

A REVIEW OF NARPO'S LEGAL STRUCTURE

At the recent workshops, the current legal structure of NARPO and alternative legal structures were reviewed. This short paper provides a general overview of those workshops and the questions which were asked by delegates.

NARPO is a membership organisation with 105 autonomous branches and a national presence, managed by the NEC.

The governing document (constitution) is the NARPO Rules dated May 2022.

NARPO is an unincorporated association.

Unincorporated Associations

An 'unincorporated association' is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit (for example, a voluntary group or a sports club). There is no relevant governing Act of Parliament.

The members of an unincorporated association agree, usually in a written constitution, to co-operate in furthering a common purpose. The association is not a legal entity, and the affairs of an unincorporated association are usually managed by a committee chosen by the members.

Advantages

The advantages of an unincorporated association are:

1. They are simple to set up. They are created by agreement between the members.
2. Finances are private as an unincorporated association does not have to file accounts and other information with Companies House or with the Registrar of Friendly Societies.
3. There is flexibility in how an unincorporated association operates.

Disadvantages

The disadvantages of an unincorporated association are:

1. The association does not have limited liability. The officers and usually the members of the association will be held liable for any debts and for the performance of the

association's contracts and other obligations. Accordingly, legal actions are brought against the committee and or its members.

2. It is not a legal entity and does not have a separate legal existence from its individual members, accordingly it can neither sue nor be sued other than through its officers and members.
3. It cannot hold land, property or investments other than in the name of officers or trustees.
4. The association cannot make formal contracts. Any contract which has been entered into in the association's name will be null and void. Contracts can only be entered into, in an individual's name, who would then be legally bound.
5. Where an action is brought against the association, problems arise because each member is personally liable. In such cases, it is usual for a claim to be made against nominated individuals (the committee) and an action brought against them. If the action is successful, all the members are liable to pay the damages equally. Difficulties often occur when the committee start to pursue the individual members.
6. Assets will usually be held on trust for all members and the committee will have the responsibilities of trustees. Consequently, committee members will need to fully understand trustee responsibilities and obligations which can be onerous.

An alternative legal structure for NARPO would be to incorporate and become a company limited guarantee.

Incorporation

A company limited by guarantee is a legal entity which is separate from its members and those who run it.

The company has guarantors and a 'guaranteed amount.' This means that the liability of the members is limited to the amount they each agree to contribute (the guarantee) which is usually £1.00 for each member.

The company invests profits it makes back into the company.

Advantages

The advantages of a company limited by guarantee are|:

1. The company is a separate legal entity from its members and their liability for its debts is limited to their guarantee.
2. The organisation will have professional credibility, which can help it reach its objectives more effectively.
3. It is the company which is sued and not the committee or members.
4. It can hold assets in its own name and the committee will not be trustees.
5. Each member is equal in standing to the others and has equal rights.
6. Companies House can agree to dispense with the use of limited in the company name.
7. Property can be held in the company's name which avoids the expense of changing ownership each time the trustees change.
8. It is an easier structure to merge or take over other organisations.

Disadvantages

The disadvantages of a company limited by guarantee are:

1. The requirement for members to file annual accounts and returns with Companies House and HMRC, as well as to notify Companies House of any changes to the registered address of guarantors/directors. The addresses can be the registered address of the company and not the personal addresses.
2. The annual costs of running a company limited by guarantee are higher than those of an unincorporated association.
3. Accounts will be public.
4. Less flexibility with organisation and structure.

Frequently Asked Questions

1. Why is this being reviewed?

The NEC undertook training workshops at the end of 2021 and early 2022 in which the NEC first learned of the differences between unincorporated associations and limited companies and the risk of individual liability. The NEC appreciated that this is primarily relevant to branches and their committees, and it is important that they have this information and are able to make decisions to protect themselves and their members.

2. NARPO branches are independent of each other. If there was a claim against a branch, would all branches be at risk?

At present, as an unincorporated association, it is arguable that branches are not just autonomous but are separate entities. Rule 20 covers liability of Branches and states- each individual Branch shall be responsible for its own liabilities and neither the NEC nor any other part of the Association shall be responsible for the liabilities of an individual Branch and no provision of these Rules shall be interpreted as imposing such responsibility.

However, a claimant may well try to claim against NARPO as a whole, putting all branches at risk.

3. If a member only pays their subscription and does not involve themselves in the running of a branch, would that member still be responsible?

As an unincorporated association, the short answer is yes; each member has equal risk. A claim may well be made against the branch officials, but they could in turn claim against each member.

4. Is it not the case that a claim against a branch is unlikely?

Claims against branches of membership organisations and officials of those branches are occurring all the time. They can come from areas such as:

- Data protection breaches
- Injuries at events when a proper health and safety assessment was not undertaken.
- Breaches of confidentiality when undertaking welfare support.

5. Does NARPO have insurance to cover any claims?

There is insurance cover, but there is always a risk that an insurer will try to avoid a claim or that a claim is capped, exposing members to the risk of a financial contribution. It is important to remember that any successful claim will be against the

committee members and the insurer will then indemnify those members. If the insurers do not do so, the members are liable.

Depending on the claim an insurer may avoid a claim because:

- A branch does not have a constitution (rules).
- A branch has not adopted or follows data protection policies and procedures.
- There is no health and safety policy or assessment in place.
- There is no equality policy.

6. What is the alternative?

Many unincorporated associations are now changing their structure to become a company limited by guarantee. This is a company registered at Companies House, but it has members rather than shareholders. The members agree to pay a fixed sum should the company be dissolved which is usually £1.00.

7. What is the advantage of being incorporated?

The members have limited liability which means that they are only personally liable to the limit of their guarantee which is usually £1.00.

The Company can also have assets in its own name such as a bank account or investments.

8. Would the name NARPO change?

It would be NARPO Limited at Companies House but could still be NARPO to members. There is an option at Companies House for the word “limited” to be removed.

9. Who would be the company directors?

The members of the NEC would become directors.

10. Would the directors be paid?

It is unusual for directors of companies limited by guarantee to be paid a salary. They can however claim their out of pocket expenses. It follows that the NEC members of NARPO would not be paid, but still would claim expenses in accordance with the Finance Policy.

11. If it were decided to incorporate, what would the process involve?

The process would involve:

- Obtaining approval at an Annual Conference.
Delegates at the Conference would be asked to approve in principle the concept of incorporation and also to approve the Memorandum and Articles of

Association which are the constitution of the organisation and would replace the current NARPO Rules.

- Instructing lawyers to assist in the drafting of the Memorandum and Articles of Association and any Rules of the new company.
- It is likely that the Memorandum and Articles of Association would be the same or very similar to the current Rules. The preference is not to change these unless the lawyers advise there is a compelling reason to change any. If this was the case the Annual Conference would have to agree to do so.
- If these are approved by an Annual Conference, then forming the limited company.
- If a company was formed, only the members can decide on changes to the Memorandum and Articles. This would take place at an Annual Conference.

12. What are the responsibilities of a Company Limited by Guarantee?

The responsibilities are the same as a limited company with shareholders, and these are briefly:

- Running the company in accordance with the Companies Act 2006 and the company's articles
- Registering for business taxes, including Corporation Tax (and VAT, if applicable). NARPO already pays Corporation Tax.
- Registering as an employer if the company has employees.
- Preparing annual accounts for Companies House.
- Preparing Company Tax Returns and accounts for HMRC.
- Filing a confirmation statement at Companies House every year.
- Paying Corporation Tax (and VAT, if applicable).
- Maintaining a registered office address.
- Keeping statutory registers and accounting records.
- Reporting any change of company details.
- Making statutory registers available for public inspection.

13. Would Branches have protection and limited liability?

Yes, the constitution can be drafted to enable branches to have autonomy but still be part of the company. All members of NARPO would be members of the company limited by guarantee.

14. Would branches remain autonomous?

Yes, branches will remain autonomous.

15. Would incorporation mean that branches would also need to comply with the requirements set out in 12 above?

Much will depend on whether the branches are viewed as autonomous. Some organisations similar to NARPO have not needed to register branches for VAT.

If a decision is made, in principle, to examine incorporation it would be essential to instruct lawyers and accountants to review all the pros and cons including tax and VAT. The preferred option is that:

- all branches remain autonomous but do not need to be separate limited companies.
- branches send accounts, as now, to NARPO HQ, who compile the overall company accounts. Branches would not therefore need their own accountants.
- NARPO HQ manage and deal with all the regulatory requirements set out in 12 above.
- importantly the cost of incorporation set out in 11 above would be borne centrally and there should be no cost to branches.
- branch committee members would continue to act as previously. They would not become directors.

16. Would the NEC be able to claim branch funds?

No, the branches will be autonomous, and the NEC would not be able to require a branch to remit any of its funds or reserves to NARPO HQ. The Precept would remain.

17. Could the NEC when they become directors change the constitution?

No, only the annual general conference can change the constitution. The directors have to comply with statutory duties in the Companies Act.

18. Could NARPO register as a charity?

A company limited by guarantee can register as a charity provided that it can establish a public benefit. The Charity Commissioner has been more restrictive in recent years on the issue of a public benefit, and it is sometimes necessary to demonstrate that the charity benefits a wider section of the public not just a specific group

In addition, becoming a charity can be more restrictive particularly with regards any action which could be taken to be political. Some future campaigns by NARPO may be determined to be political and the organisation may wish to consider having a separate charity to retain flexibility.

Any decision to become a charity would need legal and accountancy advice to review the pros and cons.

19. Could some branches decide not to incorporate?

Usually when an unincorporated association with multiple branches incorporates all branches do so. It is possible for some branches of NARPO to decide they would not incorporate and effectively leave NARPO and become a completely independent association affiliated to NARPO. This new association would not have the protection of incorporation and its committee members and members would have personal liability.

Conversely a situation may arise in which one or more large branches of NARPO do not wish to have the exposure of personal liability and if NARPO as a whole does not incorporate then these branches seek to leave and no longer be affiliated to NARPO.

20. NARPO is not for profit- how do taxes and VAT apply?

NARPO currently pays corporation tax. Other retirement membership organisations who have incorporated and maintained autonomous branches have not been required to pay VAT on membership subscriptions. This will be an area to be considered by the lawyers and accountants.