

Should we become incorporated?

What is incorporation?

We are currently a constituted group. A constituted group is a group which has adopted a set of rules saying what they intend to do and how they intend to operate. As a constituted group, we can do numerous things including applying for funding (other than Locality, who will only allow incorporated bodies to hold grants), set up a bank account, own equipment and employ staff.

However, the forum does not have its own separate legal identity. This means individual members of the forum who enter into obligations, such as contract, on behalf of the forum are responsible as individuals for its debts and other liabilities.

If the forum became incorporated this means that the forum would have a separate legal identity. However, it would come with a higher level of formality.

Why become incorporated?

Locality only provides grants to bodies which have become incorporated. This means that for the forum to benefit from funds from Locality, the forum needs to become incorporated or have another body hold the funds on its behalf. In addition, by becoming incorporated the liability of forum members may be limited.

What form should the forum take?

Stay as a constituted body	<p><u>Advantages</u></p> <ul style="list-style-type: none"> • We have been able to convince other bodies to hold Locality funds for us. Accordingly we have been able to secure funding. • By not becoming incorporated we do not need to file formal accounts. • The activities that we undertake are low risk in terms of liability. Accordingly the benefit of becoming a limited company is reduced. • We will not need to alter our Constitution. <p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • Risk of unlimited liability. • What happens to the forum in five years' time when the designation as a neighbourhood forum expires? • We will be taken more seriously as an incorporated body.
Community Interest Company (CIC)	<p>The Companies Act 2004 created the Community Interest Company (CIC).</p> <p>A CIC is a limited liability company, designed for social enterprises that want to use their profits and assets for the public good. A CIC has the specific aim of providing a benefit to a community and must use its income, assets and profits for the community it is formed to serve. CICs are not charities.</p> <p><u>Advantages</u></p> <ul style="list-style-type: none"> • Limited liability & simple to set up • Asset lock – a CIC cannot transfer its assets for less than market value • Increased credibility

	<p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • A CIC must deliver an annual report with its annual accounts. This report details the activities for that year. • CICs are more heavily regulated than constituted bodies • CICs are limited companies. They must comply with CAICE 2004 and associated regulations, & must adhere to the principles of company law
Company limited by Guarantee	<p>Companies can be incorporated for non-profit making functions, with no share capital and members rather than shareholders. The members contribute a predetermined nominal sum (can be £1) to the liabilities of the company which becomes due in the event of the company being wound up</p> <p><u>Advantages</u></p> <ul style="list-style-type: none"> • Limited liability & easy to set up • Increased credibility • Accounts requirements are not dissimilar to our current accounting process <p><u>Disadvantages</u></p> <ul style="list-style-type: none"> • They must adhere to company law and will be subject to the CA 2006. This includes strict rules as to annual accounts & filing annual returns.
A charity	<p>The forum can become a charity whether or not the forum is incorporated.</p> <p><u>Advantages</u></p> <p>Charities do not normally pay income/corporation tax, capital gains tax or stamp duty. Gifts to charities are also free of inheritance tax. Charities pay no more than 20% of normal business rates on the buildings they occupy to further their charitable purposes, and are able to raise funds from the public, grant-making trusts and local govt more easily than non-charitable bodies.</p> <p><u>Disadvantages</u></p> <p>The extent of political/campaigning activities are limited and strict rules apply to trading by charities. Trustees need to avoid situations where charitable and personal interests conflict.</p> <p>Charities need to produce:</p> <ul style="list-style-type: none"> • an annual report • a set of accounts • submit an annual return to the Charity Commission <p>This is in addition to the requirements of any incorporated structure, if we have one. In practice the accounting and reporting requirements are not very dissimilar from a company.</p>

Discussion points:

- We need to balance the benefit of being incorporated with the downside of the reporting requirements.
- Do we need to become incorporated? The limited liability would be good; however, we are unlikely to enter situations where liability will be incurred. If the group loses money due to fraud then the management group may be liable, regardless of whether we are incorporated.
- If we change the structure of the forum we will need to change our constitution and potentially reregister with the Council.
- **However, we could set up a separate company to sit alongside the forum. Members of the forum can be on the board of the company.**
- Do we want to be charity? At present, there does not appear to be many benefits for the forum in becoming a charity unless we are going to seek donations.
- A company limited by guarantee would be easiest to set up. The accounts submitted as a company limited by guarantee are similar to the accounts the forum would prepare as an unincorporated body. Accordingly, the additional burden is minimal.