COMMUNITY ACTION: MK

Structures for setting up your community group

PART 1 – VOLUNTARY AND COMMUNITY GROUPS

In the first part of this information sheet we look at legal structures which are suitable for community organisations, 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:
- Unincorporated association
- Charitable trust
- Charitable Company

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

There are different types of governing document for each structure.

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.

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.

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

- Simple and flexible.
- No need to have the constitution agreed by any outside body (unless you are registering as a charity)
- Cheap to run. No need to submit accounts to anyone outside (unless you register as a charity, or funders demand it).

- If you have charitable aims, you can register as a charity and gain advantages such as funding which is available only to charities.
- Democratic constitution

Disadvantages

- Some funders may prefer a more formal structure, especially if you are looking for big sums of money.
- 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.

- Individual members of your management committee are personally responsible for the group's obligations and debt 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. Trustees must not receive any remuneration from the trust or receive any personal benefit from its activities.

Advantages

- It is fairly cheap to establish. There is no registration fee, although there is a small stamp duty to pay.
- 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.
- It is worth considering for a charity 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.
- It gives continuity to the group, and regulation by the Charity Commission gives a 'seal of approval' to its activities.
- Funders may find the more formal and stable structure reassuring. Some funders will give grants only to registered charities.

Disadvantages

- 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.
- A charitable trust is an unincorporated organisation which means that its trustees are personally liable for its obligations and debts.
- You cannot carry out political or campaigning activities, but your group can have educational aims.

- 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.

Set up a trust if your charity doesn't need a corporate structure or a wider membership. For example, if it:
- is unlikely to employ a significant number of staff or carry on any kind of business
- makes grants but doesn't do any other type of work

Choose a trust deed as your governing document. It must specify a sum of money, land or some other assets that your charity will start with (it doesn't matter how much). Otherwise you won't be able to register it with the commission.

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. There are usually other exclusion clauses too which may make it difficult to put in a successful claim.

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 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 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

- It is very suitable for a larger organisation which has considerable assets (e.g. equipment, a building) and employs more than a few staff.
- The company can take on legal obligations and buy property in its own name. The organisation and not its members are responsible for any debts. However directors do have a legal duty to act prudently and to ensure that the company manages its finances carefully.
- 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 if you are applying for larger sums of money. Some funders will give grants only to registered charities.

Disadvantages

- 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.
- A Charitable Company cannot have political or campaigning aims, but you can have educational ones
- Companies must follow the Companies Act, which leads to an increase in administration

PART 2 – SOCIAL ENTERPRISE

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

Legal structures to consider are:

Limited companies

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.

Charitable Incorporated Organisation

Set up an association CIO if you want your charity to be a corporate body and have a wider membership, including voting members other than the charity trustees. You must:

- have a constitution as your governing document – use the Charity Commission's model association CIO constitution (or stay very close to it)
- register your CIO with the commission for it to legally come into existence
- keep a register of its members and trustees
- send its accounts and annual return to the commission each year, regardless of its income

Alternatively, you could set up a charitable company: a corporate body which can be set up with or without a wider membership. Choose articles of association as your governing document. Charitable companies can never be the same as commercial companies. Unlike commercial companies, a charitable company:

- can't distribute its surpluses to its members or shareholders – a charitable company is usually limited by guarantee, not shares
- can only apply its assets to carry out its charitable purposes
- must operate in a way which is in the best interests of the charity

You must register your charitable company with both the commission (if eligible) and Companies House. You'll also need to provide detailed information on its finances and activities each year.

Without wider membership

Set up a foundation CIO if you want your charity to be a corporate body, the only members are the trustees and you don't want a wider membership. You must:

- have a constitution as your governing document – use the commission's model foundation CIO constitution (or stay very close to it)
- register your CIO with the commission for it to legally come into existence
- keep a register of its trustees (who are also the members)
- send its accounts and annual return to the commission each year, regardless of its income

If you are an existing charity wishing to convert to a CIO structure, choose the CIOmodel constitution which best matches your original charity. Use the association model if your original unincorporated charity:

- has a constitution as its governing document
- has a wider membership which votes on important decisions, such as electing trustees or committee members

Use the foundation model if your original charity:

- is governed by a trust deed, will, scheme or conveyance
- is run solely by its trustees
- doesn't have a voting membership

Complete the appropriate CIO constitution template as your new CIO's governing document. Once the trustees agree the constitution, register your new CIO with the commission. Whichever CIO model constitution you choose, if in the future you decide that the other constitution better suits your charity, you can amend your constitution to make the changes.

For more information of legal structures, please contact:
Community Action: MK www.communityactionmk.org
Charity Commission www.charitycommission.gov.uk
Companies House www.companieshouse.gov.uk
Community Interest Company Regulator www.cicregulator.gov.uk
MKCE (support with social enterprise) www.mkce.co.uk

Get Legal Toolkit - free online reference and decision-making tool for charities, social enterprises and co-operative organisations www.getlegal.org.uk

Information taken from the Resource Centre fact sheet on 'Finding a legal structure to suit your group' www.resourcecentre.org.uk

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This information sheet has been produced by Community Action: MK and was last updated in 2015. Community Action: MK has taken all reasonable precautions to ensure that information contained in this document is accurate, but stresses that the content is not intended to be legally comprehensive.

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