

HOW TO CHOOSE A LEGAL STRUCTURE

Introduction

Every self-organised community in the UK is slightly different in how they are financed, the different decision making/governance structures that are used and a range of other unique features to the project. This can mean that picking a legal model off the shelf isn't always appropriate.

A suitable legal structure does the following:

- Reduces risk through limited liability
- Binds the group in a democratic structure
- Must be a recognisable structure that a funder will contract with
- Allows the group to open a bank account
- Groups may obtain investment advice and funding from a regulated professional (such as a bank), who are often specialist lenders in the co-housing and third sectors

Choosing a legal form

Although most groups opt for a traditional leasehold arrangement with the group/company as the freeholder (and potentially rental units with either the group or an external partner as landlord), there are other models.

This is a rough guide to the legal structures most commonly associated with social enterprise. However, there are a variety of legal requirements associated with setting up the structures described below and you should consider seeking professional advice before your organisation adopts any one of them.

Legal structure	Summary: most typical features	Ownership, governance and constitution	Is it a legal entity distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets 'locked in' for community benefit?	Can it be a charity and get charitable status tax benefits?
Unincorporated association	Informal; no general regulation of this structure; need to make own rules.	Nobody owns - governed according to own rules.	No, which can create problems for contracts, holding property and <u>liability of members</u> .	Depends on own rules.	Would need bespoke drafting to achieve this.	Yes, if it meets the criteria for being a charity.
Limited company (other than Community Interest Company) www.companieshouse.gov.uk	Most frequently adopted corporate legal structure; can be adapted to suit most purposes.	Directors manage business on behalf of members. Considerable flexibility over internal rules.	Yes, members' liability limited to amount unpaid on shares or by guarantee	Yes, but no dividends etc to members if it is a company limited by guarantee.	Would need bespoke drafting in articles, which could be amended by members.	Yes, if it meets the criteria for being a charity.
Community interest company (CIC) www.cicregulator.gov.uk	An effective limited company structure for social enterprise with secure 'asset lock' and focus on community benefit.	As for other limited companies, but subject to additional regulation to ensure community benefits.	Yes, members' liability limited to amount unpaid on shares or by guarantee.	Yes, but must benefit the wider community. Can pay limited dividends to private investors and directors can be paid.	Yes, through standard provisions which all CICs must include in their constitutions.	No, but can become a charity if it ceases to be a CIC.

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Industrial & Provident Society (IPS) (Co-operative)	For bona fide co-operatives that serve members' interests by trading with them or otherwise supplying them with goods or services.	Committee / officers manage on behalf of members. One member, one vote (regardless of size of respective shareholdings).		Yes, but should do so mostly by members trading with society, using its facilities etc, not as a result of shareholdings.		No, would have to be constituted as community benefit type of IPS.
Industrial & Provident Society (IPS) (Community Benefit Society (BenComm))	Benefit community other than just own members and have special reason not to be companies.	Like Co-op type, but new legislation provides option of more secure form of 'asset lock'.			Must primarily benefit non-members - 'asset lock' applies.	Yes, if it meets the criteria for being a charity.
Charitable Incorporated Organisation	First ready-made corporate structure specifically designed for charities.	Similar to company but with different terminology, eg 'charity trustee' instead of 'director'.	Yes, members either have no liability or limited liability.	Members are not permitted to benefit and charity trustees are only able to benefit if constitution, court or Charity Commission give permission.	Yes.	Cannot be anything but a charity, and must meet the criteria for being a charity.