

Legal identity and governance models for Big Local partnerships

You may be interested in the different legal options for setting up a new organisation to support the delivery of your Big Local plan. This might be because you want to plan and run community services or events; to own or manage assets such as buildings; to trade as a social enterprise; to generate income to operate beyond Big Local; or to involve more people with appropriate experience and expertise.

This guidance describes the identity of Big Local partnerships in the eyes of the law and raises questions to help you think about appropriate governance models. It also describes different types of governance models you could choose from, including a breakdown of their various features.

Big Local partnerships

A Big Local partnership is a group of at least eight people who guide the overall direction of Big Local in your area, most of whom (at least 51%) live within your Big Local area. Each Big Local partnership has its own way of working. We expect partnerships to:

- provide overall guidance and recommendations
- work with and through one or more locally trusted organisations to deliver activities
- have a memorandum of understanding with us
- adopt terms of reference that set out how they operate.

It is important that partnership members are fully aware of and act in accordance with these points.

In most cases, the Big Local partnership delivers through an existing organisation that acts as the locally trusted organisation. The locally trusted organisation has a legal identity, enters into agreements in line with the Big Local plan, and fulfils the necessary legal requirements for the funding in each Big Local area. This enables the partnership to provide overall guidance on Big Local and protects individual partnership members from being personally liable.

Because people come together as a Big Local partnership to achieve a common goal, it could be argued that the partnership is an unincorporated association (defined below). This works well if your activities and projects are being implemented by a locally trusted organisation and your role is to guide the overall direction of Big Local in your area. As an unincorporated association the Big Local partnership does not have a legal identity above or separate from you as individuals.

However, if, as a Big Local partnership, you take on legal responsibilities for employment, contracts, assets and liabilities or running community events, then your personal liability as a member of the partnership is not limited, as it is in the case of incorporated organisations.

Do you need a legal identity?

Before reviewing the different organisational and legal identities, consider whether you really need one and ask:

- Why you want to do this? How will this help you to deliver your vision and aims?
- Is charitable status appropriate?
- How will the organisation become financially sustainable? Will you have more than Big Local funding?
- What is the relationship between the new organisation, the Big Local partnership and your existing locally trusted organisation(s)?
- How can you make sure that the Big Local plan developed by your Big Local partnership is supported by the new organisation, and that residents' wishes continue to be respected after the Big Local programme finishes?
- What are the legal requirements associated with the legal identity you choose?

Remember that, if it relates to delivering your Big Local plan, you can use money from your Big Local budget for specialist support and advice to explore your options.

Issues to discuss and decide before you choose a legal identity

The purpose

Think about how setting up a new organisation will help you to deliver your vision and aims. Start by spelling out your vision of success – what will have changed if the new organisation is successful in ten years' time? Then list three to five aims that you intend to achieve to deliver your vision.

Next, what exactly will the organisation do and how will it do it? Are there existing organisations that already offer what you intend to provide? Duplicating a service can be expensive and create ill-feeling between you and your competition. Working with an existing organisation could save time and result in a better outcome.

Finally, if you are considering applying for charitable status (see below), you should consider whether your vision and aims fit within the list of charitable purposes as defined by the Charities Act 2011: <https://www.gov.uk/government/publications/what-makes-a-charity-cc4/what-makes-a-charity-cc4#part-2-about-charitable-purposes>.

Charitable status

Organisations that have charitable status are given particular benefits;

- They can find it easier to raise grant funding.
- They don't pay tax on most of their income, including income from donations, trading and sale of assets.
- They can claim gift aid on donations.

However, charities do pay tax on dividends and on profits from developing land and buildings. Trading (social enterprise) is allowed where it is undertaken for the charity's main objectives. This is known as primary-purpose trading, for example, a community theatre group selling tickets for its performances. You will need to assess whether your trading is undertaken for

community/public benefit, or whether it is primarily to benefit your members/investors – in which case you cannot be granted charitable status.

If any trading is not primary-purpose trading, there are limits on the proportion of your income that can be generated in this way. For example, charities with a turnover between £20,000 and £200,000 cannot generate more than 25% from trading. You can find more information on charities and trading, including trading subsidiaries here: <https://www.gov.uk/guidance/charities-and-trading>.

If the purposes of your new organisation are exclusively charitable for public benefit (which is what Big Local funding is for) and if it will comply with rules on trading, you can apply to the Charity Commission for charitable status. You can find more information at <https://www.gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1/public-benefit-the-public-benefit-requirement>.

The legal forms for charitable organisations are:

- Trust
- Charitable company limited by guarantee
- Charitable incorporated association
- Charitable community benefit society.

The Charity Commission has guidance on these forms here: <https://www.gov.uk/running-charity/setting-up>.

Financial sustainability

Consider how the new organisation will be financed, both in the short and the long term. What is the source of your income, initially and in the long term, and will it cover your expenses? Income may come from:

- Donations
- Grants
- Loans
- Sponsorship
- Membership fees
- fundraising events
- trading/service level agreements and chargeable services.

If your organisation will be reliant on grants – from Big Local or elsewhere – any long-term future is determined by funders. The organisation is more likely to be sustainable if it has various sources of income, so it will be important to draw up a business plan and ensure it is financially sustainable.

Funding and organisational form

If you will be dealing with large amounts of funding, holding property, entering into contracts or employing staff, an incorporated governance model with legal identity will limit the liability of individuals involved on the governing body.

An organisation with charitable objects can apply for grants from a variety of funding organisations. A few funders will award grants to social enterprises that do not have charitable

status but operate for community benefit, such as community interest companies (CICs) and cooperative societies. Some organisational forms have specific powers to raise funds: for example, community-interest companies can raise share capital, and community-benefit societies and cooperative societies can issue community shares.

Membership

Most incorporated organisations are owned by members, who then appoint trustees or a board of directors at an annual general meeting. There are three types of membership;

- Participatory - anyone interested in participating can apply to the governing body to become a member.
- Open - anyone meeting particular criteria (e.g. living in a specified geographical area) is eligible to be a member.
- Closed - members of the governing body appoint new governing members.

Your decision on membership is important, because Local Trust will want to ensure that any new organisation respects the role of the Big Local partnership and ensures that the voice of local residents will be heard in the long term. Your governing document will also need to allow for the removal of members, should the need arise.

Governance

If your Big Local partnership wants to become the locally trusted organisation, you need to work out the relationship between the two – are the directors/trustees of the new organisation also members of the Big Local partnership? How do the governing documents for the new organisation relate to the documents about how the Big Local partnership operates?

Is the Big Local partnership establishing an organisation to deliver a project in the Big Local plan (such as to manage a community hub)? If so, it is likely that some of the individuals on the new governing body will also be members of the Big Local partnership. But not all members of the partnership will be on the governing body, as the partnership and new organisation are two different entities.

Partnership members oversee the delivery of the Big Local plan. Directors or trustees of the new organisation have a responsibility to act in the best interests of their organisation. If Big Local money is funding the new organisation, the Big Local partnership will need to identify and manage conflicts of interest. If partnership members are also involved in the new organisation, how will non-conflicted decisions be made and how do you show they are supported by the people in the Big Local area?

Legal requirements

For organisations with legal identity, whatever governance model is chosen, the organisation will be accountable to Companies House and/or the Charity Commission, and maybe the Financial Conduct Authority or the Audit Commission as well. There are requirements to make annual returns and submit reports in a specified format. Failure to submit reports on time may result in fines.

Checklist

The following sections of the guide list the legal forms available for new organisations. Before reviewing the options, you may wish to use this checklist to confirm your decisions about the issues listed above.

1. Purpose, vision and aims.						
The vision for our new organisation is:						
The aims of our new organisation are:		1.				
		2.				
		3.				
Our purpose is:						
2. Charitable status						
We are considering charitable status and our purpose fits within the following purpose(s) in the Charities Act 2011.		1.				
		2.				
		3.				
Any trading carried out will meet the requirements for primary purpose trading OR We are considering charitable status and any trading carried out will meet the trading limits						
3. Financial sustainability and funding						
When the organisation is sustainable, we expect to generate our income as follows:						
Donations	Grants	Loans	Sponsorship	Membership	Fundraising	Trading
Percentage	%	%	%	%	%	%
4. Membership status						
Our proposed membership status is:			Participating	Open	Closed	
5. Accountability and reporting						
We have discussed the formal relationship between the Big Local partnership and have decided on the following accountability and reporting safeguards:						

More information:

- Charity Commission <https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure>
- Companies House <https://www.gov.uk/government/organisations/companies-house>
- Financial Conduct Authority <http://www.fca.org.uk/>
- Gov.uk <https://www.gov.uk/set-up-a-social-enterprise>
- UnLtd <https://unltd.org.uk/portfolio/3-7-determining-the-right-legal-structure-for-your-social-enterprise/>
- Governance of community based organisations <http://www.uk.coop/resources/simply-governance-guide>
- The Plunkett Foundation <https://plunkett.co.uk/about-us/>
- Locality, Fit for Purpose <http://locality.org.uk/services-tools/resources/>
- Locality, Early Warning Guide <http://locality.org.uk/resources/early-warning-guide/>
- Good Governance: a code for the voluntary and community sector <http://www.governancecode.org/>

Types of governance model and their features

Unincorporated association (organisation)

Governing document	Constitution
Governing body	Management committee (or trustees)
Membership	Participating membership or an open membership
Charity	May be set up as a charity
Reports to	Charity Commission (if a registered charity)
Surpluses	No profit distribution permitted

Management committee members are personally liable as the organisation has no legal identity. The management committee/trustees can insure themselves against this liability but this does not protect them from reckless or negligent management of the organisation. To be a charity, an unincorporated association must exist for a purpose that the law recognises as charitable, and its activities must be solely for public benefit. The Charities Act requires charitable associations to register if they have an annual income of over £10,000. There are some benefits in being registered as a charity (exemptions from some taxation, rate relief, funding sources) but there are administrative requirements.

No member can profit from the organisation (although expenses can be reimbursed). The surplus on winding up must be transferred to an organisation with similar objects.

As a Big Local partnership with terms of reference (or a constitution), becoming an unincorporated association is the easiest option, allowing you to open a bank account in the name of the partnership. You will also be able to apply to some places for grant funding and undertake projects. However, individuals on the Big Local partnership would be personally liable for their actions and the activities of the organisation that take place outside of the locally trusted organisation.

<http://www.resourcecentre.org.uk/information/legal-structures-for-community-and-voluntarygroups/>

Company limited by guarantee

Governing document	Memorandum and articles of association (mem and arts)
Governing body	Directors
Membership	Closed, participating or an open membership
Charity	No
Reports to	Companies House
Surpluses	Profit distribution permitted

Membership is flexible, as with an unincorporated organisation. It allows profit distribution to members, and the rules will be specified in the memorandum and articles of association.

<http://www.resourcecentre.org.uk/information/legal-structures-for-community-and-voluntarygroups/>

Charitable company limited by guarantee

Governing document	Memorandum and articles of association (mem and arts)
Governing body	Directors/trustees
Membership	Closed, participating or an open membership
Charity	Also set up as a charity
Reports to	Companies House and Charity Commission
Surpluses	No profit distribution permitted

Membership is flexible, as with an unincorporated organisation. This model has the potential to encourage member participation and this structure is currently the most common form for a charity.

It does not allow profit distribution to members, as the organisation is also a registered charity - all surpluses must be retained and reinvested in the organisation.

<https://www.resourcecentre.org.uk/information/legal-structures-for-community-and-voluntary-groups/>

<https://www.nibusinessinfo.co.uk/content/limited-companies-social-purpose>

Community interest company (CIC)

Governing document	Memorandum and articles of association (mem and arts)
Governing body	Directors
Membership	Participating membership or an open membership
Charity	Not eligible for charity status
Reports to	Companies House
Surpluses	Possible profit distribution

The Community Interest Company (CIC) governance model was established as a new structure to recognise social enterprises – that is, organisations that are socially motivated and intend to make profits to use for the public good. Memorandum and articles of association contain an ‘asset lock’ to prevent any assets owned by the CIC being transferred. Although not a charity, a CIC must satisfy a ‘community interest test’ to demonstrate how it will benefit the community. As a company it will be subject to corporation tax (whereas charities are not).

Some profit distribution may be permitted in the form of bonuses, but is subject to the discretion of the Office of the regulator of Community interest Companies. On dissolution, any assets or surpluses must go to another organisation with an asset lock.

<https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>

Charitable incorporated organisation (CIO)

Governing document	Constitution
Governing body	Trustees
Membership	Closed, participating membership or an open membership
Charity	Charitable status

Reports to	Charity Commission
Surpluses	Profit distribution not permitted

Membership – there is a full choice of membership structures. A charitable incorporated organisation (CIO) can be set up either with just the trustees as the members, or with a participating or open membership. The CIO model was created to remove the requirement for organisations requiring incorporation and charitable status to register with both Companies House and the Charity Commission. The CIO registers only with the Charity Commission to ease the burden of regulation. Hence the membership requirement is as open as possible.

This governance model is only available to charities, so all surpluses must be retained and reinvested in the organisation. <https://www.resourcecentre.org.uk/information/legal-structures-for-community-and-voluntary-groups/>

http://en.wikipedia.org/wiki/Charitable_incorporated_organisation

Trust

Governing document	Trust deed
Governing body	Trustees
Membership	Closed - the only members are the trustees
Charity	May be set up as a charity
Reports to	Charity Commission (if a registered charity)
Surpluses	No profit distribution permitted

This governance model is ideal for the holding of an asset or land. This is done with an unincorporated organisation set up to run activities known as holding trustees – as happens with community buildings.

It is also the traditional model for an organisation that wants to distribute grants (an endowed grant-giving trust) – for example, to rapidly raise and distribute funds for, say, a humanitarian crisis. It is most likely to be set up as a charity and trustees make the distributions of funding. This model is not suitable for an organisation that wishes to encourage participation in its own governance.

No member can profit from the trust. Expenses can be reimbursed, but this payment must not be confused with grant distribution.

<https://www.resourcecentre.org.uk/information/legal-structures-for-community-and-voluntary-groups/>

Community benefit society (BenComs)

Governing document	Rules
Governing body	Directors
Membership	Open membership
Charity	Can apply for charitable status if operating for public benefit
Reports to	Financial Conduct Authority (FCA)
Surpluses	Surpluses cannot be distributed in the form of dividend but interest can be paid to shareholders as an operating expense

Membership society legislation has little to say about membership of community benefit societies. The rules of each individual society must state who can (and cannot) be a member, including individuals, corporate bodies, and the nominees of unincorporated bodies. This includes joint members, where one member must be the nominee representing the interests of the joint members. The FCA does not require members to participate in the business, which means that, unlike a co-operative society, anyone is able to invest in a community benefit society, subject to

its rules. Although a society is required by the FCA to specify the community it serves, membership is not restricted to this community.

A community benefit society can issue community shares to raise funds to enable it to start up or to expand. The term 'community shares' refers to non-transferable, withdrawable share capital: a form of share capital unique to co-operative societies and community benefit societies, including charitable community benefit societies.

<http://communityshares.org.uk/resources/handbook/community-benefit-societies>

Co-operative society (Co-ops)

Governing document	Rules
Governing body	Directors
Membership	Open membership
Charity	Cannot be a charity (run for the mutual benefit of its members)
Reports to	Financial Conduct Authority (FCA)
Surpluses	Surpluses can be distributed in the form of dividend

In terms of membership, the FCA must be satisfied that a co-operative society is a bona fide cooperative, so it must meet internationally agreed principles for membership of co-operatives. The rules must state who can (and cannot) be a member, including individuals, corporate bodies, and the nominees of unincorporated bodies. This includes joint members, where one member must be the nominee representing the interests of the joint members.

A co-operative society can have more than one category of membership, but must ensure that such membership rules are consistent with the International Co-operative Alliance's Statement on co-operative identity.

A co-operative society operates for the mutual benefit of its members and may or may not be a social enterprise, depending on its activities and how it distributes profits. Co-operatives cannot be established as charities. They are

'based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of co-operative founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others'.

A co-operative society can issue community shares to raise funds to enable it to start up or to expand. The term 'community shares' refers to non-transferable withdrawable share capital, a form of share capital unique to co-operative societies and community benefit societies.

A co-operative society can pay interest on share and loan capital, provided it is not more than a rate necessary to obtain and retain enough capital to run the business. It is not a bona-fide cooperative if it carries on business with the object of making profits mainly for paying interest, dividends, or bonuses on money invested with or lent to it. If the rules of the society allow profits to be distributed, they must be distributed among the members in line with those rules. Each member should receive an amount that reflects the extent to which they have traded with the society or taken part in its business. For example, in a retail trading society or an agricultural marketing society, profits might be distributed among members as a dividend or bonus on purchases from or sales to the society. In other societies (for example, social clubs) profits are not usually distributed among individual members but members benefit through cheaper prices or improvements in the amenities available.

<http://communityshares.org.uk/resources/handbook/bona-fide-co-operative-societies>

Parish or community council

Governing document	Constitution, standing orders and financial regulations
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Governing body	Councillors
Membership	Responsible to the electorate
Charity	No, this is a statutory body
Reports to	The Audit Commission
Surpluses	All funds are retained as public money

The business of parish or community councils is carefully regulated by the Local Government Act 1972, and cannot be conducted without observing certain formalities.

Parish and community councils raise funds by local taxation: a 'precept' is collected from residents through the council tax system. Councils are accountable to residents for the spending of those funds. As well as having to fulfil certain statutory duties, parish and community councils have the 'power of wellbeing' which enables them to undertake activities for the benefit of the community.

<http://www.nalc.gov.uk/our-work/create-a-council>

This document will be developed over time with input from the people using this material.

If you have thoughts on how this document can be made more useful for you, particularly if you live in one of the Big Local areas, please let us know.

Local Trust

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If you need this document in other formats or a community language please get in touch with Local Trust and we will help you.

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