
Big Local partnerships and incorporation

A version of this paper was published internally by Local Trust in June 2020. This version has been lightly edited to make it accessible for a general audience, with core terms and concepts explained wherever possible.

Introduction

The Big Local Programme is a resident-led funding programme providing people in 150 areas in England with £1.15m each to spend across 10-15 years to create lasting change in their neighbourhood. When the programme started, all Big Local partnerships (referring to a group made up of at least eight people that guide the overall direction of a Big Local area) were classified as unincorporated associations. This means they are a collective of individuals that have a Terms of Reference for the work that they seek to do. Typically, members of an unincorporated association would be individually financially liable for their work and activities as the organisation has no legal identity. To protect Big Local partnerships from this, Local Trust establishes a grant agreement with an existing, incorporated organisation, the Locally Trusted Organisation (LTO), to be legally and financially responsible for the delivery of Big Local.

As time has progressed, Big Local partnerships have begun to look into different legal and financial arrangements that may allow them to become charities in their own right or to set up charitable organisations that work alongside the partnership and deliver their projects. There are many different models that this new organisation can take, and some of these may be 'incorporated'. Incorporation means that an organisation is seen as a legal entity, and therefore may enter contracts or hire employees (Resource Centre, 2018). However, there are lots of different organisation types that occupy a middle ground before full incorporation. These allow for different varieties of legal control and rules, and most are recognised by the Charity Commission or another relevant regulatory body. With that in mind, this piece will refer to Big Local partnerships 'becoming a legal entity/body' or 'setting up a legal entity/body' to recognise the full range of options available.

This piece takes an introductory look at the growing trend of Big Local areas that are setting up a legal entity. While the specific legal structure used will vary, the purpose is usually one of the following:

- The Big Local partnership becomes a legally constituted body
- The Big Local partnership sets up a separate legal entity with the purpose of them becoming the partnership's LTO
- The Big Local partnership sets up a separate legal entity with the purpose of managing and delivering an aspect of their work, e.g. a community centre

This piece takes data gathered by Local Trust and conversations with key members of staff and external stakeholders to look at the following:

- What is the current context around Local Trust and the creation of new legal entities by Big Local partnerships?
- What are the challenges (both now and in the future) Local Trust and Big Local areas may face once new legal entities have been created?
- What information does Local Trust currently have on Big Local partnerships setting up legal entities, and what information would it like to know?
- One example is a glossary of the most relevant types of legal structure for community groups and their governance models

Current context

Why are areas setting up new legal entities?

Internal programme data gathered across 2018 and 2019 show that there is a growing interest in areas creating a legal entity.

- 38 per cent of Big Local partnerships have set up a new legal entity because of Big Local (AAT, 2018)
- 36 per cent of Big Local partnerships plan to set up a new legal entity because of Big Local (AAT, 2018)
- 6 per cent of Big Local partnerships have legal status (AAT, 2019)

Local Trust's programmes team anticipates that the numbers of those planning to set up a new legal entity will increase over the remainder of the Big Local programme. One possible reason for this is that areas are becoming more ambitious with their plans. If areas are interested in projects such as buying a building, entering a lease, managing people or managing funding directly, they may be advised to form some sort of constituted legal body either by Local Trust staff or Local Trust reps (individuals appointed by Local Trust to offer tailored support to a Big Local area and share successes, challenges and news with the organisation). This will allow them to have their own bank account and limit the individual liability on members of the partnership.

Linked to this is an increased focus on legacy, with many partnerships wanting to maintain a presence in their communities beyond 2026, when the Big Local programme officially ends. Creating a new legal entity, such as a charity or community interest company (CIC), allows for work to continue beyond the end of the Big Local programme. The creation of a legal entity in itself does not equate to a lasting legacy; therefore, it is important for partnerships to consider how they might use the legal body as a foundation for long-term projects that will maintain momentum after 2026.

What has Local Trust done so far?

In November 2019, Local Trust held an event in London titled '*Is incorporation right for your Big Local?*'. Recognising the increased interest in areas creating a legal entity, the main aim was to provide more knowledge to partnerships and to give them the space to sufficiently consider if creating a legal entity was right for them. The event featured a presentation from a charity lawyer who provided details on the different types of legal entities and the processes needed to set them up, as well as case studies and activities to encourage participants to reflect on the numerous routes towards creating a legal entity they may wish to take. 29 people attended from 17 out of 150 Big Local areas (Eventbrite data, 2019). Feedback from attendees was positive, with attendees stating they had a clearer view of their future direction (event feedback data, 2019).

Local Trust has also recently received legal advice relating to the terms and conditions of Big Local grants and the guidance given to areas who wish to create a legal entity. This mainly covers two different circumstances:

- Partnerships that set up a separate legal entity to become their own LTO
- Partnerships becoming their own legally constituted body

Key issues that were addressed in the legal advice, which will be looked at in more detail below in the section on challenges included conflicts of interest, how to ensure good governance and how the Big Local programme can ensure accountability from these new legal entities.

Work is still ongoing to update the relevant terms and conditions of Big Local grants. Local Trust is also planning to update Local Trust's guidance to partnerships on the subject with the support of reps and others. It hopes to use workshops with other reps to consider the implications of any changes to the guidance based on areas' current needs and asks to get a useful and broad-ranging output.

What are the challenges around Big Local and legal entities?

Conflicts of interest

As mentioned above, Local Trust sought legal guidance to understand more clearly how to manage the conflicts of interest that can be created when areas set up a new legal entity, specifically where it is acting as both the LTO and/or the partnership. If partnership members are also involved in the new organisation, how will non-conflicted decisions be made? This is particularly prevalent where partnerships become their own incorporated LTO. The partnerships are given funds to deliver work *and* make judgements about themselves as a delivery partner so there is not a separation between the two organisations as there should be. It is important for the partnerships to recognise potential conflict in blurring the lines between legal entity representative and partnership member.

Accountability

A further challenge for Local Trust is ensuring that the values and rules of the Big Local programme are followed, particularly when a partnership becomes a legally constituted body. Some assumptions have to be made by Local Trust that the new organisation will also follow Big Local guidelines, for example, on its geographical boundaries and the proportion of members who are residents. However, this may not reflect the reality of an organisation that may want to work beyond the geography of the existing Big Local area or must, due to new funding opportunities. The terms and conditions of the grant will have to be amended to allow Local Trust to hold the partnership to account in the same way that it would currently hold an LTO to account. It has also been noted that this increased scrutiny and accountability towards a partnership that is a legal body, or a new LTO that is run by members of the partnership board, complicates the relationship between Local Trust and the partnership. Currently any challenge directed at a Big Local partnership by Local Trust is pitched differently to that which would be required of an incorporated partnership, given the different legal context.

Ensuring adherence to Big Local values can also be an issue where there is a newly incorporated body that sits separate to the partnership or LTO. There is no obligation that this body should adhere to any Big Local guidance, but there is often no codified detail of how the new body relates to the partnership, LTO or Local Trust. Anecdotally, it seems that assumptions are often made that the Big Local partnership will always precede the new organisation in decision-making, but that may not be detailed in the governing documents so is not always the case in reality. There is a risk this can lead to a loss of power for any individuals who remain on the partnership board but are not involved in the incorporated body, but it also makes accountability from Local Trust more challenging.

Time

As the number of areas that show an interest in forming a legal entity increases, the amount of time left on the Big Local programme may pose a challenge. There is a limited window of time to skill-up areas in the many facets of being their own legal entity such as governance and fundraising. There is also a limited time in which to ensure areas understand the *importance* of skilling up. As discussed in the next section on challenges for Big Local areas, many partnerships are not aware of the full scale of what is required of them, or perhaps already think they are meeting the appropriate requirements of an incorporated organisation. It is also important to note knowledge gaps amongst Local Trust staff. Incorporation and setting up a legal body can be complex, with different expectations based on the type of organisation or tricky conflicts of interest to be navigated. Skilling up of key Local Trust staff members, particularly in the programmes team is also something to be addressed within a limited timeframe.

What is the best approach to supporting Big Local areas?

As highlighted above, the issues around conflicts of interest and accountability are complex and may involve questions that Big Local partnerships have not had to consider before. Local Trust recognises that when areas are navigating new legal structures, conflicts of interest and issues with governance practices structures are not necessarily intentional. Local Trust therefore seeks to maintain a support structure that is not too top-down when addressing procedural issues and providing guidance.

A further consideration is of the expectations that Local Trust puts on these new legal entities. There is a lot of guidance and documentation that an organisation needs to follow to submit to the Charity Commission (or other appropriate regulatory body) as part of their path to setting up a new legal entity. There are numerous templates and resources online from the Charity Commission and others to support with this. However, Local Trust has additional measures in its Terms and Conditions, such as detailing the number of residents on a partnership or geographical boundaries. Time will need to be spent considering which additional requirements Local Trust may put on new legal entities and whether these may contradict or go too far beyond any expectations of standard good practice for small charities or legal bodies.

Finally, there is not just a need for the correct documentation and due diligence to be in place, but also a level of understanding from partnership members about why key requirements are important or the need to correctly mitigate against conflicts of interest. The value of training and knowledge sharing alongside checklists and templates to upskill Big Local partnerships to understand what their responsibilities are should not be underestimated.

Sharing of guidance and information

There are multiple ways in which Big Local partnerships interested in creating a legal entity can access information on the process. The main sources of expertise initially are likely to be Local Trust reps and members of the Local Trust Programmes team. Despite the complexity of setting up a legal entity, it is essential that those who are providing support to Big Local partnerships on this issue are sharing the same advice and information to prevent confusion or more serious issues down the line. There are also multiple resources online that can support Big Local partnerships with the process of creating a legal entity. It is therefore also important that where Local Trust's guidance to Big Local partnerships differs from general 'good practice' advice in this area, that Local Trust, or Local Trust reps, are clear to partnerships on what those differences are and why they exist. Local Trust reps play a particularly important role skilling up partnership members, so they will be an essential part of any guidance or support available to areas during the process of setting up a new legal entity. By involving a working group of reps in the creation of support and further guidance on this topic, this will draw on reps' variety of experiences to date but also ensure that knowledge on legal entities and expectations of Big Local partnerships during the setup process are shared more widely across the whole of the rep pool.

Issues for Big Local areas

Finding the right kind of legal structure

Areas need to have enough knowledge to decide about what is right for them in terms of setting up a new legal entity and if they then decide they do want to continue down that path, they need to have access to the right skills and expertise. Partnership members may initially be very keen to form a legal entity and meet the legal requirements involved, however, as identified in the previous section, they often do not realise the extent of what is required to do this. Sometimes they want additional responsibilities but do not want to step beyond their current voluntary role. A key example here is the motivation behind areas wanting to become their own LTO.

Anecdotally, this is often the case when areas are experiencing conflict with their LTO and they believe that the easiest option is to be their own LTO, but it would potentially be quicker and simpler to find another LTO. Giving areas the opportunity to reflect on their motivation for setting up a legal body was a key aim of Local Trust's November event on incorporation, but there is likely a need for this time and support to be available across more Big Local areas, rather than those able to attend the event.

Involvement of professionals

Creating a legal entity will usually require the involvement of certain key professionals such as solicitors and accountants. It is often challenging to access good quality services in many local areas, who may need specialist knowledge around charity law and charity finances. There is also the issue of how involving professional services can take power away from people on the partnership. This can exacerbate an existing situation in some partnerships where there is an imbalanced power dynamic due to some members having a more professional background, and therefore being more used to dealing with other professionals such as solicitors. Making complex professional advice into something comprehensible to all can require significant time and effort.

Local Trust's November event on incorporation included a presentation from a legal expert and work was done in advance by Local Trust to ensure language was accessible. This is a barrier that Local Trust are recognising regarding their broader guidance by commissioning a rep who understands the needs of partnership members to amend the document, but this will only go some way to resolving the issue at a local level.

New priorities for the partnership

Currently, partnerships receive money through Local Trust to fund their work. But if a partnership becomes a legal body, or sets up a new, separate legal entity, they will need to develop a business plan that covers other sources of income such as trading, delivery of contracts, grants, or donations. Ensuring the organisation is financially sustainable will be a new and essential challenge for incorporated groups within Big Local areas. Fundraising may be new for many Big Local areas, having had a reliable income source for many years, and many legal entities may find their initial fundraising forecasts unrealistic. Fundraising at a hyper-local level can be a particular challenge, effected by economic climate and the mood of grant-giving organisations. Newly incorporated organisations may find that they have to work beyond the designated Big Local area's interests, both in terms of geography and interventions, in order to gain the funds they need to survive. There will also be a significant step up in reporting expectations compared to Local Trust, such as annual reports and financial returns, and ensuring any fundraising meets appropriate guidelines.

Alongside larger strategic concerns and reporting, there may also be a greater focus on day-to-day processes such as staffing or building management. Part of the rationale behind Big Local was to give partnerships the time, space, and money to be able to focus on strategy and outcomes for their area in a way that involves local residents. It could be argued that once a partnership moves towards a more formal, legal structure, it will not allow as much time for leading on the development of the community and getting resident's voices heard.

Challenges to resident-led ethos

There are numerous different legal structures that a partnership can choose when it creates a legal entity, and these will have different repercussions for the resident-led ethos of the Big Local programme. An open membership governance structure is often appealing to Big Local partnerships as it means that a wide range of people in the community can have a say in how the organisation is run, but it is also open to the risk of minority takeovers if it does not have further governance structures to limit this. Further, it is often only the macro decisions that would need to be ratified by the membership, which could leave day-to-day decision-making out of the community's hands. This means that while an open membership may be the most democratic option, it still may not stop an organisation being run in a closed way that generates barriers to involvement.

Evidence from Local Trust's literature review on power shows that some Big Local areas already face challenges such as "residents with power...excluding other residents from having a genuine influence in decision-making" (Local Trust, 2018). A new organisation could exacerbate pre-existing internal power struggles as a new legal entity could be used to exclude other residents. Depending on their relationship with one another, Local Trust may find it difficult to hold the organisation to account in the instance that some residents are being blocked from decision-making.

Another consideration for Big Local partnerships that become a legal entity is how they can make sure that residents' wishes would continue to be respected after the Big Local programme finishes. There is an assumption that partnerships will continue to be resident led in the long-term, but measures should be implemented in their governing documents to ensure this is the case. Depending on the model, trustees may initially be sourced from the Big Local area, but only governance documents can guarantee this in the long term. This also does not necessarily give a voice to the wider community. How much influence a community can then have over this organisation will depend on the direction the trustees wish to take, and the amount of pressure the community is willing to put on the organisation without being directly involved in its decision-making processes.

Accessibility of a new legal entity

When some partnerships set up a new legal entity, they use a governance model that involves trustees as the decision-makers, in a similar approach to a partnership model. However, the key difference is that trustees have specific governance and financial responsibilities associated with their role which might limit engagement from those in the community. Accessibility of partnerships has been a concern for some Big Local areas, with formal meetings and structures seen as off-putting for many residents. There is a risk that newly incorporated organisations may be too formal to engage with the full breadth of a community. However, the use of traditional structures is not only important in meeting Charity Commission guidelines but also lends credibility to a new organisation that is welcomed by those they may wish to work with such as other charities, funders, or local government.

Returning to the theme of partnerships needing to skill up when they wish to set up a new legal entity, some work may need to be done to ensure individuals understand and recognise that there are differences between being a partnership member and a trustee or even a director of an incorporated body. A formal trustee model requires trustees to be legally responsible for the organisation, something that may be a barrier for many. Ideally, skilling up would happen prior to the set-up of the new legal entity to allow people time to consider if they are willing to take on these new responsibilities.

What information does Local Trust have on Big Local areas creating legal entities?

Levels of information that Local Trust has on incorporation is mixed

The AAT (Area Assessment Tool) contains four questions reps have been asked regarding their areas and legal entities. The first two contain data correct as of 2019, the latter two were asked in 2018.

Data from these questions were used previously in this report:

1. Does the partnership currently have a legal status (for example, community interest company, charitable incorporated organisation, registered charity, registered business)?
2. Is the partnership its own LTO?
3. As a result of Big Local, has a new legal entity been set up (outside of the partnership)? (Community interest company, charitable incorporated organisation, registered charity, registered business)
4. Does the partnership have plans in place to set up a legal entity in the future? (Community interest company, charitable incorporated organisation, registered charity, registered business)?

Data recently collated by the programmes team which draws on data from Local Trust, which draws on plan assessments, rep reports and conversations with partnerships, reps and LTOs, demonstrates the mixed quality of information that Local Trust holds on areas that are setting up a legal entity. As a Big Local plan can run for two to three years, there is a risk that the information regarding legal entities is out of date. For example, an area may have decided not to take that path or may have set up a different legal entity to the one they originally considered in their plan. Considering the most recent plans for all 150 Big Local areas, data taken from the funding tracker in June 2020 shows the following:

- Around half of Big Local areas have either already set up some form of legal entity or are considering doing so
- Areas are more likely to set up a parallel, related legal entity, than become their own LTO or incorporate their partnership
- The most common governance model chosen by Big Local areas is a Charitable Incorporated Organisation (CIO). It is also the most common proposed model when areas are beginning to think about creating a legal entity
- Legacy or managing an asset are the most common reasons mentioned within area plans for wanting to create a legal entity
- Concerns from plan assessors around legal entities reflect some of issues identified previously in this piece namely accountability and conflicts of interest

Local Trust's data on legal entities in the funding tracker is a mix of quantitative and qualitative data, but it should be noted that this is not systematically gathered but accumulated when raised either in a plan assessment or via enquiries received from areas or reps. A lot of the knowledge around the areas that have set up legal entities and their experiences of doing so is held anecdotally by staff and it was noted during interviews that this knowledge is mainly gathered when areas face challenges during the process. The programmes team may not always be aware an area is going through this process until the plan assessment stage, by which point the legal entity may already have been set up.

What would Local Trust staff like to know?

(Questions in bold indicate priority questions)

- **Why do areas select the types of legal body that they do?**
- **How do these new legal bodies relate to the partnership, Big Local or Local Trust?**
- **What are areas hoping to achieve with their new legal entities, and how does this link to their ideas of legacy in their communities?**
- **What does a typical timeline of areas incorporating look like, do things 'settle down' after initial teething problems?**
- Is there a middle ground where Local Trust is supporting areas to incorporate but not pushing them to be 'perfect' when many existing charities are not?
- Are there other ways for partnerships to get more responsibility without becoming a legal entity?
- Are there examples where partnerships setting up new legal entities has 'gone right' from resident's point of view, and not just the partnership.

Glossary of legal structures and governance models

Below is a list of common legal structures that Big Local areas may adopt, some of which have been referred to above. It is adapted from Local Trust's guidance for partnerships on legal identity and governance models (Local Trust, 2015) and an online resource website for community groups (Resource Centre, 2018).

Unincorporated association/organisation

Governing document	Constitution or Terms of Reference
Governing body	Management committee or trustees
Membership	Participating members or an open membership
Charity	May be set up as a charity
Reports to	N/A (or Charity Commission if a registered charity)
<p>Most Big Local partnerships are set up as an incorporated association with some kind of Terms of Reference and rules around membership. However, as a partnership's LTO is the grantee from Local Trust, this removes the financial liability from individual partnerships members that would typically exist for an unincorporated association. Similarly, they do not have to register as charity as their income is not over £10,000 which is a stipulation of the Charities Act.</p>	

Company limited by guarantee

Governing document	Memorandum and articles of association
Governing body	Directors
Membership	Closed, participating or open membership
Charity	Can't be recognised as a charity, even if run as not-for-profit
Reports to	Companies House
<p>A company limited by guarantee is a company which does not distribute income to shareholders. This means it can be not-for-profit if all surplus income is reinvested back into the organisation. It is incorporated and will have some voting members, but it will be controlled by a group of directors who may be paid or unpaid.</p>	

Charitable company limited by guarantee

Governing document	Memorandum and articles of association
Governing body	Directors or trustees
Membership	Closed, participating or open membership
Charity	Yes
Reports to	Companies House and Charity Commission

This is the most common example of a charity. A company can be a charity if it meets the legal requirements by charity law, and its charitable aims must be clear from its governing documents. Profits are not allowed to be distributed to members or directors, and directors would typically not be paid. Annual reports and accounts need to be submitted to both Companies House and the Charity Commission.

Community Interest Company (CIC)

Governing document	Memorandum and articles of association
Governing body	Directors
Membership	Participating membership or open membership
Charity	No
Reports to	Companies House
CICs exist to recognise social enterprises – organisations that are social motivated and will use profits for the public good. A CIC will commit its assets and profits to use for the benefit of the community via an 'asset lock'. While not eligible to be a charity, all CICs must pass a 'community interest test' to demonstrate how they will benefit the community. CICs also pay corporation tax which charities do not.	

Charitable Incorporated Organisation (CIO)

Governing document	Constitution
Governing body	Trustees
Membership	Closed, participating or open membership
Charity	Yes
Reports to	Charity Commission
The CIO model was set up in 2013 to allow charities the option of simpler reporting requirements, as they report only to the Charity Commission, not Companies House as well. There are two types: Association Model – a membership organisation that holds open elections for members Foundation Model – run by a small group of appointed trustees who are not elected	

Community Benefit Society (BenCom or CBS)

Governing document	Rules
Governing body	Directors
Membership	Open membership
Charity	May be set up as charity
Reports to	Financial Conduct Authority (FCA)

A Community Benefit Society is an incorporated body that is owned by its members who govern it on a one-member-one-vote basis. The governing document will detail who can and cannot be a member. The society must exist for the benefit of the wider community and profits must be used for this purpose – an ‘asset lock’ can be used to ensure this. Having an asset lock will grant them charitable status even though they are not regulated by the Charity Commission. They are often used for taking control of an asset, such as a community building, and shares in that asset can be sold to the community to generate funds.

Charitable Trust

Governing document	Trust deed
Governing body	Trustees
Membership	Closed
Charity	May be set up as a charity
Reports to	N/A (or Charity Commission if a registered charity)
<p>A Charitable Trust is an unincorporated body set up to manage an asset such as land or distribute lands. As it has a closed membership of appointed trustees, it is not suitable for an organisation that wishes to encourage participation in its decision making. If a trust has an income over £5,000 a year, it must register with the Charity Commission.</p>	

Cooperative society (Co-ops)

Governing document	Rules
Governing body	Directors
Membership	Open membership
Charity	No
Reports to	Financial Conduct Authority
<p>A Cooperative Society has a similar structure to a BenCom but its purpose is to provide services to members rather than the wider community. A Cooperative Society must meet the internationally agreed values of co-ops. A cooperative society cannot be a charity because its beneficiaries are its own members rather than the community, however it can operate on a not-for-profit basis. Profits do not have to be distributed and members instead may benefit through access to or discounted rates for facilities, services or amenities.</p>	

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Local Trust is a place-based funder supporting communities to transform and improve their lives and the places where they live. We believe there is a need to put more power, resources and decision-making into the hands of local communities, to enable them to transform and improve their lives and the places in which they live.

We do this by trusting local people. Our aims are to demonstrate the value of long term, unconditional, resident-led funding through our work supporting local communities make their areas better places to live, and to draw on the learning from our work to promote a wider transformation in the way policy makers, funders and others engage with communities and place.

Local Trust

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