Resource Theme: Structure and Governance

An introduction to Structures for Groups

Whichever structure your organisation decides on, you need to be sure that it is the right one for you and for the purpose of the organisation.

Remember, you do not need to register with the charity commission unless your group's income exceeds £5,000, so this may affect your decision.

Most small groups start out as unincorporated groups and then as they expand, become more formalised to keep in line with current regulations on income etc.

Unincorporated Groups

- The simplest type of organisation and the favoured structure chosen by new groups.
- An unincorporated group should have a governing document even if it does not intend to apply for charitable status in the future. Otherwise known as a constitution, a governing document sets out the rules by which the group is to be run. A model governing document or Constitution is available on our Members web resources.
- The constitution of an unincorporated association is deemed in law to be like an informal 'contract' between the individual members.
- Defined as being an informal 'collection of individuals working together' and as such it has limitations over what it can and cannot do.

Pro's

- It's cheap (to the point of being free!) to set up and run.
- Groups do not need anyone's permission to form an 'unincorporated' group.
- It's ideal for small social or activity groups.
- Easy for new groups to undertake and get support with.

Con's

- An unincorporated group cannot own property or enter into contracts in its own right as it is only the sum of its trustees and has no legal personality of its own.
- If you are considering doing something more major, for example, employing a worker or managing a building, you may well need a structure which gives the group a legal personality and gives members more individual protection (see below for more info on trustee liability).
- Trustees take on a certain amount of personal liability and shared responsibility for the group's actions.

Trusts

A charitable Trust is a special unincorporated group, set up to administer money and/or property and services for the benefit of the community or for another clearly defined charitable purpose.

- Charitable trusts do not normally have a membership other than management committee/trustees; they may employ staff and will usually be registered with the Charity Commission.
- Like an unincorporated group, Trusts make their own governing rules, normally known as a Trust Deed, which outlines and protects their social objectives.
- Trusts normally establish a formal relationship between three parties:
  - the donors of money or property;
  - the Trustees who become the nominal owners of the trust property;
  - and the beneficiaries (the people who will benefit from the trust).

Pro's

- Trusts can be set up quickly and cheaply.
- They are essentially non – democratic organisations because there is generally no membership structure which can make decision making easier on occasions.
- The nature and scope of a trustee's duties are well established in law, so if problems are encountered, there are well established guidelines for the trustees to consult and follow.

Con's

- On the downside, because a Trust has no legal identity of its own, trustees can be personally liable for contracts entered into.
- Trusts registered with the Charity Commission must submit annual reports and accounts.
- Trusts are not as flexible as other structures.

Incorporated Organisations

This structure gives the group itself a legal personality, a wider range of powers to achieve growing needs and means that trustees have considerable protection under the law from personal liability for the group's debts and contractual obligations.
Becoming an incorporated group would be for a group that wants to:

- expand
- acquire a building
- take on employees
- raise substantial finance
- apply for large grants
- enter into contracts

There are two commonly used structures for Community groups wishing to become incorporated, each with its advantages and disadvantaged. Both involve a cost in set-up and will require a legal governing document that lays out certain things you must or must not do.

Company Limited by Guarantee

- This structure has a legal personality of its own and offers limited liability for debt in the event of the company winding up.
- Each trustee or member pays a 'membership' fee of an agreed amount (this could be £1) by way of guarantee rather than share.
- Decisions on how the company is run are voted for by the trustees of which there must be a minimum of three, it is good practice to have more.

A company limited by guarantee has a governing document/constitution, but it is normally called the Memorandum & Articles of Association. This is a legal/expert document and legal advice should be taken when writing and adopting it.

A community group that establishes itself as a company limited by guarantee is usually set up either to benefit members only or to benefit members and a wider community.

Pro's

- flexible in terms of what it can do, who its members are.
- setting up financial structures such as bank accounts is relatively easy.
- such a company has its own Corporate and legal identity.

Con's

- it can be costly to set up and run a company both in terms of money and time.
- Have to register with and then be subject to Company Law and if the company is a charitable company they must also register and meet the requirements of the Charity Commission.
- This means that annual accounts and reports must be compiled and submitted twice in accordance with both set of requirements. The form of which the accounts must take depends on the amount of annual income.

Community Interest Company (CIC)

A Community Interest Company (CIC) is a type of company designed for social enterprises that want to use their profits and assets for the public good.

A CIC can choose from one of three company forms: a private company limited by shares, a private company limited by guarantee or a public limited company • All CIC are subject to an 'asset lock' which limits their profit.

A CIC can be registered at Companies House in the same way as a normal company with the same incorporation documents. There are however additional incorporation documents; to find out more visit www.cicregulator.gov.uk

When groups register as a CIC, The CIC Regulator will consider whether applications meet the criteria to become a CIC. If satisfied, the Regulator will inform the Registrar in Companies House who, providing all the documents are in order, will issue a certificate of incorporation as a CIC.

CIC's need to have a statement that describes the social purpose; this is normally called a community interest statement.

Pro's

- This type of structure enjoys a certain amount of flexibility.
- CIC's can have shareholders and can pay their directors unlike paying Trustees.
- Designed to attract investment.

Con's

- An asset lock ensures that the assets of a CIC are, after any expenditure that meets their obligations, either used for the community purposes outlined in their community interest statement or transferred to another 'asset locked' body or Charity.
- There are no special tax advantages in being a CIC (though specific regional relief and access to Lottery and other funding may be open to CIC's).

If a charitable company wants to convert to a CIC it will lose its charitable status including tax advantages. A charity may however own a CIC in which case the CIC would be permitted to pass assets to the charity.

Charitable Incorporated Organisation (CIO)

A new legal form of incorporated structure which, unlike the structure of charitable companies, has been designed specifically for the needs of charities. Very new, so still finding its feet. Existing charitable companies, community interest companies and industrial & provident societies can apply for conversion into CIO status with the Charity Commission, who has said that it will be relatively easy to do so.

There two types:

- CIO Foundation - the board of trustees are the only voting members.
- CIO Association - with wider membership are voting members.

Pro’s

- CIO’s combine the advantages of charitable status with those of an incorporated company structure whilst only being required to report to the Charity Commission.
- Reduced risk of personal liability.
    - There is no need to register and comply with the regulations of both Companies House and the Charity Commission.
    - Having to comply with only one regulating body means that CIO’s will only have to prepare and submit one annual report and set of accounts making the administration of the group much more user friendly.

Con’s

- Like Community interest Companies, CIO’s have an assets lock in place.
- They are unable to distribute profits or assets amongst their members.