

Introduction

This guide has been produced primarily for people who are thinking about setting up a new voluntary or community group and outlines some of the key considerations and steps that need to be taken. It should also be a valuable resource for established groups who may be wishing to review their current status. It has been prepared by PAVS and is intended for information only. It is not intended to comprise specific legal advice which, if required, needs to be sought from an appropriate source.

How is the guide structured?

The guide is divided into the following sections:

- Voluntary Groups and their legal structures
- Constitutions
- Charitable status
- Sources of help and further reading

Before you start...

It is important to undertake some research and do some networking prior to setting up a group. This will help you to find out:

- whether or not a similar group exists at a local, regional or national level
- whether there is any available evidence of need

There are a number of good sources of information about existing voluntary groups which are outlined in the table below and which would be a good place to start in carrying out your research. It might also be useful to talk to key people from within the local authority, health authority, national park authority and regional or national organisations in the field of work that you are interested in.

Table 1 - sources of information about existing organisations

Name of source	Type of information held
Pembrokeshire Association of Voluntary Services (PAVS)	Database containing information about over 600 voluntary and Community groups operating in Pembrokeshire
Pembrokeshire County Library Services	Directory of local societies available from the County library
Wales Council for Voluntary Action (WCVA)	Database of information on many voluntary and community groups throughout Wales
Charity Commission for England and Wales	Register of Charities in England and Wales which can be accessed through the Charity Commission website.

Feedback

Finally, no guide would be complete without an opportunity for those using it to comment on it. We welcome this feedback which will be used to develop and improve future editions.

Legal structures of Voluntary groups

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. There are an estimated 25,000 voluntary groups in Wales ranging from small specialist self help groups run by users through to national charities. They can operate on a national county, district or neighborhood level each tending to have their own specific area of interest.

Voluntary groups generally exist because people perceive a need and work together to bring about change, or provide a service, for the benefit of the community. All groups of this kind should have a governing or managing body of some kind. This group is referred to in a variety of ways e.g. 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

Legal Structures

The rules governing a voluntary group are set out in a constitution, the precise form of which depends on the legal structure adopted. There are three main legal structures used by voluntary groups; an unincorporated Association, a Trust, and 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 in the 'further reading' section of the guide.

Legal Structures (continued)

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.

Types of Company

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.

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 eaves 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).

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 consists 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.

Constitutions

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. **An unincorporated association would adopt a 'constitution' or a 'set of rules'. A trust would adopt a 'Declaration of Trust'. A company would adopt a 'memorandum and articles of association'**

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. 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 it is more difficult to develop a charitable constitution and homemade ones may result in considerable objections or lengthening of the registration procedure with the Charity Commission. The range of approved models include:

- model constitutions for charitable unincorporated associations, trusts and companies produced by the Commission themselves
- a constitution for a Community Association produced by Community Matters
- the Wales Pre-school Playgroups Association standard constitution, which can be adopted by all playgroups.

There are in addition a large variety of other models and standard constitutions designed for a range of specific purposes. For further information on the models that may be most suitable for your group, contact PAVS.

If registration is not likely to be required, it may be simpler to develop a constitution from scratch. There is no obligation to use a standard or model governing document. Below are some guidelines on the minimum requirements for a governing document.

Questions to think about 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?

Steps to take when developing 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 (models constitutions and support are available from PAVS)
- 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)
- 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.

Charitable Status

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.

A group will need to have agreed on the most appropriate legal structure, developed aims that are solely charitable by law, developed and adopted a governing document, a trust must execute and stamp its trust deed and a company must have registered with Companies House and set up a bank account in the name of the organisation.

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

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

A charity registration pack should then be requested. The committee members (known to the Charity Commission as the Charity Trustees) must fill the Charity Commission's application form and each Trustee must complete a declaration (form DEC1) in which they certify that they are willing to act as Charity trustees and that they understand what it means to be a charity trustee (this information is supplied within the application pack).

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.

Sources of Help

Local Organisations

PAVS

Tel 01437 769422

Fax 01437 769431

Email enquiries@pavs.org.uk

PLANED

Tel 01437 860965
 Fax 01834 861547
 Email information@planed.org.uk

**Pembrokeshire County Council
 Community Regeneration Unit**

Tel 01437 775535
 Fax 01437
 Email

National organisations

Charity Commission England and Wales

Tel 0870 333 0123
 Website www.charity-commission.gov.uk

Wales Council for Voluntary Action

Helpdesk 0870 607 1666
 Email help@wcva.org.uk

Community Matters (Wales Office)

Tel 01792 463200
 Email wales@communitymatters.org.uk
 Website www.communitymatters.org.uk

Environmental organisations

Environment Wales

Tel

Email
 Website

Arts Organisations

Voluntary Arts Wales

Tel 029 20562 656
 Fax 029 20555 893
 Email info@vaw.org.uk

Playgroups

Wales Pre School Playgroups Association

Tel 01437 769077
 Email dih@walesppa.org
 Website www.walesppa.org

Mudiad Ysgolion Meithrin

Tel 01239 831551
 Website www.mym.co.uk

Sports Organisations

Sports Council for Wales

Tel
 Website

Co-ops/CommunityEnterprise/Business

Wales Co-operative Centre

Tel 029 2055 4955
 Email
 Website www.walescooperative.co.uk

Further Reading

The following publications are very useful and go into further detail about some of the issues touched on in this pack:

'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