

# Incorporation and Big Local

## Setting up a new legal body

### Introduction

#### Who should read this guidance?

This guidance is for those involved in a Big Local partnership that is thinking about becoming an incorporated organisation or setting up a separate legal body.

It is also for people who have been asked to provide support to Big Local partnerships so that they can understand how they will need to work within the Big Local ethos and values.

This guidance should be read alongside the core guidance on locally trusted organisations and partnerships.

#### What is the guidance about?

This guidance explores the reasons why Big Local partnerships may want to set up a legal body and outlines what is involved in the process, including some of the things Local Trust will ask and expect to see.

Incorporation is a big step for anyone. An incorporated organisation is a single legal body, rather than a collection of individuals or an 'unincorporated association' (which is what many Big Local partnerships are). While there are many rewards and positive benefits for communities, incorporation also comes with additional work, possible increased risks and new legal responsibilities.

This document helps you make the decision about whether to incorporate or not and, if you decide to go ahead, provides guidance about successfully managing the process for the benefit of your community.

#### Use of terms

We use the term **legal body** to talk generally about the type of organisation you are considering setting up, whether it is a charitable company limited by guarantee, a community benefit society, a charitable incorporated association or a community interest

company. You may also hear the term legal entity, which is another way of saying the same thing.

**Incorporation** is a process through which an organisation goes from being a collection of individuals, to a single entity which is legally separate from the individuals involved, with its own 'legal personality'. Organisations incorporating in connection with Big Local partnerships often take the form of a limited company or a charitable incorporated organisation (CIO) and usually also register as charities.

You'll find a glossary of other technical terms at the end of this document.

## Why set up a legal body?

In most cases, Big Local partnerships deliver through an existing organisation that acts as the Locally Trusted Organisation (LTO). The LTO has a legal identity, enters into agreements in line with the Big Local plan, and fulfils the necessary legal requirements, which includes the grant terms and conditions, for the funding in each Big Local area. This works well if your activities and projects are being implemented by an LTO and your role is to guide the overall direction of Big Local in your area.

There are many reasons why Big Local partnerships have thought about setting up legal bodies. One major driver is often a desire to leave a tangible and lasting legacy beyond the life of the Big Local programme, by creating something that belongs to the community and that will continue to deliver activities and benefits in the long term.

A legal body can also enable you to take advantage of current opportunities, which may deliver long term benefits for the community, to hold and manage contracts and funding or to own or manage assets such as land and buildings. In some cases, a partnership might want to set up a separate legal entity to act as it's LTO or the partnership might want to become its own LTO.



## Examples of reasons to consider setting up a legal body

Setting up a legal body allows you to do things that you can't if you are not incorporated and it makes things more official. It identifies who is responsible for what and gives you a formal way to recruit new people or to buy and manage assets such as buildings. Where this has worked well it is driven by a clear vision of the change that you want to make and the legacy you want to leave, and the decision to incorporate should flow from these things. Although, please note that there is no obligation for Big Local partnerships to continue after 2026 and Local Trust holds no expectations of this.

Incorporation brings new and different responsibilities and potential risks. When Big Local partnerships are unincorporated associations, they are protected from liabilities by the Locally Trusted Organisation (LTO), which has incorporated status.

When an unincorporated Big Local partnership decides to employ workers or lease a building it is actually their LTO that does this on behalf of the partnership. This means that if, for instance, an employee has a grievance or a member of the public is injured while using the building, it is the LTO and not the Big Local partnership who are liable for any repercussions from that, for example damages. Therefore, the LTO's policies and procedures apply to these matters.

If the LTO did not do this on behalf of the partnership, then the members of the partnership would be personally liable. Therefore if the partnership wants, for instance, to start employing staff directly or to purchase a building, then setting up a legal body can provide a safety net outside the LTO, since the new body becomes liable, rather than the individuals within the partnership.

**Liability** – a legal responsibility for, for example, financial losses, breaches of contract, injuries on organisational property or offences committed by employees.

## Making the right decision

*'Take some time to ask the right questions. Why do you want to do this?'*

Setting up a legal body is a journey. It takes time and patience. Your first step is to carefully consider and discuss what you are trying to achieve and why setting up a legal body might help you with this.

Think about your Big Local Plan and consider how a legal body might help you achieve your vision.

- What do we want to do?
- How will it help us to deliver our vision and aims?
- Where do we want to do it?
- Who will benefit?

- Are there other ways we could gain the same benefit (for instance by working with another local organisation)?
- Is this the right time to do this?

## Allow enough time for discussion

Taking plenty of time to discuss these questions is a good investment. It will help you decide if setting up a legal body is right for you. If so, it will help you choose a suitable structure for your legal body and help you communicate your decision to incorporate to others.

Some Big Local partnerships have worked through these questions, considered their options and decided not to go ahead. This is because their business plans identified significant risks or because they realised they didn't have the capacity to deliver what was needed.

## Hear all voices

At this early stage it is important to allow everyone the chance to get involved.

You will get lots of different replies to these questions, so having an open discussion where community members, volunteers, partnership members and other local organisations can all contribute will help you understand the range of views and come to a consensus decision.

Keeping the Big Local ethos and outcomes at the forefront of these conversations will help you ground discussions and stay focused on what really matters.

**Big Local ethos:** *long-term, resident-led, non-prescriptive, patient and non-judgemental.*

**Big Local outcomes:**

*Communities will be better able to identify local needs and take action in response to them.*

*People will have increased skills and confidence, so that they continue to identify and respond to needs in the future.*

*The community will make a difference to the needs it prioritises.*

*People will feel that their area is an even better place to live.*

**Top tip:** Spend time on these questions, write down the answers and if you don't agree then work to reach a consensus before you go any further!

## Think about alternatives

Look across your area and talk to other groups and organisations to help you work out what a new legal body would bring to the community and where it would fit in with groups and organisations that already exist there. Are there existing organisations that already offer what you intend to provide? This will help you consider whether you need to set up a legal body or if, for example, there might be another existing organisation that could take on the task. Working with an existing organisation could save time and result in a better outcome.

## Be aware of the practicalities

The new organisation will be accountable to a regulator, such as Companies House and/or the Charity Commission, and maybe the Financial Conduct Authority. There are likely to be legal requirements associated with the legal identity you choose, such as requirements to make annual returns and submit reports in a specified format. Failure to submit reports on time may result in legal action, including fines.

**Charity Commission** registers and regulates charities in England and Wales. It stores charity information and makes it available to the public.

**Companies House** incorporates (and dissolves) limited companies. It stores company information and makes it available to the public.

**Financial Conduct Authority (FCA)** is the registering authority for 'registered societies' under the Co-operative and Community Benefit Societies Act 2014 (the Act).

There are many other practical aspects to think about before you decide whether or not to incorporate. These include:

- spending time learning about the rules of a legal body and the responsibilities of trustees, which are quite different from those of a volunteer
- ensuring everyone understands that being involved with a legal body is different from sitting on a Big Local partnership
- finding out if there are local people who are willing to become, for example, trustees or directors, who also have the skills you need
- mapping out the relationships that the legal body will have with the partnership, your existing LTO(s), other stakeholders and the community
- learning about the different legal structures and considering which would be best for you.

## Draw on support

Support can come in many different forms, for example, from your Big Local Rep, your LTO or another local organisation. Don't forget to seek support and information from other Big Local partnerships who have been through the same process.

You may also decide it's worth paying for specialist legal or financial advice or find that you need the services of a surveyor or expert facilitator. **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 and, if you decide to go ahead, to establish the legal entity.**

For each stage of this process, outside support can help you to:

- learn more about what's involved in setting up a legal body
- gather all the facts to make an informed decision
- make sure you do everything correctly to get the legal body set up
- address any issues around conflicts of interest.

Whatever support you choose, make sure that it's tailored to what your Big Local partnership wants to achieve and to the resident-led ethos of Big Local.

### Top Tip: Getting the right support

- When you bring in extra help, make sure that everyone is well briefed, so they know what is relevant to Big Local and what you want to achieve.
- Specialist support should help you achieve specific goals. For example, if you want to lease a building, you need someone with the knowledge to help you get the right lease in place.
- Start local, to see where there might be infrastructure organisations – for instance you might have access to a local council for voluntary service (CVS) – that give advice to local charities and groups. If you can't find the right expertise or experience locally you may need to use regional or national support organisations or individuals.
- Ask potential advisors about their experience of working with charities and communities. Talk to them to make sure they understand your partnership's shared vision and plans.
- Free ('pro bono') offers of help can be tempting, but don't feel obliged to go with them just because they save you money. It's more important that you get quality support from experienced practitioners that are interested in what you want to achieve.
- Take ownership of the advice and ask as many questions as you want. Don't be afraid to go back to the advisor if there is anything you don't understand.

# How to make incorporation work

Once you have an understanding of why you might want to incorporate or set up a new legal body there are a number of activities that will influence the success of your new organisation. These include building understanding, managing conflicts of interest, setting up appropriate policies and financial planning.

Working through these will help ensure you get everything in order and think through your options. This section also includes more about governance, assets and financial planning as well as links to useful resources.

You will need to be confident that the legal body takes account of community needs and opportunities and follows consultation with local people. You should consider how you will make sure that the Big Local plan developed by your partnership will be supported by the new organisation and consider how residents' wishes will continue to be respected once the legal entity is set up and after the Big Local programme finishes. Setting up the new legal body as a membership organisation is one way that other Big Local partnerships have achieved this.

## Membership

Most incorporated organisations have a two-tier governance structure involving members and directors (the directors may also be called charity trustees if the organisation is charitable). The members may be, but don't have to be, the same individuals as the directors. If they are different, then the members' role is to keep the directors accountable which may include appointing the directors if the governing document prescribes this. Members do not have the same duties as a director but, if the incorporated body is also a charity, they do have to act in the best interests of the charity. In the case of companies, there are certain important decisions which only the members can take, such as changing the name of the incorporated body.

The process for appointing and removing members is set out in the governing document for the incorporated body. This can (but does not have to) include certain eligibility criteria (e.g. living in a specified geographical area).

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 in making decisions on how the Big Local funding is spent and ensures that the voice of residents will be heard.

## Build understanding

It's important that everyone understands that being involved with a legal body is different from sitting on a Big Local partnership. Some of those differences include:

- legal responsibilities which include health and safety, human resources, financial accounting, corporation tax and reports
- being responsible for reporting to a regulatory body and it being a legal requirement to do so
- all members of your board or committee will have equal responsibility for the legal body and are liable for the requirements you need to fulfil. Whilst different structures carry limited liability this is only valid if the board are responsibly fulfilling their roles otherwise you could be personally responsible as a board member. For more detail on the duties and potential liability of directors and charity trustees of the different types of legal bodies please see our guidance on Trustee and Director Duties and Liabilities.

If the Big Local partnership wants to manage its Big Local funding and therefore decides to incorporate and become its own LTO, then the new legal body will need to meet our

requirements for LTOs, will be responsible for meeting the terms and conditions of Big Local and will sign the funding agreement with Local Trust. There is more guidance for partnerships thinking about becoming or setting up their own LTO.

Other local community groups, organisations and businesses will also want to understand more about the new organisation and what it offers. You will want these groups and organisations to know why it has been set up and what it is going to do.

### **Manage conflicts of interest**

Some of these issues might be particularly relevant or complex in Big Local, which is why it is important to discuss them. Taking time to understand and effectively manage conflicts of interest will help your new legal body succeed and ensure that it complies with Local Trust guidance on conflicts of interest.

Any legal body should ensure it operates transparently. It is important that residents have confidence that any new organisation is well managed and that any resources it brings in are being allocated for the benefit of the community. As part of this, conflicts of interest need to be considered, both within the legal body and between the legal body and the Big Local partnership.

A conflict of interest arises when someone acting in an official capacity can benefit from, or reasonably be perceived by the wider public to benefit from, the decisions they make. It is also where someone feels a degree of loyalty to another person or organisation such that they cannot act in the best interests of the body they are taking the decision for. Discussions about conflicts of interest (or loyalty) need to consider:

- the role of any staff in the legal body's and/or partnership's decisions
- the presence of families (either related by birth or marriage) on the partnership and the legal body's board or committee

- the presence of people with other close relationships that may adversely influence, or reasonably be perceived by the wider public to influence, decisions, on the partnership and the legal body's board or committee
- people in positions of power and influence (real or perceived) – such as chair, vice-chair, secretary, treasurer, worker – that are related by birth or marriage, or hold the same positions on different groups
- procurement and/or grant-making decisions
- the charitable principle of people benefitting from the charity not being trustees.

Although the partnership and new legal body are different, it is likely that some of the individuals on the governing body (directors and/or trustees) of the new legal body will also be members of the Big Local partnership. Conflicts of interest may arise as partnership members make decisions on the delivery of the Big Local plan, whilst the directors or trustees of the new body will have a responsibility to act in the best interests of that organisation. You will need to consider:

- If Big Local money is funding the new organisation, the Big Local partnership will need to identify and manage conflicts of interest in relation to how these decisions are made.
- If partnership members are also involved in the new organisation, how will decisions be made in a transparent and non-conflicted way and how do you show they are supported by the people in the Big Local area?
- If the new organisation is employing staff or contracting services, then the recruitment / selection should happen in a transparent and fair way with any conflicts of interest identified and managed. Our expectation is that in no circumstances should these staff also sit as voting members of the partnership.

In many cases conflicts of interest within or between groups can be recognised and managed effectively with the right policies and procedures. However, we do consider it to be an unacceptable conflict of interest in the creation of new legal bodies where:

- conflicts of interest are not transparent, declared and managed in making funding decisions that could benefit individuals on either group. This is particularly relevant where there may be the same people on the Big Local partnership and newly incorporated organisation
- there are people on both groups that are related by birth or marriage.

## Understand relationships

It is important to think about how the existing Big Local partnership interacts with the new legal body as well as any other third parties that either the partnership or new legal body need or choose to work with.

A good place to start is with agreeing roles of the partnership and new legal body. Below is a table showing one way to think about this that has worked well for some Big Local partnerships.

Big Local partnership <b>makes decisions</b> . It develops, agrees, and monitors the plan.	New legal body <b>puts some of those decisions into action</b> . It delivers specific agreed areas of the plan.
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**A contract or service level agreement** between the LTO (on behalf of the Big Local partnership) and the legal body can also help ensure clarity of roles by putting all of this in writing.

**Service level agreement** – *a contract that sets out the services a provider delivers and the standards the provider has agreed to maintain.*

Remember. If your Big Local partnership becomes its own LTO then your relationship with the previous LTO and with Local Trust will also change.

### **Create a clear and straightforward governing document**

Your governing document is a legal document that represents the rules by which you will operate. If you set up a company (either a charitable company limited by guarantee or a community interest company), it will be called your 'Articles of Association'. If you establish a community benefit society it will be called your 'Rules'. A charitable incorporated association has a 'Constitution'.

You won't have to write this from scratch, but you may want to commission some legal support. Examples of governing documents are available, like those developed by the Small Charities Coalition: [charitysetup.org.uk/checklist/write-a-governing-document-or-constitution/](http://charitysetup.org.uk/checklist/write-a-governing-document-or-constitution/). If you are considering applying for charitable status you should consider whether your vision and aims fit within the list of charitable purposes as defined by the Charities Act 2011.

Your governing document includes your 'objectives' or 'objects', which set out what the new legal body is there to do. You will need to ensure that these are aligned with your aims and objectives and can cover the activities within your plan. If you expect the legal body to carry on working in the community beyond Big Local then you may want to think about its area of benefit. Does it make sense for the new legal body to cover a wider geographical area?

**If you do decide to cover a wider area in your new organisation remember that for your Big Local funding the decision making still needs to be resident-led and the Big Local grant must still be applied to the original Big Local area.**

If you have decided that you want your legal body to be a membership organisation, then this will need to be written into your governing document. Many legal entities have members who participate in running the organisation by voting. This would include electing the trustees or directors to a board or committee but could also include other active ways to involve the community.

Aim to end up with a clear structure written in plain English, which helps you understand the legal body you have set up and your responsibilities.

### **Top Tip: Managing external support**

You will probably seek help and advice with your decision about which structure to choose and the process of setting up your new legal body.

Think about who is going to seek advice about the different types of legal body out there and who is going to manage the process once you get started.

You'll want people to work with the advisor so that they have a good level of understanding in the partnership and can answer basic questions from others.

You'll also need to consider the form in which a recommendation will come back to the Big Local partnership.

## **Set up a governing body**

Once you have worked on your governance, you will need to establish a board or committee that has overall control of your legal body. It's advisable to find out if there are local people who can commit the time and are willing to become trustees and/or directors, who have the range of skills you need and/or can bring different skills and experiences to the table.

The board or committee is made up of trustees and/or directors, who are responsible for making sure the legal body does what it was set up to do, meets its objectives and remains financially viable. The board or committee also need to report to any regulatory authority such as Companies House or the Charity Commission.

**Trustees/Directors** – *a group of people who are officially appointed to use their skills and experience to lead an incorporated organisation and ensure it is run in line with its governing document and the law. Sometimes known as Board Members or Governors. A director of a charitable company is also a charity trustee. A non-charitable company only has directors not trustees.*

This group will meet regularly to discuss the development, delivery and finances of the organisation. While you should ensure you keep to the Big Local ethos of being resident-led, you may need additional skills, expertise and experience within the group.

Think about the skills and experience that will help you achieve your aims as well as what is needed to fulfil your legal requirements. Training and support can help build the skills, capacity and confidence of people who want to put themselves forward as directors/trustees.

It is worth noting that there are some regulatory criteria for directors and trustees, which prevent certain individuals from acting in these roles: [gov.uk/company-director-disqualification](http://gov.uk/company-director-disqualification); and [gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions](http://gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions).

### Top Tip: Recruiting trustees

- Make sure you understand the key roles and responsibilities of trustees – this guide from NCVO is helpful: [knowhow.ncvo.org.uk/governance/board-responsibilities/legal-duties-of-trustees](http://knowhow.ncvo.org.uk/governance/board-responsibilities/legal-duties-of-trustees)
- Undertake a skills audit to help you consider the skills set needed and whether your Big Local partnership or community members have those skills or whether you want to plug some gaps with other trustees. Reach Volunteering has a useful guide to completing a skills audit: [reachvolunteering.org.uk/guide/how-complete-skills-audit](http://reachvolunteering.org.uk/guide/how-complete-skills-audit)
- Find out if there are enough people willing to become trustees or directors of the new legal body that reflect the skills needed and can commit enough time. If you need to recruit more people then advertise the roles locally, based on the skills you need. Your local CVS or Volunteer Centre might be able to help you with this.

## Protect your assets

If you plan to use Big Local funds to buy an asset, like a piece of land or a building, it is important to consider how you will protect that asset for the community in the long term. This will be something Local Trust will ask about and is something you may need to seek advice about.

### Important: Asset Lock

From March 2021, for any significant assets (such as buildings and land) purchased with Big Local funds, Local Trust will require the legal body which owns the asset to have an asset lock in place.

One common and effective approach is an ‘asset lock’. An asset lock is a way to protect an asset for the community in the long term. It does this by ensuring that the land or

buildings of a company or society can never be cashed in by, or transferred to, private individuals or other companies for their own advantage.

All assets owned by charities and community interest companies are automatically locked, providing an important safeguard for their future use for community benefit. However, there is no automatic asset lock for other types of legal bodies (such as non-charitable companies limited by guarantee), which is why they would not be appropriate entities to hold significant assets. More is explained below:

### **Top Tip: What does an asset lock mean for us?**

Having an asset lock means that:

- while your new organisation is in existence, it must use the land or buildings for a specific community benefit and may not transfer them to any person or organisation that will use them differently
- if your new organisation is closed down, any cash, land or buildings remaining after debts have been paid may not be transferred to the members of the organisation – instead they must be transferred to another company or society that has a similar asset lock.

Not having an asset lock means that the important protections outlined above are not guaranteed. Given this, while a legal structure such as a non-charitable company limited by guarantee may be a suitable option in other scenarios, it would not be an appropriate vehicle for the purchase of significant assets with Big Local funds.

## **Develop a long-term business plan**

You will need to develop a business plan that sets out your purpose and a robust operational and financial plan. As Big Local funds must be spent by 2026 if you want the legal body to continue beyond this date then when looking at financial planning you will need to look ahead at how you are going to cover costs and bring in additional resources. NCVO has a useful guide to writing your business plan, along with a template, here: [knowhow.ncvo.org.uk/tools-resources/business-plan-template/writing-your-business-plan/writing-your-business-plan#](https://knowhow.ncvo.org.uk/tools-resources/business-plan-template/writing-your-business-plan/writing-your-business-plan#)

Having an understanding about where the money comes from and where it goes, both short-term and long-term, will give you much needed assurance around sustainability. You may also need to think about getting some support to understand rules about tax and VAT. In general, whether an organisation pays VAT depends on its annual turnover not its legal status. However, it is only charities that are usually exempt from corporation tax.

## **Funding and organisational form**

If you will be dealing with large amounts of funding, holding property, entering into contracts or employing staff, a 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 co-operative societies. Some organisational forms have specific powers to raise funds: for example, community interest companies can raise share capital (if formed as a company limited by shares), and community-benefit societies and co-operative societies can issue community shares.

**Top Tip:** All of this can feel overwhelming but remember to refer back to the support you need and bring in additional expertise to help you if required. You don't have to do this on your own but you do need to make sure it is all in place!

## Set up clear policies and procedures

You will need to:

- develop clear policies and procedures around a range of issues including equalities, health and safety, human resources and safeguarding
- if recruiting and managing staff you must take account of employment law, implement fair and transparent processes and provide appropriate support
- ensure that you have insurance in place that is fit for your purpose
- think through other structural and operational needs to support you in becoming established.

Local Trust, and other funders you apply to, will ask you about these policies and procedures as part of the due diligence process, so it is important these are in place and being followed.

## Choosing a structure

It is up to you to decide what structure (also called 'legal form') you want. For the more common structures, there are model governing documents that you can look at. These can make the process of setting up a new legal body and getting it registered easier and faster. If you choose a less common structure, it will be vital to get specialist advice. There are pros and cons to each structure. It is important to know why you have chosen your preferred form and what the alternatives are.

### **Important: Registering with a Regulator**

From March 2021 Local Trust will require all newly incorporated legal bodies set up by a Big Local partnership to be successfully registered with the appropriate Regulator (i.e. Charity Commission, Companies House, Office of the Regulator of

Community Interest Companies, and/or Financial Conduct Authority, as is relevant to the legal body selected).

You may want your new organisation to have charitable status. You may want it to be a co-operative. The information below will help you to choose a structure that makes this possible.

**Top Tip:** Ask other Big Local partnerships what structure they chose and what kinds of help they found useful. Did things work out as they thought they would? What would they have done differently to make the process smoother?

## 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 (that furthers their purposes) and sale of assets.
- They can claim gift aid on eligible 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 gross annual income of between £32,001 - £320,000 can generate up to 25% of their total annual turnover from non-primary purpose trading. You can find more information on charities and trading, including trading subsidiaries here: [gov.uk/guidance/charities-and-trading](http://gov.uk/guidance/charities-and-trading); and [knowhow.ncvo.org.uk/organisation/financial-management/tax-and-trading/trading-and-charities](http://knowhow.ncvo.org.uk/organisation/financial-management/tax-and-trading/trading-and-charities).

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 [gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1/public-benefit-the-public-benefit-requirement](http://gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1/public-benefit-the-public-benefit-requirement)

The legal forms for incorporated charitable organisations are:

- charitable company limited by guarantee

- charitable incorporated organisation (CIO)
- charitable community benefit society (although this benefits from charitable tax status, it is not a registered charity).

A key step for establishing charitable companies limited by guarantee and charitable incorporated organisations is applying for registration as a charity with the Charity Commission, a process which can take several months. As an added step, charitable companies limited by guarantee must also, before they apply to the Charity Commission, incorporate at Companies House (although this is a faster and more straightforward process than applying for registration with the Charity Commission).

### What structure (or legal form) is right for you?

#### 1. Will the organisation own any assets (including buildings or land)?

If yes, you need a structure that has an asset lock so that the asset remains in community ownership and cannot be sold for private profit. The choices are:

- Charitable company limited by guarantee (CLG)
- Charitable Incorporated Organisation (CIO)
- Community Benefit Society (Bencom)
- Community Interest Company (CIC)

#### 2. Will you be taking on any kind of contractual relationship?

If yes, you need a structure that has limited liability, so that the organisation as a separate legal entity is taking on the responsibility. This includes employing staff, taking on leases buying or supplying contracted services. The choices are:

- CIO
- Bencom
- CIC
- CLG
- Cooperative

#### 3. Will you generate income through grants, trading or a combination of both?

- Grants – Charitable CLG, CIO, Bencom
- Trading – CLG, CIO (a CLG or CIO is possible where there is primary purpose trading and small scale non-primary purpose trading), CIC, Cooperative, Bencom
- Both – Charitable CLG or CIO (provided you are carrying out primary purpose trading or small scale non-primary purpose trading), Bencom

**Note:** all structures can borrow - they just need to have that power written into their governing document. Some funders won't give to a structure that can pay dividends (such as cooperatives) – even if they don't do so. Charities limit the amount of trading you can do in some circumstances.

#### 4. Will you have a membership so that the organisation continues to be accountable to the wider community?

If yes, then the following organisations enable you to have a large membership that is different to your governing body.

- Charitable CLG
- CIO
- Bencom

**Note:** If the people benefiting from the organisation are the same as the people running it then it may not be possible to operate as a charity due to conflicts of interest.

### And finally...

- Take your time. Don't be rushed into a decision.
- Make sure your Big Local ethos and values are central to all decisions.
- Understand the requirements of the Charity Commission and/or Companies House.
- Understand your legal and financial responsibilities.
- Make sure that your chosen structure will support what you want to achieve for your community.
- Make sure your board or committee reflects your local community and brings in the skills and experience you need for what you want to achieve.
- Ask questions – ask, ask and ask again!

## Introduction to four structures or legal forms that are common to the Big Local programme

Structure	What is this?	Can it have an asset lock?	Can it have members?	Does it offer limited liability?	Is it suitable for charitable status?
<b>Company limited by guarantee (CLG)</b>	A company limited by guarantee can distribute profits to its members, unless that power is excluded in its memorandum and articles of association. It registers as a company first and then applies for charitable status to the Charity Commission.	Yes	Yes	Yes	Yes
<b>Community Benefit Society (CBS or Bencom)</b>	A community benefit society can apply for charitable tax status, as a charitable community benefit society. It is regulated by the Financial Conduct Authority not the Charity Commission.	Yes	Yes	Yes	Yes
<b>Community Interest Company (CIC)</b>	A legal form for organisations wishing to further social objectives as a social enterprise and use their profits for the public good, but which do not require, or are not eligible for, charitable status.	Yes	Yes	Yes	No
<b>Charitable Incorporated Organisation (CIO) (association)</b>	A CIO provides both limited liability and charitable status. It has simpler reporting requirements, as it only reports to the Charity Commission, rather than to Companies House and the Charity Commission.	Yes	Yes	Yes	Yes

### Useful websites for further information

Charity Commission	<a href="https://www.gov.uk/charity-types-how-to-choose-a-structure">gov.uk/charity-types-how-to-choose-a-structure</a>
Companies House	<a href="https://www.gov.uk/government/organisations/companies-house">gov.uk/government/organisations/companies-house</a>
Financial Conduct Authority	<a href="https://www.fca.org.uk">fca.org.uk</a>
Co-operatives UK	<a href="https://www.uk.coop">uk.coop</a>
The Plunkett Foundation	<a href="https://www.plunkett.co.uk/about-us/">plunkett.co.uk/about-us/</a>
NCVO Knowhow	<a href="https://www.knowhow.ncvo.org.uk/tools-resources">knowhow.ncvo.org.uk/tools-resources</a>

### Useful resources for further information

<p><b>Gov.uk</b></p> <p>Setting up a charity and setting up a social enterprise</p> <p>Example charitable objects</p> <p>Community interest companies</p>	<p><a href="https://www.gov.uk/guidance/how-to-set-up-a-charity-cc21a">gov.uk/guidance/how-to-set-up-a-charity-cc21a</a></p> <p><a href="https://www.gov.uk/set-up-a-social-enterprise">gov.uk/set-up-a-social-enterprise</a></p> <p><a href="https://www.gov.uk/government/publications/example-charitable-objects">gov.uk/government/publications/example-charitable-objects</a></p> <p><a href="https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies">gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies</a></p>
<p><b>UnLtd</b></p> <p>Choosing the right structure for your social enterprise</p>	<p><a href="https://www.unltd.org.uk/portfolio/3-7-determining-the-right-legal-structure-for-your-social-enterprise/">unltd.org.uk/portfolio/3-7-determining-the-right-legal-structure-for-your-social-enterprise/</a></p>
<p><b>Locality</b></p> <p>Choosing a legal structure</p> <p>Fit for purpose</p>	<p><a href="https://www.locality.org.uk/wp-content/uploads/2020/02/Legal-structures-for-community-organisations-PDF-1.pdf">locality.org.uk/wp-content/uploads/2020/02/Legal-structures-for-community-organisations-PDF-1.pdf</a></p> <p><a href="https://www.locality.org.uk/wp-content/uploads/2018/03/Choosing-a-legal-structure-toolkit.pdf">locality.org.uk/wp-content/uploads/2018/03/Choosing-a-legal-structure-toolkit.pdf</a></p> <p><a href="https://www.locality.org.uk/resources/fit-purpose-healthcheck-community-organisations/">locality.org.uk/resources/fit-purpose-healthcheck-community-organisations/</a></p>

Early warning guide	<a href="http://locality.org.uk/resources/early-warning-guide/">locality.org.uk/resources/early-warning-guide/</a>
<b>NCVO</b> Different legal forms for non-profits Trading	<a href="http://knowhow.ncvo.org.uk/setting-up/legal-forms-for-non-profits-1">knowhow.ncvo.org.uk/setting-up/legal-forms-for-non-profits-1</a>  <a href="http://knowhow.ncvo.org.uk/organisation/financial-management/tax-and-trading/trading-and-charities">knowhow.ncvo.org.uk/organisation/financial-management/tax-and-trading/trading-and-charities</a>
<b>Good Governance</b> A code for the voluntary and community sector	<a href="http://governancecode.org">governancecode.org</a>
<b>Co-ops UK</b> Governance of community-based organisations	<a href="http://uk.coop/resources/simply-governance">uk.coop/resources/simply-governance</a>

## Glossary

**Asset** – something you own, such as land, a playground or a building.

**Asset lock** – a legal agreement that prevents the sale or transfer of an organisation's asset to private individuals or to an organisation that will use them differently.

**Big Local ethos** – our way of working: long-term, resident-led, non-prescriptive, patient and non-judgemental, and accompanied by flexible and responsive support.

**Big Local outcomes** - communities will be better able to identify local needs and take action in response to them; People will have increased skills and confidence, so that they continue to identify and respond to needs in the future; The community will make a difference to the needs it prioritises; People will feel that their area is an even better place to live.

**Big Local partnership** – a group of at least eight people who guide the overall direction of Big Local in a particular area.

**Charity Commission** – a non-ministerial government department that registers and regulates charities in England and Wales. It stores charity information and makes it available to the public.

**Companies House** – an executive agency sponsored by the Department for Business, Energy and Industrial Strategy that incorporates limited companies. It stores company information and makes it available to the public.

**Conflict of interest** – a situation in which someone is able to benefit from a decision they make in an official capacity or has conflicting loyalties to more than one organisation.

**Council for voluntary service (CVS)** – a charitable organisation that acts as an umbrella body for the voluntary and community organisations in their borough or district. Typically, they offer a wide variety of information and training as well as networking opportunities.

**Dividend** – a sum that a limited company pays out to its shareholders.

**Governing document** – a written legal document that sets out the rules by which an organisation operates, including its purpose and activities.

**Incorporation** – Incorporation is a process through which an organisation goes from being a collection of individuals, (in the eyes of the law), to a single entity which is legally separate from the individuals involved.

**Legal body** – a formal structure identified by the law; it defines the type of organisation.

**Legal entity** – another term for legal body.

**Liability** – a legal responsibility for, for example, financial losses, breaches of contract, injuries on organisational property or offences committed by employees.

**Limited liability** - provides a layer of protection for legal bodies and means that a creditor can only take assets or finances belonging to the company. Limited liability applies to most types of companies.

**Locally Trusted Organisation (LTO)** – the organisation chosen by a Big Local partnership to administer and account for the distribution of its funding and may deliver activities or services on behalf of the Big Local partnership.

**Objects or Objectives** – official wording that defines the activities of the legal body and the community it is set up to benefit.

**Regulatory body** – a public or government body, like the Charity Commission, that oversees an industry or practice.

**Service level agreement** – a contract that sets out the services a provider delivers to a client or customer and the standards the provider has agreed to maintain.

**Structure** – the particular way an organisation is set up (who runs it, how it is governed) when it becomes a legal body.

**Trustees** – a group of people who are officially appointed to use their skills and experience to lead a charity and ensure it is run in line with its governing document and

the law. Sometimes known as directors (where they are also company directors) or board members.

**Unincorporated association** – a group of people who come together for a reason other than to make a profit. This is a simple structure which you can set up without registering with anyone. All you need to do is write and agree a constitution.

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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.

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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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