

Introduction & Overview

When an organisation is formally established it will adopt a governing document or set of rules. This governing document is the legal document which represents the rules for the way your organisation will operate. The document usually sets out:

- The name of the organisation
- Its purpose or 'objects' - this is a statement of what the organisation is set up to do. It is usually worded in quite formal terms. For example, an organisation providing training for young people may have for its object 'the advancement of education for young people'
- Its powers - how it carries out its purposes.
- Provisions around membership of the organisation
- Provisions around who can be a trustee and how they are elected or appointed
- Procedures for calling meetings, both general meetings (of members) and trustee board meetings
- Provisions for amending the governing document or closing the organisation

Charitable

Non-Profit. Broadly speaking, there are four common forms of legal structure for charities, each with its own type of governing document.

- Unincorporated association (does not have to be charitable, many non-profit community groups use this structure. Can be an unregistered charity dependent upon income, see below. It is not known how many unregistered charities there are in the UK)
- Company limited by guarantee (if also a charity- see charitable company, below)
- Charitable Incorporated Organisation (CIO) -Foundation & Association Model
- Trust

CIOs perform much the same function as a charitable company in providing a charity with limited liability. The benefit is that as a CIO, the charity is entirely regulated by the Charity Commission and has to only produce one set of accounts, whereas a charitable company has to submit accounts to the Charity Commission and to Companies House.

Unlike an Unincorporated Association, a CIO must register with the Charity Commission at inception and not once it reaches the minimum annual income threshold of £5K. This provides the benefit of a charity number from the start but does mean that it takes longer to set up.

Legal structures of main forms of charities, social enterprises and societies – advantages and disadvantages

Social Enterprise

Non-Private Profit, but may generate a profit for social purposes. Social Enterprise is a generic term, rather than a legal form. It is best to think of a social enterprise as a 'way of doing business'. Social Enterprise UK states that a social enterprise shares 5 characteristics

1. Social mission
2. >50% income from trading
3. Distribute profits- social mission
4. Independence
5. Transparency

Legal forms of social enterprise can be

- a sole trader,
- a partnership,

However, The most common **legal** structures for social entrepreneurship are:

- a limited company (limited by guarantee or by shares)
- An Unincorporated Association
- Community Interest Companies (CICs).
- Registered Society

Community Interest Companies

Can be Limited by guarantee, but unlike charitable companies can also be limited by shares

(Limited by shares is often used in order to provide for another means of fund-raising (i.e. investors buying shares in return for fixed dividends under the CIC 'dividend cap').

This form can provide an income stream for the directors/founders.

Registered Society

Registered/Mutual Society is an umbrella term for organisations that are owned by and run for the benefit of members

- Co-operatives
- Community Benefit Societies (formally known as Industrial and Provident Societies)

Type and why	Advantages	Disadvantages
<p>Unincorporated association Choose if it</p> <ul style="list-style-type: none"> • will not own significant property • will not employ staff • will have a relatively secure income • will not carry out risky or financially burdensome activities • wants to be a membership organisation • wants more privacy than it can get as a company 	<ul style="list-style-type: none"> ✓ Flexibility – easy to set up, easy to close down, simple ✓ Privacy – accountable to members, no registration (unless charity) ✓ Charity status – can be a charity (registration with Charity Commission subject to reaching £5Kpa income threshold, hence no charity number until then) ✓ Model Rules available 	<ul style="list-style-type: none"> ✗ Personal liability – it is unlimited ✗ Entering into contracts and taking legal action – not a legal entity so can't enter into legal agreements in own right ✗ Holding property and investments – not a legal entity so can't hold assets in own right (use holding trustees, custodian trustees or nominee company)

Type and why	Advantages	Disadvantages
<p>Company limited by guarantee Choose if it</p> <ul style="list-style-type: none"> • employs or expects to employ staff • owns or expects to own land, building, investments or other substantial assets • is or expects to be involved in assets, leases or contracts where there is financial risk • is finding it difficult to recruit governing body members because they want the protection from personal liability that incorporation brings <p>In a company limited by Guarantee there are no shares - hence there are no shareholders. Instead, the company will</p>	<ul style="list-style-type: none"> ✓ Legal personality (separate to the governing body) – can take on contracts, take legal action and hold property in own name ✓ Limited liability – to members of the organisation and governing body ✓ Permanent succession – no need to transfer legal agreements as in organisation name ✓ Permanent – exists until it is closed ✓ Charity status – can be a charity 	<ul style="list-style-type: none"> ✗ Cost – registration fee, set up costs (depending upon who does the set up work), annual filing fee ✗ External accountability – on the register of companies held by Companies House ✗ Paperwork – keep registers, annual returns to Companies House, informing Companies House of changes ✗ Public access to records – information about directors publicly available via the register of companies, registers open for inspection at registered office ✗ Limitations on limited liability (for governing body members) – remain personally liable for fines, acting outside powers, allowing company to continue when insolvent ✗ Permanent endowment – not protected if

<p>have 'members'. The members of a company limited by guarantee are bound by a guarantee in the company's articles of association, which requires them to pay the company's debts up to a fixed sum - usually £1.</p>		<ul style="list-style-type: none"> liquidating assets because of insolvency × Winding up – formal process
<p>Company Limited by Shares</p> <p>Choose if it is</p> <ul style="list-style-type: none"> • Making a profit is the (or a) central motive • employs or expects to employ staff • owns or expects to own land, building, investments or other substantial assets • is or expects to be involved in assets, leases or contracts where there is financial risk • is finding it difficult to recruit governing body members because they want the protection from personal liability that incorporation brings. <p>Because most companies are limited by Shares this 'stake' usually refers to the shares held by the company's shareholders. In such a company, the shareholders' obligation is to pay the company for the shares they have taken in it. The individual puts money into the company, and in return the company gives it a percentage of ownership, in the form of shares</p>	<ul style="list-style-type: none"> ✓ Legal personality (separate to the governing body) – can take on contracts, take legal action and hold property in own name ✓ Limited liability – Limited to shares held ✓ Permanent succession – no need to transfer legal agreements as in organisation name ✓ Permanent – exists until it is closed ✓ Can allow for varied commitment by shareholders based upon holding 	<ul style="list-style-type: none"> × Cannot be a charity × Cost – registration fee, set up costs (depending upon who does the set up work), annual filing fee × External accountability – on the register of companies held by Companies House × Paperwork – keep registers, annual returns to Companies House, informing Companies House of changes × Public access to records – information about directors publicly available via the register of companies, registers open for inspection at registered office × Limitations on limited liability (for governing body members) – remain personally liable for fines, acting outside powers, allowing company to continue when insolvent × Permanent endowment – not protected if liquidating assets because of insolvency × Winding up – formal process × Ultimate ownership may be fluid and potentially out of the hands of the company
<p>Charitable Company</p>	<ul style="list-style-type: none"> ✓ Generally, advantages combined of Unincorporated Association and Company limited by Guarantee 	<ul style="list-style-type: none"> × Generally, disadvantages combined of Unincorporated Association and Company limited by Guarantee

Type and why	Advantages	Disadvantages
<p>Charitable Incorporation Organisation (CIO) Choose if it</p> <ul style="list-style-type: none"> • employs or expects to employ staff • owns or expects to own land, building, investments or other substantial assets • is or expects to be involved in assets, leases or contracts where there is financial risk • is finding it difficult to recruit governing body members because they want the protection from personal liability that incorporation brings • wants to only be registered with and regulated by one regulator, the Charity Commission <p>Two Models:</p> <ul style="list-style-type: none"> • Foundation (Only Voting members are its trustees) and Association (Open Membership and Voting Rights) 	<ul style="list-style-type: none"> ✓ Legal personality (separate to the governing body) – can take on contracts, take legal action and hold property in own name ✓ Limited liability – to members of the organisation and governing body ✓ Only registered with and regulated by one body, the Charity Commission ✓ Annual returns, accounts and reports only need to be sent to one regulator, the Charity Commission ✓ Permanent succession – no need to transfer legal agreements as in organisation name ✓ Permanent – exists until it is closed ✓ Charity status – can only be a charity ✓ Model rules available 	<ul style="list-style-type: none"> ✗ Time to set up – it will take a long time, at least two months, to set up a CIO and register with the Charity Commission and the organisation won't exist until it is registered ✗ New legal form – the legal framework is not tested so there may be teething problems. And support organisations may be less able to give support because CIOs are so new ✗ Annual returns and accounts – must be submitted to the Charity Commission regardless of income (non-CIO charities only have to submit returns if income is more than £10,000) ✗ Borrowing money – it may be more difficult to borrow money using property as security (mortgages) because there will be no register of charges on charitable assets (unlike for a company assets)

Type and why	Advantages	Disadvantages
<p>Community Interest Company (CIC) Choose if it</p> <ul style="list-style-type: none"> • wants to be clear it is not for private profit and working for the community (usually call itself a social enterprise) • employs or expects to employ staff • owns or expects to own land, building, investments or other substantial assets • is or expects to be involved in assets, leases or contracts where there is financial risk • wants to preserve its assets for the community benefit • wants to pay or be able to pay the governing body members • is finding it difficult to recruit governing body members because they want the protection from personal liability that incorporation brings 	<ul style="list-style-type: none"> ✓ Legal personality (separate to the governing body) – can take on contracts, take legal action and hold property in own name ✓ Limited liability – to members of the organisation and governing body ✓ Permanent succession – no need to transfer legal agreements as in organisation name ✓ Permanent – exists until it is closed ✓ Governing body members may be paid (payments must be reasonable) ✓ Asset lock so assets are protected for the community ✓ Reputation – additional regulation from the CIC Regulator and provides a brand as a social enterprise ✓ Model Mem and Arts available 	<ul style="list-style-type: none"> ✗ Cost – registration fee, set up costs (depending upon who does the set up work), annual filing fee ✗ External accountability – on the register of CICs held by CIC Regulator at Companies House ✗ Paperwork – keep registers, annual returns to Companies House, informing Companies House of changes ✗ Public access to records – information about directors publicly available via the register of companies, registers open for inspection at registered office ✗ Limitations on limited liability (for governing body members) – remain personally liable for fines, acting outside powers, allowing company to continue when insolvent ✗ Permanent endowment – not protected if liquidating assets because of insolvency ✗ Winding up – formal process ✗ Tax – must pay taxes on profits, must pay stamp duty, no gift aid, no mandatory rate relief ✗ Funding – funders may not want to fund CICs ✗ Charity status – can't be a charity
<p>Limited by Guarantee</p>	<ul style="list-style-type: none"> ✓ Most Common Form of CIC and most understood by funding bodies 	<ul style="list-style-type: none"> ✗ As above
<p>Limited by Shares</p>	<ul style="list-style-type: none"> ✓ Liability limited by share holding ✓ Can allow for varied commitment by shareholders based upon holding ✓ Can be a way of raising extra funds through investment in return for fixed 	<ul style="list-style-type: none"> ✗ As above ✗ Funding – Many funding bodies may tend to avoid CICs limited by Shares even more than by Guarantee as an element of profit sharing is involved. ✗ Subject to a Dividend Cap

	<p>dividends.</p>	<p>The Dividend Cap</p> <p>In the case of a CIC existing as a company limited by shares, a 'dividend cap' must be put in place. The purpose of this is to ensure that a balance is achieved between providing an attractive investment opportunity (often essential in stimulating and maintaining the financial backing required to run the CIC) and making sure that the majority of the profits made are applied for the community benefit. The cap has two elements:</p> <ul style="list-style-type: none"> • An aggregate limit on the total dividend declared • An ability to carry forward unused dividend capacity
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Type and why	Advantages	Disadvantages
<p>Cooperative Choose if it</p> <ul style="list-style-type: none"> • wants to be clear it is not for private profit and working for members & the community • employs or expects to employ staff • owns or expects to own land, building, investments or other substantial assets • is or expects to be involved in assets, leases or contracts where there is financial risk • wants to preserve its assets for the community benefit • wants to pay or be able to pay the governing body members • is finding it difficult to recruit governing body members because they want the protection from 	<ul style="list-style-type: none"> ✓ Legal personality (separate to the governing body) – can take on contracts, take legal action and hold property in own name ✓ Limited liability – to members of the organisation and governing body ✓ Permanent succession – no need to transfer legal agreements as in organisation name ✓ Permanent – exists until it is closed ✓ Owned and Controlled by Members ✓ Membership can be open or limited ✓ Equality of Management ✓ Democratic & Equitable ✓ Own legal Body ✓ Limited Liability ✓ Can Pay Dividends to Members 	<ul style="list-style-type: none"> ✗ Grant funding difficult to obtain ✗ Fewer Incentives for large investors ✗ Difficult to negotiate debt capital from banks and other financial institutions (hence better with low start-up costs) ✗ Decision making can be slow ✗ Needs active and committed participation by all members ✗ Can tend to struggle to attract and retain high quality managers (no profit motivation and generally paying lower salaries) ✗

<p>personal liability that incorporation brings</p> <ul style="list-style-type: none"> • an enterprise owned and controlled by its members • members to have an equal say in the enterprise • members to choose what to do with any profits 		
<p>Community Benevolent Society</p>	<ul style="list-style-type: none"> ✓ Member control/democratic ✓ Legal personality ✓ Legal personality ✓ Right to own property ✓ Permanent succession – no need to transfer legal agreements as in organisation name ✓ Permanent – exists until it is closed ✓ Fewer legislative requirement ✓ Less public disclosure ✓ Model rules available ✓ 	<ul style="list-style-type: none"> ✗ Grant funding difficult to obtain ✗ Fewer Incentives for large investors ✗ Difficult to negotiate debt capital from banks and other financial institutions (hence better with low start-up costs) ✗ Not listed at Companies House not Charity Commission ✗ Expensive to create ✗ Accounts subject to charities SORP ✗ Status is not charity as regulated by the Financial Conduct Authority rather than the charity commission where it is exempt from registration
<p>Trust (unincorporated) Choose if it</p> <ul style="list-style-type: none"> • will have very substantial assets or very secure funding and/or will not have long-term financial commitments • will not employ staff <p>will not have a membership</p>	<ul style="list-style-type: none"> ✓ Flexibility – easy to set up, easy to close down, simple ✓ Small number of trustees ✓ Self-perpetuating governing document ✓ Charity status – can only be a charity ✓ 	<ul style="list-style-type: none"> ✗ Personal liability – it is unlimited ✗ Entering into contracts and taking legal action – not a legal entity so can't enter into legal agreements in own right ✗ Holding property and investments – not a legal entity so can't hold assets in own right (although are held by trustees in their name) ✗ Undemocratic – doesn't have a membership ✗