

Adopting a legal structure for your organisation

Trying to understand the ins and outs of setting up an organisation can be extremely confusing, especially with all the different terms and legal wording. But it doesn't have to be complicated.

This guidance will help you decide whether or not your group needs to become an incorporated body with a formal legal structure.

Becoming incorporated is not always necessary. If you are a small group running an open homes event for the first time then your risk is likely to be quite limited and incorporation may not be right for your group at the moment. Even so, we would still strongly recommend thinking about:

1. A legal form, which can help you achieve your objectives and protect individuals should your activities carry any financial risk.
2. Your governance: how you manage yourselves and the documentation which sets this out, such as a constitution.

Legal forms

Incorporated or unincorporated?

Most small community groups are unincorporated associations and this can be whatever its members want it to be. Examples include partnerships, associations, friendly societies and trusts. It is the easiest, quickest and cheapest way for a group to set itself up, and you can write your own constitution.

However, unincorporated bodies have no distinction between the organisation and its members. In the eyes of the law this means that members are seen as being jointly responsible for the body and its activities, and can also be held individually responsible. Unincorporated bodies cannot legally own anything and this means that any equipment you buy would be owned by individual members of your group – making it tricky at a later date if they want to leave the group.

The main advantage of becoming incorporated is that it creates limited liability for your members; particularly important should you find yourselves in

a position where you owe money or have failed to deliver a service. Also, although an organisation may not have to be incorporated to get a bank account, many funders or sponsors will not write a cheque to an individual, but will to an incorporated group.

Despite this you should still consider some of the possible drawbacks to becoming incorporated. The initial cost of registration can be quite high and in some cases a periodic fee is payable. Your governing members will lose a degree of privacy as their details will be publically available, along with other information such as the organisation's financial details. And there are ongoing administration requirements (like submitting annual accounts).

If your group doesn't want to go through the process of becoming incorporated, it doesn't exclude you from receiving funding. Often working in partnership with another organisation that can hold the money for you (such as a community development association, parish council or church) is a workable option.

Choosing an incorporated legal form

Should you wish to become an incorporated body there are certainly plenty to choose from. The Simply Legal (www.uk.coop/simplylegal) publication contains the details of the main legal forms that most incorporated groups tend to opt for.

- Current legal forms for incorporated organisations:
- Company Limited by Guarantee
- Private Company Limited by Shares
- Community Interest Company (limited by guarantee)
- Community Interest Company (limited by shares)
- Charitable Company Limited by Guarantee
- Charitable Incorporated Organisation
- Charity with subsidiary company
- Industrial & Provident Society (co-operative)
- Industrial & Provident Society (society for the benefit of the community)
- Limited Liability Partnership
- Public Limited Company (plc)

The two most popular legal forms for community groups are **Community Interest Companies (CIC)** and **Industrial and Provident Societies (IPS)**, but there are different types of both of these. It's worth speaking to other groups that have similar aims to you, or even contacting a professional organisation for advice. Co-operatives UK have a free select-a-structure tool to narrow down your options (www.uk.coop/our-work/select-structure-tool).

Whatever you decide, leave enough time to make all the arrangements. It will take time (and money in some cases) to fill out all the documentation required, register with the appropriate authorities and agree on all the details. Don't rush into a decision, as the legal form that you decide on can affect the sort of activity you can deliver in future and may commit you to ongoing costs and reporting requirements.

Governance

Good governance should help to define a clear strategy for the direction, supervision and accountability of an organisation, regardless of whether or not it decides to become incorporated.

A governing document is simply a document that sets out your aims and rules. It usually includes basic information about membership, key roles and responsibilities and decision-making processes. It acts as a written reminder for members that can help to keep you on track and shows funders and potential members that you are democratic and accountable.

There are different names for governing documents depending on the legal form of your group and their required content varies. The following are some of the common names for governing documents and their associated legal forms:

Legal form	Governing document
Association	Constitution
Partnership	Partnership agreement or deed
Trust	Trust deed
Limited Liability Partnership	Partnership agreement or members' agreement
Limited Company	Articles
Community Interest Company	Articles
Society	Rules
Charitable Incorporated Organisation	Constitution

Co-operatives UK (www.uk.coop) has a publication called Simply Governance which goes into further detail about why governance is important, explains articles, rules and deeds, and provides practical strategies to avoid common governance problems. See www.uk.coop/simplygovernance.

If your group decides that a simple constitution is the way forward then a good guide for this is the Ten Steps to Writing a Constitution which also provides a template constitution suitable for a voluntary group: <http://bit.ly/19hy9y7> (pdf).

If your group plans to register as a charity, we recommend the Charity Commission's model constitution: <http://bit.ly/19jMtow>.

Useful resources

Co-operatives UK

As well as their Simply Governance and Simply Legal publications, Co-operatives UK can also help with registering your organisation, provide template models and offer training: www.uk.coop

National Council for Voluntary Organisations – Governance & Leadership

The NCVO has many free resources on their website covering the main issues around good governance: www.ncvo-vol.org.uk/governanceandleadership

Get Legal

This website provides detailed advice on legal structures, including some template models, as well as a decision tool to help provide an indication of what legal structure could be appropriate for an organisation: www.getlegal.org.uk

Co-op Enterprise Hub

Community organisations can apply for up to four days free help from the Hub for support on areas such as governance, business planning and finance: www.co-operative.coop/enterprisehub

PlanLoCal

The film 'Becoming a legally recognised entity' (5mins 38secs) provides information on why it's important to consider having a legal structure and explains some of the different legal structures that community groups commonly adopt: <http://youtu.be/LByzIP4I7W4>

The **Green Open Homes** network supports low carbon retrofit by promoting existing open homes events and helping new initiatives get going with resources, practical support and funding.

We've produced lots of other information sheets like this one covering legal and insurance issues, volunteers and marketing. See www.greenopenhomes.net



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