



Managing Risks: Unincorporated Organisations

- Is your group or organisation an unincorporated association?
- Do you rent or lease property, employ staff, or enter into contracts?
- Do you know that having charitable status may not be enough to protect you when things go wrong?

As an unincorporated association, a group or organisation has no separate legal identity from its trustees and so is not able to enter legal arrangements such as leases or contracts. Instead, the trustees must enter into arrangements in their own name and therefore become personally liable for any debts that are incurred. Many may think that having charitable status means that liability lies with the organisation, but this is not the case. Having only charitable status does not offer the same “limited Liability” protection of other corporate structures. This means that if an unincorporated business runs out of funds, the people responsible for running it will have to pay any remaining outstanding debts from their personal assets. For this reason, we would only advise groups to consider being unincorporated if they do not plan to rent or lease property, employ staff, or enter into contracts. Under such circumstances we highly recommend that groups consider converting to one of many other options available.

GCVS Sector Development Officer, Phil Broadley, can advise on incorporating your organisation. For further information email the Sector Development team at sectordev@gcvs.org.uk

Background Additional Information

The terms "*Incorporated*" and "*Unincorporated*" both stem from the Latin word "corpus", meaning "body"

That being the case therefore, **incorporated** organisations are independent legal entities (or bodies) entirely separate from those running them, whilst **unincorporated** organisations are simply extensions of the people who run the organisation, i.e. they are *not* a separate legal entity/body.

One of the chief implications of this legal distinction is that people running unincorporated organisations (*in voluntary organisations this would normally be the Management Committee*) are generally *personally liable* for the organisation's financial liabilities, whilst the people running an incorporated organisation are generally *not liable* for the business's debts.

This means that if an unincorporated business runs out of funds, the people responsible for running it will have to pay any remaining outstanding debts. On the other hand, if an incorporated organisation runs out of money, its owners are generally not legally required

to pay any of its outstanding debts, as they are deemed to have what is called "*limited liability*" *

***NB:** It is important to note some important points with regard to the concept of "limited liability" as it applies to those running organisations in the voluntary sector: Although the concept of "limited liability" limits personal financial liability, if an incorporated organisation runs into financial difficulty, it should be borne in mind that this limit on liability does *not* apply if the cause of the situation was as a direct result of any of the following:

- fraud,
- negligence,
- carelessness,
- recklessness, or
- any other form of mismanagement on the part of the people running the organisation.

Good Governance

The Scottish Governance Code lays out five principles for all boards and committees. Principle Five relating to [Control](#) is particularly relevant here.