

Big Local Is incorporating as a legal entity right for your Big Local area?

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Two big questions

1. Is incorporating the right decision for your partnership?

2. If yes, should the legal entity be a charity?



Incorporation – terminology

- What do we mean by incorporation?
- What is a legal personality?
- Types of incorporated entity?
- What isn't incorporation?
- How is incorporation different from becoming a charity

Why do organisations incorporate?

- Unincorporated associations can't:
 - enter into contracts in the name of the association
 - hold the assets of the association in its own name
 - sue or be sued in its own name
 - sign documents in the name of the association
- Unlimited liability for liabilities of the association for the management committee
 - Liability for wrong-doing
 - Liability to third parties



Being a corporate entity

- Legal personality
- Protection from the liabilities of that corporate entity to third parties
- Some exceptions where the directors are considered to be at fault

A legal entity is a thing



Types of corporate entity

- Company (can be used by charitable, other not-for-profit or commercial organisations)
 - limited by guarantee
 - limited by shares
- Community benefit society (can be charitable or not-for-profit)
- Community interest company (for organisations that benefit the community but are not charities)
 - limited by guarantee
 - limited by shares
- Charitable incorporated organisation (only for charities)

Being a charity

If you wish to incorporate, consider whether charitable status is right for your organisation before incorporating

- **What is a charity?**
 - Established in England and Wales
 - With exclusively charitable purposes
 - For the public benefit
- **Charitable Structures**
 - Companies, CIOs, Community Benefit Societies
 - Unincorporated associations and trusts
 - Charitable Incorporate Organisations
 - Others



Advantage of charitable status

- Widely recognised by the public
- Many funders will support charities (but may not support other types of not-for-profit organisations)
- Tax benefits
- Other charities may be more willing to work with you

Disadvantages of charitable status

- Must comply with charity law and the law of their legal structure
- Trading activities are restricted
- Regulated by the Charity Commission, which has extensive powers over charities
- Charity trustees (or people connected to them) cannot usually be employed or paid by the charity

Before deciding on charitable status, there is a need to consider

- Is everything you want to do charitable?
 - types of activities that may not be charitable
- Is your organisation's purpose charitable?
- A group willing to be trustees?
- Will more funders support you?
- Why do you want to be a charity?



Charitable purposes

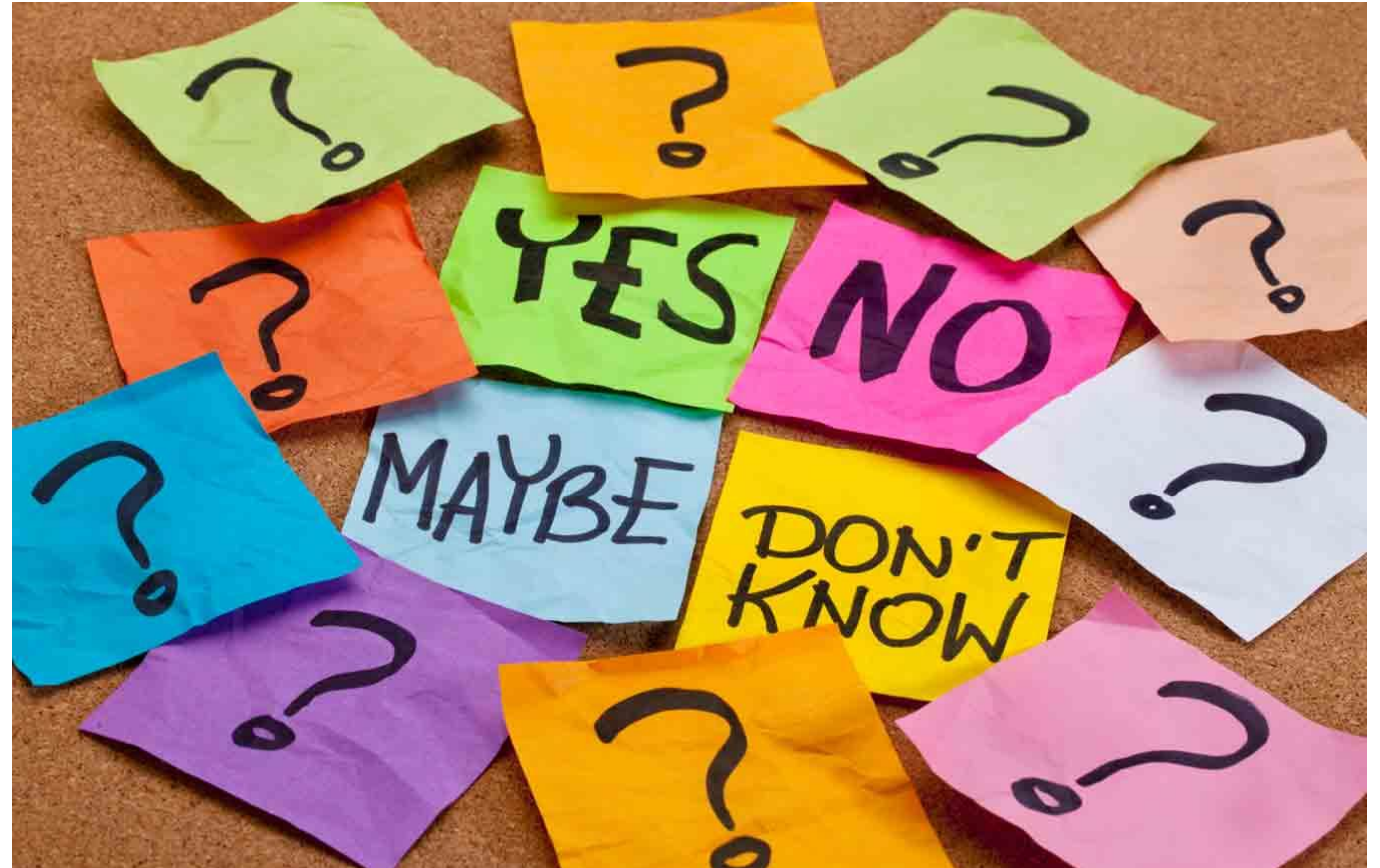
- Look at the Charity Commission's example objects (a link is in the notes)
- Try to stay close to the Charity Commission's wording

Purposes might include:

- Community centres
 - Recreational facilities (Recreational Charities Act 1958)
 - Social inclusion
 - Urban or rural regeneration (Charity Commission guidance)
 - Community Capacity Building (Charity Commission guidance)
 - Financial hardship
 - Education
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Who takes the decisions in a charity (or other legal entity)

- Members of the charity
- Trustees
- Committees
- Staff



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Two-tiers: Members and trustees

Member decisions (of charitable companies or CIOs)

- Change of name
- Amendments to constitution
- Decision to dissolve
- Others

Trustee decisions

- Budget setting
- Major policy decisions
- Some powers can't be delegated to staff
- Might need consent of the Charity Commission



Legal duties of charity trustees

Overriding duty:

At all times, to act in the best interests of the charity

Subsidiary duties in brief:

- To act within the charity's constitution and the law
- To have regard to the Charity Commission's guidance on public benefit (and more generally)
- To apply the assets of the charity for the purposes in the constitution
- To exercise proper stewardship over the charity's assets
- To avoid and/or deal appropriately with conflicts of interest
- Unless authorised, to act without pay or benefits other than the reimbursement of out-of-pocket expenses
- Take professional advice when necessary

Applying to register a charity with the Charity Commission

- Constitution of the charity
- Information about the trustees (aim for at least three, ideally more)
- Description of the activities
- Lots of questions to answer about who will benefit and how from the charity's work and where that work will be based
- Questions about whether any trustees will benefit
- Information about funding for the charity and its likely income

Setting up a registered charity

- It can take a long time (often over 6 months)
- Apply to the Charity Commission using its online form
- Charity Commission often ask lots of questions – don't be put off!
- Once registered by the Charity Commission apply to HMRC
- Look for a trustee training course as expectations on trustees are high
- Note: Community benefit societies are not required to register with the Charity Commission (yet!)

Choosing the right advisor

- Speak to 2 or 3 before you decide
 - The adviser doesn't have to be a solicitor – there are lots of consultants working in the not-for-profit sector who may be able to help you with incorporation and setting up a charity
 - If you are wishing to incorporate a new entity that is not a charity you may be able to use an incorporation agent to help with this process, but make sure the type of entity they set up for you is the right one (and they may not be familiar with community interest companies)
 - If you are looking to set up a charity and wish to instruct a solicitor – ask if they are a member of the Charity Law Association and also for their experience in advising charities, as it is a specialist area
 - Make sure you get clarity on costs before you go ahead, so you can manage the budget. You can ask to have a fixed fee or a capped fee, and solicitors will often agree to this, rather than be charged on an hourly basis.
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Case studies: Greenfields Big Local

- £650,000 of their money left
- Wish to take over from their LTO
- Plans to buy land to set up a community garden and café
- Mixed views on whether to incorporate



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Case studies: Arkley Bridge Big Local

- Two projects, a hub and youth football club
- Good relationships with a local foundation who wish to fund them in future
- 18 months of funding left
- Two partnership members are happy to set up a new company but there are alternative ideas



Questions/Points for Discussion?

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