

LEGAL STRUCTURES

¹There are two groups of organisations, unincorporated and incorporated. In unincorporated organisations (associations, trusts) the committee are operating as individuals and can be personally sued if someone gets hurt or for debts etc. The incorporated forms (e.g. a cooperative, a community benefit society, a private company) limit those liabilities.

In deciding which to choose other issues will be considered such as how much the membership is to be in control, who can become a member, whether the service/facilities will be available to non-members, whether it will employ (now or in the future) staff on permanent contracts, and whether it will (now or in the future) trade regularly where risk, significant borrowings or long –term liabilities are involved.

To read an online guide to different structures and how to choose one link to <http://www.getlegal.org.uk/legal> structures. In getting advice it is best to go to a specialist. See also www.cooperatives-uk.coop (advises on all types of organisation) and www.communitymatters.org.uk

REGISTERING AS A CHARITY

In February 2011 the founding group of the Camden Town Shed decided to form an association (similar to a club). As we had also agreed that we were going to operate for public benefit and not to distribute profits to members we found we adopted the “Small Charity Constitution” found on the Charity Commission website. See http://www.charity-commission.gov.uk/Start_up_a_charity/default.aspx

To complete this we needed to state the purpose of the association and who it was to benefit and accept the simple rules it contained. It only required three people to sign. We used one of the model clauses also found on the website to state the purpose clearly and succinctly and with the document signed the Shed was formed. A Small Charity is one whose annual income is less than £5000 and it is not registered with the Charity Commission. The management committee and the trustees can be the same people.

The main benefits of being a charity are that it confers status (helps with your credibility in fundraising), enables you to get tax relief on donated income and it reduces premises rates by 80%. If you decide not to register with the Charity Commission these benefits would need negotiating with each authority. Becoming a charity places some requirements on an organisation to provide accounts and a report but it does not mean that you cannot sell goods at a profit providing that such activities are in pursuit of the charity’s Objects and the income derived supports the charity. The Objects clause needs careful consideration.

Within a few months we had received more funds than £5000 and so we had to register with the Charity Commission. That required completing an application, answering some rigorous questions and making a trustee declaration. The key issue is to demonstrate that the proposed activities have a public benefit and that this benefit extends to a wide enough group or groups of people. The key part of our response on the question of public benefit was the following:-

“The aim of this organisation is to relieve distress derived from unemployment or enforced retirement at the end of our working lives. This distress can include loss of purpose and direction, loss of social interaction, loss of

opportunity to exercise skills, loss of identity and status, and loss of control over your life. These and other factors eg. the effects of reduced income and ageing can lead to further health problems, including depression, reduced confidence, decline in abilities etc. Research indicates that this distress tends to be worse in men because men are less likely to have developed social relationships to the degree women usually do, and men are less likely to be able to have a validating domestic role which they can continue after retirement.”

The key part of our response in reply to the question whether the benefit was unreasonably restricted included the following:-

“The intended beneficiaries are people who have come to the end of their working lives either through retirement or redundancy and to whom this presents challenges. The beneficiaries qualify if they are no longer working and do not expect to work and have need of social interaction and practical and creative activity of their own choosing, which they are not able to obtain in other ways.” We did not make this gender-specific as we could not say that women would not be included in some way. We also had to show that people experiencing poverty would still be able to attend.

The Charity Commission website offers registering organisations support in the form of model Objects clauses which as they are already approved speed up the process. We thought of using one that fell under the Recreational Charities Act which focuses on leisure activities and is normally used for sports clubs. The Commission said this was not appropriate and so we did not use that category but adopted a clause which states our purpose as:

"To promote social inclusion for the public benefit by preventing people from becoming socially excluded, relieving the needs of those people who are socially excluded and assisting them to integrate into society.

For the purpose of this clause ‘socially excluded’ means being excluded from society, or parts of society, as a result of one or more of the following factors: unemployment; financial hardship; youth or old age; ill health (physical or mental); substance abuse or dependency including alcohol and drugs; discrimination on the grounds of sex, race, disability, ethnic origin, religion, belief, creed, sexual orientation or gender re-assignment; poor educational or skills attainment; relationship and family breakdown; poor housing (that is housing that does not meet basic habitable standards; crime (either as a victim of crime or as an offender rehabilitating into society).”

This was accepted by the Charity Commission and so may be a helpful precedent to other groups who want to register a shed as a charity although since 2014 a new legal format of Charitable Incorporated Organisation has been created which offers further benefit. Adopting the Small Charity Constitution is still a useful quick way to get started but as an association the committee officers bear some personal liability. With a CIO the organisation can be both registered as a charity and have the benefit of Incorporation whilst still only having to report to the Charity Commission and not Companies House.

NB. The above is simply the experience of the Camden Town Shed and is not intended to offer any legal advice to other groups.

- The Westhill Men's Shed in Aberdeen has also registered with the Charity Commissioners in Scotland. Their charitable purposes are:
- The advancement of health.
The provision of recreational facilities and activities with the object of improving the quality of life of the participants.

The relief of those in need by reason of age, ill health, disability, financial hardship or other disadvantage.

Charities and Trading

Charities can trade under certain conditions. Some activities Sheds might engage in are not considered trading e.g. selling donated goods, for example as in a charity shop, is not considered trading so any profits would not be subject to tax.

There are two main types of trading for charities: 'primary purpose' and 'non-primary purpose' trading. These different types of trading have different tax implications.

Primary purpose trading is selling goods or services that directly further your charity's aims as they are stated in your governing document. Examples of primary purpose trading include:

- a care home charging to provide housing and care services for elderly people
- a charity for the disabled selling products made by its beneficiaries
- a charitable theatre selling tickets for its production

You might also sell goods or services that support your primary purpose trading – for example, selling food and drink to audience members in the café of a theatre. This is known as 'ancillary trading'.

Profits from primary purpose and ancillary trading may be exempt from tax, but only if the profits are entirely used to support your charity's aims.

Non-primary purpose trading: You can also sell goods or services purely to raise funds: this is non-primary purpose trading. This kind of trading has no direct link to your charity's aims. Non-primary purpose trading could include:

- selling greetings cards or similar items
- a charitable theatre running a café that sells food and drink to members of the public, as opposed to audience members

Charities can carry out non-primary purpose trading if there is no significant risk that the charity could lose money from this venture. Profits from non-primary purpose trading are usually taxable, even if they will be used to support the charity's aims. However there is a small-scale exemption, a threshold of turnover of £5000 below which profits are not taxable.

Some trading activities may mix both primary and non-primary purpose trading. For example, a museum shop may sell books relating to an exhibition (connected to their aims), and some promotional pens (not connected to aims at all). By law, you must record these sales separately in your accounts if you mix trading types in this way.

For the Charity Commission's booklet on the subject go to <https://www.gov.uk/government/publications/trustees-trading-and-tax-how-charities-may-lawfully-trade-cc35/trustees-trading-and-tax-how-charities-may-lawfully-trade>

You can also find out more about charity trading and tax from HM Revenue and Customs

ORGANISATION TYPES

These are the range of organisation types that may be applicable to Men's Sheds, along with their Pro's & Cons

ORGANISATION TYPE	PRO's	CON's
Common Association (unincorporated ²)	<p>Easy starting point & set up</p> <p>No cost</p> <p>No registration necessary</p> <p>Flexible</p>	<p>No tax benefits</p> <p>Hard to raise grants from trusts</p> <p>No security for trustees/committee</p>
Charity	<p>Charity status helps fundraising</p> <p>Suitable for small groups < £5k</p>	<p>But many trusts won't support until you are registered.</p> <p>Tax breaks don't apply until registered</p>
Registered Charity	<p>Opens up more funding potential</p> <p>Tax benefits</p> <ul style="list-style-type: none"> • no corporation tax on profits made from trading in the course of delivering their charitable aims (primary purpose trading) • 80% mandatory and 20% discretionary relief from business rates (rate relief) • Gift aid on cash donations from individuals • Stamp duty land tax relief on acquisitions of freehold property or entering into leases • While charitable status brings HMRC tax advantages as above, there are restrictions in terms of what input VAT can be reclaimed. <p>Reassures the public/makes public contributions more likely</p>	<p>Paperwork required for Charity Commission.</p> <p>Annual income >£5000 needed</p> <p>If unincorporated, trustees have personal liability and trustees must sign legal documents and hold property on behalf of the charity</p>
Social Enterprise	<p>Not a legal term and can mean anything you want it to mean – like for example the word “community”. The normal presumption is that it's an organisation that makes something, sells a service or trades and as such generates its own income – so you are not dependent on grants or other fundraising.</p>	<p>It is not a substitute for a legal format e.g. a company or registered charity.</p> <p>Social Enterprise is what you do. It's not what you are per se.</p>
Charitable Incorporated Organisation (CIO)	<p>All the benefits of a registered charity, PLUS gives financial protection for trustees.</p> <p>You can register straight away, without showing a £5k turnover.</p> <p>Slightly less onerous paperwork than a limited company.</p>	<p>Little known yet because it is a new status (20130 therefore often requires explanation</p> <p>You must register with the Charities Commission straight away.</p> <p>If moving from charity status, a change in registration number.</p>

²² An 'unincorporated association' is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit, e.g. a voluntary group or a sports club

ORGANISATION TYPE	PRO's	CON's
Corporate Trustee	An incorporated body appointed as sole trustee can limit personal liability for trustees similarly to CIO. (Possibly more suitable for larger charities)	Full reporting responsibility to Charity Commission and to Companies House
Community Benefit Society	Same tax benefits a charity, but you can issue shares	No need to register with the Charity Commission – regulated instead by Financial Conduct Authority.
Community Interest Company (CIC)	A type of limited company with social objectives. Wider purposes allowed than a charity. There is an asset lock ³ that means some funders will give you a grant even if you are not a charity.	Same reporting as a company. There is a CIC regulator. Set limits on profits to shareholders. Does not have the tax breaks enjoyed by registered charities. Asset lock may make selling assets difficult.
Limited Liability Partnership	A company with helpful limited liability – well suited for co-operatives and groups of self-employed people working together.	Can be complicated and not suitable for charitable registration.
Limited Company	Limited companies offer “limited liability” and considerable freedom of action. Significant national insurance savings, if directors are paid by dividend. If delivering services under contract for public authorities, it’s possible that you will be treated better than a charity/CIC/Co-op.	Does not have tax benefits of registered charity But tax is paid on “profit” (a moveable feast), not on income. It’s very unlikely to qualify for many grants.

³ The Asset Lock is designed to ensure that the assets of the CIC (including any profits or other surpluses generated by its activities) are used for the benefit of the community.

Further reading:

Please note that Charities in Scotland are regulated separately to the rest of the UK by the Scottish Charity Regulator

Charity Commission <https://www.gov.uk/government/organisations/charity-commission>

Scottish Charity Regulator <http://www.oscr.org.uk>

The Charity Commission has a helpful page describing differences between:

- Unincorporated charity
- CIO
- Charitable company limited by guarantee
- Trust

See:- <https://www.gov.uk/charity-types-how-to-choose-a-structure>

Co-operatives UK has a number of useful tools for co-ops and other social enterprises, written in easy to understand language/ Here are two extra page links you might like to check out:-

<http://www.uk.coop/our-work/select-structure-tool>

<http://www.uk.coop/simplylegal>