Governance Fact Sheet 1

COUNCIL FOR VOLUNTARY SERVICE
Rochdale

1. Legal Structures

1. What is a Legal Structure

A legal structure combines an organisations:-

- Legal Identity (the type of organisation it is in the eyes of the law)
- Governing document (the statement that lays out how it operates and governs itself)

2. Types of Legal Structure

There are 6 main legal structures of not for profit organisations:

- Unincorporated Association
- Trust
- Company Limited by Guarantee
- Community Interest Company (CIC)
- Industrial & Provident Societies/Co-operatives
- Community Incorporated Organisation (CIO)

2.1 Unincorporated Association

An unincorporated associations exists as soon as; a group of people come together, form some sort of membership to do something for a common purpose which is not for profit, and are governed by rules which lay out criteria for membership, what the group is doing and how they are doing it.

Summary (most typical features)	Informal No general regulation of this type of structure rules are defined by the membership
Ownership and Governance	Nobody owns it
Type of Governing Document	Constitution: Governed by its own rules
Legal Identity	No Legal Identity, the law only recognises the individuals that make up the organisation, (its members and governing bodies).
Can its activities benefit those who own and/or run it?	Depends on its internal rules
Assets locked for community benefit	No
Allowed Charitable Status	Yes
Advantages	Uncomplicated and flexible; it can be setup and wound up quickly, easily and cheaply without involving legal advisors.
Disadvantages	Cannot enter into legal agreements, contract or take legal action in its own name. This means that if it rents a telephone or orders goods or services from a supplier, those contracts are entered into by the individuals who sign the contract personally. Personal liability of individual members of the governing body

Choosing the Unincorporated Association Structure

It may be appropriate to choose an unincorporated association if the organisations does not expect to enter into contracts (own property, employ staff or rent a telephone etc), expect to receive donations or apply for grants and only wants to be a member organisation.

2.2 Trust

A Trust comes into existence when money or property is given to a person to be used for the benefit of a particular community or to fulfil a charitable purpose. The term trust defines the relationship between parties, rather than an organisational structure. However Trusts that are created by a will or declaration of trust are organisations. Individuals often set up personal or family charitable trusts as a tax effective way of donating to charities.

Summary (most typical features)	Asset holding legal body -
Ownership and Governance	Assets owned by trustees and managed in the interests of beneficiaries on the terms of the trust
Type of Governing Document	Trust Deed or Declaration of Trust
Legal Identity	No Legal Identity, the law only recognises the individuals that make up the organisation, (trustees).
Can its activities benefit those who own and/or run it?	No – The trustees cannot benefit, unless the trust, court or Charity Commission Permit it
Assets locked for community benefit	Yes – if the trust is established for community benefit
Allowed Charitable Status	Yes
Advantages	Simplicity, flexibility and ease of creation and winding up
Disadvantages	Undemocratic structure – trustees appointed rather than elected by a membership Personal liability of individual trustees

Choosing the Trust structure

This is only appropriate for organisations with substantial assets or will have very sector funding/and or it can with some certainty ensure it will be able to meet all of its financial obligations. The majority of Trusts are grant making bodies.

2.3 Company Limited by Guarantee

A Company Limited by Guarantee is a legal entity which is separate from its members and directors, this means that it can own land and enter into contracts in its own right. This means that the law considers it to be a person, in the same way as an individual and can enter into agreements (including buying properties). A Company Limited by Guarantee is a membership organisation whose members promise (guarantee) to contribute a sum, usually between £1 and £10, if the organisation becomes insolvent and is wound up.

Summary (most typical features)	Not for profit corporate legal structure which can be adapted to suit most purposes.
Ownership and Governance	Members own the organisations but elect Directors to manage the business on their behalf
Type of Governing Document	Memorandum & Articles of Association
Legal Identity	Yes – members liability is limited to amount unpaid on guarantee
Can its activities benefit those who own and/or run it?	Yes
Assets locked for community benefit	No
Allowed Charitable Status	Yes
Advantages	Contracts are entered into as a legal entity therefore it almost always give limited liability to its members. If the organisation cannot afford to pay its debts is goes into insolvent liquidation and its members are protected from any personal liability for the organisations debts. There is no need to transfer contracts, leases or other legal agreements to new signatories when a member leaves. Also the organisation continues to exist event when members cease to meet until it is formally dissolved
Disadvantages	The setting up will incur costs for legal advice and incorporation fee, and there is an annual filing fee and production of annual accounts. Accountability to members, funders and the general public through Companies House Required to adhere to Company Law, for example failure to comply with legislation could incur fines The governing body need to adhere to detailed company regulations concerning their annual accounts

Choosing the Company Limited by Guarantee structure

It may be appropriate to establish a Company Limited by Guarantee if the organisation is to be quite large;it will have employees; services under contractual agreements; regularly enter into commercial contracts; and it will be a substantial owner of freehold or leasehold land or other property.
It is advisable when setting up a Company Limited by Guarantee to seek advice as this type of organisation is subject to Company Law and is regulated by Companies House.

2.4 Community Interest Company

A Community Interest Company (CIC) is a type of Limited Company, with special additional features created for the use of people who want to conduct business of other activity for community benefit rather than private advantage. A CIC is essentially a business with social objectives that trades and whose surpluses are principally reinvested (a Social Enterprise). The difference between a Community Interest Company (CIC) and a Company Limited by Guarantee is that a CIC has a statutory 'asset lock' to prevent the assets and profits being distributed, except as permitted by legislation. This ensures the assets and profits are retained within the Community Interest Company for community purposes, or transferred to another asset-locked organisation, such as another Community Interest Company or charity.

Summary (most typical features)	Not for profit corporate legal structure for social enterprises focusing on community benefit
Ownership and Governance	Members own the organisations but elect Directors to manage the business on their behalf
Type of Governing Document	Memorandum & Articles of Association
Legal Identity	Yes – members liability is limited to amount unpaid on guarantee
Can its activities benefit those who own and/or run it?	Yes – but they must benefit the wider community as well. It can also pay limited dividends to private investors
Assets locked for community benefit	Yes- all CIC's have this in their constitution
Allowed Charitable Status	No (it would cease to be a CIC)
Advantages	Contracts are entered into as a legal entity therefore it almost always give limited liability to its members. If the organisation cannot afford to pay its debts is goes into insolvent liquidation and its members are protected from any personal liability for the organisations debts. There is no need to transfer contracts, leases or other legal agreements to new signatories when a member leaves. Also the organisation continues to exist even when members cease to meet until it is formally dissolved Directors can be paid to deliver services Flexibility to trade
Disadvantages	The setting up will incur costs for legal advice and incorporation fee, and there is an annual filing fee and production of annual accounts. Accountability to members, funders and the general public through Companies House Required to adhere to Company Law, for example failure to comply with legislation could incur fines The governing body need to adhere to detailed company regulations concerning their annual accounts More expensive than a company as additional fees are paid to the CIC regulator

Choosing the Community Interest Company Structure

It may be appropriate to establish a Community Interest Company if the organisation will have employees; trade and deliver services under contractual agreements; enter into commercial contracts, be the owner of freehold or leasehold land or other property, it will trade through the selling of goods and services it provides and will need to pay its directors.

It is advisable when setting up a Community Interest Company to seek advice as this type of organisation is subject to Company Law and is regulated by the CIC regulator.

2.5 Industrial & Provident Society

There are two types of Industrial and Provident Society, a co-operative and community benefit society. This structure is only available to genuine co-operative societies wishing to trade or deliver services under contract.

Co-operative

This is only available to bona fide co-operatives that serve members

Summary (most typical features)	Co-operative that serves it members interest by trading with them or otherwise supplying them with goods or services
Ownership and Governance	It is owned by members but a committee/officers manage it on behalf of its members. One vote per member regardless of size or shareholding
Type of Governing Document	Rules
Legal Identity	Yes
Can its activities benefit those who own and/or run it?	Yes – but mostly by member trading with the society, using its facilities not as a result of shareholding
Assets locked for community benefit	No
Allowed Charitable Status	No
Advantages	personal liability of members is limited to the amount of their unpaid share capital The legislative requirements are less detailed than for companies and the risk of non compliance is low
Disadvantages	The registration process is slower and more expensive than companies There may be difficulties convincing Inland Revenue and Funders that a charitable Industrial and provident society is a charity as it will not be registered with the charity commission.

Community Benefit

Summary (most typical features)	Benefits the community rather than members and has a special reason not to be a company
Ownership and Governance	It is owned by members but a committee/officers manage it on behalf of its members. One vote per member regardless of size or shareholding
Type of Governing Document	Rules
Legal Identity	Yes
Can its activities benefit those who own and/or run it?	Yes – but mostly by member trading with the society, using its facilities not as a result of shareholding
Assets locked for community benefit	Yes
Allowed Charitable Status	Exempt Charities not registered with the charity commission but can be considered charitable for tax purposes
Advantages	personal liability of members is limited to the amount of their unpaid share capital The legislative requirements are less detailed than for companies and the risk of non compliance is low
Disadvantages	The registration process is slower and more expensive than companies There may be difficulties convincing Inland Revenue and Funders that a charitable Industrial and provident society is a charity as it will not be registered with the charity commission.

Choosing the Industrial and Provident Society Structure

It may be appropriate to choose and Industrial and Provident Society Structure if the organisation will only serve its members (Co-operative) or if the organisation will charge for all or some of the services it provides, wants to avoid the detailed requirements of Company Law and it will not be affected by not having a charity registration number

2.6 Charitable Incorporated Organisations

Prior to December an organisation which wanted to limit its liability had to incorporate (register with Company House) and then apply for Charity Registration. This meant that the organisation would be accountable to two different regulators for two different sets of regulations (namely Company Law and Charity Law). CIO's simplifies this process and replaces it with one regulator, the Charity Commission.

To become a Charitable Incorporated Organisation the following criteria must be met:-

a) Its aims are wholly and exclusively for a charitable purpose:-
- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation
- the promotion of religious or racial harmony or equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- the promotion of the efficiency of the armed forces of the Crown; or the efficiency of the police, fire and rescue services or ambulance services
- any other purposes charitable in law

b) It provides public benefit

c) Its income is over £5,000

Summary (most typical features)	Corporate legal structure specifically designed for charities
Ownership and Governance	Owned by it members who elect charity trustees to manage the charity on its behalf
Type of Governing Document	Constitution
Legal Identity	Yes
Can its activities benefit those who own and/or run it?	No unless constitution, Charity Commission or Court agree
Charitable Status	Cannot be anything but a charity, and must meet the criteria:- • Its aims are wholly and exclusively for a charitable purpose • It provides public benefit • its income is over £5,000
Assets locked for community benefit	Yes – assets can only be used for the achievement of its charitable objects
Advantages	limited liability Only registered with the Charity Commission, which is free. Exemption from income tax or corporation tax on surplus and capital gains tax from the sale of assets, Council Tax Relief, Right to reclaim tax paid by donors, Eligible for zero VAT rate on some goods and services purchased Many funding bodies choose (or are only allowed) to fund charities Good for the public image which may assist with fundraising
Disadvantages	Members of the governing body cannot profit or benefit from the organisation Limits on trading Open to public scrutiny

5. Developing a Governing Document

Once the legal structure of the organisation is agreed, the governing body must write a governing document and officially adopt it.

A governing document is a type of legal contract which sets out:

- The mutual rights and obligations of members and the organisation
- The rights and obligations of the members in relation to each other
- The powers and rights of the governing body

CVS Rochdale has copies of model governing documents which are suitable for all legal structures.

For Further Governance Advice, Information and Support contact CVS Rochdale :

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