

Eighth edition

Voluntary but not Amateur

**A guide to the law for voluntary organisations
and community groups**

Ruth Hayes and Jacki Reason

BWB

In association with
Bates Wells and Braithwaite

DSC

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DIRECTORY OF SOCIAL CHANGE

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About the Directory of Social Change

DSC has a vision of an independent voluntary sector at the heart of social change. The activities of independent charities, voluntary organisations and community groups are fundamental to achieve social change. We exist to help these organisations and the people who support them to achieve their goals.

We do this by:

- providing practical tools that organisations and activists need, including online and printed publications, training courses, and conferences on a huge range of topics
- acting as a ‘concerned citizen’ in public policy debates, often on behalf of smaller charities, voluntary organisations and community groups
- leading campaigns and stimulating debate on key policy issues that affect those groups
- carrying out research and providing information to influence policymakers.

DSC is the leading provider of information and training for the voluntary sector and publishes an extensive range of guides and handbooks covering subjects such as fundraising, management, communication, finance and law. We have a range of subscription-based websites containing a wealth of information on funding from trusts, companies and government sources. We run more than 300 training courses each year, including bespoke in-house training provided at the client’s location. DSC conferences, many of which run on an annual basis, include the Charity Management Conference, the Charity Accountants’ Conference and the Charity Law Conference. DSC’s major annual event is Charityfair, which provides low-cost training on a wide variety of subjects.

For details of all our activities, and to order publications and book courses, go to www.dsc.org.uk, call 08450 777707 or email publications@dsc.org.uk

The history of *Voluntary but not Amateur*

As the '8th edition' on the front cover suggests, *Voluntary but not Amateur* (VBNA) has a long history. A glimpse through early editions provides for fascinating reading. The most striking feature is the rapid escalation in VBNA's size. The first edition, published in 1985 in pillar box red, was a mere 68 pages, with text printed in 12 point and with cartoons throughout following the fate of the Crumbly Mansions Community Association as it grappled with the law. Over time the cartoons disappeared and the print size decreased to make way for more text. By the time of the fifth edition in 1998 the book had grown to such a size as to demand an index. The current edition is more than four times the size of the first VBNA.

VBNA's widening girth reflects an expansion in the law. Early editions, for example, covered health and safety legislation on one page, whereas the subject now demands a dedicated chapter; maternity rights were dealt with in a column and paternity rights in a couple of sentences as a matter of good practice. Alongside new legislation came a clutter of acronyms such as SORPS, TUPE, CRB, PUWER and WEEE that now need explaining. The voluntary sector itself played a role in bringing about changes in the law. For example, its activities can no longer be summarised under the 'four heads of charity' described in previous editions, but now require thirteen, and the growth in the social enterprise movement saw the creation of community interest companies.

VBNA also provides advice and information on good practice, again giving an insight into the concerns of the time. Early editions had whole chapters on using computers (including the ambiguous headings: 'Manipulating figures' and 'Choosing a dealer'). They also had a chapter on fundraising – remember the Manpower Services Commission and the Urban Programme? These have been replaced with sections on 21st-century concerns such as contracting to provide services, use of e-mail and internet policies, the green office and developing family-friendly working practices.

VBNA has always been a production with a cast of thousands: on page xiv are listed the many people who have helped us to put together the present edition. But special thanks must go to the London Voluntary Service Council, which dreamt up the idea of VBNA back in the 1980s (when we were both working in the Council's Research and Information Department) and published the first seven editions, before graciously handing the publication over to the Directory for Social Change in 2007. Ultimately, though, VBNA is a tribute to every one of those heroic staff and committee members who over the past 20 years have learned to manage the fast-growing complexity of voluntary sector law and good practice.

Acknowledgements

The Directory of Social Change acknowledges the huge part that London Voluntary Service Council has played in the history of *Voluntary but not Amateur* and we are very pleased to have the opportunity to publish the eighth edition.

DSC would like to thank Bates Wells & Braithwaite for supplying their legal expertise. In particular: Principal Legal Editor, Sarah Bull; and Legal Editors: Rosamund McCarthy, Malcolm Robson, Alice Faure Walker, Bill Lewis, Siobhan McGoay, and Ben Maitland.

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Foreword

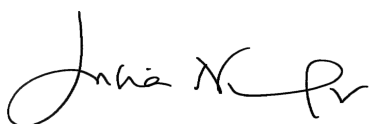
In the 24 years since the first edition of *Voluntary but not Amateur* was published, both the voluntary sector and wider society have seen extraordinary changes that were unimaginable in 1985. Coincidentally, we were in the midst of recession then and today find ourselves in another, which may well turn out to be even worse. Charities and voluntary organisations will be needed more than ever, but will face a tough climate for fundraising. Also media coverage will undoubtedly be harder to come by as other issues take the front pages.

Faced with the dual problems of escalating demand for services and increasingly stretched income, the sector needs resilience, effective governance and a first-principles approach. One of the strengths of *Voluntary but not Amateur* is that it summarises the processes people need to master when involved in running a voluntary organisation. It captures both best practice scenarios and legal requirements in one comprehensive volume, helping voluntary organisations understand everything from organisation management to employment law, campaigning and fundraising. It provides a back-to-basics resource for those running voluntary and charitable organisations, as well as a comprehensive update of recent legislation.

In 2009, the sector needs to work even more effectively than before, and so it has to be as clear about its role and as focused on its direction as possible. It must ensure its resources go where they will make the most impact, not on unnecessary duplication or ineffective recruitment practices.

We need a robust and well-equipped voluntary sector that will survive the tests ahead. Planning for these is a real challenge in itself, especially for smaller organisations. *Voluntary but not Amateur* is an excellent place for them to start.

I am delighted to welcome this new edition, and hope it will be used even more widely than its predecessors.



Baroness Neuberger DBE

Chapter 1

Before you start – legal structures and charitable status

This chapter examines the advantages and disadvantages of each legal structure open to a voluntary organisation. It then describes which organisations are eligible for charitable status and outlines the restrictions of such status. Reference is made to a number of Charity Commission publications (usually indicated by a CC or RR reference) which, unless otherwise indicated, are available from www.charity-commission.gov.uk or 0845 3000 218 (textphone 0845 3000 219).

Legal structures

The legal structures for a voluntary organisation are:

Unincorporated	Incorporated
Unincorporated association	Charitable incorporated organisation (expected to be available during 2009)
Charitable trust	Company limited by guarantee
	Company limited by shares
	Community interest company
	Industrial and provident society

Any organisation, whatever its size, needs a set of **governing rules** defining what it is set up to achieve and including its internal rules and procedures (outlined in chapter 2). The governing rules are set out in the **governing document**. The precise form of this depends on the legal structure adopted.

Legal structure	Governing document
Unincorporated association	Constitution or rules
Charitable trust	Trust deed, deed of trust or declaration of trust
Charitable incorporated organisation	Constitution
Company limited by guarantee	Memorandum and articles of association
Company limited by shares*	Memorandum and articles of association
Community interest company	Memorandum and articles of association
Industrial and provident society	Rules

**A not for profit company may be limited by shares, although this is rare. It is extremely unusual for a company limited by shares to have charitable status.*

Throughout the book, we will be using the term 'constitution' to cover all forms of governing document. Constitutions are described in detail in chapter 2.

Most voluntary organisations will be run by a management committee, which can be known by a number of titles, including the following:

- committee
- executive committee
- management committee
- council of management
- board of trustees (most commonly used by charities)
- board of directors (most commonly used by companies).

Unincorporated associations

An unincorporated association is not required by law to seek approval of any kind before setting up, nor does it have to register with any regulatory body unless it is legally charitable (see *Charitable status*, page 11). However, it may still have to register with some bodies before starting to operate: for example, HM Revenue & Customs (HMRC), the local environmental health department, the Commission for Social Care Inspection or Ofsted. An unincorporated association with a small income, which does not intend to employ staff, enter into contracts or acquire property, may need only a set of basic rules. These should state the association's aims, the powers it has to achieve them and its management procedures.

Advantages

An unincorporated association is essentially a membership organisation and can draw up its own democratic constitution setting out the rules by which it will be run. It is quick and cheap to set up: unless you are applying for charitable status no other agency need be involved and there are no fees to pay, unless you take legal advice about the constitution. It is also simple and cheap to run: you do not have to submit accounts (unless the organisation is a charity, or accounts are required by a funder). It can generally be wound up more easily than companies, charitable incorporated organisations (CIOs) or industrial and provident societies (IPSSs), provided the constitution allows for this (see chapter 10).

Unincorporated associations can register as charities and gain all the advantages of charity status listed later in this chapter. They must generally register if their objects are charitable and their annual income is over £5,000.

Disadvantages

An unincorporated association has no separate legal existence, and remains for most purposes a collection of individuals. As a result, in most cases:

- it cannot acquire property in its own name; property must be held by individuals or an incorporated body acting on its behalf
- legal proceedings cannot be taken by the association in its own name, but must be taken by individuals representing it
- its activities may be restricted as funders may prefer to donate larger sums to organisations with a more formal structure
- it may find it difficult to borrow money. Many banks and other financial institutions will insist on incorporation before providing loan finance
- individual members of the management committee can be held personally responsible for the association's obligations and debts (see *Liability of committee members*, page 20).

As a charitable unincorporated association develops, its trustees may apply to the Charity Commission to become an **incorporated body of trustees**. If the Commission accepts the application, this overcomes the first two disadvantages listed above, as the charity property is then held in the name of the association and the trustees can enter into contracts or take proceedings in the name of the incorporated body. See *Incorporation of charity trustees* (CC43) for further details. Applications must be made on the form in the application pack *How to apply to the Charity Commission for a Certificate of Incorporation* (CHY 1093), available from www.charity-commission.gov.uk.

Note that becoming an incorporated body of trustees is *not* the same as the unincorporated association converting to an incorporated organisation (known as 'incorporation': see *Changing from unincorporated to incorporated*, page 8). In particular, only incorporation will protect committee members against being personally responsible, in most situations, for the association's liabilities and debts. If liability of management committee members is a concern, you should seriously consider forming an incorporated organisation (see *Minimising the risk of personal liability*, page 20).