

Governance Structures – Sported NI Volunteers

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Who am I?



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Today's Agenda

How to choose the correct structure

Common structures

Unincorporated

Incorporated

CASCs

Community Interest Companies

Charities

Advantages and disadvantages

Governance trends 2022

Questions

How to choose the correct structure?

- Key considerations
 - What is your social mission
 - Management of risk – does your organisation need a separate legal personality?
 - Access to finance – which entity is more attractive to funders?
 - Tax – charities have favourable tax treatment
 - Power structure

Structures

01

Unincorporated groups

- Constitution = a set of Rules
 - Two-tier structure – membership and management committee
 - Personal liability for the members of the management committee
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- Advantage
 - Light touch regulation
 - Informal
 - Disadvantage
 - Can't hold assets itself
 - Personal liability
 - No legal personality
 - Rules/ purposes can be changed

Incorporated group

- Constitution = Memorandum & Articles of Association
- Advantages
 - The organisation is a legal entity liable for its own obligations
 - Limits the personal liability of individual members/ shareholders and board members
 - Separate legal entity – incorporated groups can:
 - Enter into contracts
 - Borrow and charge assets e.g., floating charges and debentures
 - Employ staff
 - Lease property and take on those burdens
- Key characteristics
 - Incorporation limits the personal liability of individuals but does not remove it
 - Established form of structure for stakeholder membership
 - More regulation, disclosure requirements increasing public trust and confidence in the organisation
 - Recognition by financial institutions. Some equity finance is only available to certain types of incorporated associations

Limited Companies

- Two types of companies
 - Company limited by shares (CLS)
 - Company limited by guarantee (CLG)
- Charitable companies are usually CLG
- CICs can be either CLS or CLG

Company limited by shares (CLS)

- Shares issued to stakeholders who become the owners of the company. Their company is limited to the amount of their investment.
- Share capital – a figure to represent the net assets of the company
- One vote per share

Company limited by guarantee (CLG)

- No share capital but a membership who support the objectives
- The members give a nominal guarantee to cover the company's liability, normally £1 each – “the £1 myth”
- Usually one member one vote
- There is no built in for profit framework to allow investors to receive a return on investments
- The CLG is traditionally linked to charities and not-for-profit companies

Directors Statutory Duties

1. Act within powers
2. Promote the success of the company
3. Exercise reasonable skill, care and diligence
4. Exercise independent judgement
5. Avoid conflicts of interests
6. Not accept benefits from third parties
7. Declare interests in proposed transactions or arrangements with the company

CASCs

- To register as a CASC, your club must:
 - Have a formal written constitution
 - Be open to the whole community
 - Membership and facilities must be open to all without discrimination. Fees, if charged, must not represent a significant obstacle to membership or use of the club's facilities.
 - Be organised on an amateur basis
 - The club is non-profit making, in the sense that all profits are reinvested in the club
 - Have as its main purpose the provision of facilities for, and the promotion of participation in, one or more eligible sports
 - Not exceed the income limit (£10k per annum, from non-member trading and property income)
 - ...and meet several other financial & management conditions

Charity or CASC? What is the difference?

- Essentially, the difference between a CASC and a charity, is that a charity has charitable status and registers with the Charity Commission for Northern Ireland and HMRC, but a CASC is only registered with HMRC.
- Charitable status brings with it a number of tax reliefs and reputational benefits, but also greater regulatory control and more stringent limits on trading.
- Whilst a CASC will benefit from less regulatory control and less stringent limits on trading, there are fewer tax reliefs available, and only a defined list of sports are eligible.
- <http://www.cascinfo.co.uk/cascvcharity/>

Community Interest Company

- Limited company under the Companies Act 2006 and regulated by the CIC regulator
- Companies (Audit, Investigations and Community Enterprise) Act 2004 and CIC Regulations 2005
- Provides a legal vehicle for non-charitable groups
- Allows groups to use their profits and assets for the public good
- The primary purpose is to benefit the community and not shareholders, directors or other employees

Community Interest Company

- Characteristics
 - Benefit to community
 - Asset lock
 - Community interest test (statement is evidence)
 - Transparency
 - Limited liability
 - Simple to set up
 - Flexibility
 - Supervision and regulation
 - Compliance with company law
 - CIC brand

- CIC's cannot be charities

Trading Companies

- Can be a CLS, CLG or a CIC – depends on the purpose and nature of trade
- Charities can do primary purpose trading only
- Wholly owned subsidiaries or charities used for commercial trade that is not permissible to be done – no permanent trading in the charity allowed
- Tco needs bespoke Articles to ensure safeguards to protect the charity
- Should be separation between the board of the charity and the board of the TCo – not same people
- Profits/ surplus can be covenanted/ gifted up from the TCo to the charity if a CLS
- Strict rules for the charity to ensure not mixing funds
- Should be a resource sharing agreement between the charity and the TCo

Personal liability

Unincorporated entity:

- Responsible for:
 - Third party contracts (between management committee and third parties)
 - Property (leases, mortgages etc. taken out in name of mgmt. company)
 - Insolvency
 - Health and safety legislation
 - Fraud
 - HMRC tax fines

Incorporated entity

- Responsible for:
 - Insolvency
 - Health and safety legislation
 - Fraud
 - HMRC tax fines

How to reduce personal liability

- Comply with constitution and objects
- Ensure the board are aware of their responsibilities
- Good governance
- Ensuring the organisation can meet its financial objectives
- Hold regular meetings
- Keep proper records
- Reduce long term commitments
- Ensure effective risk management
- Take professional advice when you need to
- Ensure adequate insurance is in place

Charities

02

Charities

- Can be unincorporated or incorporated entities
- There are 12 charitable purposes in the Charities Act 2008
- **Advancement of Amateur Sport**
- Sport means sport or games which promote health by involving physical or mental exertion but must also be for the purposes of advancing sport.
- The participants must be “amateur” and not professional
- The organisation must have purposes that are exclusively charitable
- It must be for the public benefit

12 Charitable Purposes

- **S2. Charities Act (NI) 2008**

- **Advancement of:**

- *Education*
 - Religion
 - *Health/ saving of lives*
 - Citizenship/ community development (including urban or rural regeneration)
 - Arts, culture, heritage or science
 - **Amateur sport**
 - *Human rights, conflict resolution or reconciliation or promotion of religious or racial harmony, equality or diversity*
 - Environmental protection or improvement
 - Animal welfare
 - Any other charitable purpose

Charities – The Public Benefit Requirement

Statutory Guidance – Must Read!



Charities – The Public Benefit Requirement

- For a charity's purposes to satisfy the public benefit requirement, the benefit which flows from the purposes must:
 - Be to the public or to a section of the public
 - Not provide a private benefit to individuals unless incidental
- The benefit must:
 - Flow from the charity's purposes
 - Be capable of being demonstrated
 - Be beneficial not harmful

Charities – Trustee Duties

- Charity trustees have the following duties:
 1. Duty to safeguard and protect assets – “Stewardship” role
 2. Duty to act collectively
 3. Must act in the best interests of the charity
 4. Responsible for proper administration of the charity
 5. Avoid conflicts of interest
 6. Responsible for everything the charity does
 7. Act reasonably and prudently in all matters

Governance

03

Good Governance

Governance is “**the process of decision making and the process by which decisions are implemented**”.
Governance is about leadership and ensuring that an organisation is effective and properly run.

- “The Great Resignation” – recruitment and retention
- Impact of Covid-19 on governance arrangements
- Data protection – fines can be very substantial!
- Cyber security – 39% of businesses have faced a cyber attack in the last 12 months
- Board conduct
- Ill fitting legal forms

Key Governance Issues 2022

Questions to consider...

- Recession and cost of living crisis – have you considered cash flow issues and financial instability?
- What challenges did your organisation face as a result of covid-19?
- How can you operate more efficiently? Can you think of any better ways of working? What can be improved?

Relationship between the Board and employees

- The board can delegate functions but not responsibility
- Good working relationships are essential for good governance
- Lead by example – set the tone from the top!
- Provide strategic leadership

Managing conflicts of interests

- Conflicts of interests
- Conflict of loyalty
- The proper handling of conflicts of interests is an essential part of proper decision making and good governance
- Conflicts are common. Having conflicts does not mean you have done something wrong, but you need to prevent them from interfering with your ability to make decisions in the best interests of the organisation
- **Conflicts can damage the public's perception of your organisation**

Finance

- Key considerations:
 - Do you have a clear financial strategy?
 - Do you have effective procedures and controls?
 - Where is the funding coming from?
 - Are you spending funds correctly?
 - Do you have policies for reserves, donations and investments?
 - Do you use your resources to meet your objectives?
 - Do you follow the Fundraising Regulator's standards?

Useful guidance

- **Good governance health check (DIY Committee)**
- **Fundraising Code of Practice**
- **CO3 Guide to Great Governance**
- **CCNI Guidance**

Questions?