

Your community group

A committee and a structure



WOODLAND
TRUST

A COMMITTEE AND A STRUCTURE

Nobody relishes rules and regulations, but any community woodland group, no matter how informal, needs to elect a committee and write a basic constitution. You'll need a chair, treasurer and secretary: their responsibilities, along with the objectives and procedures of your group, will be enshrined in your constitution.

A group's constitution is its governing document, and becoming 'constituted' is the minimum requirement to set up a bank account and apply for funding from many grant providers. Community groups of all kinds need to be formally constituted, whether that's as an 'unincorporated' structure or an 'incorporated' structure (see section 3, below). Fundamentally, your choice of structure depends how you want to do business and what you may need from other organisations.

All sounds a little dull if you're starting life as just a bunch of nature-loving friends – but unless your roles are defined, you may not stay friends for long!

Here are the ground rules for giving your group a formal structure...

1. Electing a committee

Most groups start by nominating a chair, a treasurer and a secretary – though depending on your group's plans, you may feel other roles need assigning from the off.

The chair will be responsible for leading your project forward, planning and running meetings and acting as a spokesperson. The treasurer is in charge of group finances, including keeping track of expenses, reporting back at each meeting and making sure financial procedures are followed. The secretary helps organise meetings, takes minutes and looks after general project admin. You could also opt to appoint an operations director to plan and supervise physical work in the wood, and perhaps create posts devoted to fundraising and publicity too.

2. Adopting a constitution

Put simply, a constitution is a statement of objectives and

rules, and it is legally binding. It sets out the purpose of your organisation; who can become a member; how people can get involved in the managing committee; how meetings are called; and more.

The constitution is the formal structure that backs up your activities and defines the procedures for dealing with any issues or disputes that arise. It means that everyone is clear about your aims, knows how your group will be run and who is in charge. It means that if you apply for funding, equipment or other formal help, backers and partners can be confident their resources will be accounted for and used appropriately.

For more on constitutions, consult the chapter 'Creating your constitution', elsewhere in this advice section.

3. Unincorporated vs incorporated

Incorporation is the process of giving a group a legal identity separate from its owners and members. This will help give the individuals running your group protection from personal liability.

An unincorporated organisation is a legally recognised structure, but it's not a discrete entity or 'person' in the eyes of the law, and so does not exist separately from its members. This means such an organisation can't own property, enter into contracts, sign a lease or arrange a loan. All property will be owned by one or more specific members, and while individuals can enter into contracts on behalf of the group, this leaves them personally liable under those contracts. Members of the governing body have unlimited personal liability, so if your organisation fails to meet its debts, members could be personally responsible for them, and even face bankruptcy. Individuals can also be held liable for the consequences of wrongful actions by your group that result in personal injury or nuisance. A bank account can be opened by an unincorporated organisation, so long as the bank accepts the credentials of the signatories.

Incorporated organisations vary greatly in type and title (see below). Critically, though, they are legal entities in their own right. They can own property and enter into contracts. Unlike with unincorporated bodies, all members of the corporate body are protected by limited liability and share equality of

personal risk – this is almost impossible to achieve unless your group is incorporated. Many banks and institutions will insist on incorporation before providing loan finance, and equity finance too is only available to certain types of incorporated organisations. Conservation bodies such as the Woodland Trust often insist their community partners are properly incorporated, whether they hope to manage their sites under a lease or a management licence.

If you plan to own or lease your own wood, enter into a contract such as a grant agreement, trade commercially, employ staff or contractors, or undertake any work that involves risk, your group will need some form of formal incorporation with limited liability – plus insurance and a bank account. Insurance issues are covered in the ‘Acquiring your wood’ section of this website.

4. Options for unincorporated structure

Unincorporated organisations are often titled ‘associations’ – any group that’s set up through agreement between people who come together for a reason other than to make a profit. You don’t need to register an unincorporated association, and it doesn’t cost anything to set one up. The organisation’s members delegate their power to an elected management committee, which is accountable to them.

Trusts, too, are unincorporated, but they don’t have members, only trustees and beneficiaries. They are often instituted when there’s a fund of money to be given away. Trustees are legally obliged to manage the property for their beneficiaries according to aims agreed in the governing document (the Trust Deed), and must always place beneficiaries’ interests above their own. Trusts can apply for charity status, in which case they’ll be regulated by the Charity Commission (www.gov.uk/charity-commission).

5. Options for incorporated structures

You’ve several kinds of ‘incorporated structure’ to choose from (outlined below), and that can feel daunting, but delay or inaction here would be foolish. You already carry legal responsibilities as individuals in an informal group or unincorporated association –

for things like safety in your wood, paying bills, and public liability insurance. Getting a separate legal identity by incorporating will help you manage your responsibilities better. It’s also worth noting that most grant-making bodies specify which types of group they will fund – something else to consider before you decide.

Note that ‘charities’ are not in themselves legal structures, so they don’t appear on the list that follows. A charity may be an unincorporated body, without limited liability, or it may register as one of the structures below. It must exist to benefit the public in a way the law says is charitable, and is governed by trustees who undertake its legal responsibilities. (Note that it’s not generally possible to register as a charity if the income of your group is below £5,000 per annum.) Likewise the term ‘social enterprise’ has no status in law – a social enterprise can be incorporated under any one of the four definitions below.

Company limited by shares or guarantee

Limited companies are primarily set up to trade. Where limited by guarantee, they have no shareholders and no share capital, so can’t raise money from selling shares. Members own the company, and guarantee a nominal amount to cover its liabilities – normally £1. Where limited by shares, the company’s share capital (an amount specified in the governing documents) is divided into fixed amounts and can be issued to shareholders, either all at once or bit by bit. The shareholders then become the owners of the company. Limited companies can also apply for charity status, provided profits are not distributed to members. They are regulated by Companies House (www.gov.uk/companies-house).

Community Interest Company (CIC) limited by shares or guarantee

These were created to give a simpler route to limited liability for social enterprises, and have been popular with community woodland groups. They are private companies with special extra features, created for people who want to conduct a business or other activity for community benefit, not private advantage. Registration as a CIC must be approved by a regulator, who then continues to monitor its status. A ‘community interest test’ checks that assets and profits are dedicated to those purposes, and an ‘asset lock’ prevents assets being sold for personal gain should the company be taken over. Again, CICs can be limited by

share or guarantee (see above), and (if the former), any dividends are capped at 20% of gross or 35% of profits, whichever is lower. Community Interest Companies are regulated by Companies House (www.gov.uk/companies-house).

Co-operative or Community Benefit Society

These organisations are defined as conducting an industry, business or trade, and they are the two main legal structures for running what's commonly known as a 'co-op'. A co-operative is set up to benefit purely its members: profits are reinvested mainly in the business, but limited profit sharing is possible, and must be equitable. A Community Benefit Society (or BenCom) is not-for-profit, and aims to benefit the community more widely – thus it can apply to be a charity. Both offer the limitation of personal liability; the ability to raise funds; and the ability to develop larger-scale enterprises than can readily be handled by an individual. With both, there is one member, one vote, and a maximum investment in shares of £20,000, all withdrawable. Both are regulated by the Financial Conduct Authority (www.fca.org.uk).

Charitable Incorporated Organisation (CIO)

A 'charity' is not in itself a legal structure. Set up to raise funds and distribute them to worthy causes, its main purpose cannot be to trade. CIOs are legal structures, effectively an incorporated form of a charity, and were created to give a simpler route to limited liability for social enterprises and offer protection to charity trustees from personal liability without the need for dual registration with company and charity law. CIOs are regulated by the Charity Commission (www.gov.uk/charity-commission); note that a separate CIO designation applies in Scotland, overseen by the Office of Scottish Charity Regulator (www.oscr.org.uk).

6. So which is best for you?

With so many different structures to choose from, it's important to think long-term, not just about where your group is today. Consider what you hope to achieve, how and by whom you want to be run, the resources you'll need now and in the future, and where these might come from.

Some questions to consider

1. Who will decide the direction of the group: its committee or all members? Who will have voting rights? In limited companies, legal responsibility lies with the directors.
2. How much flexibility do you want for future changes in direction? Limited companies offer the greatest scope for change.
3. Do you want to trade for profit, now or in the future? Trading restrictions apply to registered charities.
4. Do you want to take out loans, sell shares and pay dividends? Companies and Community Interest Companies limited by guarantee can't raise finance through issuing shares, whereas a Co-operative or Community Benefit Society can.

There's no one-size-fits-all answer to choosing the right legal basis for your community woodland group, so review your options and seek advice from a solicitor or an independent organisation such as Cooperatives UK (www.uk.coop). The flow chart below can be a useful tool when paring down your options.

