

*For more information about
Co-operatives and Limited
Companies see our
information sheet: 'Not for
Profit Organisations - a brief guide
to legal structures for community
& voluntary organisations and
social enterprises'*

Community & voluntary groups

Finding a legal structure to suit your group

In this sheet we look at legal structures which are suitable for community organisations in Brighton & Hove, ranging from small neighbourhood groups run by local people to larger voluntary agencies with staff. The three usual types of structure which your organisation may want to consider are:

- H Unincorporated association
- H Charitable trust
- H Charitable Incorporated Organisation (from early 2012)
- H Charitable Company

The first two are fairly quick and cheap to set up, while establishing a charitable company can be much 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.

A few groups which think of themselves as community organisations may find that a business structure, such as a co-operative or a (non-charitable) limited company, is more appropriate than one of the four structures above.



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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. Unless there is a membership fee, you are not even obliged to keep a membership list – anyone who is entitled by your rules to be a member can simply turn up and take part. This structure is suitable for groups such as playschemes, pensioners associations, arts groups and campaigning groups. Very many groups fall into this category (sometimes without knowing it).

You do not have to seek approval of any kind before setting up. Nor do you have to register with any regulatory body, though if your group has charitable aims and an annual income above £5,000 you are required to register with the Charity Commission. Once operating, your group may of course have to register with the City Council if, for example, you are providing childcare or are involved in catering.

You are free to draw up your own democratic constitution setting out the rules under which your group will be run. If your group plans to register as a charity, it may be best to adopt the Charity Commission's own model constitution for a charitable unincorporated association.

Advantages

- H **Simple and flexible.** No need to have the constitution agreed by any outside body (unless you are registering as a charity).
- H **Cheap to run.** No need to submit accounts to anyone outside (unless you register as a charity, or funders demand it).
- H **If you have charitable aims, you can register as a charity and gain advantages such as funding which is available only to charities.**

Disadvantages

- H **Some funders may prefer a more formal structure, especially if you are looking for big sums of money.**
- H **Your group has no separate legal existence – it is a collection of individuals. This means that:**
 - it cannot own property in its own right
 - it cannot enter into contracts – if it wants to rent premises or employ people, this is done in the eyes of the law by individuals on behalf the group.

For more details about becoming a charity see our information sheet: 'Charity Registration'

For more details about how to write a constitution see our information sheet: 'Constitutions – step by step help with writing a constitution'

A copy of the Charity Commission's model constitution is on their website: www.charitycommission.gov.uk. If your income is below £5000 it is worth looking at their 'Resources for very small charities' page.

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- individual members of your management committee are personally responsible for the group's obligations and debts, and are liable if, for example, it is sued.

Summary

The fact that this is so flexible and cheap means it is ideal for many small groups. If you are considering doing something more major – employing a worker or managing a building – you may well need a structure which gives the group a legal existence and gives members more individual protection.

Charitable trust

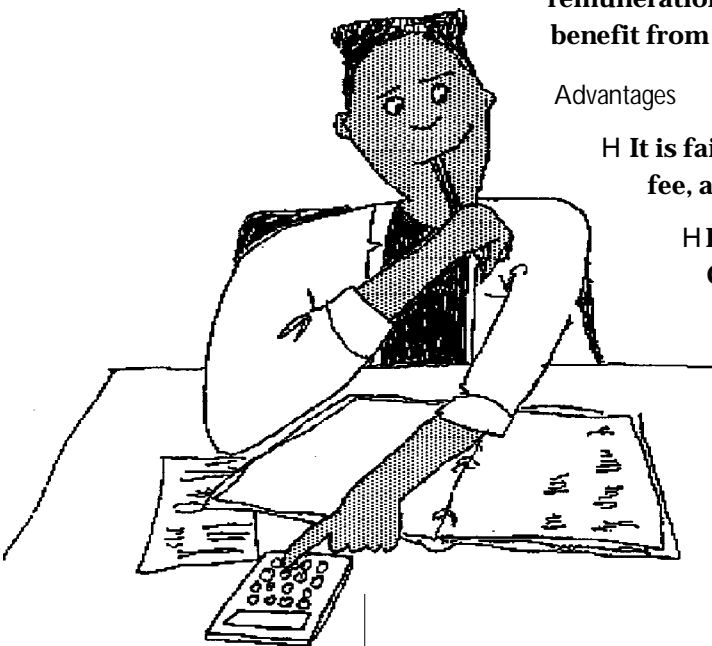
A charitable trust is a legal form which is set up by means of a trust deed. Naturally the aims of the trust must be charitable and the trust will register with the Charity Commission. A trust is usually set up to manage money or property for a charitable purpose.

It is not a membership organisation but is run by a small group of people, known as trustees, although the trust deed can be written in such a way as to allow for members. The trustees make all the decisions and have all the responsibility. Trustees can be appointed for life when the trust is set up, or can be changed regularly. This means, for example, a representative of the local authority could be invited to become a trustee. Trustees must not receive any remuneration from the trust or receive any personal benefit from its activities.

Advantages

H It is fairly cheap to establish. There is no registration fee, although there is a small stamp duty to pay.

H It is fairly simple to set up. The Charity Commission publishes a model declaration for a charitable trust (trust deed). However if you are at all uncertain about the trust deed it is sensible to get legal advice, as the deed is a formal document.



A copy of the model Trust Deed is on the Charity Commission Website: www.charitycommission.gov.uk

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- H It is worth considering for a charity with more professional aims which wants to employ a very small number of workers or manage a building. Property can be held in the name of individual trustees for use by the charity, though the charity cannot purchase property in its own name.
- H It gives continuity to the group, and regulation by the Charity Commission gives a 'seal of approval' to its activities.
- H Funders may find the more formal and stable structure reassuring. Some funders will give grants only to registered charities.

Disadvantages

- H As a registered charity, your group has obligations. Among other things, you must draw up your annual accounts and report in a particular way and send a copy to the Charity Commission.
- H A charitable trust is an unincorporated organisation which means that its trustees are personally liable for its obligations and debts.
- H You cannot carry out political or campaigning activities, but your group can have educational aims.
- H There is not generally any formal method for users to influence the work of the organisation. All decisions are made by a small group of people who are not necessarily easily replaceable (The Charity Commission suggests having between 3 and 9 trustees). So it is not a suitable structure for a group which wants to encourage a large and active membership.

Note on the Financial Liability of Trustees and Officers

If an unincorporated association or a charitable trust closes with outstanding debts, its officers or trustees will be personally liable for the debts. Some insurance companies offer a policy which will enable officers to claim for any debts which they have to cover.

However, insurers usually state that closure of the group must be outside of the control of the officers or trustees. So if, for example, your group folds after getting into debt because of slack financial management, your claim is likely to be turned down. There are usually other exclusion clauses too which may make it difficult to put in a successful claim. However, if your main concern is debt arising from circumstances outside your control, this type of policy will reassure your officers and trustees.

For more information on annual reports and accounts see our information sheet: 'Charity Reports and Accounts'

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If you think that your group really needs this sort of insurance cover, then it may be a good idea to look again at your structure and consider forming a limited company (an incorporated organisation) instead. If, after that, you decide to remain unincorporated and take out financial liability insurance, look very closely at the policy.

Charitable Incorporated Organisation (CIO)

This is a new form of charitable organisation created by the Charities Act 2006. It was expected to be introduced in the Spring of 2008, but the date has slipped back and it will not come in until early 2012. It will give a charity the main advantages of a Charitable Company – a legal personality and limited liability – but without the dual regulation of Companies House and the Charity Commission.

A CIO will be registered with and regulated by the Charity Commission. As a result, the 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 which will be simpler than the governing document of a Charitable Company.

It is expected to be straightforward to convert an existing Charitable Company into a CIO and there will also be a procedure to change the structure of an unincorporated association into a CIO.

It is not yet clear how much simpler it will be to operate a CIO. The Companies Act 2006 is reforming company law and there is some suggestion that the charitable company structure may end up being more straightforward than the CIO structure.

Charitable Company

A Charitable Company is a limited company with charitable aims. It is an incorporated organisation which means that it has a legal identity separate from its members. 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.

A company is a membership organisation. However, unlike an unincorporated association, members must be named and a list of members forms part of the Company Register. A company can also demonstrate, through its Memorandum & Articles of Association (its

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Find out more at:
www.charitycommission.gov.uk
www.companieshouse.gov.uk

governing document) that it is accountable to the community and charitable in its aims. The directors of a Charitable Company are also its trustees and perform the role of the management committee.

The Charity Commission provides a model Memorandum & Articles of Association for a Charitable Company but you would be well advised to seek legal help in drawing these up. Establishing a Charitable Company currently involves registering with both Companies House and the Charity Commission.

If your group is an unincorporated association which is already registered as a charity, there may come a point when you wish to become incorporated. This is done by forming a Charitable Company to take over the affairs of the unincorporated charity. The Charity Commission now has an application pack, together with advice and guidance, on its website which makes the process quicker and easier.

There are two types of limited company:

Company limited by guarantee

There are no shareholders and any surplus is reinvested in the company. This type is recommended by the Charity Commission.

Company limited by shares

This type of company is more usually found in the commercial sector, where its members (shareholders) are investing money in the hope of gaining a profit. However, there are some organisations in the community which are set up as companies limited by shares.

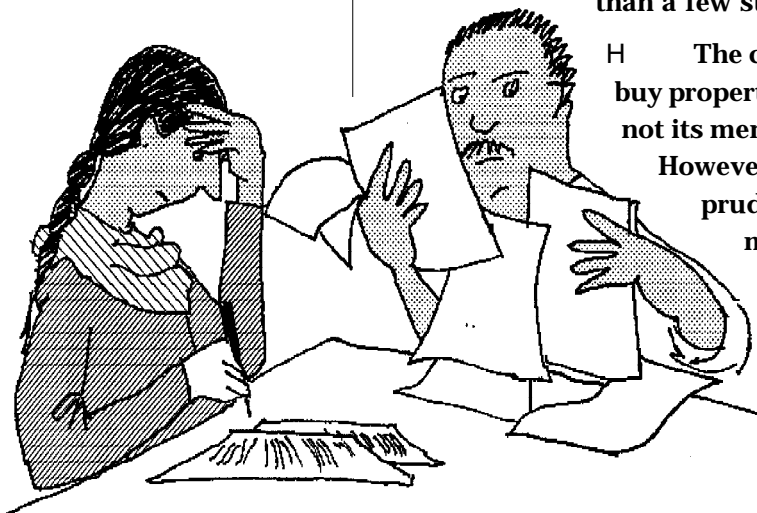
Advantages

H It is very suitable for a larger organisation which has considerable assets (e.g. equipment, a building) and employs more than a few staff.

H The company can take on legal obligations and buy property in its own name. The organisation and not its members is responsible for any debts.

However directors do have a legal duty to act prudently and to ensure that the company manages its finances carefully.

H Many funders regard this structure as more stable, as they know the company will continue to exist even if there is a change of people involved. This increases your chances of success



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if you are applying for larger sums of money. Some funders will give grants only to registered charities.

Disadvantages

- H **It is expensive to set up. It is time consuming to run and annual accountancy fees can be high. A Charitable Company is regulated by both Companies House and the Charity Commission. You have to notify them of every change of directors/trustees and draw up a particular form of annual accounts and reports.**
- H **A Charitable Company cannot have political or campaigning aims, but you can have educational ones.**

Conclusion

If none of these structures seems entirely suitable for your group, then it is worth considering one of the legal structures more usually associated with a business.

The Resource Centre's Reference Library holds several books and other information on legal structures, including a guide to drawing up a constitution for an unincorporated organisation and the Charity Commission guide to "Choosing a governing document".

For more information on annual reports and accounts see our information sheet: 'Charity Reports and Accounts'

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Useful addresses

Charity Commission Direct

PO Box 1227

Liverpool L69 3UG

Tel: 0845 3000 218

Minicom: 0845 3000 219

email: enquiries@charitycommission.gsi.gov.uk

www.charitycommission.gov.uk

Community Matters

12 - 20 Baron Street

London N1 9LL

Tel: 0207 783 7887

www.communitymatters.org.uk

Companies House

Crown Way

Cardiff CF4 3UZ

Tel: 0870 333 3636

www.companieshouse.gov.uk

Clickdocs.co.uk

Their website at www.clickdocs.co.uk has information on legal structures, together with model governing documents and application forms. They do charge for this service.