

1.9.1. Unincorporated Association

The information below is an overview of requirements and for further more detailed information, support and guidance plus associated templates etc please contact the BVA Group Development Team via telephone 01256 423816 or email admin@bvaction.org.uk (please quote "BVA Group Assistance" on title). www.bvaction.org.uk

An association is formed when a group of people come together:

- ✓ for an agreed lawful purpose of benefit to themselves or others
- ✓ for a purpose which is not to make a profit for themselves or others, and
- ✓ with the intention (even if it is not explicit) of creating a legal relationship among themselves

An association might be called a club, society, trust, organisation, campaign, project, federation, forum, company or anything similar – but as long as it is not part of another organisation, is not formally set up as a trust, company or industrial and provident society and it is not incorporated under statute or royal charter, it is an unincorporated association.

An association must have rules setting out who can be a member, how decisions are made and what the association does. If they are written, they will be called a constitution or rules.

There is no statute law relating to unincorporated associations, although **charitable associations must comply with charity law** and associations to promote science, literature, fine arts or adult education can sometimes be regulated by the Department of Trade and Industry.

Advantages

- ✓ uncomplicated and flexible – can be set up and wound up easily
- ✓ simple governing document – members can draw up themselves
- ✓ rules can usually be changed quickly and easily

Disadvantages

- ✓ members can be held personally liable for the organisation's debts or for any legal action brought against them - even if the individual ceases to be a member this does not end his/her legal liability.
- ✓ association cannot enter into legal agreements or take legal action in its own name – e.g. rent premises, hire staff, open a bank account, etc –
- ✓ an unincorporated association cannot hold land and buildings
- ✓ A gift or grant given to an unincorporated association in effect creates a trust, with the association's members entrusted to use the money or property for the purposes of the association

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If the association is charitable, it can incorporate the governing body, which would overcome some of the legal disadvantages (see below)

When is it suitable to choose an unincorporated association structure?

- ✓ The organisation does not expect to own significant property
- ✓ Does not expect to employ staff
- ✓ Will have a secure income
- ✓ Will not undertake risky or financially burdensome activities
- ✓ Wants to be a membership organisation

If all the above apply but the organisation does not intend to have a membership, a trust might be more suitable (See 1.9.2. Unincorporated Charity Trust).

INCORPORATING THE GOVERNING BODY

Is a process by which the governing body (the charity trustees) of a charitable unincorporated association or charitable trust can incorporate, without incorporating the organisation as a whole, as a company limited by guarantee or industrial and provident society.

This gives them legal personality and permanent succession and the right to:

- ✓ own property,
- ✓ enter into legal agreements and
- ✓ take legal action in the name of the trustee body as a whole rather than in the names of individuals

It does not, however, limit the liability of members. They still have the same responsibilities and liabilities as in an unincorporated organisation.

Trustee incorporation might be appropriate if the organisation:

- ✓ Is a registered, exempt or excepted charity
- ✓ Owns or expects to own property or investments and/or is involved or expects to be involved in leases or long-term contracts, and
- ✓ Does not consider that it needs the additional protection it would get by incorporating the charity as a company or industrial and provident society