

Incorporation

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Current NARPO

- An **unincorporated association**.
- Defined by Lord Justice Lawton in a 1982 case as being:
 - two or more persons;
 - bound together for one or more common purposes, not being business purposes;
 - by mutual undertakings each having mutual duties and obligations;
 - in an organisation which has rules which identify in whom control of it and its funds rests and on what terms; and
 - which can be joined or left at will
- Governed essentially by contract (its Rules) not statute. In particular the Companies Act 2006 does not apply.

What does this mean in practice?

- NARPO is not a legal entity.
- **It nothing more than a group of individual persons.**
- It follows that:
 - Property cannot be held in the name of NARPO. Property must be held in the name of individual persons who act as trustees and hold the property on trust for the organisation;
 - Contracts cannot, as a matter of law, be entered into by “NARPO”. Rather they have to be entered into by one or more individual persons on behalf of the organisation; and
 - Most importantly, a person wishing to bring legal proceedings against “NARPO” must bring action against one or more individual members.

Disadvantages of unincorporated associations

- Property held by trustees will need to be periodically transferred to new trustees, for example following a death or a person ceasing to be involved with the organisation. This involves expense (primarily legal fees) which could be avoided if the property is held in a limited company
- Uncertainty. It isn't possible to contract with an unincorporated association itself or with "all of its members from time to time". These issues are often overlooked or glossed over but, the bigger the organisation, the less satisfactory this becomes.
- If legal proceedings are brought they must be brought against individual members. For example, the members who entered into the relevant contract. **Any judgment can be enforced against the personal assets of such members e.g. homes. Bankruptcy?**
- Covered by indemnity or insurance? Possibly but not necessarily...
- Those in positions of responsibility both at national and branch level are volunteers but are, nonetheless, assuming significant risk.

Civil Liability (Contribution) Act 1978

- Section 1(1)
- Subject to the following provisions of this section, any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

Company limited by guarantee

- An alternative to using an unincorporated association.
- A company limited by guarantee is recognised as a legal entity in its own right.
- The liability of members is limited by reference to a specified amount, usually £1.00.
- The £1.00 is payable if, and only if, the company is unable to meet its liabilities.
- This contrasts with the position with an unincorporated association where there is no cap on a member's potential liability.
- **Why accept any risk of uncapped personal liability if it is avoidable?**

Advantages of “NARPO Limited”

- NARPO Limited could hold property in its own name. No need for trustees or for the property to be transferred on a change of trustees.
- NARPO Limited could enter into contracts in its own name and would be liable for any failure to meet its obligations.
- Legal proceedings would be against NARPO Limited and not individual members.
- Judgments would be enforced against the assets of NARPO Limited and not those of individual members.
- In a worst case scenario, NARPO Limited would face liquidation rather than individual members facing bankruptcy.
- Persons and businesses dealing with NARPO may be more comfortable dealing with a single legal entity.

Disdvantages of “NARPO Limited”

- Requirement to file confirmation statements (the new name for annual return) and accounts on an annual basis
- Requirement to notify Companies House of various changes e.g. changes of director.
- Companies House file is open to public inspection
- So, in general terms, a slightly greater administrative burden (all of which will be dealt with by HQ) but nothing that is a problem for a well run organisation.
- It is no coincidence that virtually any organisation of any size you deal with these days will be a limited liability company.

How “NARPO Limited” would work (1)

- One company in the same way as existing NARPO is one organisation
- Members will be members of NARPO Limited in the same way as they are members of the existing organisation
- Branches and regions will comprise groups of members of NARPO Limited in the same way as branches and regions currently comprise groups of members of the existing organisation.
- Branches and regions will not be incorporated and, as now, will not be legal entities in their own right.
- Similar to a large trading company which for organisational purposes operates as a number of divisions.

How “NARPO Limited” would work (2)

- Contracts, whether at national or branch level will be entered into by Narpo Limited.
- The intention is that the current organisational structure will replicate that of the existing organisation.
- The new articles and rules are drafted to be consistent with the current rules. In many cases these are carried over verbatim.
- Arrangements for Conference and election of Delegates to Conference remain the same.
- Arrangements for NEC and appointment of NEC members remains the same.

How “NARPO Limited” would work (3)

- Branches will retain the same level of autonomy as they have at present.
- Branches will continue to have the same right to manage their own funds subject to the same restrictions on use of those funds.
- Changes to rules require the same two thirds majority in Conference. NEC has the same very limited power to make changes as in current rules.
- Changes to articles require three quarters majority in Conference. No power for NEC to change articles.
- Destination table.
- In short, incorporation is about obtaining the benefits of operating through a limited company. In particular, the benefit of limited liability status.
- It is not about changing how NARPO works in terms of its internal organisation.

Directors' duties

- NEC Members will be the directors of NARPO Limited
- As such they will be bound by directors' duties (ss 171 to 177 Companies Act 2006):
 - Duty to act within powers (act in accordance with the company's constitution and to only exercise powers for the purposes for which they are conferred)
 - Duty to promote the success of the company
 - Duty to exercise independent judgment
 - Duty to exercise reasonable care, skill and diligence
 - Duty to avoid conflicts of interest
 - Duty not to accept benefits from third parties
 - Duty to declare interest in proposed transaction or arrangement
- “Privilege” of limited liability status brings with it “built in” governance requirements.
- These do not apply to unincorporated associations.

Documentation

- Memorandum of association
 - Prescribed form. Simply states that the subscribers wish to form a company under the Companies Act 2006 and have agreed to become members
- Articles of association
 - A contract between the company and each of its members in their capacity as members
 - Set out the basic management and administrative structure of the company
 - Automatically bind a member on becoming a member
 - Open to public inspection
 - Three quarters majority in Conference to change
- Rules
 - A contract between the company and each of its members
 - Not open to public inspection
 - Two thirds majority in Conference to change
- Destination table