare but may occur when the charity trustees have been reckless, negligent, have acted illegally or have acted outwith their powers in their management and control of the SCIO.

The governing document of a SCIO is a constitution which must contain a number of basic elements in relation to its governance and other key matters. The SCIO must also:

- have its principal office in Scotland;
- have at least two members; these may include some or all of the charity trustees subject to the terms of the constitution;
- use and apply its property in furtherance of its charitable purposes and in accordance with its constitution.

The SCIO also differs from other charities on the Register in that its existence is dependent upon its charitable status (that is, upon being entered in the Register). In the case of Scottish charities which are not SCIOs, charitable status is awarded to an existing organisation such as a company, trust or unincorporated association. This means that these organisations may continue to exist even if charitable status is withdrawn, although in the majority of cases they would no longer be entitled to refer to themselves as charities.

The SCIO, on the other hand, becomes a legal entity only when it is entered in the Register and ceases to exist if it is removed from the Register. The SCIO cannot choose to convert to another legal form, cannot amalgamate with a body which is not a SCIO and cannot seek removal from the Register other than by dissolving itself. This is an important point to consider before applying to OSCR to incorporate a SCIO.

Scottish Charitable Incorporated SCIOs will appear in the Registrar's Index of Company Names, which is maintained by Companies House. Charities that are incorporated as companies already appear on the index.

[Back up](#)

About the Community Transport Association

The Community Transport Association is a national charity that represents and supports providers of community transport: thousands of other local charities and community groups across the UK that all provide transport services that fulfil a social purpose and community benefit. We are for, and about, accessible and inclusive transport.

We help our members remain relevant and responsive to key areas of public policy and to make a big difference for the people and families in the communities in which they work. Our vision is of a world where people can shape and create their own accessible and inclusive transport solutions and our mission is to achieve this through championing accessible and inclusive transport, connecting people and ideas and by strengthening our members and raising standards.

Keep up to date with CTA via our website or by signing up to our monthly [News Brief](#).

About CTA's Advice Service

The CTA's Advice Service is available to CTA members, community and other voluntary groups, local authorities and other statutory bodies. It offers information and support on any aspect of non-profit transport operations. The CTA's Advice Service covers the whole of the UK and is supported by national governments. We will only ever explain the most accurate and commonly accepted interpretation of regulations and best practice. We do this by providing support and information on a wide range of community transport related topics such as permits and licensing regulations and by signposting to other agencies. The Advice Service does not exist to provide legal advice on any topics. If you are still unsure you will need to seek [legal advice](#).

For more information, contact

advice@ctauk.org | 0345 130 6195 | www.ctauk.org

This leaflet has been primarily produced for members of the CTA. If your organisation has benefited from using it but isn't a member please consider joining us, for more details please see: <https://ctauk.org/why-become-a-cta-member>.

Disclaimer:

The Community Transport Association has made every effort to ensure the accuracy of the information contained in this leaflet, but it should be noted that this is only a guide, and should be treated as such.