

Big Local spring event

Setting up a new legal structure

13th May 2017

Who's he?

- Anthony Collins Solicitors – based in Birmingham, working all over the country
- Leaders in the “space” between the public, private and third sectors
- Leading charities practice, focus on community enterprise
- Specialising in social enterprise
 - New models for public services
 - Community asset transfer
 - Wide range of social businesses

Where are we going today?

- Looking at when you should set up a new legal structure
- The options available
- Looking at some models in practice
- Answering questions as we go along

Legal structure

- Does it matter?
- Yes it does, because it affects:
- What a group can do
- Liability
- How the group can hold money or assets
- Who will fund and how



Legal structure

- But we're organised already!
- The role of the “locally trusted organisation”
 - Receiving and accounting for any funding
- The role of the Big Local partnership
 - Bringing people together, making decisions



Where do you want to go?

- Key issues – do you want to:
 - employ staff?
 - enter into contracts?
 - take a lease or own property?
 - provide or procure services... **independently**, without risking personal liability to people involved
- If so, then you will probably need a separate vehicle

Where do you want to go?

- Are you thinking about:
 - Running a youth centre
 - Taking over a library
 - Reducing unemployment
 - Events for elderly people
 - ... or something else?
- Consider your aims in principle before you start thinking about a structure



What happens when you create a new structure?

- **You can decide:**
 - What sort of “thing” it is
 - What its aims should be
 - Who should own it
 - How it is accountable to the community
 - Who should make the decisions

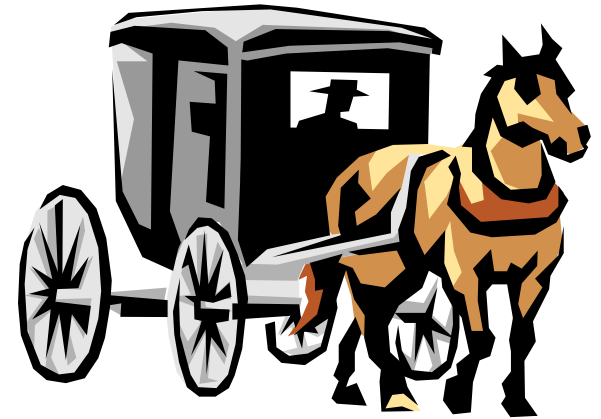


What happens when you create a new structure?

- **The new entity:**
 - Can own its own money
 - Can enter into contracts (not the board or committee members) including employing people
 - Will have a written constitution
 - Will be registered with a regulator
 - Will have to do accounts and send them off



Choosing the right vehicle



- Where do you want to go?
- What are your options?
- How should you decide?

What are the options?

Profit distributing structures:

- Companies limited by shares
 - Including PLCs
- Limited Liability Partnerships
- Co-operative Societies
- Community interest company (CIC) ltd by shares

What are the options?

Non profit distributing structures:

- Companies limited by guarantee
- Community Benefit Societies
- Community interest company (CIC) limited by guarantee
- Charitable Incorporated Organisation (CIO)

But what are we at the moment?

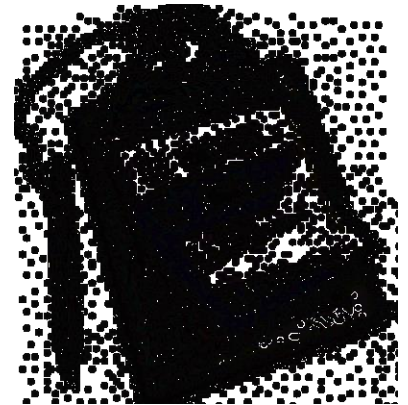
If a group isn't any of those, then in law its probably:

- an “unincorporated association”, an association of two or more people “for common purposes” (but not business); or
- a “sole trader”; or
- a “partnership” (if its about business)

Don't worry about labels

- “Social Enterprise”
- “Community Development Trust”
- “Community Enterprise”

- ... don't worry too much!
- Basic options the same



Company Limited by Guarantee

- Common vehicle for non-profit making organisations
- No shares; Members give £1 “guarantee”
- Constitution called “the Articles of Association”
- Can be a charity or a CIC



Community Interest Companies

- Introduced as legal form for social enterprise
- CIC registration: CIC regulator
- “Community benefit”
- Annual Community Interest Report
- Standard/required provisions in M&A
- Asset lock
- No tax breaks



Co-operative Societies

- For the benefit of those who join as a member
- Democratic structure – one member, one vote
- Members hold a share in the Co-op
- Regulated by Financial Conduct Authority
- International co-operative principles



Community Benefit Societies

- Set up to benefit the wider community, not just members
- Democratic structure
- Members own a share
- Can have asset lock, similar to CIC asset lock
- Can be charitable
- Generally higher set up costs than companies
- NB community investment – some useful key features

Charitable Incorporated Organisations

- A legal structure especially for charities
- Created by the Charities Act 2006
- Only has to register with the Charity Commission
- Comes into existence when registered

Charitable Status

- In order to be charitable, an organisation must be “established for charitable purposes”
- “Charitable purposes” means purposes which are “exclusively charitable according to the law of England and Wales”
- 13 listed in the Act but a wide range in practice

Charities Act 2011

Charitable Status

- Some social enterprises are charities
- Some helpful charitable purposes:
 - Urban or rural regeneration
 - Community capacity building
 - Relieving unemployment
- Health warning – Charity Commission guidance!
- But what about activities?

Charitable Status

- Tax treatment different to normal companies
 - Exempt from most forms of Corporation Tax
 - Other tax advantages
- Access to sources of funding
- Restrictions on trading
- Regulation by Charity Commission
- “Burning the bridge”

Pause for breath ...

- With me so far?

Some examples



New Horizons Community Enterprise:

- A charity which is a company ltd by guarantee
- Formed for the regeneration of the area
- Locally elected residents lead the board
- With a trading company, New Horizons Enterprises Ltd

Some examples



Power for Good:

- A community benefit society
- Which promotes renewable energy
- And works with local organisations
- Raises funds through community shares

Some examples



Roman Way Estate C.I.C.:

- A community interest company
- Which runs housing management services for over 200 properties owned by the Council
- And is resident led

How do you make the choice?

- Assess what you want the organisation to do
- Do you want to give out profits to members or investors, or is it not for profit?
- Is it likely to have only charitable aims?
- Is it likely to carry out only charitable activities?
 - Trading?
- Are the tax advantages going to be important?
- Is it likely to need to borrow?



How do you make the choice?

- How certain are you – do you need to retain flexibility?
- How are you going to raise funds?



Setting up a new legal structure – thanks for listening!

13th May 2017

If you have any queries or comments in regards to this document please contact David Alcock of Anthony Collins Solicitors LLP on 0121 212 7431 or david.alcock@anthonicollins.com

Anthony Collins
solicitors

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham B3 2ES
MDX 13055 Birmingham 1
Tel: 0121 200 3242
www.anthonycollins.com