

## Legal Structures: What's in a name?

### **Voluntary—not-for-profit—charitable—third sector—non-governmental organisation (NGO)**

As the above list indicates, organisations are often known by many different names, all of which can apply to the organisation but which have their own specific meanings. The result is often very confusing, especially for those people newly come to work with these organisations.

Below is a brief summary of some of the important terms you are likely to come across and what they mean.

### **Voluntary organisation**

This is the catchall word used most often used to describe these types of organisations. The most obvious implication of this word is that the organisation that is being referred to carries out its work through volunteers. However the word 'voluntary' is also used for organisations such as the Royal National Institute for the Blind (RNIB), which has many paid staff and millions in income.

One common point for the vast majority of all voluntary organisations is that they are governed by a group of volunteers. There are also many different names for this group of people: trustees, management committee, executive committee, or board of directors, but all refer to the same thing, a group of people who give their time freely for the management of the organisation. These people probably do not meet every day, and may only meet a few times a year, but the ultimate responsibility for the organisation is theirs.

However the term 'voluntary' says nothing about the actual activities an organisation might carry out, its legal structure or the rules by which it is governed. Indeed, it is very hard to say what exactly makes an organisation voluntary, as an organisation many have hundreds of paid staff and only a dozen volunteers.

Despite this, the term is a useful starting point that applies to most of the organisations that Voluntary Action East Renfrewshire (VAER) advises and who may use this information. As it has a generally accepted, but hard to define, public meaning, it is also a useful way of letting people know that you are not a public organisation but that you have socially-minded aims and objectives.

## **Not for profit/non-profit**

This term can also be applied to many voluntary organisations. However the use of this term does not mean that these organisations cannot make a profit. Any organisation that continually ran into debts is likely to go bankrupt, which is of no good to anyone! Instead this term is used as shorthand for the clumsier phrase, 'non-profit-distributing'.

To qualify as a non-profit, an organisation must have a clause in its governing document (see 'charity') stipulating that it cannot distribute any of its income, either as money or in some other manner, to the committee or any of its members. Often this is extended to state that none of the committee can be employed by the organisation. As a result the people who are involved in running the organisation are seen as acting out of reasons other than their own profit.

This is contrasted with private business, where the directors or the members of the company expect to receive a percentage of the income of the organisation (i.e. the organisation is for-profit). While this explains why voluntary organisations that employ many staff are still considered voluntary (because the group of people in charge cannot receive a profit for their work) it also has all the drawbacks of the term 'voluntary organisation'.

## **Non-governmental organisation and third sector**

If voluntary organisations are different from private companies, they are also different from the government, even though the government and voluntary organisations often have the same aim of benefiting people, and commonly work side-by-side. Ultimately, however closely voluntary organisations and governments work together, the organisations are still independent of the government, with committees freely appointed according to the rules of the organisations, and not the decision of the government.

Moreover, while the government is often interested in helping as many people as possible, voluntary organisations are usually interested in helping specific types of people: those who live in a certain area, or who are of a certain age or ethnic background, for example.

This is why these organisations have been described as non-governmental organisations (NGOs for short), especially for international organisations, to separate them from the many government-run organisations that are also in operation in the same fields.

The fact that voluntary organisations resemble both private and government organisations in different ways, but are also unique to themselves has also led to the term ‘third sector’, just as you have ‘private sector’ and ‘statutory sector’.

## Charity

Often when people use the word ‘charity’ they believe they are referring to voluntary organisations. Often they use the word in the same way as they use the words ‘company’ or ‘association’ (see below), but to describe an organisation that carries out activities with the aim of improving people’s lives and not simply for profit.

In fact the word ‘charity’ is used to describe an organisation whose aims/objects fall within a set of definitions established by law as charitable. These definitions fall under the following 16 headings:

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|----|---|
| a. | the prevention or relief of poverty   |
| b. | the advancement of education  |
| c. | the advancement of religion   |
| d. | the advancement of health (including the prevention or relief of sickness, disease or human suffering)  |
| e. | the saving of lives   |
| f. | the advancement of citizenship or community development (including rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities) |
| g. | the advancement of the arts, heritage, culture or science   |
| h. | the advancement of public participation in sport (which involves physical skill and exertion)   |
| i. | the provision of recreational facilities or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended     |
| j. | the advancement of human rights, conflict resolution or reconciliation  |
| k. | the promotion of religious or racial harmony  |
| l. | the promotion of equality and diversity   |
| m. | the advancement of environmental protection and improvement   |
| n. | the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage (including relief given by the provision of accommodation or care)   |
| o. | the advancement of animal welfare   |
| p. | any other purpose that may reasonably be regarded as analogous to any of the preceding purposes   |

In all 16 cases the organisation must demonstrate that its activities have a significant public benefit. An organisation that is set up to benefit a named individual (for example an appeal to raise funds for one person to receive medical treatment) could not be registered as a charity, despite its laudable aims, because it is only seeking to benefit one person.

If an organisation carries out one or more of these objects (and no other non-charitable object), is not replacing statutory services nor carrying out political activities, and its management committee is unpaid and entirely independent of any other body, then it is likely to be a charity.

There is often a large difference between what the law views as charitable and the public view. For example, charities are able to charge for their services, and are not allowed to engage in political activities. The latter point means that Amnesty International is not a charity, because of its stated aim in persuading governments to change their laws to ratify human rights within their countries.

If you think that your organisation is a charity, you are legally required to apply to the Office of the Scottish Charity Register (OSCR) for registration onto the public registry of charities. OSCR will decide whether the application meets the criteria for a charitable organisation, and may suggest amendments to your objects. If you are successful then they will issue a registration number, and the organisation must state that it is a charity in all its publicity and comply with the OSCR's regulations.

As well as saying something about the type of organisation, having a charitable registration implies an organisation has the following attributes:

**A board of trustees**—As mentioned previously, this is the group of people who volunteer to govern the charity. All charities are legally required to have a board of trustees of at least three people, although the board may be called by many different names: management committee, executive committee, board of directors. Whatever the name, they are all trustees with the same responsibilities.

**A legal structure**—Charities must have a legal structure. The three most common types are described below. A charity's legal structure is determined by its governing document.

**A governing document**—This is the document that lists the rules by which the charity must be run. Usually these include the objects of the charity, who can be a member, how the trustees are appointed and other organisational details.

Being a charity is a legal obligation and does not bring as many benefits as are generally assumed. Please consult VAER for more details on these, and the restrictions that bind charities.

## Legal structures for organisations

Whether you are a charity or not, you must have a structure to your organisation. Broadly speaking there are four types of structures available to people wishing to set up a voluntary organisation. Other types of structure do exist, but are much rarer and likely to apply in only specific cases. Contact the capacity building team at VAER for further information on this.

All organisations have a governing document which contains the rules on how the committee is appointed, who can be members, what the objects are, how general meetings are run and how to wind up the organisation.

## Unincorporated associations

These are associations of people (the members) who have come together to achieve the objects set out in the constitution. The members then elect a management committee to run the association under the terms of the constitution (the governing document for associations).

Associations that carry out charitable activities can register as charities with OSCR, being known as charitable associations. Most voluntary organisations/charities use the structure of an association.

### Pros

- Cost nothing to establish, and very quick to set up (technically exists as soon as the constitution is signed and the members agree at meeting).
- No other agency need become involved (unless you are applying to be a charity)
- Privacy—not answerable to outside group (save perhaps funders, and if you are a charity, then OSCR)
- Democratic constitution

### Cons

- Associations have no legal existence. All assets are held in the name of the individuals whose sign the bank account, contracts etc. These individuals are holding them on trust on behalf of those people who will benefit from the objects of the organisation.
- As a result when there is a change of trustees, there is usually a need to change signatories etc, which can cost money, certainly in terms of administration.

- Members of committee can be held personally liable for obligations and debts of the organisation. However, courts have generally looked upon these matters in the trustees' favour where trustees have been shown to have acted responsibly and with care and so protected the trustees from claims
- Difficult to borrow money, unless individuals do so on behalf of the association. Those individuals then become liable for the repayment of that money.

## Trusts

Trusts are commonly established by bequests, with the purpose of achieving certain objects of interest to the person making the bequest. They have a trust deed as their governing document. Usually the founders of the trust appoint the first trustees and the board of trustees then selects subsequent trustees as needed.

Trusts that carry out charitable activities can register as charities with OSCR, being known as charitable trusts. Often grant-making bodies are trusts.

## Pros

- Easy to set up and quite cheap—you may need to pay £5 stamp duty to HMRC
- As with an association

## Cons

- Trusts are undemocratic, and usually reflect the personal preferences of the founders, rather than the needs of any specific community.
- As with an association

## Incorporated company limited (by guarantee)

Unlike the previous two, a company has a legal existence, in the same way you or I do. Companies can hold property in their own right, borrow money and carry out many of the functions of any person.

A company's governing document is called an Articles of Association which includes the memorandum of association at the back. Like an association, a company is formed by a group of people who have come together to achieve the objects set out in the memorandum of association. The members then elect the board of directors.

Companies that carry out charitable activities can register as charities with OSCR, being known as charitable companies. This is the preferred structure for most voluntary organisations/charities which employ staff and enter into complex contracts etc.

## Pros

- Companies have a legal existence, so actions are taken in the company's name, rather than those of the individual trustees. This means that there is no need to change signatories when trustees change, and ownership of property and contracts is clearer.
- Companies are allowed to limit the liability of members and trustees to a nominal sum (between one to ten pounds) in the event of the company winding up and having debts.
  - **But** the directors would be personally liable for losses and debts where they had;
    - Acted fraudulently
    - Acted in breach of trust, i.e. against the objects of the company or do not take due care when making decisions.
    - Continued to run the company when they know, or ought to know, it has no reasonable chance of avoiding insolvent liquidation
- Companies are democratic organisations, but membership can be restricted giving them the same type of structure as trusts.
- May be easier to borrow money (but banks may ask for personal guarantees)

## Cons

- Companies must follow the Companies Act and, if a charity, must also follow the Charities Act, increasing the amount of administrative work involved.
- If the company winds up, all members are required to pay the sum listed in the memorandum of association to contribute to any liabilities or debts.
- Companies cost money to set up. There is an administration fee from Companies House, and it is likely that the witnesses needed on some of the forms will charge a fee for the service (i.e. solicitors, notaries public)

## Scottish Charitable Incorporated Organisation

Scottish Charitable Incorporated Organisations (SCIOs) are a relatively new legal structure. They are still registered charities, but also legal entities that are able to enter into contracts, employ staff, incur debts and own property. A SCIO is an incorporated body, so its trustees

have limited liability (in contrast with unincorporated associations where individual charity trustees could be personally liable for the charity's debts or commitments). However, unlike other incorporated bodies, SCIOs don't have to report to Companies House. They are regulated by the Office of the Scottish Charity Regulator (OSCR), so just have to submit one set of returns.

### Pros

- Liability of charity trustees is limited and members are not liable to contribute to the assets if it is wound up.
- It has a legal personality and can undertake transactions in its own right.
- Single regulator – OSCR.
- Title to land and buildings will be held in the name of the SCIO.
- Freedom to take all steps and actions in pursuit of its charitable objects (subject to any specific restriction in the constitution).
- Creditors have certain protection when conducting business with SCIOs and when SCIOs are winding up.

### Cons

- SCIOs must have a head office in Scotland and must be a Scottish charity.
- Once you are a SCIO you cannot convert to an alternative legal form or combine with a non-SCIO charity. The only option for moving away from SCIO legal form would be to dissolve the SCIO, transferring its funds, assets and activities to another charity with similar purposes that had an alternative legal form.
- A SCIO can only exist as long as it is a charity entered in the Scottish Charity Register. Unlike other charities, SCIOs cannot carry on operating if they cease to be charities.
- Membership cannot be transferred.
- Resolutions of members are required before certain actions can be taken.
- A duty to keep registers of members and charity trustees, and to make these publicly available in certain circumstances.
- A meeting of members must be held at least every 15 months.

### Further information

The best place to look is OSCR's website— <http://www.oscr.org.uk/>

For information on setting up a company, contact Companies House on 0870 3333636, or visit [www.companies-house.gov.uk](http://www.companies-house.gov.uk).



VAER

Support Development Collaboration

Voluntary Action East Renfrowshire SCIO  
56 Kelburn Street, Barrhead, G78 1LR  
Scottish Charity Number: SC008103

e: [reception@va-er.org.uk](mailto:reception@va-er.org.uk)  
t: 0141 876 9555  
w: [www.va-er.org.uk](http://www.va-er.org.uk)

