

The Travellers Aid Trust

Setting up a Voluntary Group

The following information is set out as a basic guide intended to help you understand the reasoning behind setting up a voluntary group, the different types of group structures you can choose between and what you need to do. Please note that this guide does not cover everything and more detailed information can be found from the publications and contacts given at the end.

What is a voluntary group?

A voluntary group is a collection of individuals who work together to undertake certain activities for the benefit of the community – whatever or whoever that community might be. They can operate on a national, regional, county, district or neighborhood level each tending to have their own specific area of interest. Voluntary groups are what is termed ‘not for profit’. This means that any profit or benefits made by the group either go back into the group as a whole (rather than to individuals) so that it can continue to benefit the community and/or directly back to the community.

What do you want to do and why?

Before you set up a group, you need to be clear about what it is you want to do and why. This will depend on whether there is any evidence of need within the community you want to work with or for. ‘Evidence of need’ means indicators or signs within a community that tell you and others that something needs doing. For example, if young people within a community are suffering from drug or alcohol abuse, there is evidence of need for some kind of service or facility that will help them deal with and find positive solutions to these problems. This might be setting up a drop-in centre or recreational facility, for example. If there is no evidence of need for what you want to do for a community, then your group is unlikely to be very successful because you will have very little support for what it is you want to do and are extremely unlikely to attract funding.

Once you have established that there is an evidence of need within a community, you then need to find out whether or not a similar group exists at a local, regional or national level already and whether they are meeting the need that exists. If a group already exists that is doing what you want to do by effectively addressing the need that exists in a community, you are again unlikely to be successful because you will simply be duplicating something that is already being done. However, in most cases, the issues that cause people to come together to set up a voluntary group are ones that are not being effectively addressed by other groups or service providers. Provided you do a little bit of research into who is doing what to address the issues that you want to deal with, it will very quickly become clear what it is that needs to be done. So in short, find out where the gaps in service provision are and that will usually give you a very good idea of what your aims and objectives as a group need to be.

There are a number of good sources of information about existing voluntary groups such as your local Community Voluntary Services (CVS), the National Council of Voluntary Organisations (NCVO) as well as libraries and the internet. It might also be useful to talk to key people from within the local authority, health authority and regional or national organisations in the field of work that you are interested in.

What do you need to do to set up a voluntary group?

Once a group of people perceive a need and decide to work together to bring about change and/or provide a service for the benefit of the community, they need to have a governing or managing body of some kind. This can be referred to in a number of ways but is usually called a management committee, executive committee or board of trustees. When a group is set up, there are two key issues to consider:

- The legal structure for the group
- Whether the aims and objects of the group are charitable

What is a constitution?

A constitution is a written description of what an organisation is, what it does, and how it does it. There are different terms used for a constitution depending on the legal structure of the group. In general, there are three different types of legal structures that are used by voluntary groups. These are **an unincorporated association, a trust or a company**. An unincorporated association would adopt a 'constitution' or a 'set of rules', a trust would adopt a 'Declaration of Trust' and a company would adopt a 'memorandum and articles of association'. These are all types of constitution but they are all slightly different as they are tailored to the particular type of legal structure that is being used.

Why is a constitution needed?

Very often an organisation can be operating for a number of years very informally without a constitution (although a company must have one to be registered). There may be a point at which it is recognised that the group needs to formalise itself. Examples of the types of catalyst for such a change could include an identified need for service development, a need to work more formally with local authorities or the need to secure funding for a particular aspect of the work being done. The development of a written governing document for the organisation can help to ensure that:

1. the groups aims and objectives are clear and agreed
2. there is a clear process for decision making within the organisation
3. the organisation gains credibility with funding bodies
4. the lines of responsibility and accountability are clarified
5. the group can register with the Charity Commission
6. there is a process for formally appointing the people who run the group

Model and standard constitutions

Before starting to develop a constitution it is important to think about whether the organisation will now, or at some point in the future, need to register with the Charity Commission. This might come about if what you are proposing to do is

something long-term that will have a significant impact on the community. If this is likely to be the case, then it is advisable to adapt one of the model constitutions approved by them. This is because the Charity Commission has very specific rules on how charities are governed and run and a 'homemade' constitution may result in considerable objections or the lengthening of the registration procedure with the Charity Commission. If you think your group is likely to become a charity in the future, contact the Charity Commission for a copy of their model constitutions (details below).

If registration with the Charity Commission is not likely to be required, it may be simpler to adopt a model constitution. There are a large variety of other models and standard constitutions designed for a range of specific purposes and these can be found either from your local CVS or from the internet. A standard model constitution is included with this guide which is suitable for most small voluntary groups. However, there is no obligation to use a standard or model governing document and some basic guidelines are given below on the minimum requirements for a governing document should you decide to develop your own from scratch.

What do you need to consider when developing a constitution?

- The name of the group
- What are the aims and purposes of the group?
- Who is the group set up to help?
- Who should be entitled to become a member of the group (e.g. Do they have to live within a certain area? Is membership open to groups, individuals or both? Should members be between certain ages?)
- What should people have to pay to become a member?
- Should there be different types of membership for different types of people / groups?
- How many people should be on the committee? What is the smallest number and what is the largest number that should make up the committee?
- How will the committee be chosen or elected? Who should be allowed to sit on the committee?
- What sorts of things should the committee be responsible for?
- Are there other people who should be allowed to come to committee meetings? Should these people be allowed to vote?
- How often should the committee meet?
- Are there any particular rules that should be set?
- How long should people serve on the committee for?
- Should there be any people on the committee with special responsibilities? (e.g. chairperson, secretary, treasurer) If so, how will these people be chosen or elected?
- How will the committee keep all the other members of the group informed about the decisions they make and the work they do?
- How should the money and property of the Association be looked after?
- What happens if the rules in the constitution need to be changed, or new things have to be added?

- What happens if the Association is not needed any more? How can it be ended?

What do you need to do to develop a constitution?

- Pull together a group of interested people, which could be done by calling a public meeting to establish the need for such a group. People who are interested in driving things forward are sometimes known as the steering group or the steering committee.
- From the steering committee, set up a working group to develop a constitution
- Working group presents a draft constitution to the steering committee.
- Steering Committee puts forward comments & suggestions
- Working group amends constitution and re-presents it for further amendments or for adoption
- Steering Committee agrees and adopts constitution (the adoption of the constitution needs to be minuted- i.e., someone should be designated to record everything that goes on in the meeting by taking minutes which are then agreed at the next meeting.)
- Steering Committee signs and dates constitution
- Bank account for the group is set up (Bank account name should be the same as the name on the constitution)
- Constitution formally approved at the first AGM. This meeting could double up as a formal launch of the group. This process does not cost anything. There is no need to register with any formal bodies unless the group intends to be a Company Limited by Guarantee or a registered Charity.

Unincorporated Association, Trust or Limited Companies?

As stated above, the rules governing a voluntary group are set out in its constitution and the precise form of a constitution will depend on the legal structure adopted; an unincorporated association, a trust, or a company limited by guarantee.

An Unincorporated Association

This structure is ideal for small groups with a membership, short term goals, low incomes, and which do not intend to employ staff or acquire property.

Unincorporated Associations are quick and cheap to set up. Unless a group is applying for charitable status, no other agency need be involved. There are no fees to pay unless legal advice is sought on drawing up a constitution.

However, an unincorporated association has no separate legal existence and remains for most purposes a collection of individuals. Any property or contracts would have to be held by individuals on behalf of the group, or any legal proceedings taken against the group would, in reality be against the individuals themselves, making them personally liable.

The issues surrounding liability can be quite complex and are beyond the scope of this guide. Further information is available from the range of publications listed at the end of this guide.

A Trust

Trusts are generally set up to manage money or property for a clearly defined purpose. They establish a formal relationship between three parties: the **donors** of money or property, the **Trustees** (normally 3) who become the nominal owners of the trust property and the **beneficiaries** – the people who will benefit from the trust. Trusts can be set up quickly and cheaply.

Trusts are essentially non – democratic organisations as there is generally no membership structure. Trustees can be personally liable for contracts entered into on behalf of the trust. They are not protected from personal liability

Limited Companies

A company structure is an increasingly popular choice for voluntary organisations. It is often appropriate if a group is going to be managing staff, land, contracts and/or large amounts of funding. A company limited by guarantee is an incorporated organisation. This means that it has a separate legal identity distinct from that of its members. There are two types of limited company:

Company Limited by Shares

In a company limited by shares members (shareholders) invest money in the hope of gaining profit. This kind of company is generally found in the commercial sector

Company Limited by Guarantee

In a company limited by guarantee there are no shareholders and any profits are re-invested in the company. All members would guarantee to pay a nominal sum (usually £1 and almost always no more than £5) should the organisation become insolvent. This is appropriate for organisations which aim to pursue some social or political cause.

The Advantages of a Company Limited by Guarantee

Separate legal identity

A company limited by guarantee is what is known as an 'incorporated organisation. This means that it has a separate legal identity as distinct from that of its individual committee members. Therefore an organisation with this status can:

- buy and sell property in its own name
- take or defend legal proceedings in its own name
- offer a degree of protection from personal liability for individual members and members of the managing body.

Liability

There is a difference between the liability of individual members (people with a right to vote at an AGM) and the liability of the Directors (also known as the Board, the management committee or the committee)

The extent of members' personal liability is limited to the amount they agree to guarantee. Therefore individual members are almost totally protected against personal liability in an incorporated organisation

The Board of directors (also known as committee members) is responsible for running the company. The directors / committee members generally have no personal liability unless they:

- Act fraudulently
- Act in breach of trust
- Continue to run the company when they know or ought to know it has no reasonable chance of avoiding insolvent liquidation.

Democracy

Companies are generally democratic organisations. Required to have a membership with the power to elect and the power to remove officers and/or committee members. The structure works well for any size of group

Ownership of property

Because a company has a separate legal identity, owning and transferring property is relatively simple. Even when the committee or membership changes, ownership of the property remains in the name of the company, so there is no need for any documents transferring ownership.

Borrowing money

It is relatively easy for a company to borrow money because the lender knows that the organisation, rather than a changing group of individuals, is responsible for the repayment.

Registration process

Once the organisation's constitution is agreed, company registration (with the registrar of companies) takes two to three weeks provided there are no complications. The registration fee is low (£20 March 2002)

Disadvantages of a Company Limited by Guarantee

Accountability

Companies are subject to more controls and bureaucracy than other legal structures. The Companies Acts regulates their activities. Annual returns and accounts must be submitted to the registrar of companies (the charge for this was £15 in Dec 1997). These are open to the public. Registers of members and directors/committee members must be kept for public inspection.

Changes of committee members

Companies Limited by guarantee have to notify the registrar of companies whenever a Director leaves or another one is appointed. Companies must also notify the registrar of companies if they enter into any legal charge (e.g. if they borrow money from a bank and the bank has a mortgage over the company's property).

Changing a constitution

For an organisation thinking of changing from unincorporated to incorporated, it will have to change its constitution to a memorandum and articles of association. This will consist of two parts:

- The memorandum of association which describes the company's aims, powers and the extent of members' liability
- The articles of association, which describes the company's rules, including procedures for electing the management committee and keeping accounts.

What is a Charity?

A group with wholly charitable aims has charitable status whether or not it is registered with the Charity Commission. In its strict legal sense, a charity is an organisation established for charitable purposes, and will generally be registered under the *Charities Act 1993*.

Charitable Purposes

A group is charitable if all of its aims and objectives as stated in its constitution are charitable (the *Four Heads of Charity*):

- The relief of poverty
- The advancement of religion
- The advancement of education
- Other purposes beneficial to the community

NB Public benefit is assumed under the first 3 heads but has to be demonstrated under the fourth.

As long as a group can demonstrate that its activities are beneficial to the community (or a substantial part of it) there is scope for extending the traditional charitable frontiers. The following activities could fall into this category:

- Protecting lives or property of the community
- Resettlement and rehabilitation of ex-offenders and drug misusers
- Promoting industry, commerce or art
- Promoting moral welfare
- Providing public recreation and leisure facilities
- Conserving the national heritage

However this is a complex area, and not all apparently charitable activities are in fact charitable in law. This is currently under review, which will result in legislative changes aimed at clarifying and extending the categories of charitable activity.

All money, property and other assets held by a charity are held in trust for the charity's beneficiaries. The trust is between:

- The people who have provided the money or property to the charity;
- The governing body of the charity, who control the assets (trustees);
- The beneficiaries (users, clients, members etc), who receive or use the charities benefits or services.

This is why charities are subject to trust law and why the members of the governing body have the responsibilities of charity trustees, even if they are called committee members, directors, or any other title. Being a charitable trustee brings with it additional duties specific to the role. The Charity Commission can provide information on the duties and liabilities of trustees.

Advantages of Charitable Status

An organisation, which has charitable status, will be entitled to the following,

Tax advantages

- Exemption from income tax, corporation tax and capital gains tax, provided that the charities income is applied only too charitable purposes.
- Exemption from inheritance tax.
- Receipt from the Inland Revenue of the income tax paid on a deed of covenant from an individual donor.
- Zero rating on certain supplies made by a charity, which is registered for VAT, and zero rating of certain supplies made to any charity.
- Exemptions on having to pay stamp duty.

Rate Relief

- Relief of 80% (and often 100%) on rates for property which is wholly or mainly used for charitable purposes and where the ratepayer is a charity.

Advice

- Advice from the Charity Commission on aspects of running the charity.

Fundraising

- Some funders, particularly trusts, have a policy of grant aiding only registered charities. Having charitable status and in particular having a registered charity number also provides credibility when raising money from the public.

Disadvantages of Charitable Status

Charities activities are restricted in the following ways.

Restrictions

- The charity's assets can only be used for purposes set out in the governing document. This may restrict the charity's involvement in certain activities, e.g. trading.
- A Charity has limited powers to trade, it may sell its services as part of its charitable work, e.g. providing educational or community care services. It can trade if it is ancillary to the charity's primary purpose. If the charity wishes to undertake non-primary purpose trading it can set up a separate non charitable trading arm but this will tax and rated in the normal way.
- Any investment made by a trustee on behalf of a charity must be made in the best interests of the charity, must suit the requirements of the charity (e.g. with regard to access to funds).

- The Charity Commission has the power and authority to investigate charities where it thinks it appropriate.
- Charities must not have directly political aims.
- Members of the governing body cannot profit or benefit from the charity.

Other disadvantages

- Charities are public bodies, open to public scrutiny
- All registered charities (unless excepted by law) must submit accounts to the Charity Commission and may be required by the Commissioners to have an audit carried out.
- The Charity Commissioners have considerable powers to investigate complaints, and if there is serious mismanagement to step in and even bring legal action against the charity, the members of its governing bodies and its employees.

How to register with the Charity Commission

Any organisation wanting to become a charity should obtain a copy of the Charity Commission's publication 'Registering as a Charity' (CC21). This is available on the Charity Commission website www.charitycommission.gov.uk or a copy can be requested via the Charity Commission helpline 0845 333 888. This publication explains the nature of charities, their advantages as well as their limitations, the different legal structures available to charities and the registration process.

There are two minimum requirements for charity registration. They are as follows:

A - That the association's aims or objects, as stated in its governing document, are solely charitable (see the 4 heads of charity)

B - That the association has one of the following:

- A minimum annual income of £1,000 per year
- Use or occupation of rateable land or buildings
- A permanent endowment

It is difficult to say how long the registration process takes. It depends on how straightforward the case is. If the answers on the application and/ or the supporting documents are unclear, the Commission may ask for additional information or may ask to meet with the Trustees. This may not be because something is wrong, but because the commission does not have enough information to be certain that the organisation is indeed charitable in law.

Useful publications & contacts

'Voluntary but not Amateur' – a guide to the law for voluntary organisations and community groups 5th Edition

By Jacki Reason, Ruth Hayes, Duncan Forbes
LVSC 1998

‘The Voluntary Sector Legal Handbook’
By Sandy Adirondack & James Sinclair Taylor
Directory of Social Change

‘Registering as a Charity’ - Charity Commission Publication CC21
By Charity Commission for England and Wales
May 2001

Jargon Buster – simplifying language to increase understanding
c/o ACF
Central House, 14 Upper Wobourn Place
London WC1H 0AE

National Council for Voluntary Organisations
Regent’s Warf
8 All Saints Street
London N1 9RL
0800 279 8798
www.ncvo-vol.org.uk