

LEGAL STRUCTURES

The law governing the legal structures of charities is complex. Organisations need guidance on what legal structure to choose and what the implications of the different structures are.

This leaflet provides very basic information about the various types of legal structure. This information on Constitutions & Charitable Status should also be read. Contact ELVON for further information.

CHOOSING A LEGAL STRUCTURE

You are not required by law to adopt a legal structure. It is possible for a voluntary group to exist without being formally organised and constituted as long as it is only operating on a small scale.

You may feel that there is no need to have the rules and regulations of a formal structure. However many organisations do find it extremely beneficial if they ever run into problems. If you base your work on verbal agreements, or even unstated assumptions, you could end up in trouble.

A formal structure provides a framework for you to operate within. It gives your group identity, continuity, credibility and a means for establishing common objectives.

The type of legal structure differs from organisation to organisation. It depends on the group activities, whether they own property, employ staff, how much money they receive, etc.

You will need to consider all the pros and cons of each structure and decide which is best for you.

UNINCORPORATED ORGANISATIONS

This type of organisation has no legal identity except as a collection of individuals.

If your group is small, limited in purpose, has a small budget, does not need property or take on employees a unincorporated association may be the best for you.

Advantages

- * Cheap to set up, no fees;
- * Quick to set up—the only people you need to contact is the Inland Revenue if you want to apply for Charitable Status;
- * Cheap to run—you only have to audit your accounts if there are grant conditions or your income is over a certain threshold;
- * There is no requirement to notify changes in Office Bearers; and
- * It offers a democratic structure that is more flexible than other legal structures.

Disadvantages

- * You cannot hold property in the organisation's own name;
- * You cannot enter into contracts in the organisation's own name; and
- * Individuals acting for the group may be held personally responsible for the organisation's obligations and debts. This is probably the main worry for voluntary groups who choose this structure.

INCORPORATED ORGANISATIONS

An Incorporated organisation has a separate legal identity from the individuals in it. There are costs involved in choosing this type of structure that will be prohibitive for a small-scale project. There are costs of incorporation as well as annual running costs and additional administration time.

There are two types of Incorporated Organisations.

- * A Company Limited by Guarantee; and
- * An Industrial and Provident Society.

COMPANY LIMITED BY GUARANTEE

This is a useful structure for groups who wish to enter into long term commitments such as taking on premises and employing staff.

Advantages

- * Member's liability is restricted (usually £1.00);

- * The organisation can hold property and borrow money; and
- * The organisation is subject to the democratic control of members.

Disadvantages

- * The organisation is bound by the Companies Act and thus more controls than any other structure;
- * Costs of setting up including legal advice may be substantial; and
- * There are annual fees and accounts must be audited annually.

TRUSTS

Trusts, like unincorporated organisations, are reasonably cheap and quick to establish. A Trust is a structure where land or other property, including money, is held and managed for clearly defined purposes.

Trustees are personally liable for any loss resulting from actions in breach of the trust. Also, unless special provisions are built into the trust deed, each trustee stays in office until he/she resigns. This means that there can be a lack of accountability.

INDUSTRIAL AND PROVIDENT SOCIETY

An Industrial and Provident Society is an incorporated organisation that is either a co-operative society or is intended to be conducted for the benefit of the community. Like a Company Limited by Guarantee, the Management Committee are protected from liability.

This will be the only legal structure available if your organisation is going to be a housing association or credit union.

WHAT DO OTHER GROUPS DO?

When deciding on the legal structure of your organisation, why not visit similar projects?

Find out how they are organised and why. Ask them what the benefits and disadvantages of their legal structure are. Use the opportunity to learn from their experiences. You could save a lot of time and trouble later!

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