

## Unincorporated Association

*'There is no statutory definition of **voluntary organisation** or **community group**, nor is there even any agreed definition in common use. But these terms generally mean a group or organisation which:*

- *Is **voluntary** in the sense of being set up and continuing to operate because the people involved want to, rather than being set up by statute;*
- *Has a governing body (committee or board) whose members are likely to be **volunteers**, receiving no payment other than reimbursement of expenses;*
- *Is set up for the **benefit of the public or a community**, which may be local, national or international, or a community of interest such as people with a particular illness, political or social concern or hobby;*
- *Is set up on a **not for profit** basis, which means it is not set up primarily for financial gain, and has rules saying that if it does make a profit or surplice, this has to be used for the organisation's purposes rather than being shares among the members. Not for profit organisations are sometimes but not always **charitable**.*

*The Russell-Cooke Voluntary Sector Handbook, 3<sup>rd</sup> Ed.*

There are a number of legal structures an organisation can choose. This briefing provides an insight into what an unincorporated association is, and the pros and cons for this form. Further resources can be found at the end. Community Southwark factsheets on the other possible charitable legal structures can be found on the [website](#).



### What is an Unincorporated Association?

In many ways an unincorporated association is the simplest legal form a group can take – generally as soon as a group of two or more people start doing something together for a common purpose other than making profit with the intention (even if it is not explicit) of creating a legal relationship between them, then an unincorporated association can be assumed to exist. It is therefore cheap and easy to set up.

*'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.'* (Gov.UK)

Unlike the other legal forms, unincorporated associations do not require legal recognition before coming into being i.e. you do not have to register with any regulatory body such as the Charity Commission or Companies House. It is not necessary to have a name, a formal constitution, bank account or even any money to become one. This is why when starting out many groups inadvertently create one, without realising the legal consequences for the individuals involved (of course there are simple steps you can take to avoid any confusion).

Although there is no legal requirement to register with a regulator, an unincorporated association may want to register with [HM Revenue & Customs](#) for tax purposes. There may also be other bodies that require registration depending upon what the organisation does i.e. Ofsted.

Furthermore, if an unincorporated association is charitable, once it earns a minimum of £5,000 per annum it will be required to register with the Charity Commission. At this point there will be a decision to make about which legal form best suits your organisations future direction and whether or not to incorporate.

An unincorporated association is a membership organisation, therefore it can be set up to do whatever the members wish (within the law). It is the easiest, quickest and cheapest way for a group to set itself up. This structure is particularly suitable for small community groups such as pensioners associations, film clubs, arts groups and campaigning groups.

The group may not start off with a full constitution, but it is important to have some basic 'rules' written down that state the association's aims, the powers it has to achieve these aims and the management procedures, including how to close the association. The Charity Commission has a [model constitution for unincorporated associations](#).

It is important to remember that if the association's aims are wholly charitable, then it is considered to be a charitable unincorporated association. The Charity Commission requires any group with charitable aims and an annual income above £5,000 to register with them (unless your association chooses a different legal structure such as a CIC).

An unincorporated association may be an appropriate legal form if:

- The organisation does not expect to own significant property or employ staff, will have a secure income, and will not undertake risky or financially burdensome activities; and
- It wants to be a membership organisation; and/or
- It wants more privacy than it could get as a company
- It wishes to remain very small and community focused

As a charitable unincorporated association develops, its management committee may decide to apply for a more formal legal structure either by applying to the charity commission to become a registered charity (still unincorporated) or a [Charitable Incorporated Organisation \(CIO\)](#) or by applying to become a [Company Limited by Guarantee](#) through Companies House.

If the association wishes to carry out activities for the social good but would also like to be more of a social enterprise there are further options available including [Community Interest Company \(CIC\)](#), [Co-operatives and Community Benefit Societies](#).

There are hundreds of unincorporated associations operating in Southwark that choose to remain as such, this may be because they work in very specific areas and are able to carry out their work with smaller amounts of money. Funding can often be found from grant giving organisations, especially for smaller pots of money, fundraising events, and donations.

Because there is no registrar and no need to fill in yearly accounts and reports, unincorporated associations are relatively cheap and easy to run and so suit small groups of people, voluntarily working in their communities. Therefore, it is crucial that the individuals involved in the association understand how being involved in the association affects them.

For example, the association has no separate legal existence i.e. it does not have its own legal personality. This means that it is the individuals involved who are recognised by the law, therefore the association cannot own property, go for contracts or enter into legal proceedings in its name. Instead any property will have to be in the individuals names (or an incorporated body acting in its name). As well as this the individual members can be held personally responsible for the association's obligations and debts.

The lack of incorporation may also mean that banks and other financial bodies are unlikely to lend money to the association and grant funders may be unwilling to award large sums of money. It may also make it more difficult to receive individual donations and fundraising through events as members of the public often want to see proof, such as a charity number, to ensure their money is going to a 'real' cause.

## Unincorporated Association Overview - characteristics

1. Incorporation	No
2. Limited Liability	No
3. Governing document	Constitution
4. Can register as a charity	Yes
5. Ease to set up	Very easy
6. Costs	Very cheap
7. Sources of finance available	Grants (depending upon criteria), donations, fundraising events
8. Regulator	None. May have other regulators based upon what the org. does.
9. Members	Yes
10. Income requirement	None
11. Converting to CIO	Yes
12. Asset Lock	No
13. Dividends & interest	No
14. Tax Benefits	If registered with HMRC

## The Pros and Cons of Unincorporated Association

Pros	Cons
Cheap, quick and easy to set up.	Sometime too easy to set up, a group may have become one inadvertently and not understand the full consequences of doing so
No fees to pay	No separate legal identity, therefore remains a collection of individuals
No registrar	No limited liability, therefore if the associations gets into debt, it will be the individuals responsibility to pay those debts
Do not have to submit accounts	Cannot own property in the associations name
Can generally be wound up easily, provided this has been allowed for in the constitution	Legal proceedings cannot take place in the associations name, only by the individuals representing it
Members run the organisation	Banks etc. may insist on incorporation before lending money
Flexible regarding aims and activities	The association may be restricted in activities as funders may not give large sums of money without incorporation/ a more formal structure
Can register as a charity or CIO, CIC, Company or other legal structure.	Contracts are not likely to be available to an association
Most funder will recognise unincorporated associations. (Funders are likely to require a constitution, business plan and bank account, as well as 3 committee members)	No requirements may mean some associations do not have basic policies and procedures in place.
A good starting point for a community group organisation	

## The four main types of legal charity forms:

Trust	Registered Charity	Charitable Incorporated Organisations (CIOs)	Company Limited by Guarantee / Incorporated
<p>An organisation that exists to manage property or money for a charitable purpose.</p> <p>The governing document is a trust deed or a will. There is no protection from liability for the trustees.</p> <p>There is no need for members.</p> <p>Trusts do have to register with the Charity Commission.</p>	<p>An organisation with charitable aims that meets the public benefit test and has over £5,000 annual income can register as a charity.</p> <p>The governing document is a constitution. There is no protection from liability for the trustees (unless also incorporated)</p> <p>Must have members.</p> <p>Register with the Charity Commission and have to produce annual accounts and reports.</p> <p>Prior to registering, an unincorporated association with charitable aims will be considered as a type of charity.</p>	<p>An organisation with charitable aims that meets the public benefit test and is incorporated without being a company.</p> <p>An organisation can register as a CIO with no annual income.</p> <p>The governing document will be a constitution. The trustees will be protected in most circumstances against contractual liabilities.</p> <p>Must have members.</p> <p>CIOs only register with the Charity Commission.</p>	<p>The governing document is a memorandum and articles of association for a company formed before September 2009 and articles of association for a company formed since then.</p> <p>The directors are protected in most circumstances against contractual liabilities.</p> <p>Must have members.</p> <p>Charitable companies must register with Companies House and, usually, with the Charity Commission.</p> <p>The directors of a Charitable Company will also be its trustees.</p>

## References and further information:

- The Russell-Cooke Voluntary Sector Handbook: 3rd Edition: Directory of Social Change (2009)
- Ruth Hayes and Jacki Reason: 'Voluntary but not Amateur – A guide to the law for the voluntary organisations and community groups': 8<sup>th</sup> Edition: Directory of Social Change (2012)
- Get Legal Website <http://getlegal.bwbllp.com/>
- Gov.UK - <https://www.gov.uk/business-legal-structures/unincorporated-association>

## Support

If you would like any support with setting up an organisation and picking a legal structure or any other issues facing your organisation, please contact the Development Team at Community Southwark: [development@communitysouthwark.org](mailto:development@communitysouthwark.org) or 020 7358 7020.

For more support to get involved in your local community, please contact our Social Action Team to find out more about [Community Action Networks \(CANs\)](#). Please e-mail [engage@communitysouthwark.org](mailto:engage@communitysouthwark.org) or call us on 020 7358 7020.