DISCLAIMER

This Guide is an overview only, which is intended to help social entrepreneurs to select the most appropriate legal structure for their social venture. This Guide reflects the law in force in England and Wales as at 1 July 2016. The Guide is general in nature and may not apply to the particular factual or legal circumstances which a social venture faces, and we therefore recommend that independent legal advice is sought. The Guide does not constitute legal advice and should not be relied on as such.
UNINCORPORATED ASSOCIATION

AT A GLANCE

SUMMARY

An unincorporated association is a group of people who have formed for a particular purpose. Social clubs and voluntary associations are typical examples of unincorporated associations.

ADVANTAGES

EASY TO SET UP AND LOW ESTABLISHMENT COSTS

✓ Very flexible structure, as the association is governed by its own rules or bylaws
✓ Relatively straightforward to run, and administrative requirements are low
✓ Can have more than one person involved in the day-to-day running of the business
✓ Capable of being registered as a charity where appropriate

DISADVANTAGES

✗ No separate legal identity from the individuals who are members of the association, so no limited liability for entrepreneur
✗ Generally unsuitable for borrowing money or seeking investment
✗ Generally only suitable for clubs and associations, and less appropriate for organisations which intend to trade or earn significant revenue from their activities
CASE STUDY

MAPESBURY DELL TRUST

Mapesbury Dell Trust (the ‘Trust’) is an unincorporated association which runs a community-led public park called Mapesbury Dell, located in North West London near Cricklewood Broadway. The Trust is governed by a formal constitution and run by trustees who are elected by its members each year. There are approximately 400 members of the Trust.

The land of Mapesbury Dell is legally owned by Brent Council (‘Brent’). As landowner, Brent retains responsibility for all health and safety issues and must also fulfil its statutory duties as a local authority in relation to Mapesbury Dell as a public park. However, there is a formal ‘partnership’ agreement between Brent and the Trust under which Brent is required to ensure that Mapesbury Dell remains an open space available to the public at large and the Trust and Brent each assume responsibility for specific tasks for the maintenance of Mapesbury Dell. The members of an unincorporated association are personally liable for the debts and other obligations of the association; however, the Trust has obtained various protections from liability under its agreement with Brent.

Mapesbury Dell is governed by a Steering Committee of six people. Half of the Steering Committee is chosen by the trustees and the other half is chosen by Brent. The Steering Committee has the final say on what happens in Mapesbury Dell with the exception of the implementation of health and safety regulations, the fulfilment of Brent’s statutory duties as a local authority and any expenditure by Brent. In the event of a deadlock between the members of the Steering Committee from Brent and the Trust, the Trust members have the casting vote.

The constitution of the Trust sets out the charitable purpose of the Trust, which is:

- the enhancement, maintenance and improvement of open space, within the Mapesbury Conservation Area known as Mapesbury Dell and Children’s Park for its use:
  - (a) as a recreational facility for the public at large;
  - (b) for the advancement of education of children; and
  - (c) for the conservation of rare and endangered species of wildlife.

As the trust has charitable purposes, it has registered to be able to claim Gift Aid.

The Trust intends to remain an unincorporated association. As an entirely voluntary organisation, with no paid staff, this structure meets its needs, and reflects its community and member-led nature.
UNINCORPORATED ASSOCIATION

a. OVERVIEW

Unincorporated associations are one of the most commonly used vehicles in the social and voluntary sectors. It is essentially one or more persons (‘members’) who have a common purpose, and who have agreed to regulate that relationship by contract, generally in the form of a constitution or rules.

Being ‘unincorporated’ simply means that the founding members have not formed a separate legal entity for the association. This may be to avoid the administrative requirements and expenses in operating a legal entity such as a company. Common examples of unincorporated associations include local sports clubs, investment clubs, residents’ associations and voluntary organisations.

Unincorporated associations may have trading or business objectives, carry on commercial activities or have a charitable purpose. If an unincorporated association’s purpose is exclusively charitable and for the public benefit, and it has the minimum amount of funding required pursuant to the Charity Commission’s rules (currently £5,000), then it may wish to consider applying to the Charity Commission to be registered as a charity. To register an unincorporated association as a charity, visit https://www.gov.uk/charity-recognition-hmrc.

Unincorporated associations with charitable purposes can also be friendly societies. The governing rules for friendly societies are prescribed by statute, and allow friendly societies to do things, such as borrow and loan money, make investments, bring legal proceedings in their own name and hold property (via the trustees) that ordinary unincorporated associations cannot do. A friendly society aims to assist its members, usually via financial assistance or the provision of insurance, during times of sickness, unemployment or at retirement. All friendly societies must be registered with the FCA, which keeps records of filings, memoranda and rules for each of the friendly societies. Regulation of friendly societies is a specialist area and is outside the scope of this Guide. For further information, visit https://www.the-fca.org.uk/friendly-societies-introduction.

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1. The Charity Commission will require evidence of a minimum funding of £5,000 to register a charity. Please see https://www.gov.uk/topic/running-charity/setting-up and the Charities Guide for further information.

2. Unincorporated associations wishing to register as a friendly society must now do so under the Friendly Societies Act 1992 (as amended). Incorporated entities can also be friendly societies.


4. Often the friendly society will provide life insurance (insurance of a long-term nature) but they can also provide general insurance as long as it is in relation to accidents, sickness or miscellaneous financial loss. Insurance will be provided to the members of the friendly society or to persons connected with their members. Friendly societies providing insurance products also require FCA authorisation under the Financial Services and Markets Act 2000 (as amended).

Unincorporated associations which have literary or scientific interests and wish to change the objectives set out in their constitutions may require the consent of the Department of Business Innovation & Skills.  

b. ESTABLISHMENT COSTS

Unincorporated associations are relatively straightforward to establish and run, and there is no requirement to register at Companies House. A governing document (known as the association’s ‘constitution’ or ‘rules’) sets out how the unincorporated association will be run. The rules can be adapted to cover a wide range of issues that the unincorporated association may wish to make provision for, and may, by way of example, provide for the election of a management committee to run the organisation on behalf of its members.

c. LIABILITIES

An unincorporated association does not have a legal identity which is separate from that of its members. It therefore cannot hold assets in its own name, and its members will be personally liable for the debts and other obligations of the association. For this reason, much in the same way as sole traders, unincorporated associations are less desirable than a corporate form from a liability management standpoint. Therefore, if a social venture intends to employ staff, enter into substantial contracts, acquire property, or there is the potential for the association to be exposed to liabilities which it could not pay from its own funds, then an entity with a separate legal identity is likely to be more appropriate for the social venture.

d. TAX TREATMENT

Generally, only companies are liable to corporation tax on their taxable profits. However, some members’ clubs, associations, societies, Community Amateur Sports Clubs (‘CASCs’) and other unincorporated organisations may also be liable for corporation tax. If the association is also a charity, it will not be liable to corporation tax. For further information on the taxation of charities, visit https://www.gov.uk/charities-and-tax or to register as a CASC, visit https://www.gov.uk/government/publications/charities-community-amateur-sports-club-registration-form-casc-a1.

Where subject to corporation tax, members’ clubs, associations, societies and other unincorporated associations are generally subject to the same corporation tax deadlines and requirements as other corporate entities. HMRC may, however, treat some of these

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8 Under the Literary and Scientific Institutions Act 1854.
organisations with very small tax liabilities as dormant for corporation tax purposes. To qualify, the organisation’s annual corporation tax liability must not be expected to exceed £100, and the organisation must be run exclusively for the benefit of its members. Note, however, that some types of unincorporated associations will not be covered by this exemption and you should seek specialist tax advice on this issue.

CASCs are sports clubs that need to be registered with HMRC. CASCs are liable for corporation tax on their profits but may qualify for tax relief. Additionally, some CASC activities are exempt from corporation tax if their UK trading income does not exceed £30,000, provided that the income and/or gains generated by the CASC are used only for a ‘qualifying purpose’. Generally a qualifying purpose is providing facilities for eligible sports and encouraging people to take part in them. If a CASC is liable for corporation tax then it is normally subject to corporation tax deadlines and requirements.

An unincorporated association making taxable supplies to its members will also be subject to VAT in the same way as sole traders. Please see section 2.1(d) ‘Tax treatment’ in the section relating to sole traders for further information. It is important to note that any membership fees payable by members are a taxable supply. There are specific instances where an unincorporated association will be exempt from VAT. You should consult a tax adviser for advice on your specific circumstances.

An unincorporated association that employs individuals (through its members or management committee) is required to operate the PAYE system, under which the entity must deduct from its employees’ pay the appropriate amount of income tax and national insurance contributions (‘NICs’), and account for these deductions to HMRC. Employees’ NICs are deducted from their earnings (‘primary NICs’), while employer’s NICs are charged on top of earnings and paid by the employer (‘secondary NICs’).

e. ONGOING GOVERNANCE AND REGULATORY OBLIGATIONS

As in the case of sole traders, unincorporated associations are not required to register with any regulatory body such as Companies House. Therefore, they do not have any ongoing governance or regulatory obligations, other than to keep full and proper records as required by HMRC and, where they are also a charity, the Charity Commission. Consequently, unincorporated associations are often considered more flexible and less restrictive than companies with respect to governance and regulatory obligations.
f. CORPORATE STRUCTURE

An unincorporated association does not have a legal identity which is separate from that of its members. This means that an unincorporated association cannot enter into contracts in its own name; contracts must be entered into by all of the association’s members, or such other people as are referred to in its constitution or rules, such as its trustees.

g. FINANCE AND FUNDRAISING

The main source of funding for unincorporated associations is typically the membership fees it collects from its members as well as any grant funding which may be available. Unincorporated associations may also generate income through any trading revenue. Members can also gift property or money to unincorporated associations, such as its trustees.

It is often more difficult for unincorporated associations (when compared with private limited companies) to borrow money and to obtain investment in their businesses. The members must enter into any loan agreements personally, and in some cases may be required to give personal guarantees. In addition, as unincorporated associations do not have shares, they cannot issue shares in exchange for capital in the same way as a company limited by shares can. For this reason, equity-based crowdfunding is not an option open to unincorporated associations, much the same as sole traders.

However, unincorporated associations which own property (held for the association by its trustees) can use such property as security to raise finance. This is normally done by charging the property (via a mortgage) for the benefit of the trustees of the unincorporated association and limiting the repayment to the amount of funds held by the association (thus protecting its members from having to repay the mortgage personally). This method can be used as a way of participating in loan-based crowdfunding where the investors may require security to be given by the unincorporated association for such loan. This is however a relatively unusual situation and specialist legal advice should be sought for such an arrangement.

Unincorporated associations can participate in donation-based and rewards-based crowdfunding. Other alternate sources of funding such as government grants or funds may also be available to unincorporated associations, such as grants from the Arts Council. Social entrepreneurs should check the individual criteria for any grants or funding that they think might be available to their social venture.

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The constitution or rules must expressly state that the unincorporated association has the power to borrow money (this does not apply to literary and scientific institutions, which have an implied power under the Literary and Scientific Institutions Act 1854).