



London Cultural Improvement Programme

Heritage Change Programme

1. New Ways of Working

1.3 Summary of Trust Vehicles (NPDO's)

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Introduction

When exploring alternative management models for their Heritage Services, Councils have an array of choices of Non Profit Distributing Organisation (NPDO) models which can often be confusing. From consultation and research undertaken by the London Cultural Improvement Programme as part of the Heritage Change Programme, the sector has expressed a need for simple and clear guidance on what the NPDO options are.

This guide has been designed and adapted specifically for Heritage Services based on current practice being used to establish a number of Cultural and Heritage Trusts across the UK. It has been developed by The Sport, Leisure and Culture Consultancy and legal consultants Winckworth Sherwood who are currently supporting a number of local authorities in reviewing their options.

How to use this guide

This document has been designed to provide support for senior managers undertaking an options appraisal of some or all of their Heritage Services including museums, archives and historic assets. Many of the principles contained within this guidance are equally applicable for other Culture and Sport services.

Health warning

This summary is intended as a guide only and specialist advice should be sought as required.

Summary of Trust (NPDO) Vehicles

LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
UNINCORPORATED ASSOCIATION	<p>Informal structure</p> <p>No statutory regulation of this structure.</p> <p>Governed by own rules.</p> <p>No legal personality.</p>	<p>Nobody owns an unincorporated association.</p> <p>Run entirely according to own rules.</p>	<p>No: it is an unincorporated entity and, as such, has no separate legal personality.</p> <p>Those running it will have to enter into all contracts and hold all property in their own name.</p> <p>Unlimited liability for those running the association who could be personally liable.</p>	<p>Depends on own rules.</p> <p>If the association is to be charitable, restrictions on some personal benefits will apply.</p>	<p>The rules of the association could provide for this but do not necessarily have to unless charitable status is being sought.</p>	<p>Yes: if it meets the criteria for being a charity.</p>
TRUST	<p>Set up by way of trust deed.</p> <p>Deed will set out the terms of the trust including the purposes for which assets are held and for whom.</p> <p>Legal ownership is separated from beneficial ownership.</p>	<p>Legal title in all assets is held by the trustees.</p> <p>Beneficial ownership of the assets is with the beneficiaries of the Trust.</p> <p>The trustees administer and manage assets for the benefit of the beneficiaries in accordance with the</p>	<p>No: it is an unincorporated entity and, as such, has no separate legal personality.</p> <p>Trustees will have to enter into all contracts and all hold property in their own name.</p> <p>Unlimited liability for trustees who could be personally liable.</p>	<p>If the trust is not charitable, then trustees can benefit from the trust.</p> <p>If the trust is charitable, then the general rule is that trustees cannot personally benefit unless the governing document, the Charity Commission or a court has sanctioned such benefits.</p>	<p>Not necessarily.</p> <p>For social enterprises and charities, assets would need to be locked in for community/public benefit.</p>	<p>Yes: if it meets the criteria for being a charity.</p>

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LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
		terms of the trust.				
COMPANY LIMITED BY GUARANTEE	<p>Incorporated vehicle.</p> <p>Board of directors and a membership.</p> <p>Flexible and familiar vehicle.</p> <p>Most commonly used corporate legal structure.</p>	<p>Directors manage business on behalf of members.</p> <p>Some governance requirements are imposed by statute but, within those restrictions, there is considerable flexibility over internal rules.</p>	<p>Yes: it is an incorporated entity and, as such, has a separate legal personality.</p> <p>The company itself enters into contracts and holds all assets.</p> <p>Members' liability limited to amount of the guarantee.</p> <p>Liabilities of the company sit with the company itself although directors may be personally liable in limited circumstances.</p>	<p>If not charitable, then yes, benefits can be paid.</p> <p>If charitable, directors and members cannot benefit unless the governing document, the Charity Commission or a court has sanctioned such benefits.</p>	<p>For a social enterprise or a charity, assets can only be applied in furtherance of the company's objects (which would state that they were for public benefit).</p> <p>In addition, there would be a 'non distribution' clause ensuring that all surpluses were reinvested into the stated objects of the company.</p>	<p>Yes: if it meets the criteria for being a charity.</p>
COMMUNITY INTEREST COMPANY (CIC)	<p>Limited company structure specifically for social enterprise.</p> <p>Secure "asset lock" and a focus on community benefit. The asset lock means that all assets of the CIC and any surpluses</p>	<p>As for a company limited by guarantee above but subject to additional regulation to ensure community benefits.</p>	<p>Yes: it is an incorporated entity and, as such, has a separate legal personality.</p> <p>The company itself enters into contracts and holds all assets.</p> <p>Members' liability is limited to amount of the guarantee or the amount unpaid on shares.</p>	<p>Yes: but must benefit wider community as well.</p> <p>Can pay limited dividends to private investors. There is a statutory cap on the amount of dividends payable which is set by the Secretary of State. The current maximum</p>	<p>Yes: through standard provisions which all CICs must include in their constitutions.</p>	<p>No: a CIC cannot be a charity and a CIC does not benefit from any tax advantages.</p>

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	<p>generated by them are used for the benefit of the community.</p> <p>CIC 'branded' .</p> <p>Can be a guarantee or a share company.</p> <p>If a share company, can issue dividends to investors subject to a cap.</p>		<p>Liabilities of the company sit with the company itself although directors may be personally liable in limited circumstances .</p>	<p>dividend per share is 5% above the base lending rate of the Bank of England.</p> <p>The other cap is on the amount of profits capable of distribution (currently, the aggregate cap is 35% of distributable profits).</p>		
<p>INDUSTRIAL & PROVIDENT SOCIETY (IPS) (COMMUNITY BENEFIT SOCIETY (BENCOMM))</p>	<p>Incorporated entity.</p> <p>For the benefit of the community generally i.e not its own members.</p> <p>Board members and shareholders.</p> <p>Common model in housing sector.</p> <p>Governed by the Industrial and Provident Societies</p>	<p>Board members manage on behalf of the members.</p> <p>One member / one vote irrespective of the size of shareholdings.</p>	<p>Yes: it is an incorporated entity and, as such, has a separate legal personality.</p> <p>The Society itself enters into contracts and holds all assets.</p> <p>Members' liability is limited to amount unpaid on shareholdings.</p> <p>Liabilities of the Society sit with the Society itself although board members may be personally liable in limited circumstances</p>	<p>Must primarily benefit non-members.</p> <p>Asset lock applies.</p>	<p>Yes .</p>	<p>Yes: if it meets the criteria for being a charity.</p> <p>Depending on the particular circumstances, it would either be a registered charity or an exempt charity.</p>

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	Acts.					
CHARITABLE INCORPORATED ORGANISATION (CIO)	<p>Bespoke vehicle specifically for charities.</p> <p>Created by the Charities Act 2006.</p> <p>Expected to be available in early 2008.</p> <p>Will have a board and members.</p> <p>Two models available – either members as trustees or a wider membership.</p>	<p>Similar to a company. Expected to have different terminology to a company (e.g. there is likely to be no concept of 'directors' – instead, 'charity trustees').</p>	<p>Yes: it will be an incorporated entity and have a separate legal personality.</p> <p>The CIO itself will enter into contracts and hold all assets.</p> <p>Members will have either no liability or limited liability.</p> <p>Liabilities of the CIO will sit with the CIO itself although trustees may be personally liable in limited circumstances.</p>	<p>Charity trustees can only benefit personally if the constitution, court or Charity Commission permit it.</p>	Yes.	<p>Cannot be anything but a charity, and must meet the criteria for being a charity.</p>

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Where to go for more support

New Ways of Working Signposting

The Heritage Change Programme has reviewed the available information for London Boroughs considering transforming their services and new management models.

The range of information can be quite overwhelming and as a response to requests by London Boroughs, we have highlighted the key publicly available documents here with weblinks.

The key areas covered are as follows

- [Guidance on options appraisals](#)
- [Guidance on business cases](#)
- [Guidance on Trust \(NPDO\) implementation](#)
- [Routes to Further Information](#)

Please note these documents should only be used as a guide and specialist advice should be sought as appropriate.

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