

VOLUNTARY

ACTION

North

Lanarkshire

*A GUIDE TO STARTING A
GROUP*

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INTRODUCTION

More and more individuals want to start a voluntary group and give something back to the community. To ensure success, it's beneficial to be aware of all the steps involved in getting it off the ground and to be aware that there's a lot involved with growing and sustaining a group. This guide aims to inform and advise on all aspects of starting a group.

VANL offer a range of sources and support for groups and volunteers. For more information go to www.voluntaryactionnorthlanarkshire.co.uk or email info@vanl.co.uk or phone 01236 748011.

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*Setting up and
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Setting up a Community Group or Project

You and your friends have an idea for a community project, activity or service - can you make it work? How do you get started?

First and foremost - do not work in isolation. Getting started should always include some kind of 'market research' – test the water, asking what people think, finding out whether or not your idea is feasible.

With the community behind you, and the group's aims and objectives clearly identified, you can explore this section to learn about the different options for formalising a group. You may also want to look at the information on seeking charitable status.

Whilst most of the content in this section is applicable to the initial setting up of a community group or project, some may also apply to existing groups who are considering a change of structure or looking at becoming a registered charity for the first time.

Identifying the need

Identifying the need should always come first when setting up any community group or project. A community project or activity is never going to get off the ground or work successfully if there are only two or three people in the community talking about it. The initial stages should include research - establishing public opinion and assessing people's needs. You may think that your idea is the answer to the community's problems – but does the community share your view? Involve the rest of the community. Do your homework - it will only be worth taking your idea forward if there really is a need for it.

Setting up a Steering Group

A steering group is the first 'informal' stage of a community group or project. The steering group will usually be made up of volunteers who have put themselves forward (or been nominated) from an initial public meeting. They should share the enthusiasm and commitment for the ideas that the community want them to take forward and explore further. They will also need the time, energy, skills and knowledge to 'steer' things forward to the next stage.

Holding an initial Public Meeting

Holding an initial public meeting is a good way to start. No community service or activity is ever going to be successful if there are just a couple of people talking about it. It is essential to do the ground-work and take time to ask what other people in the local area think.

Choose a venue which is accessible (the local hall or community centre may be an ideal choice). Make sure that you advertise it appropriately to encourage a good attendance. At the meeting set out the ideas clearly and encourage discussion. This will enable you to gauge public opinion and enthusiasm – are they for or against your ideas? If the majority of attendees consider the ideas to be sound and worth investigating further, thank them for their participation and invite volunteers to form a steering group. To keep the momentum going, the volunteers who put themselves forward for the steering group should aim to meet as soon as possible after the public meeting.

The next stage – tasks for the Steering Group

The steering group needs to work together as a team and to be in agreement about what it is trying to achieve, why it exists, who is going to benefit and how it intends to conduct itself. To

form the framework for the operation of the community group, the steering group should have a clear vision, mission statement and shared belief and values.

It is helpful for the steering group to write a plan of action – the complexity of this will depend on the nature of what the steering group is trying to achieve. It is also a good idea to draw up a list of initial tasks. These may typically include:-

- deciding on how to organise the steering group itself. Very often the steering group members will need to be doing several things at once, and it may help to allocate specific tasks to individuals. It is also useful to nominate someone to act as 'chair'
- identifying basic start- up costs and agreeing on how these are going to be paid for. Outlay for things such as postage, phone calls, photocopying, venue hire all add up and at this stage the group will not be able to open a bank account
- speaking informally to local support agencies (find these via your local Third Sector Interface). They can offer valuable information and advice on all aspects of setting up a community group or project and they can help you identify possible funding sources
- identifying similar projects or groups that already offer activities and services in the local area. Talking to the volunteers (or staff) involved in the running of these, and asking about their experiences, will help avoid duplication of effort and highlight possible ways of working together

Setting up a community group or project takes time. The steering group needs to keep talking to each other, to support agencies and to the wider community. All this will help to clarify the need, find the best means of finding a solution and to keep 'steering' the idea forward.

Choosing a Structure

Choosing a Structure

Community groups take many forms – from small clubs run entirely by volunteers to larger companies run as social enterprise for community benefit. Some have paid staff, the vast majority do not. Each will have a structure, making it easier to run the group. Community group structures include:-

- Unincorporated Association
- Charitable Trust
- Company Limited by Guarantee
- Scottish Charitable Incorporated Organisation (SCIO)
- Community Interest Company (CIC)
- Registered Societies

Why choose a structure?

Whilst there is no legal obligation for your group to adopt a formalized structure, having a structure does offer you clear advantages.

- a structure gives your group a more formal base from which to work
- it will mean that you have a set of rules and guidelines (your constitution) and you will need a constitution to open a bank account
- a structure can give your group more credibility and encourage support for your aims – particularly those structures which mean that your group will be reporting to a regulatory body and have to be legally compliant
- most funders require your group to have a structure (be formally constituted) before they will consider an application for grant assistance from you

How to choose the best structure for your group

Before looking in more depth at the different options available, ask yourselves the following questions. Your answers to these will help guide you to choosing the most suitable structure for your group:-

- what is your group set up to do? What are you aiming to achieve?
- who can become a member and how do you intend to recruit members?
- who will be responsible for managing and controlling the group? How will they be appointed? What will they be authorised to do?
- how will the group's members meet and make decisions?
- does your group or organisation intend to be borrowing money and / or giving grants or loans to others?
- does your group own property or is it likely to own property in the future?
- is it likely that your group will be handling large sums of money?
- do you envisage the group employing paid staff?
- is your group thinking about charitable status?

When your group is in the early stages of setting up, it is likely to be the steering group who will need to consider these questions. Understandably, they may not have all the answers straight away but they will have an idea about the nature and likely scale of what the group is being set up to achieve.

For example, if the group is being set up to run a local sports club for young people who will meet in the local community centre once a week, then it is unlikely that they will be employing staff, owning premises or handling large amounts of money. However, a

community group which is looking to take over the running of the local shop will need to consider the implications of owning or leasing a building (the shop) and taking on staff. They are also more likely to be handling larger sums of money.

Broadly speaking, the choices of community group structures fall under two categories:-

To remain unincorporated

Most groups start out unincorporated, existing simply as a group of individuals who have agreed to come together for a shared aim that offers community benefit of some kind. You may decide that you want to remain this way. However, it is important to realise that unincorporated groups have no legal identity except as a collection of individuals.

This means that an unincorporated group cannot:-

- hold property in its own name
- enter into contracts in its own name
- undertake legal proceedings in its own name

Individuals acting for an unincorporated group (that is the executive or management committee members) may be held personally responsible when things go wrong (for example if the group end up in debt or with outstanding legal obligations).

To become incorporated

Becoming incorporated gives your group or organisation a legal identity of its own (separate from the individuals involved). This means that it can:-

- hold property and enter into contracts
- borrow money
- defend or take legal proceedings

Being incorporated offers individual members and committee/board members protection against unlimited personal liability. If your group wants to employ someone or wants to enter into a contract concerned with buying or leasing property, then becoming incorporated would be a sensible route to take.

Unincorporated Charitable trust

An unincorporated Charitable Trust is a simple structure consisting of a collection of individuals who have come together with shared charitable aims or purposes – commonly relating to the protection and management of money or property (that is specific assets).

This structure is not a democratic one. The Trustees are usually the only members and decision making rests entirely with them. Trustees choose other Trustees - effectively making it a 'closed shop'. Once they are appointed, the Trustees of a Charitable Trust usually have an unlimited term of office - they do not have to stand for re-election and can basically hold their offices until they resign (or die).

By its very nature a Charitable Trust only exists as a charity registered with the Office of the Scottish Charity Regulator (OSCR). It will therefore need to pass the two-part Charity Test demonstrating that its purposes are charitable and that its activities/services provide community benefit. The running of the Charitable Trust will be regulated by OSCR with reference to The Charities and Trustee Investment (Scotland) Act 2005.

Advantages to being a Charitable Trust

- relatively cheap to set up - although you may incur legal fees for drawing up the Trust's constitution (called a Trust Deed or Declaration of Trust)
- relatively cheap to run
- shares the advantages of being a registered charity

Disadvantages of being a Charitable Trust

- not a democratic structure - this may make it difficult to access some funding streams
- cannot sign legal contracts in name of group – this means that any lease documents, rental agreements, hire contracts, funding contracts etc will need to be in the name of one (or more) of the individual Trustees.
- trustees face unlimited personal liability for losses resulting from actions in breach of the Trust.
- if the Trust is small - statutory reporting duties and Trustee responsibilities relating to charitable status may outweigh advantages
- can be inflexible and not necessarily future-proof - once a Trust has been set up the legal structure can be difficult to change.

Most suitable for:

An Unincorporated Trust may be the best option if your group:-

- aims to hold property or money 'in trust' for a specific purpose
- does not consider the lack of democratic accountability a problem
- Not to be confused with 'Development Trust'

Charitable Status

Charitable status is not a legal structure in itself. It is more like a 'badge of credibility', the icing on the cake or the license plate on the car, something which enhances the public profile of your group.

Your group cannot simply choose to call itself a charity. It is a legal offence in Scotland for a group to refer to itself as a charity if it is not on the Scottish Charity Register. Charitable status can only be gained by successful registration with the Office of the Scottish Charity Regulator (OSCR).

OSCR are responsible not only for the registering of new charities, but also for ensuring that charities on the Scottish Charity Register continue to comply with all aspects of the legislation that regulates charities in Scotland - The Charities and Trustee Investment (Scotland) Act 2005.

Not every group is eligible to apply for charitable status. The Charities and Trustee Investment (Scotland) Act 2005 sets out clear definitions for 'charitable purposes'. Your group should consider whether or not its core objectives (purposes) are likely to be regarded as charitable, and whether or not the activities of your group offer public benefit.

What are the advantages of charitable status?

The 'badge' of charitable status and the reassurance that charities are regulated, brings with it a degree of credibility which gives the public confidence in your group. This in itself can also encourage support and public donations.

There are also financial advantages to having charitable status such as:-

- the charity may qualify for rates relief from local authorities
- the charity can register with HMRC to get tax relief/Gift Aid
- some funders will only support registered charities, increasing your group's possibilities for securing financial assistance

What are the disadvantages of charitable status?

Your group will need to weigh up the many advantages of charitable status against the additional ongoing legal responsibilities and statutory duties of being a registered charity. These include:-

- statutory reporting
- Charity Trustee duties

Company Limited by Guarantee

A Company Limited by Guarantee is a democratic legal structure, usually with a two-tier membership.

The general members will elect or appoint people from the membership who they believe will run the company in a competent manner on their behalf. These people will be the Board of Directors. The Board must not include anyone who is legally disqualified from becoming a Director of a Company Limited by Guarantee:-

- someone who is an undischarged bankrupt (except with leave of the court)
- anyone under the age of 16
- anyone disqualified by a court from acting as a company director (unless he or she has been given permission to act by a court for a particular company)

All important matters affecting the structure of the company are referred to the members for a decision.

The constitution or governing document of a Company Ltd by Guarantee is called the Articles of Association (previously the Memorandum and Articles). The Articles will set out the period of office that board members can serve before they need to stand down (or retire) from office, along with procedures for re-election and the election of new directors. The Articles will be formally adopted by the members at the first general meeting of the organisation.

The membership of a Company Ltd By Guarantee - including the Directors - cannot benefit from any profits (surplus income) made by the company. If the organisation runs into debt, the members' liability is limited to an agreed guaranteed amount (usually a nominal sum of £1 each). However, incorporated limited company status does not protect directors found to be willfully negligent or who do not have due regard for the interests of creditors. They can also be found guilty of a criminal offence.

As a corporate body, a Company Ltd by Guarantee is regulated by company law (currently the Companies Act 2006). Compliance is regulated by Companies House.

Director responsibilities include statutory obligations in relation to filing returns and keeping proper records and most importantly in monitoring the company's financial position and taking immediate steps to prevent insolvency.

If a Company Ltd by Guarantee also has charitable status, this will be regulated separately under the Charities and Trustee Investment (Scotland) Act 2005 with the Office of the Scottish Charity Regulator (OSCR) ensuring compliance. Directors of a Company Ltd By Guarantee with charitable status will therefore have dual statutory responsibilities and filing duties.

Advantages to being a Company Ltd by Guarantee

- the organisation can hold property and borrow money in its own name
- personal liability of members is limited
- may be eligible to apply for charitable status (if the group's purposes are 'charitable' and its services/activities offer community benefit)
- two tier structure for decision making allowing democratic input from members including the chance to vote on election/re-election of the board of directors

Disadvantages of being a Company Ltd by Guarantee

- may incur some setting up costs
- statutory filing to Companies House
- will need to prepare Annual Accounts compliant with company law (and if a registered charity these will also need to be compliant with charity legislation)
- if a registered charity – legal duties/responsibilities for the Trustees and filing commitments to OSCR
- members cannot benefit from any 'profits' made

Most suitable for

This is a useful structure for community groups/organisation which:-

- are actively involved in (or planning to be involved in) the running of projects which require lease or purchase of premises, long-term contractual commitments or the employment of paid staff.
- are handling substantial sums of money
- want the option of applying for charitable status (if the group has charitable purposes and activities which offer community benefit)

How to become a Company Ltd by Guarantee

Applications for incorporation as a Company Ltd by Guarantee are made to Companies House the application may be submitted online using the Web Incorporation Service or by completion and submission of a form to Companies House by post.

Scottish Charitable Incorporated Organisation

A Scottish Charitable Incorporated Organisations (SCIO) is a legal (incorporated) structure exclusive to groups with registered charitable status in Scotland. To be eligible to apply to be a SCIO your group must therefore have charitable purposes and deliver activities which provide community benefit (these conditions are part of the two-part Charity Test applied to any group seeking charitable status in Scotland).

As a corporate body (for example like a Company Ltd By Guarantee) a SCIO can enter into contracts, employ staff, incur debts, own property, sue (and be sued).

A SCIO must:-

- have its principal office in Scotland
- have two or more members; these may include some or all of the charity trustees subject to the terms of the SCIO's constitution
- have three or more charity trustees
- keep and supply a register of members and charity trustees

A SCIO is regulated under the Charities and Trustee Investment (Scotland) Act 2005 with the Office of the Scottish Charity Register (OSCR) as the regulatory body.

Advantages to being a SCIO

- members' personal liability is limited. Charity trustees are protected from incurring unlimited personal liability except in instances where they are reckless; negligent; have acted illegally or have acted outwith their powers in the management and control of the charity
- one regulatory body - a SCIO only reports to the Office of the Scottish Charity Regulator (OSCR). OSCR not only regulates compliance with respect to the SCIO's charitable status but also its legal structure. There is no requirement for separate reporting to Companies House.
- has the advantages of charitable status

Disadvantages to being a SCIO

- requirement to keep a register of members – if you have a large/shifting membership this may be difficult to comply with
- membership is required to take on some of the responsibilities of the Trustees
- a SCIO can only exist as a registered charity - if a SCIO loses its charitable status, it legally ceases to exist.

Most suitable for:

The SCIO structure is most suitable for groups with charitable purposes who:-

- plan to own or manage assets including running an office or property, employing paid staff, or entering into contractual agreements
- want the protection of limited liability that comes with being incorporated
- have a small to medium sized membership that they can keep a register of

How to become a SCIO

Once you have decided that your group wants to become a SCIO, you should first look at developing a suitable constitution or governing document. To make this easier you can use the SCIO model constitution template as a basis. Your SCIO constitution should contain basic information about how your group will be governed. In particular it should also set out:-

- rules for the charity trustees - who is eligible to be a charity trustee? How are charity trustees appointed?
- details of the procedures that members and charity trustees must follow to withdraw from membership or their positions as charity trustees, and how they may be removed from the SCIO
- any restrictions your group wants to put on the powers of the SCIO (A SCIO has powers under the 2005 Act to do anything to further its charitable purposes unless its constitution restricts those powers)
- the organisational structures of the SCIO
- for example, are the charity trustees and the members identical (a single-tier structure), or does it have a separate body of members (a two-tier structure)?
- procedures for meetings
- how will meetings be convened and recorded? This should cover both members' meeting and charity trustees' meetings.
- what is the quorum for any meetings of the SCIO? Again, this covers both members' meetings and charity trustees meetings.
- what voting rights do members and charity trustees have?
- how will resolutions be passed?
- any restrictions on the remuneration of charity trustees which are additional to the restrictions in Section 67 of the 2005 Act, for example, a ban on remuneration being paid to charity trustees.
- procedures for dealing with any conflict of interest.
- details of how the SCIO will use any surplus assets it has at the time of its dissolution. These assets must be used for charitable purposes which are the same as or which resemble closely the SCIO's own purposes.

Once you have drafted your constitution, two people from your group will need to make the formal application to OSCR. They will need to prove that the group satisfies all the requirements for being a SCIO - including charitable purposes and activities which provide community benefit (the two-part Charity Test).

Converting an existing Charitable Company to SCIO form

Incorporated organisations with existing charitable status, and Registered Society may apply to OSCR to convert to becoming a SCIO. They will need to satisfy the requirements of the two part Charity Test and have a suitable constitution (governing document)

Community Interest Company

A Community Interest Company (CIC) is a limited liability company providing services or activities for community benefit. CIC's operate on a business model, aiming to make a surplus or profit to support their activities. However, unlike a Private Sector business, the profit made by a CIC is not distributed to individuals running the company. Any profits made are used exclusively to further the aims of benefiting the community - either a specific geographic community or a community of interest (a specific group of people).

CICs are often run as social enterprise, although their activities and services can be broader than the 'social purposes' of a social enterprise. Whilst the ideas for a community benefit trading activity may come from an entrepreneurial individual, the company structure will need to be democratic with the members appointing/electing suitable Directors to run the company on their behalf.

CIC Board members (Directors) must not be:-

- an undischarged bankrupt (except with leave of the court)
- anyone under the age of 16
- anyone disqualified by a court from acting as a company director (unless he or she has been given permission to act by a court for a particular company)

To be a CIC, your group will need to:-

- meet the Community Interest Test
- ensure that your governing document (also referred to as your Articles of Association or constitution) includes certain specified requirements relating to being a CIC
- be incorporated by Companies House in the same way as a normal company, with the same incorporation documents supplemented by a Community Interest Statement.
- observe statutory reporting requirements
- keep the community in touch with its activities
- only use your assets and profits for the community specified (or pass them to another body with similar features)
- include reference to being a CIC in your groups name

Proving Community Interest

As part of the application process to become a CIC, your group would be required to pass the Community Interest Test. The definition of community interest (benefit) that applies to CICs is fairly wide (and certainly much broader than the definition of community benefit for charities) but it does exclude some groups (such as those with political aims or whose activities involve political campaigning).

A CIC offers the flexibility of a wide range of activities such as:-

- running trading activities to support deprived communities here and abroad
- running a business (for example, a retail or manufacturing operation) as a trading arm to generate profits to support activities which directly benefit the community
- running community services more directly, for example by running day centres, or providing transport or other services in the community

The assets and profits (surplus income) of a CIC must remain with the community specified. This prevents disposal of assets to anyone other than the community and is referred to as the Asset Lock.

A CIC has the flexibility to adopt the legal structure of either:-

- a Company Ltd Guarantee,
- a Public Company Ltd by Shares
- a Private Company Ltd by Shares

Each of these will offer separate benefits and obligations which means that a CIC can consider which is best suited to its needs. All CICs (whichever corporate form they adopt) are regulated by Company Law and by the Community Interest Company Regulations 2005. Compliance is regulated by Companies House and the CIC Regulator, meaning that the Directors of a CIC will have statutory filing duties to both.

Advantages of being a CIC

- as a corporate body, a CIC can hold property and borrow money in its own name
- flexible options for trading for community benefit without private gain
- personal liability of members is limited
- two tier structure for decision making allowing democratic input from members including the chance to vote on election/re-election of the board of directors
- asset lock ensures that profits/assets are retained by the community
- directors may receive limited payment (if the CIC's constitution or Articles permits)

Disadvantages of being a CIC

- may incur some setting up costs (such as legal fees and registration fees to Companies House)
- dual reporting to both Companies House and the CIC Regulator including statutory filing of Annual Accounts along with annual CIC Report
- cannot apply for charitable status in Scotland

How to apply

To be eligible to be a CIC, an enterprise or business must pass the Community Interest Test, make a Community Interest Statement and comply with the relevant legislation. An existing company may be converted to a CIC by changing its name and making the necessary changes to its constitution (or Articles).

Most suitable for

A Community Interest Company (CIC) is most suitable for groups who:-

- want to trade for the benefit of a specific community (as long as any current constitution permits them to do so)
- can prove that their activities and services will benefit the community
- want to limit the personal liability of members
- want to run/lease/manage/own community assets such as shops, garages, day care centres
- do not have charitable purposes and are not seeking charitable status (in Scotland a CIC is not eligible to be a registered charity itself)
- are existing charities who want to set up a trading arm (the trading arm, which would not have charitable status itself, could be a CIC)

For further information on forming a CIC, or converting an existing company to a CIC visit the CIC Regulators website.

Registered Society (*Industrial and provident Society): Co-operative and Community Benefit Society

***Registered society' are all those societies registered under the Co-operative and Community Benefit Societies Act 2014. This includes co-operative societies, community benefit societies. Societies previously known as 'industrial and provident societies' are now referred to as 'registered societies'.**

A Registered Society is an incorporated organisation or enterprise trading or operating for community benefit. It can be run either as a co-operative (with each member having a say in the control of the society plus a share in the profits/losses) or as a company benefiting the wider community (in which case it may be eligible to apply for charitable status).

Examples of Registered Society activities include:-

- housing co-operatives
- working men's clubs
- women's Institute markets
- allotment societies
- mutual investment companies
- Scottish Co-operative supermarkets

A registered society has a legal identity in its own right which offers the protection of limited liability to its members.

Registered Society co-operatives are owned and run by the members (at least 3 individual members), with individual shareholding capped at a certain level. Each member has a vote in the control of the company. They will elect a management committee to oversee the running of the company, and profits are shared (usually distributed to members according to their contribution to the trading or business of the society).

Registered Societies are regulated by the Financial Conduct Authority (FCA) in a manner similar to other company structures, and with reference to legislation relating specifically to Friendly Societies, Co-operative and Community Benefit Societies and Credit Unions.

Advantages of being a Registered Society

- can own property, employ staff and raise funds in its own right
- provides protection from unlimited personal liability for the individual members and management committee (this does not exclude liability for any negligence or failure to comply with relevant legislation)
- benefits of incorporation without some of the complexity of forming a limited company

Disadvantages of being a Registered Society

- members may not want the responsibility of being shareholders
- inflexible standard constitution (Model Rules). If your group chooses to make too many changes to the model constitution (Rules) this can hold up the registration process and incur additional setting up costs
- unfamiliar structure for many funders and agencies

Most suitable for Groups who:-

- want to trade or operate for community benefit
- require flexibility to be able to share profits amongst members

- want to limit personal liability but are not keen on becoming incorporated as a Company Ltd by Guarantee or Community Interest Company

How to Apply

If your group is considering a Registered Society structure, you will need to adopt a Registered Society model constitution and apply through the Financial Conduct Authority (FCA).

Development Trusts

The term Development Trust does not refer to a specific legal structure. It can be applied to any group or organisation which:-

- is owned and managed by the local community
- has social aims relating to improving the economy, environment and culture of a community
- generates its own income through enterprise and the ownership of assets.
- re-invests any profits or trading surplus back into running the organisation or benefiting the community.
- works in partnership with other organisations (private, public and third sector)

These groups may be incorporated as a company limited by guarantee, a community interest company or registered society and some will have charitable status.

COMMITTEE & BOARDS

Establishing your Committee/Board

The Committee, Management Committee or Board (if you are a Company Ltd by Guarantee or Community Interest Company) is the governing body of a community group.

The volunteers that make up the committee are crucial to the running of any community group. They are the people responsible for taking care of the organisation on behalf of the members. They 'govern' the group. Everything they do is often referred to as 'governance'. Governance is about setting long term direction, making sure that things are in place to keep that forward motion going.

If your group is small and unincorporated, your committee will be very hands on. They may be involved in actually delivering the services or activities your group provides. They still need to govern the group – ensuring that it has the resources to continue to thrive.

The committee or board of directors on a larger, incorporated group may be less hands on, but they will still be the ones responsible for ensuring that everything is in place for the group to keep going. The day-to-day management and delivery of services/activities may be delegated to other volunteers or even paid staff but it will be the board (or committee) that has overall responsibility.

The members that make up the committee may be called:-

- committee members – if your group is unincorporated
- directors - if you are a limited company (Company Ltd by Guarantee or Community Interest Company)
- charity trustees – if your group is a registered charity

Establishing Your Committee

When your group is in the process of getting started, it is often useful to have a steering group as the first 'informal' committee. They will do all the research and groundwork required to move things forward. Your group's inaugural general meeting will usually be the platform for the election of the first committee members. They should be willing volunteers and ideally people with the required skills and experience to take forward the long term aims of the group.

Your group's committee will usually be nominated or elected from your general members . This procedure will be set out in your group's constitution (or governing document). How long your committee members can serve before they are required to step down and/or stand for re-election should also be included in your group's constitution.

Ensuring your committee is up to the job

In theory, anyone over the age of 16 years in Scotland can become a committee member, but it will be up to the members of your group to make sure that whoever they elect/appoint to be on the committee (or board) is competent and fit for the role.

Disqualified persons

If your group/organisation is incorporated (for example as a Company Ltd by Guarantee or a Community Interest Company) some types of people are legally disqualified from becoming Directors on the board, they include:-

- anyone who is an undischarged bankrupt (except with leave of the court)
- anyone already disqualified from being a Company Director subject to a disqualification order or disqualification undertaking, under the Company Directors Disqualification Act 1986(c.46) or the Company Directors Disqualification (Northern Ireland) Order 2002

If your group is a charity registered in Scotland (or is considering an application to become one) there are additional disqualifications for anyone being elected or appointed to act as a Charity Trustee.

These are any person who:-

- has been previously removed from the office of Charity Trustee by the Charity Commission in England & Wales

It is a good idea to get new Directors/Charity Trustees to sign a declaration of eligibility prior to appointment and to ensure that these declarations are reviewed annually (for example after each Annual General Meeting).

Committee Skills

Ideally, your group should aim for a committee that has a good mix of skills and experience amongst the members. Good committee members are volunteers who:-

- share the beliefs and aims of what your group wants to achieve
- have enthusiasm and commitment
- are honest, fair and have an understanding of equality and diversity
- have experience of book keeping and administrative work
- are skilful at diplomacy
- are good listeners - able to communicate effectively
- are not legally disqualified

Dividing up the job

To ensure that all the legal and management duties are carried out on time and efficiently, it is advisable for a committee to have designated roles. The four most common roles will be that of:-

- Chairperson
- Vice chairperson
- Secretary
- Treasurer

Role of Chairperson

Your chair person plays a key role in making the committee work together effectively. Most people assume that the chair is there simply to keep meetings in order, but the responsibilities of the chair person include much more than this.

Your group's chair person has a managerial role within your group and should be the one to:-

- liaise with the treasurer and secretary
- consult with committee members as necessary
- ensure that staff and volunteers are supervised and supported.
- take overall responsibility for legal, health and safety and insurance matters
- act as representative and spokesperson for the group

Your chair has a role to play before, during and in between meetings.

Role of the Chair - before a meeting

- The chairperson should liaise with the secretary, treasurer, committee members and staff as appropriate, and with any member who has a specific issue to bring to the meeting. They should be informed about topics to be discussed and the decisions or actions needed.
- The chairperson should also contact and brief new committee members on the aims and objectives of the organisation.

Role of the Chair - during a meeting

- During meetings the role of the chair is all about making the meetings as effective as possible:-
- start the meeting on time and keep to time limits while allowing for adequate discussion.
- keep the meeting focused on the agenda. Allow extra items to be dealt with under AOCB (any other competent business) or deferred until another meeting
- encourage all members to participate in a broad discussion and summarise the discussion, bringing it to a close by reviewing the points made for inclusion in the minutes
- should a vote be required, clarify the voting procedure and clearly state the proposals. In the event of an even split, the chairperson has the casting vote. State clearly the agreed outcome of any discussions and votes
- arrange the date of the next meeting

Role of the Chair - following a meeting

- The chairperson should liaise with the secretary, treasurer, committee members and staff as appropriate over any action to be taken as a result of discussion.

Role of the Vice Chair

- The role of the vice-chairperson is to deputise for the chairperson in their absence, adopting his or her responsibilities and authority, and to co-operate with the chairperson to encourage and promote the work of the organisation and management committee.

Role of Treasurer

Sound financial management makes an organisation more credible and the role of the treasurer is all the more important as the handling of a group's finances has a direct bearing on how it is perceived both by the public and by funders.

Keeping your group's finances in order is a legal duty for any incorporated group or groups with charitable status.

The main duties of the Treasurer are to:-

- keep accurate records of all financial transactions (income and expenditure)
- manage petty cash, sign cheques and retain safe keeping of the cheque book
- collecting membership subscriptions, unless there is a membership secretary
- the treasurer should not make decisions on spending, other than on small amounts, this is something for the committee to discuss and agree on

Financial Reporting

The Treasurer is responsible for keeping the committee informed about the group's financial position in easily understood terms, so that they can make decisions in full knowledge of the implications. Financial reporting includes:-

- informing the group about likely income and projected expenditure, prepare estimates, cash flows and budget plans
- pulling together financial information from a day book (or ledger) and the petty cash into the annual accounts. The format of the Annual Accounts will depend on your group's legal **structure and income**

The Treasurer and fundraising

Fundraising is the responsibility of the whole group, and should not be left to the treasurer; however the treasurer is often the most obvious person to assist with fundraising and funding applications. This is something your whole committee should decide and review.

Role of Secretary

The secretary is responsible for keeping people informed of the group's activities and their main duty is the day-to-day running of the group. The exact work and the amount of work they are required to do will depend on the size and nature of the organisation, on your group's legal structure and whether or not you are a registered charity.

For incorporated groups/organisations, having a separate Company Secretary is no longer mandatory. If your Company Ltd By Guarantee or Community Interest Company already has a separate company secretary, but decides it no longer needs one, you can notify Companies House using the correct form. Remember that you should also check what it says in your company's Articles. Some old Articles may make specific references to appointing a Company Secretary, in which case they would need to be reviewed, and the correct procedures followed to make an amendment. For more information on this visit Companies House Website.

Usually the Secretary will:-

- handle the group's correspondence and keep records
- send any reports or publicity to the media (unless there is a publicity officer)
- keep membership lists up to date

- keep records of all correspondence for at least one year
- ensure legal duties are carried out, including (where relevant) reporting to Companies House and/or OSCR, however the committee is jointly responsible for legal duties and it should not be assumed that the secretary will take these duties. Have a meeting and decide how to divide tasks up but do make sure that a named person, or persons, takes responsibility

The Secretary also has a role to play before, during and after meetings.

Role of the Secretary - before each meeting

- liaise with the chairperson, treasurer, committee members and staff as appropriate to draw up the agenda and check that all members have carried out any work they undertook to do
- book the meeting venue, and arrange catering if required
- distribute the agenda
- give adequate notice calling the meeting (according to your group's governing document)
- send out all relevant papers, for example, minutes of the last meeting, reports and correspondence, etc. prior to the meeting, or make them available at the meeting
- record apologies

Role of the Secretary - during meetings

- ensure that a quorum is present (refer to the number of people stated in your group's governing document as being the minimum required to vote or make a decision)
- take minutes (unless there is a minute secretary). Advise the chairperson of any information which may be particularly relevant
- Role of the Secretary - after meetings
- write up the minutes as soon as possible
- copy draft minutes to the chair and to any persons not present at the meeting
- make sure everyone knows what action points they have agreed to do, this should be recorded on the minutes
- never destroy the minute book or file

General Committee Responsibilities

Whether they sit on the Board of a Company Ltd by Guarantee or a small unincorporated association, and whether or not the group has charitable status, all committee members have collective general responsibilities that underpin any legal requirements.

Giving your group direction

The committee are appointed to manage the group on behalf of the members. They therefore need to be forward thinking and should plan your group's development. Monitoring and reviewing progress on the way is essential to this.

Keeping your group within the law

The committee is required to ensure that your group is compliant with all legal requirements

Managing people

It will be the committee who has responsibility for the recruitment and development of the group's most important asset – its people. Your committee will have a role in managing

everyone involved in the delivery of activities and services of your group - volunteers and/or paid staff. If your group is employing staff then the committee (or board) becomes the employer.

Being accountable

The committee needs to be accountable to the group's members, to funders, to regulatory bodies (where applicable), to the local community and to the general public. The committee may be handing public money (grants), receiving donations (if a registered charity) and welcoming support from a wide range of people. Committee members need to be seen to be managing the group effectively and reporting on its progress. They also need to have in place appropriate policies and procedures, which are regularly reviewed and updated.

Managing your group's resources

It will be up to the committee to manage the group's finances. They will need to ensure that they keep proper financial records and abide by any conditions set by funders. They also need to be able to produce proper Annual Accounts in the format denoted by the group's structure and/or charitable status.

Managing yourself

Being on a committee should be about working together as a team. Collectively the committee members are there to work for the good of the group as a whole. They should aim to meet on a regular basis, have a clear vision and a strong diplomatic chair person who can ensure that meetings are effective and productive.

The legal responsibilities and duties required of your committee members will depend on the structure of your group and whether or not you have charitable status.

Legal Responsibilities

Your committee is responsible for taking care of the organisation on behalf of the members. As such, it has a duty to ensure that it is treating people fairly, recognising that people are individuals, and ensuring their safety. Whatever the size or structure of your group (and irrespective of whether or not you have charitable status) there will be legislation that your committee will need to be aware of and comply with.

These will typically include:-

- Equality laws
- Data Protection
- Health and Safety
- Licensing Laws (if your group is holding events; serving alcohol; playing music or providing entertainment)
- Child Protection/Vulnerable Adult Protection (If your group has volunteers or staff who work with children or protected adults, the Protection of Vulnerable Groups Act means that your group will need to register for Disclosures)
- Employment laws
- Food Hygiene regulations

As well as general committee responsibilities, your group's committee members will also have specific legal duties and responsibilities. These will vary depending on your group's legal structure and whether or not you are registered as a charity.

It is the committee as a whole (and not just those acting as chair, vice-chair, treasurer or secretary) that has a legal obligation to make sure the group's legal duties are fulfilled.

Charity Trustee Duties

If your group or organisation is a registered charity in Scotland, the Charity Trustees will usually be the members who are elected or appointed to form your governing body. If your group is incorporated, the Charity Trustees will be your Board of Directors. If your group is unincorporated, it will be the committee members.

In Scotland, current charity law (The Charities and Trustee Investment (Scotland) Act 2005) extends the definition of who is a Charity Trustee to include anyone who:-

- has general control and management of the administration of the charity
- exercises significant influence or control on the charity
- has an input into decision-making

All Charity Trustees have a responsibility to take care of the charity's affairs, act as guardians of the charity's assets and safeguard the charity's reputation.

All Charity Trustees are collectively responsible for carrying out general and specific duties defined under the Charities and Trustee Investment (Scotland) Act 2005.

They may delegate tasks to others (as long as the tasks are adequately supervised) but they cannot delegate their duties or responsibilities as Charity Trustees.

Charity Trustee general legal duties

Charity Trustees have four general legal duties:-

- to act in the interest of the charity and put the interests of the charity before any other
- to ensure that the charity operates in a manner consistent with its purposes
- to act with due care and diligence
- to ensure that the charity complies with the current charity legislation in Scotland and with any other relevant legislation

Charity Trustee specific legal duties

Charity Trustees also have a number of specific legal duties under the Charities and Trustee Investment (Scotland) Act 2005. These are:-

- to ensure that the charity's details (as held on the Scottish Charity Register) are up-to-date and accurate
- annual reporting to the Office of the Scottish Charity Regulator (OSCR)
- seeking consent and notifying OSCR of any changes to the charity
- keeping financial records and accounting
- controlling fundraising activities
- providing information to the public

The Charities and Trustee Investment (Scotland) Act 2005 also requires all Charity Trustees to take reasonable steps to ensure that:-

- any breach of general or specific duties is corrected by the Trustees concerned and not repeated
- any Trustee who has been in serious or persistent breach of duty is removed as a Trustee

It is good practice to include a clause in your group's constitution (governing document) which permits the removal of any Trustees who are persistently in breach of their duties.

Legal Responsibilities for Directors of a Company Limited by Guarantee

Incorporated organisations such as a Company Ltd By Guarantee are regulated under company law. The Board of a Company Ltd by Guarantee has a legal duty to comply with the requirements of the law by informing Companies House of:-

- the names and details of all directors
- the registered address of the Company
- any changes to Directors details
- any changes to the registered address of the company

The board of Directors of a Company Ltd By Guarantee are also required by law to file both an Annual Return and the Annual Accounts (in the required format) with Companies House each year.

Annual Return

The Directors of the board are responsible for filing the company's Annual Return with Companies House. It is a criminal offence not to return your Annual Return within 28 days of the anniversary of your Companies incorporation. You can do this online using Companies House Software Filing/Webfiling service. If you file after this date you will incur a late filing penalty fine. Potentially your Directors could end up with a criminal record if convicted.

Annual Accounts

The directors of a Company Ltd by Guarantee also have a legal requirement to keep accounting records (even for years where the group/organisation is not actively trading).

Accrued accounts (in the required format) should be submitted to Companies House within 9 months from your financial year end (also called the Accounting Reference Date).

If your Annual Accounts are filed late, there is an automatic late filing penalty to pay. If your Board are persistently late in filing they may face prosecution from Companies House.

If your group/organisation employs an accountant, do not assume that they are automatically sending your Annual Accounts to Companies House for you. It is essential that Directors check this. Ultimately it is the group/organisation that will be fined for late penalty - not the accountant.

As well as filing the Accounts with Companies House, it is good practice for your group to be transparent about its financial handling. Your Articles (or governing document) may require the Annual Accounts be put before the general members for adoption at the Annual General Meeting (AGM). These may be extracts from the Accounts - as long as there is enough information for the members to gain an understanding of the Directors handling of the group's financial affairs. Full accounts should be available on request to anyone requiring further information.

If your group/organisation is also a registered charity, your Directors will also be Charity Trustees and as Charity Trustees they will have specific duties which they also need to comply with including statutory reporting to the Office of the Scottish Charity Regulator (OSCR).

Legal Responsibilities for Directors of a Community Interest Company

Community Interest Companies (CIC) are incorporated organisations. They are regulated by Companies House under company law as well as by the CIC Regulator.

The Board of a Community Interest Company has a legal duty to comply with the requirements of the law by informing Companies House of:-

- names and details of all Directors
- notification of any changes to Directors details
- notification of changes to registered address of the company

The Board of Directors of a Community Interest Company are also required by law to file the following documents with Companies House each year:-

- Annual Return
- Annual Accounts (in the required format)
- Annual Community Interest Company Report

CONTACTS & RESOURCES

The following information has useful information and resources for Starting a Group, legal Structures and Boards and committee/board responsibilities:

- VOLUNTARY ACTION NORTH LANARKSHIRE
Website: www.voluntaryactionnorthlanarkshire.co.uk
Email: info@vanl.co.uk
Tel: 01236 748011
- SCVO (Scottish Council for Voluntary Organisations)
Website: www.scvo.org
Email: enquiries@scvo.org.uk
Tel: 0131 474 8000
- OSCR (Office of the Scottish Charity Regulator)
Website: www.oscr.org.uk
Email: info@oscr.org.uk
Tel: 01382 220446
- COMPANIES HOUSE
Website: www.gov.uk/government/organisations/companies-house
Email: enquiries@companieshouse.gov.uk
Tel: 0303 1234 500
- CIC REGULATOR (Community Interest Companies)
Website: www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies
Email: cicregulator@companieshouse.gov.uk
Tel: 029 2034 6228
- COMMUNITY SHARES SCOTLAND
Website: www.communitysharesscotland.org.uk/about-cooperative-and-community-benefit-societies
Tel: 0131 220 3777
- DEVELOPMENT TRUSTS ASSOCIATION SCOTLAND (DTAS)
Website: www.dtascot.org.uk
Email: info@dtascot.org.uk
Tel: 0131 220 2456