

The voice of the Voluntary Arts

Taking the next step from an informal group to a registered organisation

Most voluntary arts groups come together simply to provide an opportunity for members of their community to participate in their chosen art or craft form. If the group is successful and members wish to expand its activities or take advantage of a wider range of opportunities, then they often find that they need to formalise the set-up of the group by becoming a registered organisation.

Becoming a registered organisation – whether that be a charity, company or social enterprise – can bring a number of benefits, such as helping your group appear more professional to potential members and partners, protecting the management committee from liability and allowing you to apply for funding from sources otherwise unavailable to you. However, the first step is deciding whether it is right for your group. This briefing provides you with an overview of things to consider before taking the next step.

Fit the structure to your plans, not the other way around!

Organisational change should grow from your plans (whether they are to organise a big event, move into a permanent venue, take your work into schools, etc.) in an organic fashion. Having done proper planning it will be much easier to match the group to the organisation shapes available.

Setting your sights on an organisation structure without knowing what you're going to do when you achieve it is rarely an effective strategy, and can leave you with an inappropriate structure when you finally decide what you want to achieve.

A. Deciding whether to change

Reasons to remain as an informal group

As long as you have an effective management committee, a good clear constitution (or written rules) and a bank account suited

to your needs, you may decide that you are happy to continue as you are. The main strength of small informal groups is their flexibility to adapt quickly to changing circumstances with a minimal amount of time spent on regulatory administration and reporting. Informal groups can apply to a variety of local and national funding bodies (only some specify that applicants must be registered charities).

Other advantages of informal groups are that they can:

- remain flexible, adapting easily to changes in the community and internal changes in the organisation, without having to go through the process of getting approval from their membership at a general meeting, changing their governing documents and informing a regulator;
- still have some of the advantages of larger registered organisations if they join an umbrella body – including a louder voice when lobbying policy-makers and politicians (*for details of national umbrella organisations relevant to your group, visit the Voluntary Arts websites*);
- avoid some of the bureaucracy of running a registered organisation, giving you the space to focus on a good quality of life and artistic excellence, not only for your members and participants, but for you and your committee too.

Reasons to become a registered organisation

Remaining informal doesn't suit all groups. Those with ambitions to employ paid staff, run big public events or apply for funding from a wider range of funding bodies might decide that becoming a registered charity, company or social enterprise is a much better option. Formalising your group in this way will:

- allow you to employ paid members of staff, buy or hire premises, enter into other types of contracts and undertake not-for-profit trading, whilst protecting your committee from financial liability should the organisation wind up owing money (if you choose the limited company or community interest company model);
- help ensure that it is independently monitored and accountable (this will provide reassurance for potential members and partners);
- widen the funding sources available to you (some awarding bodies only fund registered charities);



- signify that you are serious about what you are doing, are business-like in your dealings and intend to be in operation for the long haul (potentially beyond the involvement of the founding members);
- show that you intend to be of benefit to your local community and wider art or craft community (especially if you choose a charitable or social enterprise model);
- allow you to take advantage of discounts that some organisational forms (e.g. charities) receive from banks, building societies and some retailers; and
- provide relief from certain forms of tax (if you register as a charity), including local business rates (if you own or rent property) and corporation tax.

However, with these advantages come various risks and responsibilities – though all can be managed with proper planning. These include:

- the administrative time and effort needed to comply with the various reporting requirements – but if you are organised, plan things in advance and take advice, this should be well within your capabilities;
- putting committee members in a more responsible position which they may (potentially) feel uncomfortable about;
- coming to terms with the fact that the group is more than just a hobby shared between people with a shared passion – it is now in the sphere of work – this could change the dynamic and unsettle some;
- ensuring that you and the committee realise that becoming a registered organisation probably means a more hands-off approach, especially if you intend to take on paid staff to run the day-to-day operations. The management committee of a registered organisation (usually known as ‘the board’) should be focused on the overall strategy of the organisation rather than being so closely involved in its running;
- potential costs if you don’t already have a registered office or logo and stationery (the latter aren’t always essential, but depending on what type of organisation you wish to become, you might be required to produce documents on letterheaded paper containing certain required legal information);
- making sure that you don’t get so caught up in becoming a registered organisation that you lose your focus on providing opportunities for voluntary artists or craftspeople... and yourself!

Deciding whether to take your group to the next stage, and in what fashion, is often a balancing act between keeping your flexibility and focus on participation on the one hand and working on being a sustainable, accountable organisation on the other.

B. What are the options?

If you aren’t already a registered organisation, chances are you are what is known as an unincorporated association – a joint venture between two or more people which, unlike a registered company, charity or social enterprise, does not have a legal

identity separate from its management committee. As a result, the committee is personally responsible for any obligations or debts of the association.

Even if after careful consideration and discussion you decide to remain as an informal group, then your constitution should be written as clearly as possible. The *Running Your Group* section of the Voluntary Arts website (www.voluntaryarts.org/ryg) contains links to model constitutions for unincorporated associations that should meet all of your current needs while making any future transition to charitable status as straightforward as possible. This should include contingency plans in case the organisation breaks down and how debts will be dealt with.

Unincorporated associations offer little protection to individual members against risks such as financial liability and any kind of legal action brought against the association. However, in reality the exposure to risk is minimal so long as the management committee acts responsibly and the finances of the organisation are managed well.

The Scottish Law Commission is currently looking at proposals to change the legal entity status of unincorporated associations in Scotland. Keep in touch with Voluntary Arts Scotland (www.vascotland.org.uk) for details.

Charitable status

Charitable status has a number of benefits for voluntary arts organisations including better access to funding and sponsorship, and exemption from certain taxes. It also makes your organisation more attractive to individual donors.

When you become a charity you have to nominate ‘trustees’ (usually the management committee) to hold the charity’s assets in trust and set its strategic aims and direction. Trustees must act reasonably and with a high standard of care. Trustees must never place themselves in a position where personal interest might conflict with their interests as trustees. Those who cause loss to their charity through lack of care or dishonesty may be required to repay the loss from their own pockets.

To become a charity your organisation must have purposes which the law sees as exclusively charitable. Charities in England and Wales need to be registered with the Charity Commission, while those in Scotland need to be registered with OSCR (see *Further Resources section for contact details*). Currently groups in Northern Ireland and the Republic of Ireland still go through HMRC or the Revenue Commissioners respectively to gain charitable status for tax purposes. However, the newly formed NI Charity Commission is expected to take first new registrations from April 2010. The recently enacted Irish Charities Act 2009 includes provision for setting up of a charity regulator.

Many charities are also registered as companies (see *below*). However, it is possible to register as an ‘unincorporated charitable association’. This is simple to operate provided the terms of its constitution are clear and workable. A charitable company is more complex but offers greater security to its trustees (who also become its ‘board of directors’).



Incorporation

'Incorporation' is the process of becoming a registered company. Many charities choose also to register as companies, but you may decide to become just one or the other (rather than both).

The main advantage of incorporation is that it means your organisation takes on a legal status separate from that of its members (usually its management committee, which becomes the 'board of directors'). As a result of this, the company can buy property, enter into contracts (such as employment contracts and leases) and bring and defend court prosecutions in its own name, and the members are not generally liable for any debts incurred, provided they act lawfully and in good faith. Adopting a company structure will also enhance your organisation's credibility and can encourage it to grow and develop.

Most non-profit making organisations also become companies limited by guarantee (as opposed to those limited by shares). In this type of company members undertake to guarantee to pay a certain, usually nominal, amount if the company is 'wound up' (ceases operation).

Companies in England and Wales need to be registered with Companies House in Cardiff, in Scotland at Companies House in Edinburgh, in Northern Ireland with Companies Registry Northern Ireland and in the Republic of Ireland with the Companies Registration Office (see *Further Resources section for contact details*). These national registrars also keep information about the company, which is accessible to the public. It is essential that the company sends new information (changes of names, address, directors and their details) to the registrar on the relevant forms as soon as they occur. Every year the company must also file its annual returns. There are fines and penalties payable for not filing changes or submitting accounts on time.

For more information about incorporation and recent changes to company law, see *VAN Briefing 121*, available to download for free from the VAN website at www.voluntaryarts.org/briefings.

Dual status – the CIO (England and Wales)

The Charities Act 2006 created a new legal form of incorporation due to be introduced in England and Wales in 2010 – the Charitable Incorporated Organisation (CIO or Welsh equivalent SEC).

The CIO is designed to combine the advantages of a company structure (such as reduced risk of personal liability) and charitable status without the burden of having to comply with two sets of regulations and provide accounts and returns to two regulatory bodies. Other potential advantages of the CIO are that it is meant to have fewer onerous requirements for preparing accounts and reports, a single annual return and lower costs.

The CIO form was originally expected to become available in summer 2008, but many concerns were raised during the consultation process, and it is still unclear what the outcome will be. The structure is now expected to become available in

April 2010 (to be kept up to date with the launch of the CIO form, sign up to the VAN E-news at www.voluntaryarts.org/news).

Voluntary sector consultant Sandy Adirondack (see *Further Resources for details*) suggests that unincorporated charities that need the advantages of incorporation should consider becoming charitable companies now, rather than waiting for the CIO to become available.

Proposals for a similar organisational form are under consideration in Scotland (SCIO).

Social enterprises – the CIC (UK) and DAC (RoI)

Community Interest Company (CIC) status has been developed for people in the UK who wish to develop social enterprises (i.e. businesses that benefit the community, rather than just make money for the owners, employees or shareholders). The main feature of these companies is that they are 'asset locked' to prevent the assets (cash, goods, property, etc.) and profits of the company being used for anything other than the benefit of the community. A charity cannot be a CIC unless it gives up its charitable status.

To register an organisation as a CIC you will need to first register with your national registrar of companies as a company limited by guarantee or by shares (if you have not already done so), and then apply for CIC status to the CIC regulator who, if your registration is successful, will continue to monitor you and ensure that the rules are upheld.

As a CIC, you will have to submit a 'community interest statement' to the regulator, describing the company's intended activities and beneficiaries. If satisfied that your application meets the criteria, the regulator will advise the companies registrar who, providing all the documents are in order, will issue a certificate of incorporation as a CIC. Thereafter, as well as reporting to their company regulator, CICs must submit an annual report to the regulator on how they are delivering for the community and how they are involving their stakeholders in their activities.

CICs are best suited for organisations that intend to generate income through trading, ticket sales or subscriptions, rather than from funding bodies. They may not be eligible for funding from bodies that only support registered charities.

Designated Activity Company (DAC) is the new legal form for social enterprises in the Republic of Ireland – equivalent to CICs in the UK. DACs vary from other types of limited company in that they will be able to designate a particular cause as the recipient of their profits.

For more information about CICs/DACs and social enterprise, see *VAN Briefings 106 and 117*.

Don't rush into a decision about whether to change from an informal group to a registered organisation – consult as many of the stakeholders of your group (committee members, volunteers, members, participants, supporters, etc.) as possible and, if necessary, get advice from a local or national voluntary sector body (see *Further Resources section for contact details*) or a legal adviser.

Further Resources

Voluntary Arts briefings

These are available to download for free from www.voluntaryarts.org/briefings.

- 124 – *How to make sure your group is still here in ten years' time*
- 121 – *Incorporation and recent changes to charity law*
- 117 – *Social enterprise*
- 106 – *Community Interest Companies*
- 58 – *Participatory planning involving your stakeholders*
- 49 – *Make change work for you*
- 47 and 48 – *Taking on paid staff*
- 23 – *Incorporation*
- 22 – *Getting charitable status*

Mapping the Future – guide to planning specially written for small arts and voluntary groups (*available in England, Ireland and Scotland versions – for more details contact your Voluntary Arts office*).

Charity registrars and regulators

- **The Charity Commission for England and Wales** – www.charitycommission.gov.uk
- **The Office of the Scottish Charity Regulator (OSCR)** – www.oscr.org.uk

Note: in Northern Ireland the new charities commission is just commencing operation (as of 2009) and the Republic of Ireland Charities Act 2009 includes provision for a charity regulator (sign up to www.vaireland.org/news for updates).

Company registrars and regulators

- **The Irish Revenue Commissioners (RoI)** – www.revenue.ie
- **Companies House** – website contains details of the Registrar of Companies in England, Wales and Scotland – www.companieshouse.gov.uk
- **Companies Registry Northern Ireland** – www.detini.co.uk
- **Companies Registration Office (RoI)** – www.cro.ie
- **Office of the Director of Corporate Enforcement (RoI)** – www.odce.ie
- **Community Interest Companies Regulator (UK)** – website contains detailed information and the forms necessary to apply for CIC status – www.cicregulator.gov.uk
- **HM Revenue and Customs Charities (UK)** – for charities and corporation tax enquiries – www.hmrc.gov.uk/charities

National voluntary sector councils

- **National Council for Voluntary Organisations (England)** – www.ncvo-vol.org.uk
- **Northern Ireland Council for Voluntary Action** – www.nicva.org
- **The Wheel (RoI)** – www.wheel.ie
- **Scottish Council for Voluntary Organisations** – www.scvo.org.uk
- **Wales Council for Voluntary Action** – www.wcva.org.uk

Sandy Adirondack publishes a very useful legal update newsletter via email (mainly focused on England and Wales), which you can sign up to through her website at www.sandy-a.co.uk.

Are you based in Northern Ireland and visiting or revisiting the legal structure of your group? Voluntary Arts Ireland can provide tailored support to help. Contact Voluntary Arts Ireland on 028 4483 9327 or info@vaireland.org.

Information contained here may go out of date and you are therefore advised to check its currency. Updated information may be available on the VAN website: www.voluntaryarts.org

Disclaimer: Reasonable precautions have been taken to ensure the information in this document is accurate. However, it is not intended to be legally comprehensive; it is designed to provide guidance in good faith at the stated date but without accepting liability. We therefore recommend you take appropriate professional advice before taking action on any of the matters covered herein.

© **Copyright notice:** Unless otherwise stated, all material published by VAN is subject to copyright.

However, we do encourage members of the voluntary arts sector to copy and disseminate this material for non-commercial purposes.

Prior to doing so, please send details of your requirements to info@voluntaryarts.org.

We also require that you acknowledge VAN wherever such material is used.

Do you need this publication in an alternative format?
Contact T: 029 20 395 395 E: info@voluntaryarts.org

VOLUNTARY ARTS NETWORK


VOLUNTARY ARTS WALES
CELFYDDYDAU GWIRFODDOL CYMRU


VOLUNTARY ARTS IRELAND
EALAÍONA DEONACHA ÉIREANN
VOLUNTAR AIRTS AIRLANN


VOLUNTARY ARTS LINK


VOLUNTARY ARTS SCOTLAND
EALAIN SAOR-THOILEACH AN ALBA


VOLUNTARY ARTS ENGLAND

The Voluntary Arts Network, Ground floor, 121 Cathedral Road, Pontcanna, Cardiff CF11 9PH
T: 029 20 395 395 E: info@voluntaryarts.org W: www.voluntaryarts.org

The Voluntary Arts Network is registered in Scotland as Company No. 139147 and Charity No. SC 020345.

Voluntary Arts acknowledges funding from the the Arts Council of England, Northern Ireland and Wales, the Big Lottery Fund, National Lottery through the Scottish Arts Council, Legacy Trust UK, Glasgow City Council, Binks Trust, Hugh Fraser Foundation and the Austin & Hope Pilkington Trust.

Registered office: 2nd Floor, 54 Manor Place, Edinburgh EH3 7EH.