

## From Passion to Protection: Why Incorporating Your Charity Can Make All the Difference



On a wet Tuesday evening in Stirling, a small group of volunteers gathered in a group in the local community hall. There is tea, a plate of biscuits, and a sense of purpose. A few years ago, this group started out by helping neighbours who were struggling. Now they run a busy local charity, offering food parcels, advice and practical support.



It is a success story. Demand has grown. Donations are steady. A part-time member of staff keeps everything organised. The group has even taken on a lease for a small storage space. Everything feels like progress. But there is one detail they have not stopped to think about. The charity is an **unincorporated association**.

At first glance, this might not seem like a problem. In fact, most community groups start this way. It is simple, flexible and quick to set up. But as the story of this group shows, what works well at the beginning can become risky as a charity grows.

### Understanding the difference

An unincorporated charity is not recognised as a separate legal entity. In plain language, this means the charity is not legally '*its own person*'. Instead:

- Trustees act in their own names on behalf of the charity
- Contracts are signed by individuals, not the organisation itself
- Assets are often held by trustees
- Responsibility sits directly with the people involved

For small, low risk activities, this arrangement can work perfectly well. It allows communities to come together and act quickly. However, as soon as a charity starts to take on bigger responsibilities, this structure can begin to strain.

### When growth brings hidden risks

Let's return to the Stirling charity.

## Leasing a building

The group signs a lease for a storage unit to hold donations. The landlord asks for named signatories. Two trustees' sign. What this means in practice is important:

- The lease is legally in the names of those individuals
- If the charity struggles to pay rent, those trustees can be pursued personally
- Any legal dispute sits with them, not with the charity

Even though they are acting in good faith, they are personally exposed.

## Employing staff

As the charity grows, they recruit a part-time coordinator. This helps the organisation run smoothly and support more people. But in an unincorporated charity:

- The trustees are the legal employer
- Employment rights claims could be directed at them personally
- Responsibility for payroll, pensions and compliance sits with individuals

This is not just a legal issue. It can create pressure and anxiety, especially for volunteers who never expected to take on that level of responsibility.

## Signing contracts and agreements

Everyday activities often involve formal agreements. These might include:

- Funding agreements with grant providers
- Contracts for services or supplies
- Insurance policies

In each case, trustees may be named directly. If something goes wrong, they could be held accountable. Over time, this can make it harder to attract new trustees. People may worry about the personal risks involved, especially when they are volunteering their time.

## A different approach: incorporation

There is another option that many Scottish charities choose as they grow. This is to become **incorporated**. The most common structures for this are a **Scottish Charitable Incorporated Organisation (SCIO)** or a **Charitable Company**. When a charity becomes incorporated, it becomes its own legal entity. This brings a number of key changes:

- The charity can own property and leases in its own name
- It can employ staff directly
- It can enter into contracts independently
- Trustee liability is generally limited

In simple terms, the organisation stands on its own, rather than relying on individuals to carry legal responsibility.

## A positive turning point

The Stirling charity decides to take a closer look at its structure. At first, the idea of incorporating feels like a mountain to climb, with paperwork to complete and some changes needed in how things are managed. After discussing the different options, and with support from SVE, the trustees agree to proceed with the SCIO route and successfully secure SCIO status. Within a year, the difference is clear:

- The lease for the storage unit is transferred into the charity's name
- The staff member is formally employed by the organisation
- Trustees feel more confident in their role
- New volunteers are more willing to step into trustee positions

Most importantly, the focus shifts back to the charity's purpose, rather than the risks behind the scenes.

### **Why incorporation matters for certain charities**

Incorporation becomes particularly important where there is increased responsibility or risk. This includes charities that:

- Own or lease buildings or land
- Employ staff or contractors
- Manage significant income or funding
- Enter into formal partnerships or contracts

In these situations, staying unincorporated can expose trustees to personal liability that is difficult to manage. Incorporation does not remove all responsibility, but it creates a clearer and safer framework for operating.

### **A note on balance and proportionality**

It is important not to present incorporation as something every charity must do. For many smaller organisations, especially those that are:

- Fully volunteer-led
- Operating on a small scale
- Not holding property or leases
- Not employing staff

Remaining unincorporated can still be a sensible and practical option.

### **A good example: PTAs**

Parent teacher associations are a great example. They often:

- Run small fundraising events
- Handle modest amounts of money
- Operate informally with strong community links

For these groups, the simplicity of being unincorporated is often a benefit. Incorporation might introduce unnecessary complexity. The key point is that the structure should match the level of activity and risk.

### **Making the right choice**

Choosing whether to incorporate is not about following a rule. It is about making an informed decision based on how your charity works. A helpful way to think about it is:

- If your charity is small and simple, an unincorporated structure may be enough
- If your charity is growing and taking on responsibilities, incorporation becomes increasingly important

It is also worth reviewing this regularly. A structure that worked well two years ago may not fit the organisation today.

## **Final thoughts: supporting the people behind the work**

Charities are built on people. Trustees, volunteers and staff give their time because they care deeply about the cause. Incorporation is not just a technical or legal step. It is a way of:

- Protecting those who give their time
- Building confidence for future growth
- Strengthening relationships with funders and partners

For many Scottish charities, it marks a natural stage in their development. A move from informal beginnings to a more secure and sustainable future. And when that happens, it allows everyone involved to focus on what really matters: making a difference in their community.

If you are involved in an unincorporated charity that has the above responsibilities and you wish to discuss incorporation, please contact Lee Stevenson – [leestevenson@sventerprise.org.uk](mailto:leestevenson@sventerprise.org.uk)