

# Legal Structures

Legal structures, or legal forms, refer to the type of organisational structure and how it is governed. The legal structure of an organisation determines how it is regulated, who by and what is required of it by law. There are various legal structures for organisations, but they won't all be suitable for your Shed.

Each legal form has restrictions, rules and regulations, and pros and cons that would impact your Shed, depending on its purpose and future plans. These will be dictated by a governing document – the legal document that the organisation is based on, which details how it should be run. The contents of the governing document are dictated by the type of structure you opt for. This guide summarises the main organisational structures that might suit Sheds through various stages in their life. If you're short on time, skip to the quick reference guide at the back and then look at the pros and cons of ones that suit. First, it is worth understanding some underlying principles – the jargon if you like.

## Members

In relation to legal structures of organisations, the term members simply means any individual or other organisation with some level of power or right in relation to the organisation. For example, the power to amend its constitution or to appoint people to the board. These powers should be clearly detailed in the organisations governing document.

The term 'members' can often cause confusion because people often use the same term for individuals without powers or rights that simply associate themselves with the organisation in return for certain benefits like a newsletter or badge.

## Incorporation

An organisation can either be incorporated or unincorporated. To incorporate means to create a legal identity for the organisation which is separate from its members – it becomes a corporate body. This means that the incorporated organisation can enter into contracts, buy services and own property in its own name, using its own assets and limiting the liability of its members. Because of these advantages, organisations that carry risks or who want to buy property and services often decide to incorporate in some way to protect their members.

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Unincorporated organisations do not have separate legal identities to their members. Therefore, when an unincorporated organisation enters into contracts or buys services, it is being done by the individuals who run the organisation. Those individuals are responsible for its liabilities, such as debts and legal proceedings. Individuals on the management committee of unincorporated associations are personally liable for the organisation and should the organisations assets not cover its debts, their personal assets are at risk.

## Charitable Status

The term 'charity' describes a legal status of an organisation and isn't in itself a legal structure. Charitable status is held in addition to a legal structure. A charity is a specific type of non-profit organisation that is regulated by charity law. Mainly, at present, by the Charities Act 2011.

Only organisations with certain legal structures can become charities, others won't qualify. For example a co-operative cannot be a charity because it is designed to give non-charitable benefits to its members, like shares.

For organisations that become charities, they must be registered with the charity regulator. In England and Wales that is the Charity Commission. To be successful in registering as a charity the organisation's purposes must be exclusively for public benefit and wholly and exclusively charitable, as determined by the Charity Commission.



Now that you understand the common terms associated with relevant legal structures, below is a short summary of the common structures for voluntary organisations like Sheds. Beneath each one is some pros and cons of each. The information is not exhaustive and does not constitute legal advice. You should assess each one carefully before deciding which to go for. If none suit, seek professional advice.

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## Unincorporated Association

This is the option most Sheds take when they start up. It's simple, easy and cheap to set up an Unincorporated Association – so much so that many voluntary organisations don't know they already are one – and you don't have to register with a regulatory body. This type of organisation can be whatever its members want it to be, carrying out whatever activity they choose.

An unincorporated association is governed by its constitution, drawn up and controlled by its management committee.

You can download a template constitution for an unincorporated association from our [Resource Library](#).

### Pros

- Simple and easy to set up. All you need is a constitution and it doesn't need to be approved by a regulatory body.
- Low cost to run, with no requirement to submit accounts to anybody outside of the organisation (unless you get funding, in which case, the funder might need to see your accounts).

### Cons

- No separate legal identity from its members, so members (often the management committee) are liable for debts or legal proceedings. Because of the lack of separate legal identity, the organisation can't buy property or contract services in its name.
- Some funders only award money to organisations registered with the Charity Commission, but becoming a Charitable Unincorporated Association can help.

## Charitable unincorporated Association

A charitable unincorporated association is a type of charity. Structurally, it is exactly the same as an unincorporated association, with the only difference being that its purposes are legally charitable and it can demonstrate it works for public benefit.

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A charitable unincorporated association must register, and is regulated, by the Charity Commission in England and Wales if its annual income exceeds £5,000. If your income is under this value then there is no need to register with the Charity Commission.

### Pros

- It can be easier to get funding as a charity.
- Public perception is often in favour of charities and this can lead to better support.
- Simple and easy to set up and run when compared with other types of charity structure.

### Cons

- This type of organisation has more obligations than a non-charitable association. For example, it must produce accounts and report its activities in line with Charity Commission rules when income exceeds £5,000. At this point, it might make sense to become a CIO and benefit from incorporation.
- Although the organisation is a type of charity, it still has no separate legal identity to its members and therefore members (often the management committee) are liable for debts or legal proceedings. Because of the lack of separate legal identity, the organisation can't buy property or contract services in its name.

### Charitable Trust

A charitable trust is another type of charity. Unlike the associations described above, a Charitable Trust is not a member organisation and is instead run by a group of individuals called trustees. The most common reason for opting to set up a Charitable Trust is to manage money or property for charitable purposes. It is governed by a Trust Deed rather than a constitution and because it is charitable, it must register with the Charity Commission if its income is over £5,000.

In the same way as in an unincorporated association, the trustees of a charitable trust have no separate legal identity from the organisation and are therefore personally liable for its debts and liabilities.

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## Pros

- It can be easier to get funding as a charity.
- Public perception is often in favour of charities and this can lead to better support.
- It can be simpler and less costly than other forms of charity to set up.

## Cons

- This type of organisation has more obligations than a non-charitable association. For example, it must produce accounts and report its activities in line with Charity Commission rules.
- Although the organisation is a type of charity, it still has no separate legal identity to its members and therefore members (often the management committee) are liable for debts or legal proceedings. Because of the lack of separate legal identity, the organisation can't buy property or contract services in its name.
- Because a charitable trust is not a member organisation, and instead is run entirely by a small group of individuals, its products and services are less likely to be informed by users.

## Charitable Incorporated Organisation (CIO)

This is the option most Sheds go for after they have settled into life as a cohesive group of Shedders and a strong and competent management committee is in place.

A CIO is a type of charity that is incorporated, meaning that the law recognises it as its own separate legal entity. It can enter into contracts and purchase property in its own name and the trustees of a CIO have limited liability.

There are two types of CIO:

- An association CIO, which has a wider membership of voting members, other than the charities trustees.
- A foundation CIO, without a wider membership. The only members are the charity's trustees.

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Registration as a CIO for an unincorporated organisation with few assets is fairly straightforward. There are guidelines in our [Resource Library](#) as well as full instructions and model constitutions which you can adapt on the [Charity Commission](#) website.

## Pros

- A CIO is incorporated and so has its own separate legal identity from its members. It can buy property or contract services in its own name.
- There is the option of being a CIO with or without voting members, to suit the aims and needs of your organisation.
- Trustees have limited liability and therefore have a level of protection over their personal assets. Any claim made against the organisation is made against the CIO and not the members.
- It is free to set up a CIO and the Charity Commission does not fine organisations who might accidentally fail to comply (though it does show on record).
- It can be easier to get funding as a charity.
- Public perception is often in favour of charities and this can lead to better support.
- Accounting and reporting is fairly simple, particularly for CIOs with an income below £250,000, allowing them to submit accounts on a receipts and payments only basis. This reduces accountant's fees.

## Cons

- Registering a CIO can take some time, particularly if you have never done it before and aren't familiar with the process, or if your organisation has a lot of assets, liabilities, or is already a different type of charity.
- There are strict rules on being and remaining charitable. It takes extra care to ensure the CIO continues to operate under its charitable purposes, exclusively for public benefit.

## Company Limited by Guarantee (with Charitable Status)

This is another type of incorporated organisation, meaning it is a separate legal entity in the eyes of the law and those that run it have limited liability. A company limited by guarantee is first and foremost a company (as the name suggests), but if its purposes are

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charitable and for public benefit it can be a company limited by guarantee with charitable purposes, making it a charity as well as a company.

Because it is a company as well as a charity, there are two separate regulatory bodies that the organisation must comply with and report to. They are Companies House (for the company part) and the Charity Commission (for the charity part). The organisation has to report to both bodies, producing accounts in specific ways for each.

The governing document for this type of organisation is a Memorandum & Articles of Association. To qualify for the 'with charitable status part', it must demonstrate that it has charitable purposes and that it works for public benefit.

The benefits of this type of organisation are much the same as with a CIO for Sheds. At the time of producing this document, no Sheds have opted for this structure.

## Pros

- A charitable company is incorporated and so has its own separate legal identity from its members. It can buy property or contract services in its own name.
- It can be easier to get funding as a charity.
- Public perception is often in favour of charities and this can lead to better support.
- Trustees have limited liability and have a level of protection over their personal assets. Any claim made against the organisation is made against the CIO and not its members.
- It can be easier to secure loans due to the extensive public records it has to keep.

## Cons

- There are two regulatory bodies to report to and each have different requirements.
- You have to pay to register the company with Companies House and additionally for filing of reports and changes to information. They also charge fees for late or incomplete submissions.

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- Accounting is more difficult than with a CIO, regardless of size, because all accounts must be on an accruals basis. This type of accounting takes more time and can cost more to be independently examined.

## Community Interest Company (CIC)

The CIC model aims to provide a robust legal structure for enterprises that aim to provide public benefit to their wider communities, or to trade with a 'social purpose', rather than to make a profit.

The model makes it clear that the intention of the organisation is to provide community benefit, whilst also benefitting from the advantages of a limited company. However, it is not a charity. The CIC can be any type of company, but most are limited by guarantee.

CICs must be registered with both Companies House and the CIC Regulator. The CIC regulator presides over the registration process and also has a continual monitoring role.

As with other types of company, a CIC and those that run it benefit from limited liability, meaning it has a separate legal identity from those that run it and can purchase assets in its own name.

### Pros

- There is less onerous regulation of CICs than other types of company.
- A CIC is incorporated and so has its own separate legal identity from its members. It can buy property or contract services in its own name.
- CICs are often eligible for funding.
- The model makes it clear that it exists for community benefit.
- They can trade like a normal business.

### Cons

- CICs are a fairly new model and not as widely understood. They are not as well understood as charities and therefore may not have the same positive perception from the public.
- They have two regulators which may make it more onerous than charities.



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- A CIC cannot receive donations from the public for its work.

## Quick Reference Guide

	Regulatory Body	Governing Document	Management	Limited Liability?	Charity Status Available?
Unincorporated Association	None	Constitution	Management Committee	No	Yes, Becomes Charitable Unincorporated Association
Charitable Unincorporated Association	Charity Commission	Constitution	Management Committee	No	Yes
Charitable Trust	Charity Commission	Trust Deed	Board Of Trustees	No	Yes
Charitable Incorporated Organisation (CIO)	Charity Commission	Constitution	Board Of Trustees	Yes	Yes, Automatic
Company Limited By Guarantee (With Charitable Status)	Companies House And Charity Commission	Memorandum and Articles Of Association	Board Of Directors	Yes	Yes
Community Interest Company (CIC)	Companies House And CIC Regulator	Memorandum And Articles Of Association	Board Of Directors	Yes	No