



HOW SHALL WE SET UP?

1. HOW MANY TYPES OF ORGANISATIONAL STRUCTURES EXIST?

There are now six main types of organisational structure open to community groups and voluntary organisations.

A. An Unincorporated Association

- Any group of people who meet together for a common interest or purpose and will undertake work for the benefit of the public. They are usually governed by a constitution and managed by a management committee.
- They are not recognised in law as a legal entity.
- The committee members are legally liable as individuals.

There is **no** legal requirement to register with any other body.

It is advisable to have some written format to identify how the group will run, who is responsible for what, how disputes will be settled and how the group will be disbanded. Also where any group funds will go when the group finishes.

B. Incorporated Associations

This is when the organisation is a company and is recognised in law as a legal entity.

How many types of companies are there?

There are two forms of company.

- **A company limited by guarantee** – The company is managed by directors and is regulated by Companies House. It can be charitable or non-charitable. If charitable it will also be regulated by the Charity Commission. The liability of the governing body is limited, e.g. they are liable for an agreed sum (usually £1) if the organisation is wound up.
- **A company limited by shares** – which is owned by its shareholders. It seeks to make profits, which are distributed amongst the shareholders. Charitable organisations sometimes set up a wholly owned other group – to pursue non-charitable objectives.

C. A Trust

Trusts are set up to hold money or property for clearly set out purposes – set out in a trust deed.

A Trust does not have members but Trustees.

D. An Industrial and Provident Society

Industrial and Provident Societies are set up to carry out some industry, business or trade for the benefit of the community. They are incorporated, with limited liability for their members.

They cannot register as charities but are required to register with the Financial Services Authority.

If a group's purposes are charitable they may obtain benefit from registering with the Inland Revenue.

E. Company Interest Company (CIC)

This is a new form of company, available since July 2005. They have to register at Companies House, they must take a community interest test and have an asset lock, to ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. "Asset lock" 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. A CIC cannot be a registered charity – they will not have charitable status, even if their objects are entirely charitable in nature.

F. Charitable Incorporated Organisation (CIO)

The Charities Act 2006 introduced a new legal form of incorporation which is designed specifically for charities, the Charitable Incorporated Organisation (CIO). The new structure has been designed to allow charities a limited liability structure without needing to have company status and be regulated both by the Charity Commission and Companies House. The CIO will combine the advantages of a corporate structure such as reduced risk of personal liability without the burden of dual regulation and the costs involved. Further details about when the CIO will be available for charities to use will appear on the Charity Commission website – www.charity-commission.gov.uk

2. WHICH WAY SHALL WE GO? WHICH ONE IS BEST?

There is no easy answer to this question.

Trusts and Industrial Provident Societies tend to be set up for SPECIALIST purposes.

Most community groups would usually choose between an unincorporated association and a company limited by guarantee status.

Careful consideration needs to be given to this issue by the steering group who wish to set up the organisation.

3. WHAT IS THE DIFFERENCE BETWEEN BEING UNINCORPORATED AND INCORPORATED?

An unincorporated group does not have a legal personality of its own. This means it **CANNOT:**

- enter into contracts in its own name;
- hold title to property;
- sue or be sued.

An unincorporated group relies on the committee members (over 18 years of age) to loan their legal personalities to the group to transact business.

The committee members are individually liable.

An incorporated group has a legal personality of its own. It **CAN:**

- enter into contracts in its group name;
- hold property;
- sue or be sued.

Community groups who incorporate as charitable companies usually register with Companies House as a company limited by guarantee, although this is likely to change when the Charitable Incorporation Organisation (CIO) is fully operational, as the Charities Act 2006 does contain provisions to enable existing charitable companies and charitable industrial and provident societies to convert to CIO's. The existing corporate body will simply be re-registered as a CIO and the conversion process will not affect the legal personality of the organisation or its business relationships.

For further information about structures and companies, you can visit the Charity Commission website:

www.charity-commission.gov.uk or ring the information line on 0870 333 0123
Minicom: 0870 333 0125

or the Companies House website: www.companies-house.gov.uk

To see the simplified summary of the key features, see the page 4

Simplified summary of key features	Ltd. Liability	Business Rates Relief	Regulator	Charity	Recognised brand	Paid Exec. Cttee. ¹
Charitable Trust	No	Yes	Charity Commission	Yes	Yes	No
Unincorp. assoc. – charitable	No	Yes	Charity Commission	Yes	Yes	No
Unincorp. assoc. – non-charitable	No	No	–	No	No	Yes
IPS	Yes	Yes if benefits community	Financial Services Authority	Unreg. charity if benefits community	No	Yes
Co. limited by guarantee – charitable	Yes	Yes	Companies House/Charity Commission	Yes	Yes	No
Co. limited by guarantee – non-charitable	Yes	No	Companies House	No	No	Yes
CIC	Yes	No	CIC Regulator	No	Not yet	Yes
CIO	Yes	Yes	Charity Commission	Yes	Not yet	No

¹ It may be possible to pay trustees where the governing document authorises such payments or the Charity Commission's consent has been obtained.

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David Mears and Shivaji Shiva – Sinclair Taylor & Martin – The Charity Team at Russell-Cooke Solicitors