



Studio organisations: charitable status and constitutional structures

Report to the National Federation
of Artists' Studio Providers

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1 The brief:

Interview a snapshot of who the National Federation of Artists Studio Providers [NfASP] will serve - a cross section of studio organisations that represent different types of company / organisational structure, and charitable status, with a view to establishing the range of possible models and their benefits and drawbacks. This information will feed into creating model constitutional and charitable templates for new studio organisations. Identify organisations that may be at risk through their existing constitutional structures, in particular conflict between an organisation's actual charitable objects, its aims and objectives and its main activities.

16 of 19 organisations interviewed. 3 organisations have not responded at all, and attempts for these to be substituted with other studio groups have failed also to get participation. [See Appendix 1.]

2 Main issues arising from the survey

Some clear issues arise out of the sample of groups talked to, which raise the need for further work to be done in this area as set out below.

2.1: Identify the available legal entities for new studio organisations to adopt, and for studio organisations to reconstitute as if needed, with some guidance on suitability of these models for different organisations.

Assuming the basis for an affordable artists' studio provider is a not-for-profit organisation, then the following in essence is the range of legal structures that an organisation may adopt:

- Unincorporated associations
 - Trusts
 - Limited companies with a social purpose
 - Limited companies with a social purpose [and also Registered Charities]
 - Community benefit societies (BenComs) [an IPS, specifically for community benefit and with the option of becoming an exempt charity]
 - Community Interest Companies [new from 2005]
 - Charitable incorporated organizations [new from Autumn 2006]
- 2.2: Devise strategies for giving advice to studio groups, both new and existing, on choosing appropriate legal structures when forming an organisation.**
- 2.3: Make available a set of model rules / constitutions for unincorporated groups / groups in a process of constitutional change.**
Including a model constitution for use by unincorporated groups wishing to have a clear profile of not-for –profit status and provision of affordable studio provision. [This would also enable such groups to meet NfASP membership criteria]
- 2.4: Set up a system for devising health check" on existing studio organisations, in particular those with charitable status**
- 2.5: Assemble material for lobbying the Charities Commission on guidance around public benefit in relation to affordable studio provision for fine artists**
- 2.6: Identify existing case studies [and commission additional research as required] on the extent of public benefit carried out by:**
- A/ Individual artists who benefit from affordable studio space
 - B/ Providers of affordable artists' studio space who provide public benefit through educational [and other] community programmes.

3 Findings from the survey

General main issues:

1 Advice

- 1.1 There was an almost universal agreement that “a variety of constitutional templates specific to artists’ studio provider organisations would have been a benefit” when establishing the organisation.
Although some groups had the benefit of good legal advice, even these groups stressed how they felt they would have benefited from appropriate templates.
- 1.2 On the issue of access to legal advice on constitutional [and other matters], while there was a huge range of responses to this question, even groups who currently had access to good legal advice, whether on a paid, pro-bono or other basis, felt that a National Federation that could signpost organisations to appropriate regional advisors or bodies, pool existing knowledge within the sector, assist with providing case studies etc, would be of great benefit, both to new and existing organisations.

2 Charitable Status

- 2.1 Organisations that have registered charitable status and organisations that are exempt charities, whose primary objects included the “advancement of education” fell into 2 broad categories:
 - Those for whom *active* education through visual arts programmes were central to both the current aims *and* activities of the organisation.
 - Those for whom this was a necessity of obtaining / retaining charitable status, but was not a currently active object or activity.
- 2.2 In the latter case there were organisations who were not aware that their primary objects stated ‘education in / promotion of visual art’, rather than ‘provision of studio space for artists’.

While in most cases these organisations felt their constitutional arrangements had provided, and continued to provide, a stable base for the organisation to operate, there is clearly a potential future problem for some organisations with charitable status.

For these organisations, the ability to obtain charitable status by *solely* providing affordable studio space to artists would be seen as a benefit.

It needs to be added that for groups in the first category the provision of studio space *and* wider educational benefits were seen as equally important and mutually beneficial, for economic and cultural reasons.

For this reason, further work clearly needs to be done in establishing and publicising the extent of public benefit created by *individual fine artists* who rely on an affordable studio space for their practice and associated activities.

Associated with this, more work also needs to be undertaken in ensuring that the extent of public benefit carried out by studio *organisations* can be properly measured, and demonstrated.

Best practice examples could be shared from existing organisations, there was an expressed need for this to be done and several organisations have set up systems for doing so and would be happy to share this with others.

- 2.3 A number of organisations articulated in different ways that they were providing indirect public benefit by assisting fine artists through the provision of affordable studios, but were also aware that they lacked the necessary wider statistics and evidence to effectively make this argument. These and other organisations could be at risk in terms of their charitable status if they cannot clearly demonstrate the scope of public benefit they provide.
- 2.4 For organisations that were considering becoming a charity, or had done, and existing charities, the primary benefit of charitable status was obtaining mandatory rates relief. The other main reason was a perceived benefit in seeking grant aid, and also in the wider public perception of the organisation and its activities.
- 2.5 A majority, but by no means all, of the organisations, both registered charities and not, felt that if they could obtain the benefit of mandatory rates relief through other means, on a secure long term basis, then they would not need charitable status.

A number of groups had managed to obtain significant rates relief without charity status, although this was clearly without any permanent mandatory basis and could potentially change with a change in Local Authority policy direction.

3 Decision Making / Legal Structures / Membership issues

In terms of decision-making, [particularly for organisations going through periods of growth or constitutional change] there was an often-expressed need to ensure that key decision making was retained by those who were managing the organisation, [in many cases the founders of the organisation] or in the case of artists co-operatives, with the founder artists.

Some felt the registered charity model did not give sufficient protection to this need, and that there were also risks to be had in this sense with membership organisations, particularly those with a large membership, or memberships based on studio occupants or licensees.

Others felt the risks were negligible, and depended entirely on the individuals involved.

Organisations that had a small closed membership rather than a large open membership generally had had a more stable history in terms of their organisational development.

There were also identified problems with large memberships in achieving the required numbers to attend AGMS and fulfil other constitutional requirements, which organisations with smaller memberships did not have.

A majority of both large and small membership organisations felt that essentially artist 'members' or beneficiaries on the whole wanted to leave the constitutional and organisational aspects of the organisation to others, and devote time to their studio practice.

B Specific responses to the questions

A full list of the questions is given in appendix 2

1 Advice

Where do you go for advice, on constitutional / company / charity etc legal advice?

[Some organisations went to more than one source as appropriate]

- | | |
|---|----|
| ○ Professional Advisors [Solicitors or accountants] | 11 |
| ○ Trustees / Members | 4 |
| ○ Regulatory bodies | 3 |
| ○ Local advice agencies | 3 |
| ○ Other Organisations | 4 |
| ○ Don't know / have not ever had legal advice | 3 |

Would a variety of constitutional templates specific to artists' studio provider organisations have been a benefit to you?

- There was a 100% response that this would have been of great benefit.
- There was also a strongly expressed need for a centralised advice or signposting agency to go to when seeking specialised advice on constitutional or other legal matters.

2 Constitutions / legal status

*What if anything would you change about the constitution / legal status of your organisation?
Are there any particular constitutional flaws or areas of un-clarity that cause concern?*

- A need for simpler language
- Membership issues, around conflict of benefit and involvement, and clarification of roles
- Conflict between stated objects and activities in practice
- Objects outdated in terms of current activities of organisation

3 Membership issues / Strategic decisions

How are decisions made about the future of the organisation?

What is the role of members in your organisation?

Does the membership participate in, lead or inform decision-making and strategy?

Is the membership status there only because it is a requirement of charitable status?

- 2 organisations felt that members have a critical role in decision making
- 8 organisations felt that members have a limited role in decision making

What are the benefits, as you see it, of your organisation being a membership organisation?

Some examples:

- Involvement of studio members in 'ownership' of decisions made
- Organisation continues to respond to artists needs

What are the drawbacks, if any?

Some examples:

- Poor turnout when needed at AGMs and other meetings
- Confusion over members roles
- Self interest or short term thinking of artists in studios can over rule important strategic decisions for long term benefit of artists

How important is being artist-led / artist-run to you?

- Of those organisations that described their organisation as being artist-run or artist-led, this was felt to be of great importance in terms of understanding the changing needs of artists and being able to respond to these needs in terms of the provision of studio space and support services in the most appropriate ways.
- It needs to be reiterated that the artists' studio movement has been and continues to be a self-help movement largely run and staffed by artists or those from an artist background.

4 Public Benefit

What is the relationship between your provision of benefits to artists, and to members of the wider public?

As can be expected, a range of different responses was given to this question. In terms of provision of benefits to artists, this naturally focused primarily on affordable studio provision, but also included:

- Networking and peer support
- Access to professional development support
- Access to resources such as digital equipment
- Access to exhibition opportunities
- Access to Open Studio opportunities

In some instances organisations were very clear about how the provision of benefits to artists, particularly access to affordable studio space related to benefits to members of the wider public, whether that wider benefit was provided by individual artists or the organisation itself.

The best and most often cited example was that without the access to affordable studio space artists would not be able, in most cases, to deliver the wide range of public benefit activities that they undertake, either as an intrinsic or additional part of their working practice.

However, there is clearly a significant amount of work to be done in ensuring that studio provider organisations, as well as public bodies, understand the relationship between these two aspects of benefit, and can develop a means of recording the extent of this provision of benefit and the linkages that exist.

How do you see the provisions of benefits to the wider public in relation to your organisation's aims and objects?

As stated earlier, there are organisations whose sole or primary focus is on the provision of affordable studio provision for artists, and organisations that place the provision of affordable studio space within a context of education and public access programmes using artists to deliver the public benefit, and also providing income for the artists and in some cases the organisation.

This only becomes problematic when the organisation is a registered charity and provision of public benefit is a stated object but is not a primary activity. Of the organisations surveyed at least two of the organisations were in this position, and regarded this as a problem.

5 Charitable Status

All organisations were asked, regardless whether they were a registered, exempt or non-charity:

If you were able to obtain or retain charitable status by solely providing affordable studio space to artists, would you see this as a benefit to your organisation?

- | | | |
|------------------------------|---|--------------------------------------|
| o Yes | 8 | [50 % of organisations surveyed] |
| o No | 5 | [approximately 30% of organisations] |
| o Not sure or not applicable | 3 | [approximately 20% of organisations] |

For organisations not having charitable status

Does your organisation wish to become a charity?

If no: Why would you rather not?

- o Additional cost and administrative burden of compliance [particularly an issue for small organisations with no / or little paid staff]
- o Setting up a board of external trustees can potentially mean a loss of strategic control for the founder artists
- o Concern over meeting the stated charitable objects if the organisation was primarily set up to provide affordable studio space rather than educational activities

If yes: Why? What do you see as the benefits?

- o Mandatory rates relief
- o Increased access to grant funding
- o Improved public profile / clarity of not for profit status

For organisations with charitable status

[Includes organisations in the process of obtaining charitable status]

Does the meeting of charitable objects fit with what the organisation sees as its main roles?

Yes	8
No	2

These were the responses initially given. Following discussion with three organisations there was doubt whether the charitable objects reflected the main activities of the organisation.

Does having charitable status give benefits that outweigh the added compliance requirements?

There was a 100% response from organisations with charitable status that felt that the benefits outweighed the compliance requirements.

Have you ever been contacted by the Charity Commission?

- o Only one organisation surveyed had been contacted, [as part of a random selection by the Charities Commission]
The need for an organisation to clearly demonstrate public benefit and to ensure that an organisation's stated charitable objects are in line with the delivery of the its main activities, are the principle guidance that should be shared with all other studio provider organisations that have or are seeking charitable status.

Organisational structures, charitable status and public benefit – a report on artists studio organisations for the NfASP

Appendix 4 Useful links for further information on legal structures and charitable status

ACEVO

Legal forms guide:

<http://www.acevo.org.uk/legalforms/>

For more information on charitable status, contact the Charity Commission via their web site at <http://www.charitycommission.gov.uk/>

For progress on the Charities Bill:

<http://www.charity-commission.gov.uk/spr/charbillprog1.asp>

For more information on Community Interest Company legal form, see the DTI website at <http://www.dti.gov.uk/cics/>

It is envisaged that the CIC form will be particularly useful for social enterprises. For more information on social enterprise, see the Social Enterprise Coalition website at

<http://www.socialenterprise.org.uk/>

and the DTI's Social Enterprise site at

<http://www.dti.gov.uk/socialenterprise/index.htm>

Bates, Wells and Braithwaite provide specialist legal advice for third sector organizations and social enterprises, for more information, visit their web site at

<http://www.bateswells.co.uk/>

Business Link: Set Up a Social Enterprise:

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1077475650&r.l3=1073865730&r.l2=1073859131&r.t=RESOURCES&r.i=1073789616&r.l1=1073858805&r.s=e>

The Financial Services Authority [FSA]:

http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR/Societies/index.shtml

Charity Commission: Exempt Charities

<http://www.charity-commission.gov.uk/supportingcharities/ogs/q057a001.asp>

Business Link: Community Benefit Societies:

<http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1077475850>

3 Limited companies with a social purpose

Social enterprises often take on the form of a limited liability company (LLC). This is a more accountable form than, for example, an unincorporated association.

LLCs have an "objects" clause that sets out the company's aims or purposes. Although these objects can be commercial, if a business is a social enterprise, it may be to regenerate an area or provide employment for people with learning difficulties. If an organisation is a charity, it must have an object that the law defines as charitable, such as relieving financial hardship or promoting education.

Types of LLC

There are two incorporated forms to choose between when setting up a social enterprise as an LLC:

- **Private company limited by shares (CLS)** - shareholders each hold shares in the company. Their liability is limited to the amount unpaid on shares they hold. A public limited company (PLC) differs from a CLS in that its shares can be sold to the general public.
- **Company limited by guarantee (CLG)** - each of the members gives a guarantee for a certain sum that will be put towards the company's finances if the company is wound up. A CLG cannot raise finance by issuing shares, nor pay dividends to its members.
- LLCs often underpin other forms of social enterprise- such as Community Interest Companies (CICs) - in which case you will have to meet additional requirements.

All LLCs - including CICs - must register (incorporate) and file annual returns at Companies House. LLCs must also submit a set of memoranda and articles of association.

LLCs, with the exception of CICs, can also apply for charitable status if the organisation has exclusively charitable objects. However, a CLS is unlikely to get charitable status.

4 Community benefit societies (BenComs)

Community benefit societies (BenComs)

BenComs are incorporated industrial and provident societies (IPS) that conduct business for the benefit of their community. Profits are not distributed amongst members, or external shareholders, but returned to the community.

How BenComs operate

As IPS, some key characteristics of BenComs are as follows:

- They are set up to conduct a business or trade.
- They are run and managed by their members.
- They must submit annual accounts.
- They can raise funds by issuing shares to the public.
- They can apply for charitable status, allowing them to raise capital through public grants and charitable trusts. If approved, they are known as exempt charities - reporting to the Financial Services Authority (FSA), not the Charity Commission

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BenComs are not to be confused with another form of IPS - co-operatives. Co-operatives operate for the mutual benefit of their members and may or may not be a social enterprise, depending on their activities and how they distribute their profits
BenComs and co-operatives are both regulated by the FSA.

5 Charities

To be a charity, your organisation must have aims - or **charitable purposes** - that are exclusively charitable. For example, it may aim to advance education or religion, relieve financial hardship or benefit the wider community.

In addition to their charitable purposes, charities also have to pass a test to demonstrate that they **operate for public benefit**.

Some **advantages** of charitable status are that:

- An organisation can get a wide range of tax benefits and business rate discounts
- An organisation may be able to raise funds more easily than non-charitable bodies
- An organisation can get free advice from the Charity Commission

Some **disadvantages** of charitable status are that:

- An organisation's business activities are restricted to being exclusively charitable
- Strict campaigning, trading and dual financial reporting rules apply
- An organisation's trustees must follow certain rules and restrictions

A formal governing document is needed to set up a charity. There are three main types of governing document. Which is chosen determines the type of organisation the charity will be.

Governing document

Constitution or Rules
Memorandum and articles of association
Trust deed

Organisation created

Unincorporated association
Company limited by guarantee
Trust

The Charity Commission provides model documents for the above structures. Some national charities also produce a standard governing document to be used by organisations associated with them.

Registering a charity

In addition to registering with Companies House or the Financial Services Authority, you must register with the Charity Commission if your organisation is set up under English and Welsh law and is established for exclusively charitable purposes. It must also:

- Have an income of more than £1,000 a year
- Use or occupy land or buildings
- Have assets that constitute permanent endowment

A new charity form is the **charitable incorporated organisation**.

6 Community Interest Companies

Community Interest Companies (CICs), a new model available since 2005, are limited companies that exist to provide benefits to a community, or a specific section of a community. The CIC has the flexibility of the familiar company form, and access to a range of financing options, so may be appropriate for those working for a social purpose.

Its key features include an asset lock and a community interest statement.

CICs shouldn't be confused with charities. CICs do not have charitable status. This means they do not get the tax benefits of a charity, but in return they do not have the strict reporting requirements of a charity.

Setting up a CIC

To register as a CIC, an organisation must register as either a company limited by shares or a company limited by guarantee.

When registering the company with Companies House, an organisation will need to provide additional documents, including a community interest statement describing its social purpose. The CIC Regulator will approve the application if the statement passes the community interest test - i.e. the business activities an organisation intends to undertake will be carried out for the benefit of the community or a section of it.

How CICs operate

CICs have to follow specific rules, including the following:

- CICs must have an asset lock. This means that the company cannot generally transfer its profits or assets for less than their full market value. It will also protect any remaining assets for the community if an organisation dissolves the CIC.
- If an organisation set up a CIC as a company limited by shares, it will have the option of issuing shares that pay a capped dividend to investors. The cap is set by the CIC Regulator to protect the asset lock.
- Together with annual accounts, an organisation must present an annual community interest company report for public record. The report must show what the CIC has done during the year to pursue its pre-specified community interest and involve the individuals or groups with a particular interest in the CIC.

7 Charitable incorporated organizations

From autumn 2006, an organisation will be able to set up as a charitable incorporated organisation (CIO). This form is specifically tailored for charities registered in England and Wales. It will be available to new organisations and existing charities that meet all the criteria for being a charity but do not want to use the charity form.

Converting to a CIO

Under certain conditions, the following organisations may be able to apply to the Charity Commission for conversion to a CIO, and for the CIO to be registered as a charity:

- An existing company which is registered as a charity
- A charity that is a regulated industrial and provident society
- Exempt charities and companies or regulated societies with a share capital - where any of the shares are not fully paid up - will not be able to apply for conversion to a CIO

Special features of CIOs

CIOs will differ from traditional charities in the following ways:

- Although CIOs will not use company terminology - directors will be called charity trustees - they will be closer to companies than charities are.
- Traditional charities may or may not be incorporated, depending on their legal form. As CIOs are always incorporated, they will be separate legal entities and their members will have either no liability or limited liability.
- CIOs - like Community Interest Companies and community benefit societies - will have their assets locked in for the benefit of the community. They will not be able to distribute profits or assets to their members.

Unlike charities, CIOs will report only to the Charity Commission, not to Companies House or the Financial Services Authority.

Proposals to introduce the Charitable Incorporated Organisation will be included in the charities bill.