



Community Finance Solutions

Report to the Tudor Trust & Community Land Trust Network

Provision of detailed advice upon best practice in the formation of legal entities to implement community-led housing trusts.



August 2011



Acknowledgements

The views of the contributors are their own, rather than their sponsor organisations:

Contributors

Sarah Lines, Cobbetts LLB

Alison Ward, Wessex Community Assets

Sean Wheelden, Wessex Community Assets

Bob Paterson, Community Finance Solutions, University of Salford

The Tudor Trust has commissioned this provision of advice to provide fledgling Community Land Trusts (CLTs) direction upon which legal structure might be most appropriate to their local circumstances. Pro forma legal structures have been drafted upon which a check-list has been designed to take start-up groups through key points which will highlight the important decisions to be made at the outset and how they might be progressed. The contents of this report has been made available to the CLT Network who with Wessex Community Assets will keep the advice updated to reflect both changes in law and also best practice in the sector.

Cobbetts LLP have actively been involved in the CLT movement for many years.

Ian Moran (direct line: 0845 404 1743; email address ian.moran@cobbetts.com) is a property partner who has acted for many CLTs. As a result of having negotiated the very first CLT direct grant agreement for Holy Island in 2009, he has recently been instructed to act for the National CLT Network to advise on the new form HCA grant agreement for CLTs for 2011-2015.

Over the last four years, Ian has also:

- negotiated and completed a number of land acquisitions for development for CLTs
- negotiated numerous section 106 affordable housing agreements for CLTs
- advised generally on the possible methods of sale units available and been part of the team negotiating mortgage funding with the Counsel of Mortgage Lenders

Sarah Lines (direct line: 0845 404 2247, email: sarah.lines@cobbetts.com) is a governance and housing lawyer. Sarah has put together the CLT toolkit. Sarah's experience includes:

- obtaining charitable status and TSA registration for the first CLT to apply for dual registration
- obtaining charitable status for CLTs
- registration of Industrial and Provident Societies (charitable and non charitable)
- advising on the use of trading subsidiaries for charitable companies
- identifying the issue of cross subsidy for charitable CLTs
- registration of a CLT as a community interest company

Wessex Community Assets (WCA) is a social enterprise specialising in facilitating access to land and finance for communities. The activities of WCA focus on supporting community groups to acquire assets (such as affordable housing, land for food growing,

workspace, and renewable energy installations), particularly through raising finance through community share issues and through establishing community land trusts. WCA co-hosts the Somerset, Devon and Dorset Community Land Trust Project and was on the expert reference panel for the Community Shares project, a national action research project for the Department of Communities and Local Government.

For further information please contact Alison Ward (alison.ward@wessexca.co.uk) or Sean Wheeldon (sean.wheeldon@wessexca.co.uk)

Community Finance Solutions (CFS) is an award winning independent research and development unit engaged in promoting and developing integrated solutions for financial and social exclusion, and community asset ownership.

For further information please contact Gemma Thompson (g.thompson@salford.ac.uk)

Please read the note below before using the guidance and documents contained in this Toolkit.

This Toolkit on the formation of a Community Land Trust (CLT) has been produced by Cobbetts LLP (legal advisers) in conjunction with the National CLT Network to provide assistance and guidance to community groups interested in the setting up of CLTs. Whilst every effort has been made to ensure that the information provided is accurate, it does not constitute legal or other professional advice.

The Toolkit has been published in good faith by the National CLT Network and neither the National CLT Network nor Cobbetts LLP shall incur any liability for any action or omission arising out of any reliance being placed on the Toolkit documents of guidance by any individual, group, organisation or other body. Any individual, group, organisation or other body in receipt of this Toolkit or any of the documents or guidance contained therein should take their own legal, financial and other relevant professional advice.

Please note: Neither the National CLT Network nor Cobbetts LLP can be held responsible for the contents of any pages referenced by an external link.

Contents

1. Executive Summary	5
2. Introduction to the Legal formats	7
3. Registration with Regulatory Authorities	14
4. Other issues to be aware of when deciding the structure	19
i. Governance & CLT policy requirements	19
ii. Cross-Subsidy	19
iii. Public Benefit Requirement	20
iv. Raising money locally	21
v. Disposal models	22
5. Role of the CLT Network and others in acting as a sponsoring body & the provision of ongoing advice	23
6. Annexes	28
Annex A - Legal structures summary chart	28
Annex B - Pro-forma legal structures	29
Annex C – Jargon Buster and Glossary	31
Annex D – Property Disposal Models	38
Annex E – CLT Housing toolkit checklist	40
Annex F – Findaform	43

1. Executive Summary

1) Why do we need a toolkit?

This note introduces this toolkit which contains guidance on three legal structures which may be suitable for you in establishing a Community Land Trust (CLT); in no particular order, the Company Limited by Guarantee (CLG), the Industrial and Provident Society (IPS) and the Community Interest Company (CIC).

It covers many of the issues you will need to consider in establishing a legal form and highlights some of the differences which may influence which legal structure and governance arrangements are more suited to your local situation.

This toolkit does not provide a comprehensive statement of the law as it applies to the different structures and specific advice should be taken on your particular requirements at the legal formation stage. Hopefully this toolkit will empower you and your colleagues with useful information at an early stage in considering setting up the CLT and thus avoid abortive legal and consultancy costs.

2) What is a CLT and why do you need a legal form?

CLTs must be an incorporated body – this means that they must be established as a separate legal entity. CLTs received statutory recognition in the Housing & Regeneration Act 2008. The definition of a CLT is a relatively broad one designed to capture the aims and distinctive characteristics of the CLT sector and of promoting for the benefit of the wider community. Importantly, the definition is not exclusively linked to affordable housing but to the wider regeneration interests of a local community.

The introduction to the legal structures provides an insight into the choices of legal form and the sample object clauses will help to clarify in legal terms what you propose to do. Formally setting up a CLT will bring certainty to partners & stakeholders, attract funding, give confidence to the local community and provide protection from personal liability.

3) What are the choices?

Each of the legal structures, the CLG, IPS & CIC, has what is referred to as a separate legal personality; it is a legal person in its own right, separate from those who own it or run it. Just as an individual can enter into contracts and own assets, sue or be sued, so too can the CLT which has been set up as an incorporated body and Articles of Association and Rules are provided for each of the legal forms.

In addition to deciding about the appropriate legal form guidance is also provided about registration as a charity and whether or not more than one legal entity will need to be incorporated for example as a subsidiary to undertake ‘trading’ or to set up a co-operative for its own members.

Another consideration is registration with Regulatory Authorities including whether or not the CLT intends to have immediate access to public funding from the Homes & Communities Agency. As well as potentially adopting charitable status if public funding is required the CLT will also need to become a ‘registered provider of affordable housing’ to be eligible to receive financial assistance for rental housing.

4) How does this toolkit assist?

In addition to the legal forms and choices there is a 'jargon buster' about other terms or issues that you may come across. It is intended that this toolkit will provide bespoke advice about setting-up and registering a CLT. To assist in this process a CLT housing toolkit checklist has been developed which can be completed and returned to Cobbetts LLP. Wessex Community Assets have also developed a Findaform tool to supplement and complement the checklist.

A great deal of general guidance is available to prospective charities and social enterprises. This toolkit draws upon the experiences and good practice of the 'early adopter CLTs many of which have been advised by Community Finance Solutions & Cobbetts LLP. The contents of this toolkit which will be periodically updated by Cobbetts LLP are available on the National CLT web site at www.communitylandtrust.org.uk and the Cobbetts website www.cobbetts.com.

Sarah Lines
Director
Cobbetts LLP

Bob Paterson
Visiting Social Enterprise Fellow
Community Finance Solutions
University of Salford

August 2011

2. Introduction to the Legal formats

Community Land Trusts (CLTs) are a legally defined concept but they are not a legal format in themselves. Any prospective community land trust should choose a legal format which would enable them to meet the legal definition as legislated in the Housing & Regeneration Act 2008, Part 2, Chapter 1, Clause 79:

A Community Land Trust is a corporate body which:

- 1) Is established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order -*
 - to provide benefit to the local community*
 - to ensure that the assets are not sold or developed except in a manner which the trust's members think benefits the local community*
- 2) Is established under arrangements which are expressly designed to ensure that:*
 - any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members)*
 - individuals who live or work in the specified area have the opportunity to become members of the trust (whether or not others can also become members)*
 - the members of a trust control it.*

This means that only legal formats would be suitable for a CLT to adopt. All legal formats must be designed to benefit a designated community/the public/section of the public - rather than members, or any private individuals such as shareholders. The legal formats need to protect the assets (such as land, buildings and money) of the CLT through a provision in the governing document (all legal formats have a governing document) called an asset lock - this will mean (amongst other things) that if the CLT is wound up any assets will have to go to a similar organisation once creditors have been paid (see Jargon Buster for more detail on Asset Locks).

The legal formats will dictate that any profit made by the CLT (and it should be planned for that the CLT will make profit) will only be able to be used to further the objectives of the CLT – so profits/surpluses will need to be reinvested in the CLT rather than shared amongst members as dividends. The legal formats must also contain provisions to offer opportunities for local people to become members, and for the members to control the CLT - thus ensuring that the trust is accountable to the local community.

The legal formats are a **Community Benefit Society** (also known as an Industrial and Provident Society for the Benefit of the Community), a **Community Interest Company Ltd. by Guarantee** (also known as a CIC); a **Company Ltd. by Guarantee which is also a registered Charity**; and a **Company Ltd by Guarantee** (but only if it has a custodian member of the constitution to ensure that the Asset Lock cannot be voted out). All these legal formats are **Limited Liability** – which means that the organisation has its own legal personality, so in the event of the CLT not being able to repay its debts, the liability of the members (including directors) is limited to either the amount they have paid for their shares (if a Community Benefit Society) or the amount they have guaranteed which is usually £1 (if a CIC Ltd. by Guarantee or a Company Ltd. by Guarantee). The only eventuality leading to a member becoming individually liable for costs incurred by the CLT would be if that member acted ‘ultra vires’ (outside the law).

It is important to remember that a CLT is an organisation with a very long life since it is set up to ensure that assets are available and affordable for future generations. Although it is impossible to foresee every eventuality, when choosing a legal format a group should try to consider what the CLT may wish to do in the future as well as in the short term. This will help to avoid complications later on (such as needing to set up subsidiary or sister organisations which would involve additional cost and effort).

In considering which of these three legal formats to adopt prospective community land trusts need to consider which format would be most appropriate regarding several factors:

- 1. Allowing the organisation to conduct its chosen trading activities**
- 2. Being appropriate for the financial arrangements required** (possibly attracting grants, taking loans and raising share capital)
- 3. Being effective, efficient and economical**
- 4. Being democratic and enabling local and interested people to be involved**
- 5. Its ethos (aims and values)**

Community Benefit Society

The governing document of a Community Benefit Society is called its Rules. Community Benefit Societies used to be called Industrial and Provident Societies for the Benefit of the Community, and are similar to Co-operatives in how they operate. The key difference between the two is that Community Benefit Societies are set up to benefit the community whereas Co-operative Societies are set up to benefit their members (which is why a Co-operative Society could not be a CLT). The body which registers Community Benefit Societies is currently the Financial Services Authority (although this will change when the Financial Services Authority is abolished).

A Community Benefit Society can be charitable but it does not have to be. There is a choice to be made.

- i. Allowing the organisation to conduct its chosen trading activities*
 - On registering a Community Benefit Society objects need to be specified. These objects need to be carried on for the benefit of the community but they are not as restricted as the objects of a Registered Charity. As long as trading activities are conducted to help the Society to meet its objectives there are no restrictions on trade. In the case of a CLT this could potentially include land transactions, leasing land, renting properties, room hire, selling things such as renewable energy, fruit and vegetables, etc.
- ii. Being appropriate for the financial arrangements required (possibly attracting grants, taking loans and raising share capital)*
 - One of the main advantages of Community Benefit Societies is that they offer great flexibility in terms of financial arrangements. Community Benefit Societies can make and take loans, attract grant finance and issue share capital.
 - A very special thing that Community Benefit societies can do is raise share capital through a community share issue without the great expense of a conventional public share issue (this is due to special exemptions from the Financial Services Authority). Shareholders become members with one vote each. A small amount of interest can be paid to shareholders (not comparable to a dividend, or profit share, more like the cost of acquiring finance, such as

interest on a loan). This is not available if the Community Benefit Society is set up as a charity (called an “Exempt Charity”).

- There are no tax advantages to being a Community Benefit Society unless registering as an exempt charity with HMRC. Very soon (when the Charities Act 2006 comes into effect) it is likely that Community Benefit Societies will not be able to become exempt charities, and will be required to become a Charity registered with the Charity Commission if seeking charitable status and the tax advantages of this status (or with the Tenants Services Authority if a Registered Provider). Therefore you should take note of the guidance on Registered Charities and their charitable objects when considering the option of an exempt charity.

iii. *Being effective, efficient and economical*

- The Rules have to be checked by the FSA before a Society can be registered. The legal work this entails is expensive and so the most cost effective way to register a Community Benefit Society is to use ‘Model Rules’ supplied by a sponsor. Wessex Community Assets are the sponsoring body for Model Rules with registration costing £600 (inc.vat), other rules are also available with other sponsoring bodies. New ‘Community Land Trust’ rules are currently being developed, please contact the CLT Network for further information on this.
- A Secretary must be appointed and is responsible for ensuring the Society acts within the law. This requires some knowledge though is commonly carried out by informed volunteers.
- The Committee of Management can be paid although this will require approval by the members.
- Organising an AGM and notices to members will create some expense (room hire, printing, postage, etc.), however is good practice for a CLT.
- The annual return to the FSA enables the Society to remain registered. There is a fine for not completing this. In order to maintain the register the FSA requires a payment which is dependent on the size of the Society. It starts at £55 and rises for £425 for assets of over £1m.

iv. *Being democratic and enabling local and interested people to be involved*

- The Rules will state who may become a member, this should be open to anyone (although some Societies place restrictions on membership – such as to those living and working in the community, or those who share the values of the Society).
- All members have one equal vote (regardless of the number of shares they hold).
- Members vote for and will be able to stand for the Committee of Management.
- There is a requirement to have an Annual General Meeting.

Community Interest Company (Ltd. by Guarantee) - aka CIC

The governing document of a CIC is called its Memorandum and Articles of Association. The regulator is the Community Interest Company Regulator. A CIC can be a company limited by guarantee, a company limited by shares or a PLC. The model CIC most appropriate for a CLT is a CLG. The CLT Network has a standard model for CLTs to adapt as necessary to suit their purposes.

A CIC Ltd by Shares is not a good legal format for a CLT as each share has one vote rather than each member having one vote. This jeopardises the community control since

the voting power of each member is determined by the number of shares held. Special drafting on voting rights would need to be considered so as to retain the democratic principles and community ethos of the CLT if a CIC limited by shares is used. Also, CICs Ltd by Shares may raise share capital, but a community share issue using a CIC would be expensive (CICs do not benefit from the social exemptions from the Financial Promotions Regulations which Community Benefit Societies do). You should seek specialist legal advice on the suitability of this company format.

- i. *Allowing the organisation to conduct its chosen trading activities*
 - CICs must have social objectives which must pass a community interest test. The social objectives are not as tightly defined as with Charities. The test is of the underlying purpose of the CIC – it is the end (or mission) which is important rather than the means (or activities). Activities cannot be detrimental to community benefit though.
- ii. *Being appropriate for the financial arrangements required (possibly attracting grants, taking loans and raising share capital)*
 - CICs are appropriate legal formats for attracting grants and loans.
 - There are no tax advantages to being a CIC but local authorities may allow some local rate relief.
- iii. *Being effective, efficient and economical*
 - CICs are inexpensive to set up, costing approximately £35 using model governing documents although legal advice will probably be required to tailor these rules to meet a CLT's requirement (the CLT Network has a standard model suitable for CLTs to adopt)
 - There is a requirement to produce an annual community interest report.
 - There is an annual regulatory fee of £15 to be submitted with the community interest report.
 - Committee of Management members may be paid in a CIC.
- iv. *Being democratic and enabling local and interested people to be involved*
 - A CIC is similar to a Company in terms of membership. It can be set up (by including provisions in the Memorandum and Articles of Association) to allow anyone to become a member, have a vote at the AGM, and stand for the Committee of Management. Although, it is also permissible to have non-voting classes of members and to not have an AGM these provisions should not be included for a CLT. The memorandum and articles of association are open to future amendment by members (so democracy is not cast in stone in the same way as with a Community Benefit Society) but it can be if you have a Custodian Member.
 - A Custodian Member is intended to be a permanent member with the right to veto the exclusion of an existing Asset Lock and any other articles that require protection. Your local council could be invited to become your Custodian Member.
 - Sample Mem and Arts are available on the CLT Network's website.

Company Limited by Guarantee Registered Charity

The governing document of a Company Ltd. by Guarantee which is a Registered Charity is the memorandum and articles of association (mem and arts). This legal format is regulated by two bodies, Companies House and the Charity Commission.

- i. *Allowing the organisation to conduct its chosen trading activities*
 - This legal format is the most restricted one in terms of being able to conduct its trading activities. Charities cannot pursue trading activities outside of their primary purpose.
 - Charities need to have charitable objects. Depending on planned activities, suitable ones for CLTs may be 'prevention or relief of financial hardship'; 'advancement of citizenship or community development'; 'advancement of environmental protection or improvement'. When applying for registration it is incumbent on the CLT to prove it will be following and meeting those objectives in a public benefit test. This is strict as charities experience significant public trust and also substantial tax benefits.
 - The charitable objects can be changed once registered. Any changes would have to satisfy the Charity Commission on the Public Benefit Requirement.
 - It is possible to set up a wholly or partly owned trading subsidiary for a Charity which gifts profits back to the Charity. There is the obvious additional expense and regulation associated with this but it may be appropriate in some circumstances. See the definition of cross-subsidy in the Jargon Buster.
- ii. *Being appropriate for the financial arrangements required (possibly attracting grants, taking loans and raising share capital)*
 - Charities are the ideal vehicle for attracting grants and donations. They can also attract loan finance. They cannot raise share capital.
 - Some Charities can only transfer assets, such as land and buildings, to other Charities with similar objects. This is relevant if seeking to acquire assets from other Charities.
 - Charities are restricted in their ability to generate profits (they must use their funds in furtherance of their objectives and must not have disproportionate levels of financial reserves). In deciding to set up a charity CLTs must appreciate the special nature and standing a charity has and that this is the approach the Charity Commission will take when deciding whether or not to grant charitable status.
 - There are tax benefits to being a Charity, corporation tax relief, discretionary rate relief. Charities are exempt from tax on income received from renting out land or property that is held for charitable purposes, as long as the income is used for charitable purposes only. This includes profits from letting out furnished property. There is no exemption from tax for any profits made from developing land or property, for example if entering into a contract for a builder to develop and sell charity property. However when buying a property, a charity won't have to pay Stamp Duty Land Tax. This also applies when buying a lease where Stamp Duty Land Tax would normally be due. It is worth noting that currently transactions below £125,000 are not liable for Stamp Duty Land Tax, and for transactions between £125,000 and £250,000 the tax is 1%, rising to 3% for transactions between £250,000 and £500,000.
- iii. *Being effective, efficient and economical*
 - As Charities are the most heavily regulated legal format of the three, there is a larger amount of work required in terms of complying with charity law and regulation.
 - However the advantages in terms of tax and levels of public trust may mean that this is an acceptable price to pay.

- Saple Mem and Arts are available on this website, however you may require additional legal advice. The more work a community group can do itself (ensuring that the business plan demonstrates how the CLT will meet each charitable object) the lower the cost.
- Companies Ltd. by Guarantee which are Registered Charities must submit annual returns to Companies House with a fee of £15.
- All registered charities must prepare a Trustees' Annual Report (TAR) and accounts and make copies available to the public. Charities in the income range up to £10,000 do not have to send them to the Charity Commission.
- Accounts will need to be filed, but a small company does not need to pay to have them audited.
- A board of Trustees must be unpaid, although reasonable expenses are allowed.
- Trustees have to understand the Public Benefit Requirement (see the Jargon Buster).

iv. *Being democratic and enabling local and interested people to be involved*

- Beneficiaries of a Charity can also be members of it and sit on the Committee of Management as a Trustee. However, there cannot be a majority of beneficiaries on the Committee and there must be a clear policy on Conflicts of Interest to ensure accountability, propriety and transparency in decision making.
- As with a CIC, the memorandum and articles of association can be set up to allow all members to vote but can also be set up to have non-voting classes of members.

This summary has been written as a guide. It is important to make a considered decision when choosing the legal format of your CLT as the cost of altering to a different legal form later can be great (if it is even possible). Further advice should be sought before a decision is taken.

Summary chart of legal structures for a CLT

Legal Format	Company limited by guarantee/Charity	Community Interest Company	Community Benefit Society
Open membership	Yes	Yes	Yes
Member Democracy	Yes	Yes	Yes, one member one vote
Trading flexibility	Limited	Flexible	Flexible
Beneficiary representation on Board	Limited	Unrestricted	Unrestricted
Payment to Board members	Restricted	Unrestricted	Unrestricted
Raise share capital at affordable cost	No	No	Yes, using withdrawable shares
Legally enforceable asset lock	Yes	Yes	Yes

Reporting and regulation	Companies House and Charity Commission	Companies House and CIC Regulator	Financial Services Authority
Tax advantages	Rate relief Stamp duty exemption Corporation tax exemption	None	None, unless an exempt charity, in which case tax advantages are the same as CLG/Charity.
Tax relief for donation	Gift aid	None	None

Optional Clauses

- *Constitutional groups* - guidance as to whether this can be within the constitution or by a Board adopted policy for board membership. Explanation as to its usefulness/pros and cons;
- *Voting rights & Quorums* - this links into constituency based groups and whether it is desirable or useful to reflect within voting rights;
- *Constitutional custodians* - guidance on usefulness of such an arrangement. It may be particularly helpful for relationship with local authority and/or where the entity is not going to have a statutory asset lock.
- *Resident involvement* - guidance to be provided on this for board membership particularly for charitable entities. How far should the CLT provide for resident board membership?
- *Restricted Local Authority persons* - this is not a legal requirement any more (the provisions within the Local Govt and Housing Act 1989 were repealed on the introduction of the prudential regime) but it may be prudent to have restrictions to make sure that a CLT cannot be overrun by local authority connected persons. The guidance will explain this.

3. Registration with Regulatory Authorities

i. Introduction

During the life of a CLT (and depending on the chosen legal form) one or more of the following Regulatory Bodies will be key to your project. They are:

- the Financial Services Authority (referred to as the “FSA”);
- Companies House/CIC Regulator;
- the Charity Commission;
- The Tenant Services Authority (the “TSA”); and
- the Homes and Communities Agency (the “HCA”).

ii. The FSA (for Industrial and Provident Societies)

- If you have selected the Industrial and Provident Society as your chosen legal form the Regulatory Body is the FSA. At some point the FSA will cease to be the Regulating Body but it is not yet known when this will happen or who will take over.
- The registration process will involve the FSA and a Sponsoring Body. The Sponsoring Body will have model Rules that have been approved by the FSA in principle. Using a Sponsoring Body’s model Rules will make the process slightly cheaper than starting afresh with your own Rules. The National CLT Network is a Sponsoring Body for these purposes and its model Rules are available on this website.
- The first step to registration is to send your adopted model Rules to National CLT Network (if you are using any other Sponsoring Body’s model Rules you will need to send them to that Sponsoring Body and not to the National CLT Network). They will check any amendments that you have made to the Rules (and generally) so that they are in an acceptable form to be forwarded to the FSA.
- The FSA will review the proposed Rules and accompanying application forms.
- When applying to become an Industrial and Provident Society you will need to submit the following to the Sponsoring Body:
 - Mutual Societies application form;
 - appendix 1 for charity trustees (only for use if the IPS is to be a charity);
 - the Rules, in duplicate, each signed; and
 - Fees for the Sponsoring Body and FSA.

Application fees for the FSA are as follows:

Transaction	Amount
Application using model rules without any amendment to the model	40
Application using model rules with between 1 and 6 amendments to the model	120

Application using model rules with between 7 and 10 amendments to the model	350
Application using model rules with 11 or more amendments to the model, or application not using model rules	950

Note: Adding information such as a name, an address, a number, or any text that is added to a model rule in a space specifically provided for such text, will not be regarded as an amendment to model rules.

- The National Housing Federation’s administrative fees for checking a CLT’s proposed version of National CLT Network’s Rules and liaising with the FSA for registration are £588.
- Following its registration the IPS will then have to pay a periodic fee to the FSA each year, beginning with the FSA’s financial year following that in which the society is first registered.
- The FSA website has a specific section for Industrial and Provident Societies with useful information around the application process for registration and all subsequent dealings on a company level (for example change of name, amendment of rules etc).
- Once registered, if you seek to be charitable and claim UK charity tax relief you are likely to also need to complete the HMRC’s charities application form (Form ChA1). HMRC Charities tax team will provide guidance on this. If you seek to make use of the Gift Aid scheme you must complete form ChA1 and the Fit and Proper Person declaration.
- The “Fit and Proper Person” declaration links into HMRC’s Money Laundering Regulations and exists to make sure that charities entitled to charity tax relief are not managed or controlled by individuals who might misuse the valuable tax relief that the organisation receives. At the moment this only applies to Gift Aid schemes. It is not expected to apply more widely to UK charity tax relief in the future but the law has not yet been brought into force.
- An individual is “fit and proper” if they make sure that charity funds and tax relief are used only for charitable purposes. For a CLT, all the trustees would be required to complete the fit and proper person’s model declaration. This is available on the HMRC website (www.hmrc.gov.uk). As and when any new trustees/directors come on board you will need to update HMRC.
- The HMRC will carry out various checks to make sure that the information provided on the Fit and Proper Person test model declaration is correct. They will check your information against their own records and against records kept by other regulatory authorities, government, lower enforcement agencies and commercial organisations. HMRC will tell you within 45 days of receiving your application whether they will register your business or refuse to register it. A useful guide is available at www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm.

iii. Companies house / CIC regulator (for CLGs and CICs)

- If the company form you have chosen is a company limited by guarantee or a community interest company limited by guarantee, you will need to register the company form through Companies House and/or the CIC Regulator.
- The documentation that you will need to submit for registration are as follows:
 - memorandum of association;
 - articles of association;
 - form IN01; and
 - form CIC36 (only if incorporating as a community interest company).
- The fee for registration is £35 for a CIC/CLG.
- The website address for Companies House is www.companieshouse.gov.uk.
- The website address for the CIC Regulator is www.bis.gov.uk/cicregulator/.

iv. Charity commission (for CLGs)

- If you have decided to become a registered charity the company formation will be as a company limited by guarantee initially and then subsequently you will seek registration with the Charity Commission. This section deals with the registration process for charitable registration.
- In addition to submitting the Memorandum and Articles of Association, the Charity Commission will require you to complete their application form. This is available on the Charity Commission's website and can be completed electronically. The Charity Commission has issued guidance notes on form CC5b.
- The Charity Commission also require you to submit the trustee declaration. This is available online and also as form CC5c.
- You will also be required to provide documentary evidence in support of your proposed activities. For example a business plan, allocations policy and draft tenancy and leases to name but a few (see guidance and Governance).
- The website address for the Charity Commission for England and Wales is www.charity-commission.gov.uk/ for English CLTs.

v. Tenant Services Authority

- The TSA will be abolished under the Localism Act (not yet in force) but at the moment it is still the regulatory body responsible for Registered Providers in England. Therefore if you intend to apply to the HCA for grant funding and you intend to provide social rented accommodation, you must also become a not for profit Registered Provider.
- The application process is split into two stages:
 - firstly whether the organisation is “eligible” to be registered – this is the Preliminary Application Form for Registration as a Provider of Social Housing;

- the next and final stage is the Detailed Application Form for Registration as a Provider of Social Housing.
- The preliminary application form is straightforward – as long as the proposed corporate form has a legal presence in England (eg registered office) and is, or intends to become, a provider of “social housing” in England then it is eligible for registration by the TSA.
- The next Detailed Application looks more closely into whether the proposed CLT will meet the TSA’s registration criteria regarding its constitution, financial situation and management arrangements.
- The corporate form (ie Articles or Rules) will need to contain the following:
 - explicit reference within the objects clause to the provision of social housing;
 - that any other purposes of the CLT are connected with, or incidental to, the provision of housing;
 - a statement that it is a not for profit entity; and
 - a prohibition on the distribution of assets to members.
- Guidance notes and copies of the application forms are available on the TSA’s website: www.tenantservicesauthority.org/.
- You will also be required to provide documentary evidence in support of your application such as a business plan, various policies and draft tenancy/lease agreements.

vi. Homes and Communities Agency (hca)

The HCA is the body to whom you should apply for grant funding. Useful guidance and information is available on the website: www.homesandcommunities.co.uk/.

vii. Issues common to all corporate forms prior to applying for registration and afterwards

- Once you have determined the name for your CLT you should check on the Companies House or FSA’s website (as appropriate) whether any other company currently uses the same or similar name to the one you want to adopt. If it does, you must think of a different name.
- The word “trust” is regarded as a sensitive word because of what it implies as to the nature of your organisation. You may therefore be asked to confirm that the entity is a community land trust as defined in the Housing and Regeneration Act 2008 and that it trades on a not for profit basis. All Regulators (FSA and Companies House/CIC regulator) have indicated acceptance of the use of “Community Land Trust” within a name where the legal form complies with the not for profit ethos. However, this cannot be guaranteed.
- There is general guidance from Companies House and the FSA on names.
- If you make any changes to your constitution/directors/trustees, change of registered office etc there will be forms to be filled in and submitted to the relevant Regulator.

- Annual accounts and annual general reports also require filing in one format or another depending upon the corporate form you have chosen. Full details are available on the relevant Regulatory Body's website. Further detail on this is beyond the scope of this toolkit.
- The Charity Commission and the CIC Regulator will require an annual statement as to how the CLT's activities have met their Objects. For a registered charity, this is the Public Benefit Requirement and for a CIC it is the Community Interest Statement.

viii. Welsh CLTs seeking social housing grant from the Welsh Assembly Government

- If your CLT is based in Wales and you seek grant assistance, you will need to apply to the Welsh Assembly Government not the HCA. The assistance available depends on the tenure of the properties being provided and the status of your CLT (ie whether it is a social landlord or not).
- The definition of a CLT within section 79 of the Housing and Regeneration Act 2008 does not apply to CLTs operating in Wales for the purposes of applying for housing grant from the HCA.

4. Other issues to be aware of when deciding the structure

i. Governance & CLT policy requirements

- a) The classic definition of governance was stated by the Cadbury committee in 1992 as follows:

“Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board’s actions are subject to laws, regulations and the shareholders in general meeting.”

- b) Whether or not your CLT also becomes registered with the TSA/HCA and/or the Charity Commission, the need for the CLT to act in a transparent and accountable way to its community is very important.
- c) It is recommended that the CLT has the following policies to ensure good governance. They will also be required to support the application for registration with the Charity Commission and/or the TSA:
- identifying and dealing with conflicts of interest
 - allocations policy and disposal cascade
 - code of conduct
 - register of directors’ interests
 - trustee role description
 - financial authority policy
 - reserves policy
 - policy relating to repossession of property
 - data protection policy;
 - exit strategy.

ii. Cross-Subsidy

For a CLT, a cross-subsidy usually involves using money from its fundraising and other commercial trading operations to fund its main work of providing low cost housing. CLTs which aren’t charities can cross-subsidise without difficulty, but for charitable CLTs there is one issue that needs careful management because of the tax implications. This issue arises where charitable CLTs wish to build or develop houses and sell some of them on the open market and use the money from the sale to fund (or “cross subsidise”) their charitable low cost housing. The problem, in a nutshell, is that building houses for sale on the open market is commercial trading and is not something that charities themselves can do. The solution is for a charity to set up its own trading company which is responsible for all commercial trading and which uses Gift Aid to pass its profits to its

parent charity. Another useful guide is the Joint Guidance Affordable Home Ownership – Charitable Status and Tax issued by the Charity Commission, HMRC and the HCA:

http://www.charity-commission.gov.uk/charity_requirements_guidance/specialist_guidance/housing/homeown.aspx.

Although this is directed towards housing associations (aka Registered Providers of Social Housing) it is still useful for CLTs.

An example for a CLT that provides housing (in line with its charitable object to do so) is as follows:

- Where land is donated or sold at less than market value, so that the charitable CLT can achieve a profit for cross-subsidy purposes, the land should ideally have been transferred to a wholly owned trading subsidiary directly. The profits made would then be Gift Aided to its charitable parent body, the CLT. Specialist legal and tax advice should be sought on legal structures where a trading subsidiary and cross subsidy are being considered.

The additional costs of setting up a trading subsidiary and how its set up costs would be financed by the parent charity would also need to be factored into the business plan of the CLT at an early stage.

iii. Public Benefit Requirement

All charities have to be for the public benefit. This must be clear from their objects and from the way they carry out these objects. Although this has long been the case, it wasn't made explicit until the Charities Act 2006 came into effect from 1 April 2008. This Act also made it a requirement for charities to report in their trustees' annual report how they have provided the public benefit. It is not enough simply to point to the entity's charitable objects within its constitution.

Charities are set up to serve the "public" by carrying out charitable purposes. It is this requirement that separates them from other types of community groups that are not charitable. The latter have greater freedom to define what their objects are and how they achieve them in a way that doesn't fit the definition of public benefit but still brings some benefit to the community. Charities, on the other hand, exist to further charitable purposes for the public good.

Defining what is, and is not, for the public benefit can be quite complex, but the Charity Commission's guidance breaks public benefit down into two principles.

Principle 1: *there must be an identifiable benefit or benefits:*

- it must be clear what the benefits are;
- the benefits must be related to the aims;
- benefits must be balanced against any detriment or harm.

Principle 2: *benefit must be to the public, or section of the public:*

- the beneficiaries must be appropriate to the aims;
- where the benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted;
- people in poverty must not be excluded from the opportunity to benefit;
- any private benefits must be incidental.

Those seriously considering setting up as a charity and/or becoming Charity Trustees should read the Charity Commission's guidance which can be found on the following links:

http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/default.aspx .

http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/pbsummary.aspx

The Charity Commission's website also includes some examples of how it applies these principles:

http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/pbassessintro.aspx

The Charity Commission also has supplementary guidance for specific charitable purposes such as the relief of poverty/financial hardship. This is key for those CLTs wishing to provide affordable housing for those people who cannot afford to buy or rent on full market terms.

iv. Raising money locally

There are several reasons why a CLT might wish to raise money locally through a community share issue, including: to raise money that cannot be raised through loans and grants, particularly if there is a finance gap when building affordable rental homes; to give a real sense of community ownership to local people - research indicates that community investors value the sense of involvement and belonging that being an investor offers and become long term supporters of the projects they invest in¹; or to lever in other forms of finance - as equity (the capital raised by issuing shares) is considered as an asset on a balance sheet so can improve the financial position of the CLT.

The most appropriate legal format to use if planning raise money locally is the Community Benefit Society. This is because a Community Benefit Society can issue shares (which companies ltd. by guarantee cannot); is run for community benefit; each member (shareholder) has one vote rather than each share having one vote as in a Company Ltd by Shares (thus ensuring democracy and community control); and a community share offer document launched by a Community Benefit Society usually benefits from exemptions from the Financial Services Authority (FSA) regulations surrounding financial promotions.

FSA financial promotions regulations usually mean that producing a community share offer document through a Company Ltd by Shares, even if a Community Interest Company, costs tens of thousands of pounds in due diligence costs (often legal and accountancy fees). For a Community Benefit Society issuing withdrawable shares the due diligence costs are more likely to be around about £1,000. A community share issue using a Community Benefit Society is low cost but not regulated by the FSA and so investors have no recourse to a compensation scheme if things go wrong – Community Benefit Societies must be careful to explain all of the risks to investors carefully.

Withdrawable shares cannot be sold to anyone else and so shares must be returned to the Community Benefit Society if the investor wishes for their money back. Enough income must be generated by the Community Benefit Society to build reserves which will enable it to honour requests for capital invested to be returned to the investor. The

¹ Community Investor Research – Who is Buying Shares and Why? (research carried out by Wessex Community Assets for the national Community Shares action learning research project for Communities and Local Government (CLG), funded by the Office of Civil Society (OCS) and delivered in partnership by the Development Trusts Association (DTA) and Co-operatives UK) <http://communityshares.org.uk/news/new-research-identifies-who-are-community-investors>

Community Benefit Society can, though, set policies in place such as only 5% of shares to be redeemed each year, or no shares to be redeemed within the first 5 years of operation. The value of shares can also be written down – so investors must accept the risk that they may lose their money. Interest can be paid to shareholder but no more than what is considered to be cost of acquiring the capital for the Society (so akin to the payment of interest on a loan and what is needed to compensate an investor for being apart from their money) and not as a distribution of profit (a dividend).

Some community organisations have opted to set up a separate Community Benefit Society which raises capital through a community share issue then on-lends, or on-invests the capital raised into another community organisation (such as a CLT). The Charity Commission currently takes the view that issuing more than one share per member is incompatible with charitable status, although this could change in the near future, but for now using a separate Community Benefit Society to raise share capital is an option for CLTs which require charitable status. Specialist advice on raising money locally is available from Wessex Community Assets (www.wessexca.co.uk).

v. Disposal models

CLTs should with the agreement of their Local Authority decide upon criteria when considering applicants who wish to be considered for one of their affordable homes. There are two ways in which affordable homes can be made available, either as a rental where the applicant will be granted a tenancy and pay a rent for as long as they occupy the property or as a disposal through a part sale. There are four main methods of disposal which CLTs can consider and decide upon. These are described in Annex D

5. Role of the CLT Network and others in acting as a sponsoring body & the provision of ongoing advice

i. The National CLT Network

The National CLT Network supports and promotes the work of CLTs. The Network is a membership body and is open to emerging CLTs, fully-fledged CLTs and organisations and individuals with an interest in the sector from across the United Kingdom.

Being a member of the Network entitles you to a number of benefits that are invaluable to delivering a CLT. This includes acting as a signpost for the provision of legal advice and being a sponsor for the IPS Model Rules.

For more information see the National CLT Network website:

www.communitylandtrusts.org.uk

ii. Sample Objects Clauses

How to use the Example objects clauses

- Attached are various example objects clauses depending upon the activities that your CLT intends to carry out. If none of these reflect what you want to do then you will need to draft your own objects.
- We would suggest that you look at these once you have gone through a process of identifying what your aims and ambitions are together with the ethos of your CLT. You are also reminded to consider the financial aspects within that decision making process.
- Once you have identified what you want your CLT to achieve, we would suggest that you write these down and then compare them to the legal language used in the example objects clauses. Where your CLT is to carry out charitable activities, care is required to make sure your activities further charitable purposes.
- If your CLT is not to be a charitable entity the object clause need only be clear and flexible enough so that a reasonable person would be able to understand what it is that the CLT has been set up to achieve.
- The example objects have been split into the following categories:
 - example objects for a charitable CLT;
 - example objects for a non charitable CLT; and
 - example objects for an enabling/umbrella CLT.
- They cover:
 - housing activities; and
 - non housing activities.

Charitable Objects

- Charity law is a complex area of law but the tool kit aims to highlight those charitable purposes created by the Charities Act 2006 that will be of most relevance to you. Please read the introduction to legal formats and the Jargon Buster/Glossary for additional information.
- The Charity Commission's website has guidance on charitable objects which you may also find useful. The website address is www.charity-commission.gov.uk.
- Cobbetts' view is that you should seek to include only those charitable objects that are attainable either within the immediate future or within the near to

medium future. A long list of objects which range, for example, from housing, to the relief of unemployment and to the provision of education is likely to be rejected unless you have a business plan to support each of these activities. This is because these activities are wide ranging and it is unlikely that a newly created charitable CLT with limited resources would be able to meet the Public Benefit Requirement for each of them.

- It is possible to add to your charitable objects or delete and replace at a later date. To do this, you would need to apply to the Charity Commission. If you are also a Registered Provider, you will also need the consent of the TSA (or statutory successor).
- The TSA may adopt a different approach to the extent of charitable activities if the CLT is also to be a Registered Provider. We would recommend that you seek legal advice on this issue.

Non-Charitable Activities

When drafting objects for a non-charitable CLT, the wording needs to be straightforward and flexible enough so that it is clear what it is that the CLT is set up to do. Example objects for a non-charitable CLT have been provided. There is some overlap, for example in the provision of housing and in the maintenance, improvement or provision of public amenities and amenities' land with the charitable version. However, the people who benefit from the provision of community transport need not fulfil a charitable purpose for eligible beneficiaries and this is the difference. The provision of a pub or post office is not charitable.

Optional Wording in Square Brackets

Square brackets are used to indicate optional wording depending on the range of activities, whether or not you intend to be charitable and whether or not you intend to operate as a registered provider of social housing with the TSA (or successor body).

- A. Example Object for a charitable CLT with focus on the relief of financial hardship through the provision of housing

“the business of providing [social housing], housing, accommodation, assistance to help house people and associated facilities and amenities for those in need by reason of financial hardship on terms appropriate to their means.”

Social housing appears in square brackets – delete altogether if your CLT is not to become a Registered Provider. If it is, delete the square brackets only.

- B. Example Object for a charitable CLT with a focus on the relief of those in need by reason of age and/or disability and/or ill-health

“the business of providing [social housing], housing, accommodation, assistance to help house people and associated facilities and amenities for those in need by reason of age and/or disability (whether physical or mental) and/or ill-health on terms appropriate to their means.”

Social housing appears in square brackets – delete altogether if your CLT is not to become a Registered Provider. If it is, delete the square brackets only.

- C. Example Object for a charitable CLT with a focus on the advancement of community development – provision of amenities and facilities

the maintenance, improvement or provision of public amenities and facilities;

- D. Example Object for a charitable CLT with a focus on the advancement of citizenship or community development – regeneration activities

the promotion for the public benefit of rural regeneration in areas of social and economic deprivation (and in particular [specify area]) by all or any of the following means:

- [the relief of financial hardship in such ways as may be thought fit];
- [the relief of unemployment in such ways as may be thought fit, including assistance to find employment];
- [the advancement of education, training or retraining, particularly amongst unemployed people, and providing unemployed people with work experience];
- [the provision of financial assistance, technical assistance, or business advice or consultancy in order to provide training and employment opportunities for unemployed people in cases of financial or other charitable need through help:
 - in setting up their own business; or
 - to existing businesses];
- [the creation of training and employment opportunities by the provision of work space, buildings and/or land for use on favourable terms].

Note: the options listed in (a) to (e) are examples only and can include other charitable purposes such as “the provision of housing for those in conditions of need” or as worded in Example 1 or as suggested within the Charity Commission’s guidance on urban and rural regeneration.

- E. Example Object for a charitable enabling/umbrella CLT

Where your CLT intends to act as an enabler or promoter of CLTs the example object to include with other objects is:

“the promotion and advancement for the public benefit of community development by the assistance and promotion of charitable community land trusts (in the area of benefit).”

- F. Community based charitable objects

Many CLTs wish to become the steward of such community assets as their Village Hall, Community Centre, Allotments, Woodland, etc. In order to be a charitable such objects must be recognised as such in Charity Law. The Charity Commission has example objects which are also linked to their guidance. The web page link is:

www.charity-commission.gov.uk/start_up_a_charity/guidance_on_registering/example_objects/exobjhome.aspx

Here is an extract from the example objects by the Charity Commission:

- Community Amateur Sports Club
- Community Centre
- Community Transport
- Conservation of the environment
- Recreational Charities Act 1958
- Recycling
- Sustainable Development
- Urban or Rural Regeneration
- Village Halls

G. Example Objects for a non-charitable CLT

Example objects are:

- the business of providing [social housing], housing, accommodation, and assistance to help house people and associated infrastructure facilities and amenities;
- the maintenance, improvement or provision of public amenities and amenity land;
- the provision of allotments on such terms as the Trust shall determine;
- the provision of transport on such terms as the Trust shall determine;
- the provision of workspace, buildings and/or land for use on such terms as the Trust shall determine;
- the provision and/or maintenance of a community based shop and/or post office;
- the provision of such other community based resources and activities in the area of benefit as the board shall determine from time to time in furtherance of its objects.
- the provision, supply and maintenance of renewable forms of energy.

Social housing appears in square brackets – delete altogether if your CLT is not to become a Registered Provider. If it is, delete the square brackets only.

H. Example Object for a non-charitable enabling/umbrella CLT

Where your CLT intends to act as enabler or promoter of CLTs the example object to include with other objects is:

“the assistance and promotion of community land trusts (in the area of benefit).”

iii. *Model Memoranda and Articles of Association (M&As) for Companies Limited by Guarantee*

This toolkit provides model templates for M&As on the CLT Network and Cobbetts LLP websites and guidance for comparing the legal structures, key terms such as Public Benefit Requirements etc. Cobbetts also can provide for a fixed fee, the following additional services;

- Tailored objects and legal advice on the M&As (as opposed to guidance)
- Correspondence on the CLTs behalf on regulation/application to be registered
- A report upon the constitution

- Setting up a trading subsidiary

iv. Sponsoring Body for Community Benefit Society 'CLT' Model Rules

The National Housing Federation (The Federation) which hosts the National CLT Network is the sponsoring body for the CLT Model Rules. Based on their 2011 Model, this provides an up to date template specifically tailored to CLT needs. CLTs will apply through the Federation's Membership department to register these rules with the Financial Services Authority. The Federation will provide administrative support and liaison with the FSA and if necessary, the TSA (or successor body).

For further information please contact Stephen Tulip at stephen.tulip@housing.org.uk

v. Sponsoring Body for Community Benefit Society 'reinvestment' Model Rules

Wessex Community Assets state that this set of Model Rules is written in plain English and has a statutory asset lock. WCA has registered over 40 Community Benefit Societies, 19 of which have raised over £3m in share issues between them.

vi. Wessex Community Assets training tool –'Findaform'

The Findaform can be found at Annex F.

The Findaform tool has been developed by Sean Wheeldon at Wessex Community Assets, with input from Cobbetts, in response to the need expressed from some community groups for the need for additional information on decision making. It would be suitable as an aid for advisors in talking through the different legal format options for community groups and it would also be useful for community groups to work through in conjunction with advice from an advisor. It is not a substitute for advice tailored on a group's individual circumstances. Wessex Community Assets is a Community Benefit Society founded on the values of social justice, economic democracy and environmental sustainability, and the Findaform tool reflects these values. The Findaform tool will be available on the Wessex Community Assets website and also the CLT network (<http://www.communitylandtrusts.org.uk/>)

For further information please contact Sean Wheeldon (sean.wheeldon@wessexca.co.uk)

6. Annexes

Annex A - Legal structures summary chart

Legal Format	Company limited by guarantee/Charity	Community Interest Company	Community Benefit Society
Open membership	Yes	Yes	Yes
Member Democracy	Yes	Yes	Yes, one member one vote
Trading flexibility	Limited	Flexible	Flexible
Beneficiary representation on Board	Limited	Unrestricted	Unrestricted
Payment to Board members	Restricted	Unrestricted	Unrestricted
Raise share capital at affordable cost	No	No	Yes, using withdrawable shares
Legally enforceable asset lock	Yes	Yes	Yes
Reporting and regulation	Companies House and Charity Commission	Companies House and CIC Regulator	Financial Services Authority
Tax advantages	Rate relief Stamp duty exemption Corporation tax exempt	None	None, unless an exempt charity, in which case tax advantages are the same as CLG/Charity.
Tax relief for donation	Gift aid	None	None

Annex B - Pro-forma legal structures

The template constitutions have been prepared by Sarah Lines of Cobbetts LLP (save for the National CLT Network's Model Rules which are a modified version by Cobbetts LLP of the National Housing Federation's Model Rules 2010).

The template constitutions are:

- A non-charitable Company Limited by Guarantee with optional provisions to enable it to be incorporated as a Community Interest Company.
- A charitable Company Limited by Guarantee for companies who wish to become a registered charity with the Charity Commission.
- The National CLT Network's Model Rules for the Industrial and Provident Society legal form. This has optional provisions to allow it to become an exempt charity.

Each of the template constitutions have optional provisions which must be included if your CLT is also seeking to become a not for profit Registered Provider of Social Housing. They should be deleted if you do not seek registration with the TSA/HCA.

The pack contains a Questionnaire and Introduction for each template. These are designed to guide you through what you need to do when selecting the optional provisions provided. It is not possible to produce a "one size fits all" constitution that will suit every conceivable type of CLT. If the template does not meet all of your requirements you will need to amend it.

The Questionnaire takes you through key provisions that require you to choose the optional wording that suits your CLT.

Cobbetts LLP offer the following services:

- A review of your completed Questionnaire and draft template constitution as amended by you. Provision of advice and drafting any amendments required. This would be at a cost of £155 plus VAT unless the amendments required are substantial.
- Drafting your constitution from scratch based on your completed questionnaire: £300 plus VAT.
- Taking your constitution through the incorporation process: £155-£300 plus VAT. This assumes a straightforward constitution and business plan (if you seek to break new ground with the Charity Commission the fees would be separately quoted for).
- Drafting Form CIC36 for a Community Interest Company CLG based on completion by you of the Ambition/Ethos Questionnaire: up to £250 plus VAT.

- A more detailed report and advice on the form of constitution chosen based on your amended draft template: £155 plus VAT.

Annex C – Jargon Buster and Glossary

Affordable Rent

Since February 2011 this denotes rented housing where the rent is set at 80% of the market rent inclusive of service charges (market rents are used when setting the Housing Benefit Local Housing Allowance). The Charity Commission has provided guidance on what charitable housing associations need to consider when charging affordable rents. Guidance is also available on the Communities and Local Government and the HCA's websites.

Asset Lock

In general terms this means a provision within the CLT's constitution to ensure that:

- (a) any trading profits or surplus are used solely for the benefit of its Objects;
- (b) its assets are retained by the entity and if sold/let/transferred then only in the prescribed circumstances allowed for; and
- (c) on dissolution its assets cannot be distributed to its members but must transfer to another asset locked entity.

The Asset Lock will require specific wording depending on which legal form you choose for your CLT.

Asset Lock for charities (as CLG, CIO or IPS as exempt charity)

Becoming a charity is an irreversible step. The Public Benefit Requirement and charity law on dispositions (ie sale, lease or transfer of assets) combined with the legal constitution (to name but some aspects of being a charity) effectively creating a perpetual asset lock.

Asset Lock for Registered Providers

Grant-aided assets are restricted in their use and disposal by the terms of the HCA funding and Housing and Regeneration Act 2008. As a result it is not usual to include the wording of the Statutory Asset Lock because such an entity can only cease to be an RP with the consent of the TSA (or its successor).

Charitable Objects

"Objects" is the expression used within all constitutions to set out the purposes/aims of the legal entity being created (incorporation).

The Objects direct and guide the CLT's activities and how its assets may be used to achieve those objects. Using assets for purposes not stated is not allowed particularly if the CLT is a charity.

To be charitable the objects must:

- (a) fall within at least one of the purposes listed in Charities Act 2006; and
- (b) be for the public benefit. This means (very broadly) that the object must have an identifiable benefit or benefits and the benefit must be to the public or a section of the public rather than for private benefit. See separate definition.

Not all objects that aim to benefit individuals or communities are necessarily charitable – for example, an object which aims to provide housing won't be charitable because this isn't one of the purposes listed in the Charities Act 2006. But if providing housing is a means of achieving an object (for example, relieving or preventing poverty), this is more likely to be charitable. This is because preventing or relieving poverty is listed as a purpose in the Charities Act 2006 and providing housing can be a legitimate way of achieving this. Whether it is in fact charitable or not will depend on whether the aim is going to be for the public benefit.

Information on charitable purposes and public benefit can be found at http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/public_benefit.aspx

Applying for charitable status should be considered carefully as it might not be appropriate and it is important to remember that becoming a charity is an irreversible step.

Charity Commission

This is the charity regulator in England and Wales. Most charities must register with the Commission and file their accounts and a financial summary with it. Some groups of charities aren't required to do this – the main exceptions are for charities with incomes of less than £5,000 a year and IPS/Community Benefit Societies. The Commission's website includes the charity register and copies of charities' accounts and financial returns

Charitable Incorporated Organisation (CIO)

This is a new legal structure that only charities can use. The main advantage will be that (like charitable companies) they provide protection for trustees from personal liability for contracts but (unlike charitable companies) they only have to register with and send accounts to the Charity Commission.

The CIO structure is not yet available to use but should be ready by late 2011. You can, however, find out more about how they will work from the Charity Commission's website.

Charitable Purposes (or aims)

The Charities Act 2006 describes 13 purposes which can be charitable if they are carried out for the public benefit. The ones that are most likely to be relevant to a charitable CLT are:

- a) the prevention or relief of poverty;
- b) the advancement of citizenship or community development;
- c) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;

A CLT choosing to be a charity must undertake aims and activities that further one of these or the other purposes listed in the Act; the Sample Objects [add in link] show how this can work in practice.

Community Interest Company (CIC)

See table comparing legal forms [link]. This is a limited liability company which is designed for Social Enterprises and which has the specific aim of providing benefit to a community. A CIC must use its income, assets and profits for the community it is formed to serve. A CIC can be a company limited by shares or by guarantee but must satisfy a community interest test. You should seek legal advice if you want to adopt the company limited by shares model because this could affect whether the statutory definition of a CLT is satisfied. The usual company model is the company limited by guarantee.

Asset Lock for a CIC: The very essence of a CIC is its Asset Lock. A Company Limited by Guarantee can only take on the mantle of a CIC by incorporating the Asset Lock required by the CIC Regulator as a minimum, although a more stringent Asset Lock could be used instead.

Community Land Trust

One of the kinds of English Body that can register with the TSA/HCA. The definition from section 79(2)-(5) of the Housing and Regeneration Act 2008 is a body corporate that satisfies the following conditions:

- the body is established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order
 - to provide a benefit to the local community, and
 - to ensure that the assets are not sold or developed except in a manner which the trust's members think benefits the local community;
- the body is established under arrangements which are expressly designed to ensure that
 - any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members),
 - individuals who live or work in the specified area have the opportunity to become members of the trust (whether or not others can also become members), and
 - the members of the trust control it.

In these conditions, “local community” means the individuals who live or work, or want to live or work, in a specified area.

Whilst a Community Land Trust might be able to register with the TSA/HCA this will not guarantee that the Trust can be registered as a charity. To be a registered charity a Trust must have aims that are exclusively charitable which are carried out for the public benefit. Not all activities that benefit communities and the people who live and work there are exclusively charitable. There may be elements to these purposes that give private benefit to those in the community which may fail the charity registration test for public benefit.

Company Limited by Guarantee (CLG)

See table comparing legal forms [\[link\]](#). A CLG offers its members limited liability as the outside world deals with the company as a separate entity and not the Company Members on an individual basis. Should the company fail, the governing documents state how much the members are personally liable for (usually a nominal £1). Directors also enjoy a level of protection from personal liability.

A CLG can apply to become a registered charity with the Charity Commission.

Asset Lock for a CLG: A non-charitable CLG can have an Asset Lock but its strength depends on the attitude of the members because an Asset Lock can be voted out by the members. Where a local council or other third party organisation is the Custodian of the constitution, they act to protect the company Articles and, as such, the ability of the other members to change the Asset Lock is significantly weakened. The role of the Custodian would be to veto any changes to the Articles which affect the Asset Lock. This is set out in the sample Articles for a CLG.

Declaration of trust

This is a formal legal agreement between a CLT and someone buying low cost housing from it. The declaration of trust sets out the respective shares in the land held by the CLT and the buyer. It is usually contained in a 125 year Lease. In some ways it is similar to shared ownership. See Annex D on Property.

English Bodies

This is an expression used in the Housing and Regeneration Act 2008 setting out the legal entities that can register with the TSA/HCA as a Registered Provider in England (not Wales or Scotland).

Equity mortgage

In this method, the buyer acquires the property outright with a mortgage from a High Street lender for (say) 70% of open market value, the remaining 30% being held on a second equity mortgage by the CLT. See Annex D on Property.

Fit and Proper Person Test

This test only applies to exempt charities (Industrial and Provident Societies with charitable objects) – “exempt” means not registered with the Charity Commission. This is due to change in the near future.

Currently this only applies to gift-aid, but will be extended to cover more aspects of a Charity’s dealings with the tax office (HMRC). In order to avoid the fraudulent use of tax breaks, a Charity must check that anyone controlling it is a ‘fit and proper person’.

An individual is 'fit and proper' if they ensure that charity funds and tax reliefs are used only for charitable purposes. A declaration is signed to declare that the person:

- has not been disqualified from acting as a charity trustee;
- has not been convicted of an offence involving deception or dishonesty (**or** any such conviction is legally regarded as spent);
- has not been involved in tax fraud;
- is not an undischarged bankrupt;
- has not made compositions or arrangements with my creditors from which I have not been discharged
- has not been removed from serving as a charity trustee, or been stopped from acting in a management position within a charity;
- has not been disqualified from serving as a Company Director; and
- will at all times seek to ensure the charity’s funds, and charity tax reliefs received by this organisation, are used only for charitable purposes.

More guidance can be found at:

<http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm>

A copy of the help sheet and model declaration can be found at:

<http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/model-dec-ff-persons.pdf>.

FSA/Financial Services Authority

The current regulator/registration body for IPS/Ben Coms. At some point the FSA will cease to be the Regulating Body but it is not yet known when this will happen or who will take over.

More information can be found at: <http://www.fsa.gov.uk/pages/index.shtml>

HCA/Homes & Communities Agency

Created by the Housing and Regeneration Act 2008, the HCA is the funding agency for Social Housing. It is tasked with bringing land back into productive use and enables local authorities to achieve housing and regeneration ambitions for their own areas.

Once the TSA is abolished, the HCA will take over its functions. The functions include regulating RPs by setting standards for social housing provision.

More information can be found at: <http://www.homesandcommunities.co.uk/>

Industrial and Provident Society (“IPS”)

See table comparing legal forms [link] for Industrial and Provident Society.

An IPS is an organisation which conducts an industry, business or trade for the benefit of the community and which is registered under the Industrial and Provident Societies Act 1965. This can be charitable or non-charitable.

Asset Lock: A non-charitable IPS that does not seek to become a Registered Provider can choose to adopt the Statutory Asset Lock. It is not a requirement of registration that the Rules contain this. The Statutory Asset Lock was introduced in response to concerns around the de-mutualisation of various Industrial and Provident Societies (building societies) in 2002/3. Once adopted within the Rules the Statutory Asset Lock cannot be removed. The FSA also has powers to make sanctions for improper use of the CLT’s assets.

Local Housing Allowance

This is the level at which Housing Benefit is payable for tenants of non-RP landlords. This value will need to be compared to the value of affordable rent (80% of the market rent) to consider affordability of a dwelling to a tenant.

Model Constitutions

The registration process to become an IPS/Ben Com will involve using the Model Rules of a sponsored body such as the National CLT Network, the National Housing Federation, Wessex Community Assets, CDS Co-Operatives, etc.

There are model Articles for a CIC or CLG (charitable and non charitable) on this website. The Charity Commission has model Articles for a CLG and its CIO. The CIC Regulator has model Articles for CICs.

National CLT Network

This is the body that has been set up to support and promote the work of CLTs.

More information can be found at: <http://www.cltnetwork.org/index.php>

Not for Profit

This means that an organisation’s primary purpose is the provision of specific services/activities to a defined community for the community’s benefit and not for the distribution of monetary profit to shareholders. It is therefore not a commercial trading entity.

Objects

This is the expression used within all constitutions to set out the purposes/aims of the legal entity being created (incorporated). The Objects direct and guide the CLT’s activities and how its assets may be used to achieve those objects. Using assets for purposes not stated is not allowed. The powers granted to the CLT need to be sufficient to enable the Objects to be pursued.

Registered Charity

If your charity’s income is over £5000 and it undertakes exclusively charitable purposes for the public benefit you must apply to register your organisation with the Charity Commission. A charity can take the form of a number of legal structures. These include Unincorporated Associations, Trusts or a Company Limited by Guarantee (CLG). A CLG must register with and report to both the Charity Commission and Companies House.

After registering as a charity, there are a number of ongoing duties and responsibilities to the Commission that must be complied with. You will need to maintain your charity’s

accounts and send the Annual Return it issues each year. Depending on the level of income you may also need to have the accounts audited or independently examined and to file a Trustees Annual Report. You also need to tell the Charity Commission when there are changes to the charity's registered details (for example, if the contact address for the charity changes), inform it of any 'serious incidents' (such as fraud) and obtain its consent to sales of leases of land to people connected with the charity.

Once your charity is registered it may be eligible for some tax breaks - corporation tax (income tax for organisations), stamp duty land tax (buying land or property over a certain value), gift aid on donations and rates relief.

As outlined above, registered Charities have an Asset Lock in perpetuity.

Registered Provider of Social Housing/Registered Provider (RP)

This is a legal entity (ie English Body) registered with the HCA and/or TSA to provide Social Housing in England. Being a Registered Provider makes the legal entity eligible for HCA grant funding (note: eligibility does not guarantee availability of funding). A Registered Provider can be for profit or not for profit. A CLT cannot be a for profit Registered Provider.

Re-sale price covenant

This is a method by which a buyer buys the property outright at a percentage of its open market value, but enters into a covenant (binding agreement) with the CLT not to sell the property except at the same percentage of market value. See Annex D on Property.

Self Build

This means a project where a group of people acquire plots or part built properties and pool skills to build or finish houses/dwellings so that they will each have a home suitable for their needs. The time of other professionals may need to be bought in for certain aspects of the build, but by using this method the self-builders capture more of the final value of the property. This type of project raises questions around whether this can be classed as a charitable activity and legal advice should be sought on the specific project being planned.

Shared ownership

This means the grant of a lease of a share in a property to a lessee for (usually) 125 years, with the lessee paying a rent on the unsold share. The lessee would have the ability to acquire further shares at open market value ("**Staircasing**"). See Annex D on Property.

Social Enterprise

These are businesses that trade in the market with a social rather than commercial purpose. Profitable trading will be for sustainability rather than wealth creation for individual members of the organisation. A social enterprise is not defined by its legal status but by:

- its nature;
- its social aims and outcomes;
- the basis on which its social mission is embedded in its structure and governance;
- the participation of its shareholder groups in its governance and activities; and
- the way it uses the profits generated by trading activities.

Typical legal structures are: Community Interest Companies and Industrial and Provident Societies. See Annex A comparing legal forms.

Social Housing

This has a specific meaning and is provided by sections 69-72 of the Housing and Regeneration Act 2008:

“social housing” means

- low cost rental accommodation (defined by section 69), and
- low cost home ownership accommodation (defined by section 70).

The definitions set out the type of housing that the HCA grant funding can legally help to provide. Note: CLG policy is evolving and new concepts of Affordable Rent and the National Affordable Housing Programme 2011-2105 (“**NAHP Funding**”) will impact on HCA grant funding. The new approach to NAHP Funding means that there is no grant funding for social rented homes (low cost rental accommodation).

Sponsored Body

For the purposes of Model Rules for a CLT, the Sponsored Body is the National CLT Network.

Other sponsored bodies are as listed on the FSA website:

<http://www.fsa.gov.uk/pages/index.shtml>

Statutory Asset Lock

This is available as a matter of choice for an Industrial and Provident Society that is neither an exempt charity nor a Registered Provider. The Statutory Asset Lock wording is set out in the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006. If the Statutory Asset Lock is selected, the precise wording contained in the sample Rules must be used. Once inserted into the Rules it cannot be taken out. The FSA has regulatory powers to enforce compliance with the Statutory Asset Lock.

TSA/Tenant Services Authority

The TSA is soon to be abolished and have its functions transferred to the HCA. Currently, the TSA regulates RPs by setting standards for social housing provision, particularly around key areas such as tenancy terms, rents, tenant involvement, viability and contributions to sustainable communities. It also deals with applications for RP status.

More information can be found at: <http://www.tenantservicesauthority.org/>

Umbrella CLT

This can be a support body across a region for other CLTs or it can be a hybrid (an enabler and active CLT).

Annex D – Property Disposal Models

Methods of disposal by sale for Community Land Trusts

Methods of disposal of properties by sale for Community Land Trusts ('CLTs') are determined strictly by which products mainstream lenders will lend on, of which there are few in the current economic climate. Our advice has always been that whichever method is chosen, a CLT should try to ensure that at least one High Street lender (bank or building society) should agree to lend on that method, as well as any more local or regional lenders. This would hopefully mean that mortgages would still be available at reasonable rates on properties being resold in years to come. The nightmare scenario would be that a CLT purchaser would buy a property and then would not be able to sell it in five years time, because the lending policy of the lender concerned has changed and no lender will lend on this method of disposal.

One important aspect to bear in mind when deciding on methods of disposal is that the new HCA grant framework document (covering 2011-2015) makes it clear that grant will only be available for sale units sold on shared ownership or equity mortgage. A CLT would either have to use one of those methods if it required grant in order to develop sale units, or it would have to develop the sale units without grant if it wanted to use one of the other methods. Interestingly, the framework document does not rule out the possibility of providers developing units for outright sale to cross-subsidise affordable units.

There are four main methods of disposal available at this point:

1. Shared Ownership

- 1.1 This means the grant of a lease of a share in a property to a lessee for (usually) 125 years, with the lessee paying a rent on the unsold share. The lessee would have the ability to acquire further shares at open market value ("Staircasing").
- 1.2 In urban areas, this method is not really feasible for CLTs because it does not guarantee permanent affordability of the unit, in that any shared ownership lessee must be able to staircase out and acquire a 100% interest in the property. However in "protected areas", designated by Communities and Local Government (being mainly rural areas), a CLT can restrict Staircasing to a maximum of 80% of market value, thus preventing a property ever being sold outright. However, critics of this method say that 80% of market value in a rural area is still way above a house price which would be affordable to people on average incomes.

2. Re-Sale Price Covenant

- 2.1 This is a method by which a buyer buys the property outright at a percentage of its open market value, but enters into a covenant with the CLT not to sell the property except at the same percentage of market value.
- 2.2 This is a very simple method and is easily understood by buyers and CLTs alike, but it is relatively crude. There is no ability for the buyer to acquire further shares or a greater interest in the property and, crucially for the CLT, there is no remaining equity left in the property for the CLT's benefit. We are actively looking at new provisions in this method of sale which would allow purchasers to "buy" a higher percentage of the open market value of the property (by paying the market value of that share, similar to shared ownership Staircasing), which could solve both of these major flaws. If that could be achieved, this method could possibly work in urban areas where shared ownership failed.

3. Equity Mortgage

3.1 In this method, the buyer acquires the property outright with a mortgage from a High Street lender for (say) 70% of open market value, the remaining 30% being held on a second equity mortgage by the CLT. This is very similar to the HCA's own Homebuy Direct product, which has been quite successful. The issue here for CLTs is that, as with shared ownership, an equity mortgage does not create permanent affordability in the unit, because the borrower must by law have the right to pay off the mortgage and a mortgagee in possession would be able to sell the property outright. This method is therefore not suitable for rural exception sites or schemes where a section 106 agreement requires units to remain affordable in perpetuity, or indeed where the CLT wishes the properties to remain affordable in perpetuity.

4. Declaration of Trust

4.1 This is a 125 year lease which in many ways is very similar to shared ownership, but in this instance the lease is by the CLT to the CLT and the buyer with a declaration of trust as to their respective shares in the property. This method is not hamstrung by the statutory limitations of shared ownership, so a CLT could, for example, limit Staircasing in urban areas, amongst other things. The problem is that there is no track record for this product with lenders. Once the mortgage market eases and lenders are prepared to lend on "new" products, a declaration of trust could be a way forward for CLTs but this is presumably some years off.

One important aspect to bear in mind when deciding on methods of disposal is that the new HCA Grant framework documents (covering 2011-2015) makes it clear that grant will only be available for sale units sold on shared ownership or equity mortgage. A CLT would either have to use one of those methods if it required grant in order to develop sale units, or it would have to develop the sale units without grant if it wanted to use one of the other methods. Interestingly, the framework document does not rule out the possibility of providers developing units for outright sale to cross-subsidise affordable units.

Annex E – CLT Housing toolkit checklist

CLT LEGAL TOOLKIT QUESTIONNAIRE COMPANY AMBITION / ETHOS INFORMATION

A CLT is a corporate entity established for the purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order:

- to provide a benefit to the local community; and
- to ensure that the assets are not sold or developed except in a manner which the Trust's members think benefits the local community.

As such, the CLT's legal structure must also include provisions that are designed to ensure that:

- any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members);
- individuals who live or work in the specified area have the opportunity to become members of the Trust (whether or not others can also become members); and
- the members of a Trust control it.

In order to satisfy these specific requirements please complete the following questionnaire providing certain information about your proposed CLT. Feel free to add more detail/comments as you feel necessary.

<u>QUESTION</u>	<u>ANSWER</u>
ASSETS	
What asset(s) have you the ability to acquire?	
What is the unmet need that you wish to put the assets use to?	
Who in the community will benefit from the provision of the unmet need on the asset being acquired?	
UNMET NEEDS	
What is the identified unmet need that you want to remedy? Is there one need or several?	
What is your social mission?	
How do you know there is an unmet need? What evidence do you have?	

THE COMMUNITY	
Who is the community?	
What is the geographical location of the community that you want to serve?	
How will you engage the community/ stakeholders?	
CHARITABLE	
Is being a charity important?	
Are all of your proposed activities (called objects and legal structures) charitable?	
Do you intend to carry out all of these activities in the short to medium term? <i>Note: you should only pursue those activities that you can demonstrate will meet the Public Benefit Requirement (see Jargon Buster)</i>	
Charities have to meet the public benefit requirement. This is an annual test.	
What is the ethos of your CLT? Charitable beneficiaries or community benefit?	
Will it be a wholly charitable set of activities? <i>Note: a charity cannot mix charitable and non-charitable activities and it may be therefore that a trading subsidiary is needed</i>	
ADMINISTRATIVE	
How important is an asset lock?	
Democratic decision making – do you want decisions to be made on a one member, one vote basis?	

Do you want to extend membership to councils and other organisations?	
Do you want a Custodian of your legal constitution? (See Introduction to Template Constitutions)	
Do you want to offer open membership so that anyone can become a member?	
Do you want to restrict the benefits to the members of the CLT only? (This links to a cooperative mutual housing model).	
FUNDING	
Do you wish to raise community investment? (e.g. by way of Shares or Loans)	
Do you envisage applying for public grant aid? e.g. From the HCA	
Do you envisage mixing 'trading activities' with the ownership of the assets?	
If you are acquiring and developing property assets, are you envisaging cross-subsidy?	

Annex F – Findaform

**NB: Please move through this document using [CTRL click] links.
If you scroll then information may be out of context and misleading.**

Grant Funding

A CLT may be able to apply for grant funding from one or more of the following sources:

- a charity with similar aims and objectives
- the HCA (the Homes & Communities Agency)
- a local council/other public body

Any one of these bodies is likely to impose conditions such that the CLT:

The first four points also reflect the statutory definition of a CLT (s79 of the Housing and Regeneration Act 2008).

- 1 operates on a “not for profit” basis;
- 2 has an “asset lock”;
- 3 is democratic;
- 4 is controlled by the community; and
- 5 provides/manages Social Housing.

Statutory bodies such as the HCA and TSA will add on more requirements depending on the extent of your CLT's activities and any grant funding applied for. This is where the requirement to provide or manage Social Housing links in.

If your CLT intends to apply for grant funding from the HCA to build and/or manage Social Housing, the CLT must be registered with the TSA as a not for profit provider of Social Housing.

Any debt finance from a bank/building society will also attach conditions or require proof of a satisfactory legal form.

Local Authorities may still want to see evidence of not-for-profit, even if you do not intend/want to register with the TSA.

How do you demonstrate that you are not for profit; what form does the funder prefer?

If, having considered the factors
above, you can choose any legal
form
Click [Here](#)

If funders want you to
be a Community
Benefit Society or a
registered charity
click [Here](#)

How much community control do you require?

A company limited by guarantee (CLG) can have voting members (the organisation's governing documents, its Articles of Association will explain in detail).

A Community Benefit Society has guaranteed democracy (one member- one vote) and has to have an annual general meeting. A CLG may opt out of either of these.

(A lack of asset lock means that a co-operative society is not being considered for a CLT which should be for perpetuity).

If you want the
guaranteed democracy
of a bencom
Click [Here](#)

If you want to set
membership details in
your governing
document
Click [Here](#)

Community Benefit Society (CBS)

A Community Benefit Society requires an Annual General Meeting and members join by buying a share. This can be a nominal amount, as low as £1, but running costs need to be considered.

An annual fee is payable to the FSA which depends on the value of the assets.

Currently this is £55 for assets of under £50k and rises to £425 for assets of over £1m.

As with any organisation, the costs of dealing with members and holding meetings need to be considered and planned for. How will income be generated?

A bencom can choose to have an asset lock. This means that members cannot vote to sell the assets and share the profits amongst themselves. The asset lock will help ensure that the CLT is permanent. Assets could still be lost if things go badly, it protects their value from the members, not external effects.

Charitable status for a Community Benefit Society

People understand what a charity is and being one can be beneficial. Charities don't pay rates, land duty stamp tax or corporation tax on any charitable trading surplus or profits. Charities can attract funding from other charities.

However, charity tax law is complicated if the CLT seeks to carry out activities/use proceeds from non-charitable activities. Tax breaks can be worthwhile but charitable status is also limiting in terms of activities. This is a business planning issue to be considered at these early stages.

A Community Benefit Society would be an **exempt charity** and would apply to HMRC for approval of its status. However, large exempt charities are required to be regulated by the Charity Commission which does not approve of exempt charities having large investments in the form of members' share capital. It is likely that, eventually, all exempt charities will be regulated by the Charity Commission.

Impact of becoming a charity:

- 1 it is an irreversible step: once a charity always a charity;
- 2 the tax breaks are only available for charitable activities (cross subsidy is a complex tax issue and advice should be sought);
- 3 activities must be in line with the CLT's charitable objects;
- 4 dealing with the Public Benefit Requirement;
- 5 trustees' ability to be paid is restricted;
- 6 beneficiaries' ability to sit on the Board is restricted.

If you do not want the limits of an exempt charity or would not benefit from a tax break then click [Here](#)

If you want the benefits of an exempt charity then click [Here](#)

Exempt Charity

If you set up an exempt charity you will have the democracy and requirement for an annual general meeting.

You also can enjoy the tax breaks of a charity. If your turnover or income is low then there is little reporting required- just an annual return to the Financial Services Authority. [\[Link\]](#)

There is also an annual fee and this starts at £55. For larger exempt charities (over £1m in assets) the fee slides up to £425 and a large exempt charity (income of over £100k per annum) will be required to be regulated by the Charity Commission and the financial reporting required will increase.

Trading and non-charitable activities (such as selling houses on the open market)

A charity is allowed a small amount of trading which is not directly fulfilling its objects. A CLT could sell Christmas cards as long as the income was not significant. This is case-by-case but 10% of income as a maximum is considered a good rule of thumb. [\[Link\]](#)

If your CLT will involve more significant trading, such as running a shop, or wants to develop and sell land in order to finance the CLT then a trading arm will be required.

Charities have specific charitable objects that stipulate how their funds should be used and the trustees have a legal duty to follow these. A trading arm owned by a charity does not have such restrictions on its activities and can gift aid profits back to the charity. The separation between the finances of the trading arm and the charity must be clear. You should seek professional tax advice.

An example: The CLT wants to own and run a community shop.

This is a commercial trading activity because the shop is selling goods. There is no recognised charitable object that could be claimed here.

The shop would have to be set up as a separate legal entity but owned by the charity. This would allow the shop to borrow money from a bank, run as a normal business, and gift aid profits to the charity.

Another example where a trading subsidiary would be used is where the activity carries a risk to the charity. A charity must always protect its assets and not put itself at risk. If the trading arm failed the charity's assets would not be repossessed; the loss would stay with the trading arm.

The same logic applies to selling houses to cross-subsidise affordable homes owned by a CLT set up as a charity. It is risky to a CLT's tax status as a charity and there are no guarantees as to sale prices being achieved.

The CLT may want to trade
or cross-subsidise
Click [Here](#)

The CLT will not trade
Click [Here](#)

Exempt charity, trading

Multiple legal structures

Running an organisation has costs and so adding another, unnecessarily, organisation for a community to run should be avoided.

However, if you want to cross subsidise by a non-charitable activity and/or raise finance from the community using a share issue, another Industrial and Provident Society could be used.

If you want to run a shop then it could be set up as an IPS (but not as an exempt charity) or a company and kept financially separate from, but owned by the exempt charity CLT.

Income from a trading arm enables more flexibility in choosing to spend money as it will not be limited by charitable objects if it is not all gifted to the exempt charity.

The trading arm would have to file accounts, will need its own AGM if it is an IPS, will need to file an annual return (and pay £15) to Companies House if it is a company and conflicts of interest could arise.

The exempt charity must not make a financial loss from its relationship with the trading arm.

This means any capital requirements of the trading arm have to be sourced.

The board of the trading arm may occasionally be torn between its owner, the exempt charity, and the need to run a successful business. As a company director, you are required to do the best for the company.

The CLT will

- Have democracy with one member, one vote
- Be able to vote in the board from members of the community
- Have an asset lock (offering perpetuity) regulated by the Financial Services Authority
- Will have limited flexibility in how the asset is used as this will be dependent on the wording of the objectives
- Be unlikely to be able to pay all the board members as trusteeship is regarded as a volunteer activity

For the CLT, you will have to

- Send an annual return to the Financial Services Authority and pay between £55 and £425 to remain on their register depending on the size of the CLT's assets
- Hold an Annual General Meeting and invite all of the members
- Your objectives will have to be acceptable to the Charity Commission/HMRC Charities

On top of this, the trading arm will have its own requirements and regulatory aspects.

End

Exempt, non-trading Charity

If you set up as an exempt charity you have:

- Have guaranteed democracy (community control)
- An asset lock (perpetuity)

You will have limited flexibility in how the asset is used.

It is very unlikely that you can pay all or any of the board members

And the current situation is that you should not issue shares to raise finance where you are offering interest, dividend or bonus. It is possible to have shares which can be repaid but without a right to interest, dividend or bonus.

You will have to

- Send an annual return to the Financial Services Authority
- Pay an annual fee on a sliding scale from £55 to £425 (depending on assets)
- Hold an annual general meeting and invite all of the member/investors
- Check with HMRC that they are happy that your objectives are charitable
- If your income is very large you will have to be registered with the Charity Commission
- You may become regulated by the charity Commission in the future

End

Non-charitable Community Benefit Society

If you set up as a Community Benefit Society you can:

- Have guaranteed democracy (community control)
- Have an asset lock (perpetuity)
- Have flexibility in how the asset is used
- Pay the board members
- Issue shares to raise finance

You will have to:

- Send an annual return to the Financial Services Authority
- Pay an annual fee on a sliding scale from £55 to £425 (depending on assets)
- Hold an annual general meeting and invite all of the member/investors

End

Company Limited by Guarantee

When you choose or create your Articles of Association (the governing documents), you can stipulate how the Board is elected. You can also decide whether some members have different voting rights. It is possible to set up a “one member one vote” democratic system.

Registering your company as a charity may offer tax breaks.

Business rates, corporation tax and land stamp duty could be reduced. As a company limited by guarantee, CLG, you can register with the Charity Commission if you have charitable objects. As well as obtaining tax benefits, becoming a charity also gives the organisation an asset lock. A charity could hold meetings where residents’ concerns were heard, and this would be required by the TSA if the CLT was a Registered Provider, but a charity would not enable residents to run their own CLT.

In most cases the Charity Commission looks for a clear separation between beneficiaries and control of a charity but it is possible to have tenants on board of a charitable RP. It’s about numbers/ratio.

We want to be a CLG
registered as a charity
Click [Here](#)

Our CLT does not need
charitable status
Click [Here](#)

This would need to be revised as per earlier comments once agreed.

Trading and non-charitable activities (such as selling houses on the open market)

A charity is allowed a small amount of trading which is not directly fulfilling its objects. A CLT could sell Christmas cards as long as the income was not significant. This is case-by-case but 10% of income as a maximum is considered a good rule of thumb. [\[Link\]](#)

If your CLT will involve more significant trading, such as running a shop, or wants to develop and sell land in order to finance the CLT then a trading arm will be required.

Charities have specific charitable objects that stipulate how their funds should be used and the trustees have a legal duty to follow these. A trading arm owned by a charity does not have such restrictions on its activities and can gift aid profits back to the charity. The separation between the finances of the trading arm and the charity must be clear. You should seek professional tax advice.

An example: The CLT wants to own and run a community shop.

This is a commercial trading activity because the shop is selling goods. There is no recognised charitable object that could be claimed here.

The shop would have to be set up as a separate legal entity but owned by the charity. This would allow the shop to borrow money from a bank, run as a normal business, and gift aid profits to the charity.

Another example where a trading subsidiary would be used is where the activity carries a risk to the charity. A charity must always protect its assets and not put itself at risk. If the trading arm failed the charity's assets would not be repossessed; the loss would stay with the trading arm.

The same logic applies to selling houses to cross-subsidise affordable homes owned by a CLT set up as a charity. It is risky to a CLT's tax status as a charity and there are no guarantees as to sale prices being achieved.

The CLT may want to trade
Or cross-subsidise
Click [Here](#)

The CLT will not trade
Click [Here](#)

This would have to be revised as per earlier version once agreed.

CLG charity trading

Multiple legal structures

Running an organisation has costs and so adding another, unnecessarily, organisation for a community to run should be avoided.

However, if you want to cross subsidise by a non-charitable activity and/or raise finance from the community using a share issue, another Industrial and Provident Society could be used.

If you want to run a shop then it could be set up as an IPS (but not as an exempt charity) or a company and kept financially separate from, but owned by the exempt charity CLT.

Income from a trading arm enables more flexibility in choosing to spend money as it will not be limited by charitable objects if it is not all gifted to the exempt charity.

The trading arm would have to file accounts, will need its own AGM if it is an IPS, will need to file an annual return (and pay £15) to Companies House if it is a company and conflicts of interest could arise.

The exempt charity must not make a financial loss from its relationship with the trading arm.

This means any capital requirements of the trading arm have to be sourced.

The board of the trading arm may occasionally be torn between its owner, the exempt charity, and the need to run a successful business.

The CLG registered charity will have:

- An asset lock
- Some tax breaks if they are applicable
- Its own version of membership and voting rights
- A status that is recognisable as 'not-for-profit'
- It will not be able to pay your Board
- To file an annual return with the Charity Commission if its income is over £5k
- To file an annual return with Companies House

It is very important that the finances of the trading arm are clearly separate from those of the charity. The board of each organisation should not share too many members. The board of the trading arm's first duty will be to the trading arm and not the charity which may cause tensions.

End

CLG Charity not trading

You have chosen to set up your CLT as a CLG registered charity

You will have:

- An asset lock
- Some tax breaks if they are applicable
- Your own version of membership and voting rights
- A status that is recognisable as 'not-for-profit'
- You will not be able to pay your Board
- To file an annual return with the Charity Commission if your income is over £5k
- To file an annual return with Companies House (and pay £15)

You have decided that there will not be any 'secondary trading' and so this is the only legal entity you require, currently.

End

¹ The Charity Commission will not normally accept applications to pay trustees for their work as trustees unless the role is particularly time-consuming or involves considerable responsibility. Some Registered Providers pay board members, others think that it goes against their charitable ethos. The CC consider that paying a trustee is not a good incentive, there are others that should be used.

Asset Lock for CLG required?

An asset lock would prevent members from deciding to sell the assets of the CLT and divide up the money amongst themselves or use the assets for something other than the CLT was originally set up for.

The articles of association can have specified parts of it 'entrenched'. This means that the conditions of articles being changed could be set to make change difficult (but it still would be possible).

If you do not want to have charitable objects then a company limited by guarantee could register as a Community Interest Company, CIC. These are regulated by the CIC Regulator in the same way as charitable companies are overseen by the Charity Commission.

The CIC Regulator will require objects that demonstrate a community benefit, will require an annual statement (and £15) to show that the objects are being followed and a CIC also has regulations around the financial returns it can offer on any finance it receives.

A CIC has an asset lock. A CIC will not be able to distribute its assets to its members and, if it is dissolved, the residual assets have to be passed to another, similar, organisation.

Unlike a charity, a CIC does not get any tax breaks but it can trade and pay its board members (who could be residents/beneficiaries).

We want our CLT to be a CIC with
its asset lock
Click [Here](#)

We do not need an asset lock
Click [Here](#)

CLT set up as CIC

As a Community Interest Company, you are registered at Companies House and regulated by the CIC Regulator.

You can

- Decide your own membership requirements and voting rights
- Pay the board
- Trade, cross-subsidise, run a community shop

You have

- An asset lock
- A legal form that is intended for community benefit
- An annual return for the CIC Regulator (and £15)
- An annual return for Companies House (and £15)
- Limits on the returns offered on finance

You cannot issue shares as a CLG CIC. You would have to set up a separate IPS for that.

If you were to set up a CIC limited by shares then, as with any share company, control would be proportional to the member/owner's investment. CICs limited by shares may not be accepted as not-for-profit and do not enjoy the cost-saving exemptions from FSA regulation that IPSs do.

You could issue bonds but there is regulation of this and reliable cash flow will be required to ensure the money can be paid back.

End

Company Limited by Guarantee

A CLG is cheap to set up and run but the lack of asset lock, regulated social objectives and possibly limited transparency in structure means that funders may be less inclined to deal with a CLG.

There are few limits to what you can do, within the law.

A CLG can

- Decide its own membership requirements and voting rights
- Decide how the board is elected and how directors are removed
- Pay directors who could be residents of the CLT
- Trade, cross-subsidise, run a shop

It must

- File an annual return with Companies House (£15)

A CLG cannot issue shares but could issue bonds.

If the CLT has no assets (or a small amount of cash) then a low cost option which allows some local control over the CLT could be achieved using a CLG.

Without an asset lock, land and property might not be held in perpetuity. It is worth considering what your stakeholders would like you to be.

_____End_____

Bencom or Charity looking for grant

What degree of community control do you require?

The degree of 'community control' depends on the legal structure you choose-

- A charity is run by a Board of trustees who make all of the decisions and there are restrictions around beneficiaries joining the Board

This means that tenants or future home owners in a CLT should not also control the charity running it.

The Charity Commission could be approached to sanction representatives of the residents being on the board of Trustees but the general rule is that Trustees must not be financial beneficiaries of the charity.

A Charity could hold meetings where residents' concerns were heard, and this would be required by the TSA if the CLT was a Registered Provider, but a charity would not enable residents to run their own CLT.

An Industrial and Provident Society, IPS, offers the chance of community members, regardless of their relationship with the CLT to join and democratically run the CLT. Residents could be elected to the Board.

All members have one, equal, vote.

