

Charity Registration & Constitution Changes
A note by the Union President & Managing Director

This paper is based heavily on the note presented by the Managing Director last year. It is now crucial that a decision is taken by the board: our status as an exempt charity is soon to expire.

Constitutional changes (which have been considered by the Union President, Chair of the Trustee Board, Council & Court, and the Managing Director) are included as an item for your information, but are currently being presented formally to the Council and will come to the Board next.

Background

The Charities Act (2006) removed the exemption that was in place for a number of types of organisation, including students unions. Over the past eight years, many students unions' have reviewed their governance structures to prepare for registration with the Charity Commission, many have reviewed their organisational status, and a majority have now successfully registered with the Charity Commission.

Last year: Register or not?

The option of choosing not to register with the charity commission was raised and it was presented as an option.

The Union is currently classed as an exempt charity by virtue of its administrative and financial links with the College. Although it is 'part of the college' in terms of its links with the College's statutes, it is clearly different from a college department – it has its own bank account, auditors, financial statements, VAT registration, governance and management structures and policy and decision making processes.

We would, in effect, have to become a department of the College if we did not register.

Resolved last year: To register with the Charity Commission as our own Charity.

Now: Organisational structure

The two relevant organisation structures available to the Union are:

- Becoming a Company Limited by Guarantee
- Remaining as an Unincorporated Association

The relative benefits and disadvantages of each structure are outlined in the table below.

Organisational Structure	Benefits	Issues
Company Limited By Guarantee	Limited Liability of Trustees Union has legal identity in its own right	Dual registration/regulation regime. (CC and Companies House) Relatively complicated process involving dissolution of current charity Requirement to maintain a

		register of members and changes to the College's registration process will be required.
Unincorporated Association	The current situation – would need the least changes to governance document and lead to the quickest registration process. No requirement to maintain a record of members No requirement to dissolve current charity and transfer assets and liabilities	Union doesn't have its own legal identity – the Trustees are the embodiment of the organisation. No limit to liability of Trustees.

A third option: becoming a Charitable Incorporated Organisation (CIO), is still not available to register as, so I have removed it from this paper.

Pursuing incorporation brings risks in terms of the relatively complicated nature of the process, the resources required to ensure compliance with two regulating bodies (three, if the College is included in terms of its role as a regulator under the Education Act (1994).

Conversely the risks with remaining as an unincorporated association are largely related to the liability of trustees. Trustees of an unincorporated association are both jointly and severally liable for seven years following their trusteeship.

Retaining indemnity insurance for trustees, which covers trustees for the decisions that they make, assuming, can mitigate these risks that Trustees were not knowingly negligent in their duties.

After discussion I have had with members of the Board over the last few months, it would appear that Trustees are happy to continue holding this liability for the Union.

It should be noted that the limit to the liability provided by the CLG does not apply if a Trustee is found to be negligent.

It should also be noted that registering with the Charity Commission as an unincorporated association does not preclude the Union from incorporating at a later date.

Large Students' Unions have not universally chosen one of the two legal structures – there are examples of Unions with high turnovers that have successfully registered under each organisation structure.

Resolve

To register with the Charity Commission as an unincorporated association.