

# Legal structures

## for community groups and not-for-profit organisations

Simple information about the different types of not-for-profit organisation, and what to consider when choosing a legal structure.

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# What is a not-for-profit organisation?

“Not-for-profit organisation” is a broad term for all independent organisations whose purpose is something other than to make private profit for directors, members or shareholders. Many different types of organisation can be “not-for-profit”. It is not a legal structure in and of itself. Not-for-profit organisations choose a legal structure based on a variety of factors, including:

- ♦ How the organisation will be funded (see page 3)
- ♦ Whether the organisation will be controlled by voting members (see page 4)
- ♦ Whether the organisation will be incorporated (see page 4)
- ♦ Whether the organisation will be charitable (see page 5)

## Just want a straightforward community group?

Many community groups are run entirely by volunteers, to benefit their own members, improve their local neighbourhood, or run campaigns.

If you are simply a group of people wishing to get together to organise something on a small budget, and don't plan to employ staff or lease premises, you probably don't need to read the whole of this guide!

You are likely to find that an unincorporated association is the structure for you. This is a simple structure which you can set up yourself, without registering with anyone. All you need to do is write and agree a constitution.

Go straight to page 7 for more information about unincorporated associations.

# Things to consider when choosing a legal structure

## How will your organisation be funded?

Some organisations receive income from grants and donations, while others generate all their own income by selling goods and services. Knowing how you will generate income is important when choosing a legal structure, because some types of structure are less likely to attract grants and donations.

### Income from grants and donations

Organisations that make all or part of their income through grants and donations are usually controlled by a team of volunteers. Because the people running the organisation do not make any personal financial gain, they can manage the grants and donations without any conflict of interest. Most community groups and charities are run in this way. They usually adopt one of the following structures.

- ♦ Unincorporated association
- ♦ Charitable trust
- ♦ Charitable Incorporated Organisation (CIO)
- ♦ Company limited by guarantee

Which structure is best depends on whether the organisation will have voting members (see page 4), whether it will be incorporated (see page 4) and whether it meets the legal requirements to be a charity (see page 5).

### Income from selling goods and services

Instead of relying on grants and donations, some not-for-profit organisations generate their income by selling goods and services. They often start off by receiving investment from members or external organisations, which they pay back once up and running. These organisations are called social enterprises.

Social enterprises can be controlled by volunteers, but they can also be controlled by people who have invested in them, people who are paid to work for them, or people who benefit as customers.

“Social enterprise” isn’t a legal structure – social enterprises can adopt different legal structures depending on their needs and the way they work. They generally adopt one of the following legal structures:

- ♦ Company limited by guarantee (includes Community Interest Company)
- ♦ Community Benefit Society
- ♦ Cooperative Society

All these structures are incorporated – social enterprises are generally incorporated. (See page 4 for information about incorporation).

Which structure is best depends in part on who will control the organisation (e.g. will it have voting members, and if so, who will they be?) and whether the organisation meets the legal requirements to be a charity (see page 5).

## Will your organisation have voting members?

Many not-for-profit organisations have members who take part in running the organisation by voting. In many large organisations, the role members play is primarily to elect the directors, trustees or management committee of the organisation. In smaller organisations members might play a more active role. Some organisations (particularly companies) may have a very small number of members, while others may have a large membership.

Membership organisations are accountable to their members, and the members can vote to change the people who are in control. Charities often have members who are service-users of the organisation. Some social enterprises have members who have invested money in the organisation, and/or are customers of the organisation.

The following structures have voting members (although the number of members can be small):

- ♦ Unincorporated association
- ♦ Charitable Incorporated Organisation (Association model)
- ♦ Company limited by guarantee (including Community Interest Company)
- ♦ Community Benefit Society
- ♦ Co-operative Society

The following structures do not have voting members. They are controlled by a small group of people who are appointed without election by members.

- ♦ Charitable trust
- ♦ Charitable Incorporated Organisation (Foundation model)

Whether you choose to have voting members or not, you will also need to consider how the organisation will be funded (see page 3), whether it will be incorporated (see below), and whether it meets the legal requirements to be a charity (see page 5) to help you work out which structure is best for you.

## Will your organisation incorporate?

Incorporation is a process through which an organisation goes from being a collection of individuals (in the eyes of the law), to a single entity which is legally separate from the individuals involved.

An **incorporated** organisation has “legal personality” which means it can enter into contracts, buy or lease property, and employ people in its own right. Any debts or obligations belong to the organisation, rather than to the individuals running it. This gives the trustees, directors or committee members some protection, although they still have liability for debts caused by negligence or poor financial management.

An **unincorporated** organisation is, in legal terms, a collection of individuals. Any debts or obligations are the responsibility of the trustees or management committee themselves. Although this might sound scary, many small organisations actually have very few financial obligations. For example, most community groups do not employ staff or run premises, and there is little money involved in running the group’s activities. This means the risk is often very low.

Organisations with incorporated legal structures are more closely regulated than those with unincorporated structures. They take longer to set up, require more ongoing work to keep running, and are more likely to incur costs for services from accountants and solicitors.

The following structures are incorporated:

- ♦ Charitable Incorporated Organisation
- ♦ Company limited by guarantee (including Community Interest Company)
- ♦ Community Benefit Society
- ♦ Cooperative Society

The following structures are unincorporated:

- ♦ Unincorporated association
- ♦ Charitable trust

Whether you choose to incorporate or not, you will also need to consider how your organisation will be funded (see page 3), whether it will have voting members (see page 4), and whether it meets the legal requirements to be a charity (see below) to help you work out which structure is best for you.

## Will your organisation be charitable?

A charity in England and Wales is defined, by law, as an organisation which has exclusively charitable purposes, and is regulated by the “High Court’s charity law jurisdiction”. As part of this, charities must prove they exist for the public benefit. These definitions are explained on the Charity Commission website<sup>1</sup>. If an organisation meets these criteria it is, by definition, a charity, even if it is not registered with the Charity Commission. If an organisation does *not* meet these criteria then it is *not* a charity, cannot register with the Charity Commission, and is not subject to charity regulation.

“Charity” is not a legal structure in and of itself. Most charities adopt one of the following legal structures:

- ♦ Unincorporated association
- ♦ Charitable trust
- ♦ Charitable Incorporated Organisation (CIO)
- ♦ Company limited by guarantee
- ♦ Charitable Community Benefit Society

Which structure is best depends on whether the organisation will have voting members (see page 4), whether it will be incorporated (see page 4), and how it will be funded (see page 3).

The following structures *cannot* be charities:

- ♦ Community Interest Company
- ♦ Co-operative Society

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<sup>1</sup> [gov.uk/government/publications/what-makes-a-charity-cc4/what-makes-a-charity-cc4](http://gov.uk/government/publications/what-makes-a-charity-cc4/what-makes-a-charity-cc4)

## Rules that affect charities

Charities must govern themselves in accordance with the Charities Act. Detailed information about regulations affecting charities are available from the Charity Commission<sup>2</sup>.

Some basics include:

- ♦ **Payment of trustees:** In order to ensure the public benefit requirement is met, charities are generally not permitted to pay their trustees. There are exceptions to this rule, but new organisations intending to pay their management committee as a matter of course are likely to find it easier to set up as a non-charitable organisation. Structures to consider include Community Interest Company, Community Benefit Society or Cooperative Society.
- ♦ **Governance, accounts and record keeping:** Charities must keep good records, which should include details of their finances, charitable activities, and trustees. They must adhere to the rules in their governing document (e.g. constitution). Registered charities must send information to the Charity Commission each year.
- ♦ **Political campaigning:** Charities are prevented by law from taking part in certain political and campaigning activities that other organisations are free to engage in.

For more information about responsibilities of charities, see our sheets *Responsibilities of Registered Charities* and *Charity Reporting and Accounts*.

## Registering with the Charity Commission

Almost all charities should register with the Charity Commission if their income is higher than £5,000 per year. Charitable Incorporated Organisations should register even if their income is less than this. For information about registering a charity, see our information sheet *Charity Registration*.

Once a charity is registered, the Charity Commission can check to see that the organisation is being run properly. Being a registered charity gives an organisation recognition that it is run for the public good, and this can help with getting grant funding and other benefits available only to registered charities.

A few types of charity are exempt from the requirement to register with the Charity Commission, and are regulated by alternative organisations instead. This includes Charitable Community Benefit Societies, which are regulated by the Financial Conduct Authority<sup>3</sup>.

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<sup>2</sup> [gov.uk/government/organisations/charity-commission](http://gov.uk/government/organisations/charity-commission)

<sup>3</sup> [www.fca.org.uk/](http://www.fca.org.uk/)

# Legal structures to consider

Here are details of a range of legal structures available to community groups and not-for-profit organisations. To understand the difference between the various structures, and decide which suits you best, you will need to read the previous section “Things to consider when choosing a legal structure”, which starts on page 3.

## Unincorporated Association

An unincorporated association is a membership organisation. It can be whatever its members want it to be, and carry out whatever activity the members choose. It is the easiest, quickest and cheapest way for a group to set itself up. 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). To set up an unincorporated association, your group simply needs to draw up a constitution, setting out the rules under which it will be run.

An unincorporated association can be a charity, but it does not have to be. Many unincorporated associations primarily benefit their own members, and are therefore not considered to be charitable and are not regulated by charity law. For an unincorporated organisation to be a charity it must have charitable aims and be run for the public benefit. If your group is not charitable you do not need to register with or report to anyone. If your group is charitable, you will need to register with the Charity Commission if your annual income is over £5,000 per year.

An unincorporated association is not incorporated, so it cannot enter into contracts or own property in its own right.

To set up an unincorporated association, all you need to do is write and agree a constitution in your group. If you do not plan to become a charity, your constitution should lay out whatever aims you want for your group. If you wish to be a charity, it is best to base your constitution on the model constitution on the Charity Commission website<sup>4</sup>.

## Charitable Trust

A charitable trust is a type of charity run by a small group of people known as trustees. The trustees are appointed rather than elected, and there is no wider membership.

A charitable trust is not incorporated, so it cannot enter into contracts or own property in its own right.

To set up a trust your group must write and sign a trust deed, which must show that the organisation is legally charitable. There is a model trust deed on the Charity Commission website<sup>5</sup>. Charitable trusts must register with the Charity Commission if they have income over £5,000 per year.

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<sup>4</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/586359/GD3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/586359/GD3.pdf)

<sup>5</sup> [gov.uk/government/publications/setting-up-a-charity-model-governing-documents](https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents)



## Charitable Incorporated Organisation (CIO)

A CIO is a type of charity which is incorporated. It is quite a new legal structure – it was introduced in 2013.

There are two types of CIO: Association Model and Foundation Model. Association Model CIOs are membership organisations and hold elections, whereas Foundation Model CIOs are run by a small group of appointed trustees.

CIOs must be registered with and report to the Charity Commission, regardless of their income. Unlike charitable companies, however, they do not need to register with Companies House. This means the reporting requirements are simpler for CIOs than for charitable companies.

Registration of a new CIO takes up to 40 days. You will need to use a model constitution approved by the Charity Commission<sup>6</sup>, and apply online via their website to register your organisation<sup>7</sup>.

Other types of charity can change their structure to become a CIO.

Charitable companies can convert directly by adopting a CIO constitution and completing an online application form<sup>8</sup>.

Unincorporated charities such as unincorporated associations and charitable trusts can also become CIOs, but this involves setting up a new CIO, transferring all assets, then closing down the old organisation. This can take up to 18 months.

For more information on how to change to a CIO structure see the Charity Commission guidance “Change your charity structure”<sup>9</sup>.

## Company limited by guarantee

A company limited by guarantee is a type of company which does not distribute income to shareholders. This means it can be not-for-profit, if all surplus income is reinvested back into the organisation.

A company is incorporated, and has voting members. It is controlled by a group of directors, who can be paid or unpaid.

Companies are registered with and regulated by Companies House<sup>10</sup>. To establish a company, you must adopt a governing document called a Memorandum and Articles of Association, and submit it to Companies House. It is a legal document, so it is sensible to get it checked by a solicitor.

## Charitable company

A company can be a charity if it meets the legal requirements required by charity law (see page 5). This must be clear in the governing document, so if you wish to set up a

<sup>6</sup> [gov.uk/government/publications/setting-up-a-charity-model-governing-documents](http://gov.uk/government/publications/setting-up-a-charity-model-governing-documents)

<sup>7</sup> [gov.uk/guidance/how-to-register-your-charity-cc21b#how-to-apply-to-register-a-charity](http://gov.uk/guidance/how-to-register-your-charity-cc21b#how-to-apply-to-register-a-charity)

<sup>8</sup> <https://forms.charitycommission.gov.uk/apply-to-convert-a-charitable-company-to-a-charitable-incorporated-organisation-cio/>

<sup>9</sup> [gov.uk/guidance/change-your-charity-structure](http://gov.uk/guidance/change-your-charity-structure)

<sup>10</sup> [gov.uk/government/organisations/companies-house](http://gov.uk/government/organisations/companies-house)



charitable company you should use the model Memorandum and Articles of Association approved by the Charity Commission<sup>11</sup>.

In order to be considered charitable, the directors of a company are usually unpaid. Charities may pay their directors in exceptional circumstances, but organisations wishing to pay their directors as a matter of course are likely to find a Community Interest Company, Community Benefit Society or Cooperative Society structure more suitable.

Establishing a charitable company involves registering with the Charity Commission as well as Companies House, and then submitting your annual report and accounts to both organisations annually.

If you are setting up a new organisation, it is worth considering whether a Charitable Incorporated Organisation (CIO) would suit your needs instead. CIOs do not need to report to Companies House, so they are simpler and cheaper to run than charitable companies.

### Community Interest Company (CIC)

A non-charitable company can still be a not-for-profit organisation: many social enterprises are non-charitable companies. If your organisation is not charitable, you can guarantee your not-for-profit status by becoming a Community Interest Company (CIC). CICs commit their assets and profits permanently to the community by means of an “asset lock”, ensuring that assets are used for the benefit of the community. CICs can have paid directors.

To register a new CIC, you have to apply to Companies House to register a company, and include with your application form CIC36<sup>12</sup>, which you will use to describe how your company will benefit the community. To apply for CIC status for an existing company, use application form CIC37.<sup>13</sup>

Applications are assessed by the CIC Regulator (a department at Companies House)<sup>14</sup>.

### Other types of company

A company can be not-for-profit without being either a charity or a CIC, but it may be harder to prove and guarantee the not-for-profit status to interested parties such as supporters, investors or funders.

### Community Benefit Society

A Community Benefit Society is owned by its members, who hold shares and control the society democratically, on a one-member one-vote basis.

The society must exist primarily for the benefit of the wider community, and members may not receive preferential treatment. Profits must be used for the benefit of the community (although interest on shares can be paid to members, up to a maximum rate).

<sup>11</sup> [gov.uk/government/publications/setting-up-a-charity-model-governing-documents](http://gov.uk/government/publications/setting-up-a-charity-model-governing-documents)

<sup>12</sup> [gov.uk/government/publications/form-cic36-application-to-form-a-community-interest-company](http://gov.uk/government/publications/form-cic36-application-to-form-a-community-interest-company)

<sup>13</sup> [gov.uk/government/publications/form-cic37-application-to-convert-a-company-to-a-cic](http://gov.uk/government/publications/form-cic37-application-to-convert-a-company-to-a-cic)

<sup>14</sup> [gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies](http://gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies)

A Community Benefit Society can apply for a Statutory Asset Lock, which will allow it to guarantee its non-profit status.

A Community Benefit Society can register as a Charitable Community Benefit Society with the Financial Conduct Authority<sup>15</sup> if it has:

- ♦ aims that are exclusively charitable; and
- ♦ a Statutory Asset Lock specifying that any assets would be transferred to another charity if the organisation wound up.

This allows the organisation to call itself a charity, although it is not regulated by the Charity Commission.

A Community Benefit Society is a useful structure if your community wishes to take control of an asset, such as a building. You can fund your organisation by selling “Community Shares”, and run the service to benefit the wider community.

A Community Benefit Society is incorporated and can have paid directors.

To find out how to register a Community Benefit Society contact the Financial Conduct Authority. There is also very useful information about setting up these Societies on the Community Shares website<sup>16</sup>.

## Cooperative Society

A Cooperative Society is a similar structure to a Community Benefit Society, but its main purpose is to provide services to its members rather than the wider community. Cooperative Societies must be based on the co-operative values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In general, membership to a Cooperative Society is open to people who use the services provided by the society, or work for the society, and profits may be distributed to members providing this is not the primary purpose of the organisation.

A Cooperative Society cannot be charitable because its beneficiaries are its own members, rather than the public.

A Cooperative Society is incorporated and can have paid directors.

To find out how to register a Cooperative Society contact the Financial Conduct Authority. There is also very useful information about setting up these Societies on the Community Shares website<sup>16</sup>.

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<sup>15</sup> <https://www.fca.org.uk/>

<sup>16</sup> [communityshares.org.uk](https://communityshares.org.uk)

## More information

For more help deciding which legal structure is right for you, have a look at our RouteMap<sup>17</sup>.

If you are setting up a community group or charity, you may find more of our information useful, especially:

- ♦ *Starting a group*
- ♦ *Constitutions*
- ♦ *Charity Registration and Requirements*

If you are setting up a social enterprise, the Resource Centre is not able to offer more detailed guidance. See our website for a list of organisations that provide information for social enterprise and cooperatives.<sup>18</sup>

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<sup>17</sup> [www.resourcecentre.org.uk/information/routemap/](http://www.resourcecentre.org.uk/information/routemap/)

<sup>18</sup> [www.resourcecentre.org.uk/service/information-for-social-enterprises-and-co-operatives/](http://www.resourcecentre.org.uk/service/information-for-social-enterprises-and-co-operatives/)