

A step by step guide to incorporation

Stephanie Cole



A step by step guide to incorporation

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Welcome, introductions and housekeeping

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Today's session

By the end, you will have learnt more about

- Unincorporated and incorporated organisations
- The risks of being unincorporated
- The two options for incorporation
- CIOs and charitable companies and the differences and similarities
- How to change from unincorporated to incorporated including the different steps

The small print (not that small)

This presentation and the handouts apply to England and Wales only

They are not a full statement of the law and are not a substitute for individual analysis of your organisation and its needs and legal advice

Setting the scene

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Legal structure...what's that?

Unincorporated

Incorporated

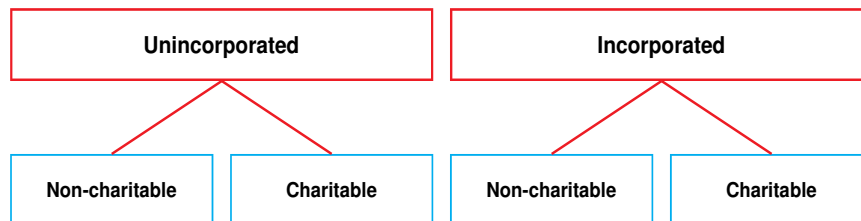
Every organisation is **unincorporated** or **incorporated** (registered as a company, CIO, IPS or other incorporated body)

This is its **legal structure** (also called legal form)

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Legal structure...what's that?



And an organisation may or may not be a **charity**

Being incorporated or not is totally separate from being legally charitable or not. Charitable status depends upon an organisation's objects, not whether it is registered with the Charity Commission

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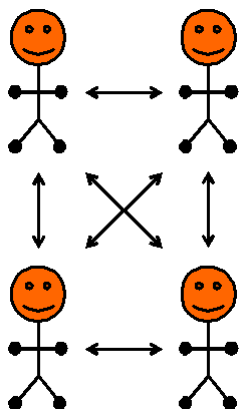
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What are the risks of being unincorporated?

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What's an unincorporated organisation?

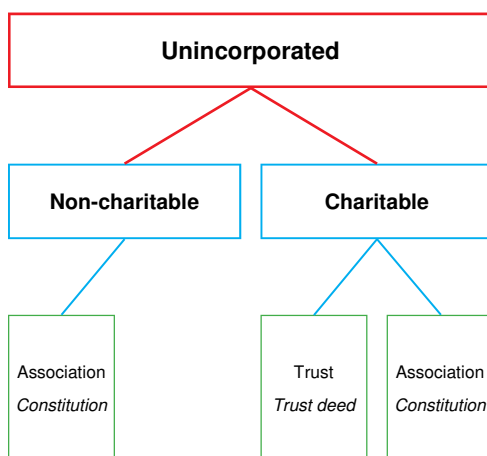


- a group of people acting together for a common purpose - the law doesn't see a difference between the organisation and its members
- any contracts and property in the name of one or more of the members on behalf of the organisation
- any workers employed by whoever signs the contract of employment on behalf of the organisation
- unlimited personal liability (joint and several) – committee/members can be personally liable for organisation's debts
- cheap and easy to set up
- can be a charity

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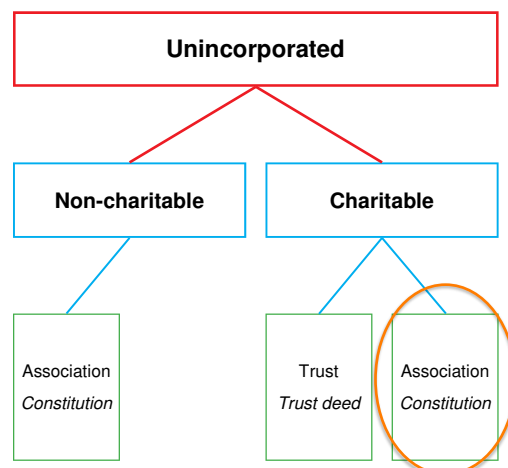
What's an unincorporated organisation?



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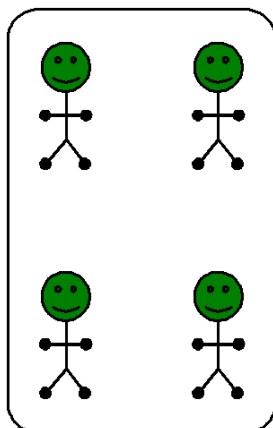
What's an unincorporated organisation?



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What's an incorporated organisation?

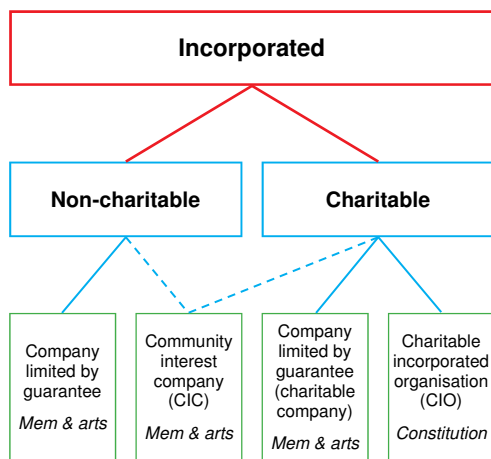


- has a legal identity of its own separate from its members
- can enter into contracts, own property, take legal action, be sued and employ workers in its own right and name
- limited personal liability (usually £1 or £10)
- can be a charitable company (company limited by guarantee and a registered charity) or CIO
- if a charitable company, there are fees to set up and make annual returns
- more complex than unincorporated

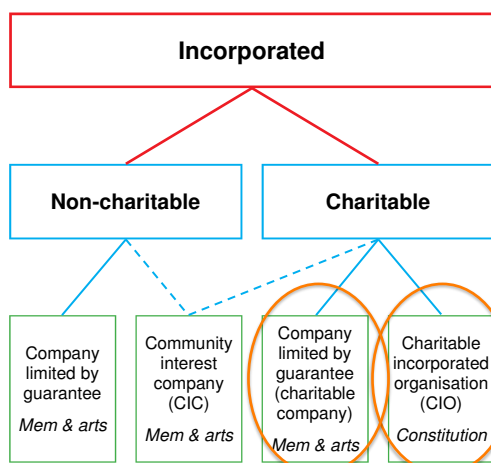
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What's an incorporated organisation?



What's an incorporated organisation?



Not 100% liability-free

Doesn't protect against

- wrongful trading
- breaking the law (nothing does)
- fines eg health and safety (nothing does)
- breach of trust as a charity eg acting outside your objects, acting outside charity law, losing charity money by being reckless (nothing does)

It's not magic!

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More on charitable companies

- Registered and regulated by Companies House and Charity Commission
- Follow two bodies of law – charity and company
- It's governing document is called articles
- Makes annual returns to Companies House and Charity Commission
- Can be fined if returns are late or break rules
- Must keep register of members and a register of directors (committee)

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More on CIOs

- Registered and regulated by the Charity Commission only
- Follows one body of law – charity law
- Governing document is called a constitution
- Is only created once it is registered by the Charity Commission
- Makes annual returns to the Charity Commission (all even if small)
- Must keep register of members and a register of trustees (committee)

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More on CIOs

Two types of constitution

- **Association** – for CIOs with members ie committee and a wider membership with voting rights who will make decision and appoint some or all of the committee
- **Foundation** – for CIOs with no members ie the committee are the only voting members (like a charitable trust) and make all the decisions and appoint new committee members

Must use the Charity Commission models constitutions

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CIOs – main advantages

- All the **advantages of incorporation** – legally separate from members and committee and limited liability
- **Single registration and regulation** with Charity Commission
- **Annual returns, accounts and reports** only sent to Charity Commission
- **No fees or fines**

CIOs – main disadvantages

- A CIO **may find it difficult to borrow money** as there is no register of charges
- A CIO must **submit annual returns, accounts and reports** to the Charity Commission no matter how small
- CIOs **not well known**, other bodies don't understand the legal structure yet
- ~~It takes longer to set up than charitable company~~

A bit of a breather...

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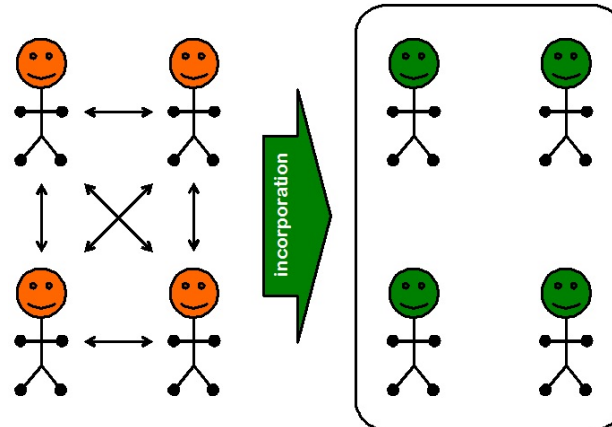
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Making the change... an overview

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Changing from unincorporated to incorporated



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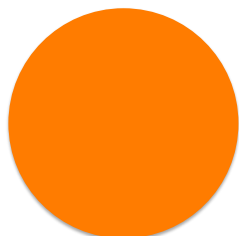
Making the change...overview

1. set up new CIO or charitable company
2. transfer assets and undertakings from the unincorporated charity to the CIO or charitable company and settle any liabilities
3. close the unincorporated charity
4. remove the unincorporated charity from the register of charities

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Making the change...overview



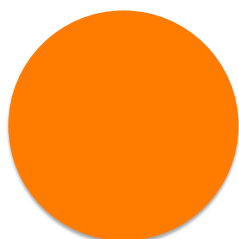
current/old

0 - this is where you are now

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Making the change...overview



current/old



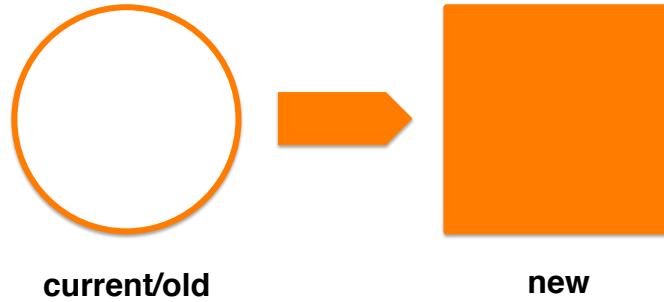
new

1. set up new CIO or charitable company

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Making the change...overview



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Making the change...overview



3. close the unincorporated charity
4. remove the unincorporated charity from the register of charities

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Making the change... the detail

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Step 1 – find out more and decide

You need to

- find out more about incorporation, the process and your new responsibilities
- look at the two options and choose the right one for you
- formally decide to incorporate at a committee meeting

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Step 2 – make a plan

You need to

- put together a detailed plan with dates to manage the process – **allow lots of time**. Newcastle CVS has a detailed action plan for you to use
- create a budget for incorporating (you may need to do some research about costs)
- set a date for a general meeting to get formal agreement from the members

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Step 3 – check constitution

You need to check

- there's no restriction in your current constitution to incorporating (you'll need Charity Commission approval if there is)
- there's a dissolution or closing down clause
- the objects are suitable for the long term (now is a good time to review them)
- the area of benefit is suitable for the long term (now is a good time to change it)

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Step 4 – check membership

You need to

- check if you need to make changes to your membership – will you continue to have members and committee or just committee

Step 5 – pensions and endowment

You need to

- talk to your pension provider about your plans. If you use a defined benefit scheme, incorporation may trigger pension liabilities. It is likely you'll need to take legal advice
- check if you have permanent endowment. If you do, it will complicate the process and you need need legal advice

Step 6 – general meeting

You need to ask your members to

- agree to transfer the assets to the CIO or charitable company
- agree to close the unincorporated charity by a future date (usually the last day of your accounting year). This is the transfer date

Step 7 – set up new organisation

If a CIO, you need to

- draft CIO constitution
- agree constitution at a committee meeting
- register CIO with Charity Commission – fill in online form and answer any follow up questions from Charity Commission

Step 7 – set up new organisation

If a charitable company, you need to

- draft articles
- register the company with Companies House
- register company with Charity Commission – fill in online form and answer any follow up questions from Charity Commission

Step 8 - governance

You need to

- set up register of members
- set up register of trustees (committee)
- agree schedule of meetings for new organisation
- agree to accept the transfer of assets and liabilities from the unincorporated charity
- adopt the unincorporated charity's policies and procedures
- carry out all 'first meeting of new committee' tasks

Step 9 – write transfer agreement

You need to

- draft a transfer agreement to transfer the assets and liabilities from the unincorporated charity to the new CIO or charitable company

Step 10 – assets tasks

- Fixed assets – create list (a register)
- Property, vehicle, investments, land, archive or heritage assets, trading company – arrange transfer ownership or lease on transfer date
- Bank – open new account
- Funders and commissioners – tell all funders and commissioners and get them to agree to transfer grants or contracts

Step 11 – obligations/liabilities tasks

- Staff – tell staff about the change including new employer (continuation employment)
- Suppliers – tell suppliers about the change and transfer contract (utilities, stationery, etc)
- Insurance – transfer policies
- Partnership agreements – transfer agreements
- Registrations – data protection, VAT, licenses, memberships
- Building tenants – inform, new agreements

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Step 12 – other transfer tasks

- Accounts – talk to your accountant/book keeper about your plans and get advice if needed
- HMRC – register as employer and for gift aid
- Communications – tell service users, partners, members, other stakeholders
- Stationery and publication material – letterhead, leaflets, email signatures, website
- Membership – ask current members to reapply as members of new organisation

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Step 13 – close old organisation

You need to

- prepare final accounts for the old charity
- hold final committee meetings to approve final accounts
- add old charity to register of mergers held by the Charity Commission

Step 14 – remove from register

You need to

- remove the old charity from the register of charities using the online form
- upload the old charity's accounts to your website to show your financial history

Step 15 – celebrate and have a well earned rest!

Becoming a charitable company... incorporating an existing charity
Action plan

Becoming a CIO... existing unincorporated charity
Action plan

Incorporating an unincorporated charity
Additional notes

Incorporating an existing charity

Charitable incorporated organisations (CIOs)

What are the advantages of CIOs?

- **limited liability** for the trustees and members of the organisation. This may make it easier for charities to recruit and keep trustees.
- **single registration and regulation** with one regulator: the Charity Commission (a charitable company has dual registration and regulation with the Charity Commission and Companies House).
- **annual returns, accounts and reports** only need to be sent to one regulator: the Charity Commission.

What are the limitations of CIOs?

The CIO is a new type of organisation as we don't know the full limitations yet, particularly which companies against the charitable company. The reported limitations are:

- it will take longer to set up a CIO: the Charity Commission has said it will take around 40 working days to respond to an applicant if model charitable objects are used; if the model constitutions are used; and if the Charity Commission asks for more information.

www.cvsnewcastle.org.uk | www.sandy-a.co.uk
www.charitycommission.gov.uk

The end...any questions?