

Legal structures for Not-for-profit organisations

Introduction

There is a wide range **of** structures open to organisations which are active in the community. People frequently refer to such organisations as 'not-for-profit' or 'non profit-making' organisations. While these may be handy informal descriptions, these terms have no legal meaning in this country and do not refer to any particular legal structure. In this sheet, we give brief details of structures for not-for-profit organisations, together with details of organisations which can give more help. For the purpose of this information sheet, we are dividing organisations in the community into two main categories:

1. Community Groups and Voluntary Organisations

This category covers a whole mass of organisations, ranging from small neighbourhood groups run by local people to larger voluntary agencies with staff. They may be working to improve their local area, campaigning for change or providing a service. Some, but not all, will be charities.

2. Social Enterprises

Social Enterprises have been defined as "a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners."

Social Enterprises are involved in providing services or making goods. However they have explicit social aims and social ownership with a structure based on participation by 'stakeholders' such as users, community groups and employees. Most aim to be viable trading concerns, making a surplus from trading alone.

Community Groups and Voluntary Organisations

The four types of structure which your group may want to consider are:

Unincorporated Association

Charitable Trust

Charitable Incorporated Organisation (from late 2011)

Charitable Company

The first two are fairly quick and cheap to set up, and it is expected that it will be fairly simple to set up a Charitable Incorporated Organisation when this form of organisation becomes available.

However, establishing a charitable company can be more time consuming and expensive.

Whichever structure you choose, you must draw up a set of rules stating how your group will work (known as the governing document). There is a different type of governing document for each structure.

Our information sheet [Community and Voluntary Groups - A Guide to Legal Structures](#) looks in more detail at these four structures.

A few groups which think of themselves as community organisations may find that a business structure, such as a Co-operative or a (noncharitable) Limited Company, is more appropriate than one of the four structures usually adopted by community groups or voluntary organisations. For example, a large campaigning group may decide that it needs a more formal structure than its starting point as an unincorporated organisation and that a limited company is more appropriate. Or a small group of community artists may prefer to set themselves up as a form of co-operative.

Unincorporated Association

An Unincorporated Association is a membership organisation. It can be whatever its members want it to be, and carry out whatever activity you choose. It is the easiest, quickest and cheapest way for a group to set itself up. There is no need even to keep a membership list - anyone who is entitled by your rules to be a member can simply turn up and take part. 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 democratic constitution setting out the rules under which your group will be run. You do not have to register with any regulatory body, though if your group has charitable aims and an income above £5,000 per year you are required to register with the Charity Commission.

Charitable Trust

A Trust is usually set up to manage money or property for a charitable purpose and it will register with the Charity Commission. It is not a membership organisation but is run by a small group of people, known as Trustees, although the Trust Deed (its governing document) can be written in such a way as to allow for members. This structure is suitable for a charity with more professional aims which wants to employ a very small number of workers or manage a building, but you should bear in mind that the Trustees of a Charitable Trust are personally liable for any debts. A Trust is fairly cheap and simple to establish.

Charity Commission Direct

PO Box 1227

Liverpool L69 3UG

Tel 0845 3000 218

Minicom 0845 3000 219

www.charitycommission.gov.uk

This new form of charitable organisation was expected to be introduced in the Spring of 2008, but the date has slipped back to early 2012.. It will give a charity the main advantages of a Charitable Company – a legal personality and limited liability – but it will be registered with and regulated by the Charity Commission only. Requirements for reporting and for annual accounts should be simpler and much cheaper, in particular for a smaller CIO. The Commission will produce model forms of constitution for CIOs.

Charitable Company

A Charitable Company is Limited Company with charitable aims. It is a membership organisation (a list of members is part of the Company Register) and accountable to the community. It also has a legal identity separate from its members and its directors are agents of the company and are not personally liable for its debts.

There are two types of Limited Company. A Company Limited By Guarantee is one in which there are no shareholders and any surplus is reinvested in the company. This type is recommended by the Charity Commission. A Company Limited By Shares is more usually found in the commercial sector, where its members invest money in the hope of gaining a profit. Establishing a Charitable Company currently involves registering with both Companies House and the Charity Commission.

Companies House

Crown Way

Cardiff

CF14 3UZ

Tel 0870 3333636

www.companieshouse.gov.uk

2. Social Enterprises

Businesses covering a wide range of activities are defined as social enterprises. Legal structures to consider are:

- Partnership and Limited Liability Partnership
- Limited Company
- Community Interest Company
- Industrial and Provident Society
- Bona Fide Co-operative Society (including a Credit union)
- Society for the Benefit of the Community.

Partnership and Limited Liability Partnership

A partnership is not generally considered to be a Social Enterprise, though social aims can be spelled out in the Partnership Agreement. A Partnership Agreement is between two or more people and defines how the business will be run. But there is likely to be a problem if the business wants to apply for funding as it will be difficult to demonstrate any wider social involvement. Partners can be self-employed or employees of the partnership and they are personally liable for debts.

There is also a form of Limited Liability Partnership (LLP) which is safer for the partners; they are not personally liable for any losses provided they have acted in a reasonable manner. An LLP requires you to register with Companies House and to publish annual accounts. Information and forms for Partnerships and Limited Liability Partnerships are available at www.clickdocs.co.uk

Limited Company

This may be a company limited by shares or limited by guarantee. Its Memorandum & Articles of Association must state that any surplus is put towards the company's social purpose and usually defines the company as democratic and accountable to the community through its membership. In law, a Limited Company is considered to be a person and it can therefore own land or enter into contracts. The directors are agents of the company and are not personally liable for its debts. This is a flexible structure, suitable for a wide range of Social Enterprises, but regulation by Companies House is fairly strict and there are detailed requirements for annual reports & accounts.

Community Interest Company

A CIC is a limited company with special features to ensure that it works for the benefit of the community. It differs from a charitable company in that it can be established for any legal purpose which benefits the community, whereas a charity must have exclusively charitable purposes. A further advantage is that a CIC is subject to lighter regulation than a charitable company. On the downside, a CIC may not be eligible for funding which is available to a charity.

CICs commit their assets and profits permanently to the community by means of an "asset lock", ensuring that assets cannot be distributed to shareholders. They report to a new independent regulator, the Regulator of Community Interest Companies. A big advantage is that CIC's not-for-profit status is visible as well as assured.

It is worth noting that a CIC cannot register as a Charity, but that a Charity may set up its trading subsidiary as a CIC.

CICs have to register with Companies House as a company limited either by guarantee or by shares and then apply to the new Regulator for CIC status. The CIC Regulator's website has detailed guidance notes on all aspects of setting up a CIC, or converting an existing limited company to a CIC.

Community Interest Company Regulator

CIC Team, Room 3.68

Companies House

Crown Way, Maindy

Cardiff CF14 3UZ

Tel: 029 20346228

Email : cicregulator@companieshouse.gov.uk

Website: www.cicregulator.gov.uk

Industrial and Provident Society (IPS)

An Industrial and Provident Society (IPS) is an incorporated organisation and its members benefit from limited liability. There are two types of IPS: a bona fide co-operative society and a society for the benefit of the community. An IPS must register with the Mutual Societies Registration section of the Financial Services Authority, the regulatory body. In general regulation is lighter than for Limited Companies and the accounting requirements far less stiff.

The Financial Services Authority - registration of Industrial & Provident Societies

25 The North Colonnade,
Canary Wharf,
London E14 5HS
Helpline 0845 606 9966

www.fsa.gov.uk

An IPS is run by its members and there are several sets of model rules. Profits must generally be ploughed back into the business. Where part of the profits are used for another purpose, that purpose should be similar to the main aim of the society, for example for philanthropic or charitable purposes. Where the rules of the IPS allow assets to be sold, the proceeds must be put into its business activities. A change in the law has now made it possible for a non-charitable IPS to have an "asset lock", similar to a CIC above, to ensure that its assets are always used to benefit the community. An IPS whose aims are wholly charitable is considered an 'exempt charity' - it cannot register with the Charity Commission and is not regulated by them, but it is generally bound by charity law. However, following the March 2010 Act, Community Benefit Societies with an income over £100,000 will register with the Charity Commission. This change is likely to happen some time in 2011. A charitable IPS already has an "asset lock" under charity law.

a) Bona Fide Co-operative Society

This is a business owned and democratically controlled by its employees and founded on seven basic principles, one of which is Concern for the Community. Although a co-op must make a surplus to be successful other motives may be equally important; for example, a recycling co-op will be based on concern for the environment. A co-operative must have at least two members.

A Credit Union is a specialist form of co-operative, regulated by an act of parliament covering financial services. It is a financial cooperative whose savers are its members. Money is saved in a common fund and can be used to make low interest loans to members. A Credit Union is run by a Board of Directors elected from among the membership at the AGM. There are other specialist cooperatives such as housing co-ops which are covered by separate regulation.

b) Community Benefit Society

A Community Benefit Society (called a Society for the Benefit of the Community until a recent change in legislation) must show that its

activities benefit the wider community rather than simply its members. It also has to demonstrate a 'special reason' for registration as an IPS rather than as a company.

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. They see their role as seeking "to move beyond provision of welfare services, by setting up enterprises (social businesses) which encourage self-help and reduce dependency." Social Firms are businesses set up specifically to provide employment or training to disabled people, and they are usually limited companies or co-operatives.

Further help and useful addresses

The Resource Centre is not able to offer more detailed guidance on legal structures for social enterprises. Please contact the appropriate specialist organisations listed below.

Community groups and voluntary organisations

Community Matters

12-20 Baron Street

London, N1 9LL

Tel: 020 7837 7887

www.communitymatters.org.uk

Email: communitymatters@communitymatters.org.uk

The Charity Commission

Charity Commission Direct

PO Box 1227

Liverpool L69 3UG

Tel 0845 3000 218

Minicom 0845 3000 219

www.charitycommission.gov.uk

Companies House

Crown Way

Cardiff, CF14 3UZ

Tel: 0870 3333636