

Appendix C

Unincorporated Associations**Legal Status**

1. Most societies, clubs and similar organisations (other than companies, industrial societies and trusts), are unincorporated associations. This is an informal organisation, which may arise where several people join together, with the intention of creating legal relations, to carry out a mutual purpose otherwise than for profit.
2. There is no statutory definition of an unincorporated association but it has been described by the court as “an association of persons bound together by identifiable rules and having an identifiable membership”. Unlike a company it does not have a separate legal status distinct from its members.
3. The rules of an unincorporated association are found in its constitution, which sets out the roles and responsibilities of its members.

Duties

4. An unincorporated association will typically have an executive or management committee with its powers and composition defined by the constitution. Key decisions will usually be made by the members at general meetings. The day to day administration of an association is usually undertaken by the officers and members of the executive or management committee.
5. Broadly executive or management committee members must act within the constitution and must take reasonable care in exercising their powers.
6. Where an unincorporated association is a registered charity the members of the executive or management committee may also be charity trustees. As such, their role and responsibilities will be determined not only by the association’s constitution but also by the general law relating to trusts and charities, as set out Appendix B.

Observer Status

7. The Council may appoint a councillor to the executive or management committee of an unincorporated association as an observer. A councillor acting as an observer should avoid exceeding this role by becoming directly involved in the management of the association as they may be deemed to be an ordinary member for the purposes of determining liability.

Liabilities

8. Members of the management committee are generally liable, jointly and severally, for the acts of the organisation, but are entitled to an indemnity from the funds of

the organisation if they have acted properly. If there are insufficient funds the members are personally liable for the shortfall

9. Particular care should also be taken when entering into contracts on behalf of the association. If the individual lacks the authority to do so, they may find themselves personally liable for the performance of the contract.

Insurance

10. Insurance may be available, but payment of the premiums must be authorised by the constitution if they are to be met from the association's funds.
11. If the association is a trust, as will be the case with any registered charity, the position with regard to indemnities will apply as explained earlier. Councillors can also rely on the limited immunity from legal proceedings provided by Section 265 Public Health Act 1875.
12. Officers will advise you whether the association has taken out any relevant insurance that covers you as a Councillor in the carrying out of your responsibilities as such. However where insurance is not provided you should raise this as an issue and ask the association to take out and maintain appropriate insurance against members' liability. As mentioned earlier Councillors should be aware that the effectiveness of such insurance will depend on the association having the resources to maintain the insurance, which it may not if it becomes insolvent and ensuring that it is both regularly reviewed in terms of cover and renewed.