

LEGAL STRUCTURES

Community Broadband Scotland

INTRODUCTION

Any community undertaking a Community Broadband Scotland (CBS) funded project are required to set up a legal entity in order to take the project forward.

The decision on which legal structure will be adopted is entirely in the hands of the communities involved. However CBS will only fund organisations that have:

- An 'asset lock' in place that ensures the assets of the organisation are only used for the benefit of the community
- An open and democratic governance structure which ensures that control of the organisation rests with the community

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COMPANY LIMITED BY GUARANTEE (CLG)

A CLG has the benefits of an incorporation - the company has its own legal identity that is separate from its board and members. The liability of members for company activities is limited to a guarantee made by all members on joining (normally £1).

CLGs are registered with Companies House and have to submit annual reports.

A CLG can apply to the Office of the Scottish Charity Register (OSCR) to become a registered charity. If successful the organisation has to submit annual returns to both OSCR and Companies House.

SCOTTISH CHARITABLE INCORPORATED ORGANISATION (SCIO)

This structure was established for Scottish organisations that wish to be a charity and to have limited liability for members and directors. SCIOs are registered with and report to OSCR. As they do not have full company status they are not required to report to Companies House and are not subject to company law.

A SCIO can only exist as a charitable organisation and therefore, has the associated restrictions on trading activity. If trading grows beyond an acceptable level, or if the organisation fails to meet the charity test in other ways, then the

organisation may be required to dissolve. This can be averted by establishing a trading arm (see below).

COMMUNITY INTEREST COMPANIES (CIC)

A Community Interest Company is an appropriate structure for organisations whose emphasis is on trading with a social purpose, such as carrying out a business or social enterprise.

CICs can operate as the trading arm of a charity and pass some or all of its profit to the charity.

There are two distinct features of a CIC:

- a 'Community Interest Statement' that explains the activities which will be carried out for the benefit of the community and how this will be achieved
- an 'asset lock' which ensures that assets are retained within the company to support its activities or otherwise used to benefit the community.

CICs are registered with Companies House but require the approval of the Community Interest Company Regulator. They are required to submit an annual report to the CIC Regulator.

COMMUNITY BENEFIT COOPERATIVE (BENCOM)

This is a relatively new form of cooperative that operates for the benefit of the wider community. The BenCom format is generally adopted for its ability to raise finance through the sale of shares. However, unlike other shareholding bodies, any profit has to be used for community benefit and cannot be distributed amongst members. It is permitted to pay interest to shareholders on the sums invested. BenComs adhere to the cooperative principal of 'one member, one vote' irrespective of the number of shares held or financial contribution made.

OSCR does not yet recognise BenComs as a qualifying structure for charitable status.

There is a potential conflict between a BenCom and the principle of maintaining open membership for a community asset owning organisation. As all members have to buy a share the cost involved could be perceived as a barrier to membership.

This can be avoided by setting the minimum share price at a low-enough level to not be prohibitive. Limiting membership of a BenCom to residents of the local community is likely to impose a restriction on its fundraising ambitions.

SUBSIDIARY OR INDEPENDENT ORGANISATION?

Communities can set up a new independent body to take forward the community broadband projects. However, another option is to set up a trading subsidiary of an existing body to take on the community broadband project. Each option has a number of advantages and disadvantages.

TRADING SUBSIDIARY

Usually the main reason for establishing a trading subsidiary is to protect the parent company from any financial risks or losses that may occur from trading activity.

This approach also allows the subsidiary organisation to be free from the regulations and restrictions that are involved with being a charity.

Although the management board of the subsidiary can be separate from that of the parent body, often many of the same individuals are involved with both, which can cut down the need for additional volunteers. The relationship between the two bodies can also reduce the administrative and financial costs of running the two organisations, by allowing for consolidated accounts to be prepared, back office services to be shared and policies and procedures to be developed which cover both bodies.

Having a charity as a parent company could also allow funds to be brought in that wouldn't be available to a non-charitable body.

INDEPENDENT ORGANISATION

The main advantage of the independent body as opposed to the subsidiary is a more straightforward governance structure with greater self-determination.

This provides increased control over the direction of the organisation and the running of its day to day affairs by the community. An entirely separate set of purposes can be developed which clearly define the objectives of the organisation and the powers needed to achieve them.

While subsidiary organisations have a degree of independence, they are ultimately controlled by

the parent body. This may lead to confusion for communities about who is taking forward the project and could cause problems if conflicts of interest develop between the two organisations.

CHARITABLE TRADING

Many charities carry out significant trading activity without establishing a trading arm. Primary purpose trading is trading which fulfills charitable objectives and can generally be carried out by a charity without falling foul of charity law e.g. by setting up a separate trading arm, or having to pay corporation tax on the profits, provided the surplus is used to support the charity's aims.

OSCR's latest guidance on the charity test sets out the types of activities which are deemed to be charitable. One of these charitable purposes is 'the advancement of citizenship or community development' and the guidance clarifies that "improving digital connectivity, particularly in rural areas" is an activity which would be considered a charitable purpose. This should mean that the main trading of community broadband organisations wouldn't be subject to restriction.

SCVO has produced information pages which guide you through what is required to trade as a charity (see www.scvo.org.uk)

If the Working Group is looking to pursue charitable purposes then CBS recommends that they speak to OSCR.

EXAMPLES OF EXISTING CBS PROJECTS

When it comes to legal structures, there is no 'one size fits all' approach.

The GigaPlus Argyll aggregate project chose to become a Community Benefit Cooperative (BenCom) as this would allow them to carry out a share issue to raise private capital. A BenCom can be set up as a separate entity or can be linked to another entity. It cannot be set up as a trading subsidiary.

The Locheilnet project established a Community Interest Company (CIC) as did Badenoch Broadband. The CIC structure can allow greater flexibility in how the organisation is run, with less restrictions than what would be involved with a charity as well as enabling the organisation to pay directors for any work they carry out.

ADDITIONAL INFORMATION

We encourage working group members to ensure they have sought the appropriate advice before making a decision on which structure to adopt.

The following resources provide additional information to consider:

- Scottish Council for Voluntary Organisations (SCVO) - [Guidance on Choosing a Legal Structure](#)
- Plunkett Foundation - [Comparison Guide for Available Legal Structures](#)
- Department for Business Information and Skills (BIS) - [Information and Guidance on CICs](#)
- Office of the Scottish Charity Regulator (OSCR) and Sencot - [Legal Paper on the Regulatory Challenges for Social Enterprises which Apply for Charitable Status](#)
- Model Governing Documents for setting up a Co-Operative – including Community Benefit Societies
- [Cooperative Development Scotland can advise on setting up a BenCom](#)
- [The Development Trusts Association](#) has a Community Ownership Support Service which provides information, advice and support to communities taking on assets

	CLG	SCIO	CICs	BenCom
Broad Remit	A general purpose company structure with the liability of members limited by the guarantee of a specified sum – usually £1. Has the option to apply to be a registered charity.	A charitable organisation with many characteristics similar to a CLG but with the advantage that it only reports to one regulatory body - OSCR.	Particularly suited to trading organisations including social enterprises. Has greater scope for private investment and financial remuneration of directors.	Primarily used as a vehicle for raising share capital; the members are the shareholders. The organisation's purpose is to provide community benefit through its activities and by the use of profit.
Possible to Register as a Charity?	Yes	Automatic	No	Not in Scotland
Limited Liability for Members	Yes	Yes	Yes - if structured as a CIC limited by guarantee	Yes
Limited Liability for Directors	Yes	Yes	Yes - if structured as a CIC limited by guarantee	Yes
Potential to Establish Trading Subsidiaries	Yes	Yes - but would lead to additional reporting requirements	Not necessary as it is a trading organisation	Not necessary
Suitability for Social Enterprise/Trading activity	Yes - if not a charity. If a charity, trading to meet own charitable purpose is permitted	Trading to meet own charitable purpose is permitted	Yes	Yes
Why choose this structure for your community broadband project?	A general purpose, robust structure that is widely used and well-recognised. If the company is also a charity the CLG can be perceived as having onerous statutory requirements as it has to submit annual reports to Companies House and to OSCR as well as being subject to both company and charity law.	The SCIO provides the advantages of incorporation and charitable status without having to comply with two regulators. Is able to access funding that is only open to charities. May be less suited to organisations that plan to have significant trading activity that is outside their charitable purposes.	A number of community broadband projects already use the CIC structure. CICs have straightforward reporting requirements, offer flexibility and are designed for organisations where trading is the main activity. CICs can allow directors to be paid for their work. Not be able to access funding that is limited to charities.	The BenComs model allows funds to be raised through the sale of shares whilst retaining principles of broad community benefit. It can be appropriate where full grant funding would be difficult to access or where the community enthusiasm for the proposal is sufficient to raise significant finance. Not be able to access funding that is limited to charities.