

Getting It Right Legally

For an organisation to be successful and compliant with legislation, it is crucial to have a clear legal structure in place. This summary will help providers to determine their current form, in addition to detailing the most common types of legal structure for early years and childcare organisations.

Legal form

The expression Legal Form is used to indicate a particular type of organization. The relevant legal form both determines an organisation's legal status and a basis for its legal structure.

Legal status and Legal structure

Everyone involved with an organisation needs to understand how it relates to customers, supporters, regulators, other organisations, and anyone else dealing with it, this is determined by its Legal Status.

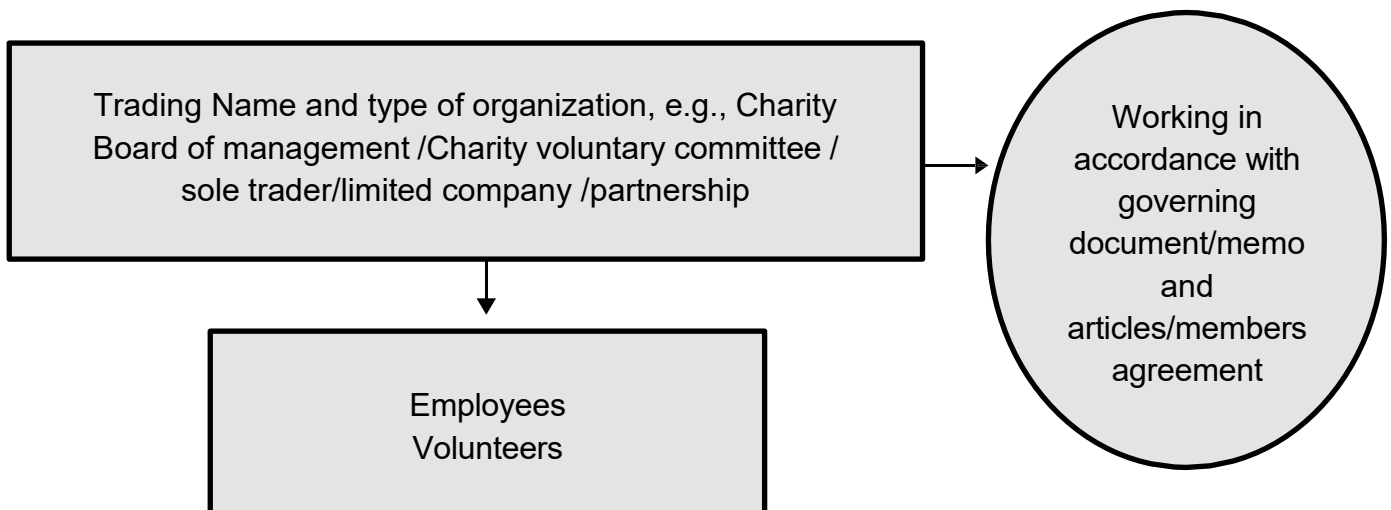
Everyone involved in an organisation needs to know how they themselves relate to it, and to the others involved in it, this is determined by its Legal Structure

Legal status – A particular type of organisation

For example, a Charitable Incorporated Organisation (not for profit) or a Private Limited Company (profit making).

Legal structure – How your business is structured:

For example, governing document, leadership, staffing, membership.



There are a number of common Early Years and Childcare organisation types which fall under either not for profit (describes an organisation that does not distribute its profits to members or shareholders but uses them for social or community benefit) or profit making (an organisation in a commercial form usually dedicated to generating profit for its owners).

For example:

- Unincorporated charity, Charitable Incorporated Organisation, Social Enterprise (CIC), Charity Limited by Guarantee – not for profit
- Company Limited by Shares, Sole Trader, Limited Liability Partnership – profit making.

School Run Provision

Another form of Early Years and childcare provision is school run which can take three forms, a maintained nursery class whereby the school lowers the age range from four years to two years, (requires consultation and must have a QTS), Local Authority Section 27 Community Powers (no requirement to lower the age range or employ a QTS), or Academy run under its Charitable Aims (exempt charity - no requirement to lower the age range or employ a QTS). Separate Ofsted registration is not usually required in each case. <https://www.gov.uk/guidance/childminders-and-childcare-providers-register-with-ofsted>

Liability

Unincorporated organisations

An unincorporated organisation is the simplest type of organisation and the favourite legal structure chosen by childcare groups. However, the organisation does not have any independent existence in law. Therefore, the individual Management Committee members are personally liable for any debts, contractual obligations or claims against the organisation that cannot be met out of the organisation's own resources. There are different types, associations, and trusts.

Incorporated organisations

An incorporated organisation is an organisation that is set up as a legal entity. The Management Committee members / directors do not normally have personal financial responsibility for contracts and debts incurred. This limited liability does not protect a Management Committee that acts improperly or fraudulently.

Governor's liability:

- *The DfE says that individual governors are protected from personal liability. Provided they act honestly, reasonably and in good faith, any liability will fall on the governing body.
- For a maintained school, the buck stops with the governing body. Even though the head teacher and senior leadership team may run the school on a day-to-day basis, with the support of the Local Authority, responsibility for what happens rests with the governing body.
- It is worth noting that a governing body of a maintained school is technically a company. This enables it to enter contracts as 'the governing body of Anytown School' rather than in the head teacher's name!
- For academies, responsibility lies with the individuals who are registered at Companies

House. They may be called 'Directors', 'Trustees' or 'Governors' but, whatever their name, they are responsible for the academy trust and therefore any academies it supports.

- In most cases, if something goes wrong at a school and a claim is brought, it is not brought against individuals but against the governing body if the school is a maintained school or against the academy trust if a school is an academy.

Limiting liability:

- Ensure correct insurances in place.
- Comply with governing document.
- Adhere to health and safety law.
- Adhere to employment law.
- Adhere to Ofsted legal requirements.
- Adhere to charity/company law.
- Ensure adequate reserves funds.

Governance models for early years and childcare provision

Type	Trustee /director /governor/owner personal liability?	Governance Regulator	Who is the Registered provider
Unincorporated committee run charity. Voluntary Managed	Individual Trustees (the committee) have personal liability	Charity Commission	The charity
Incorporated committee run Charitable Incorporated Organisation (CIO) Voluntary Managed	Individual Trustees (the committee) generally protected from personal liability	Charity Commission	The charity
Company limited by guarantee CLG. (not for profit) Voluntary Managed	Individual Directors/members (the committee) protected from personal liability	Companies House Charity Commission	The Ltd company (the directors)
Community Interest company CIC (social enterprise) Director (s)	Individual Director(s) protected from personal liability	Companies House	The CIC (the directors)
LA Maintained Nursery Governing Body	Individual governors protected from personal liability. Governing bodies are liable*	Secretary of state Local Authority	The school (separate registration not required)

LA Sec 27 Governing body	Individual governors protected from personal liability Governing body are liable*	Secretary of state Local Authority	The school (separate registration not required)
Academy run (age range change) Academy board	Individual board members protected from personal liability. (the academy trust as a whole are liable) *	Secretary of state Companies House	The Academy trust (separate registration not required)
Sole trader Owner	Owner has personal liability	No regulatory body	The owner
Company limited by shares (for profit) Directors	Individual Directors protected from personal liability	Companies House	The Ltd company (the directors)

Where to get legal advice:

- LAWCALL (EYA members must contact Lawcall free legal helpline) 01455 255 205.
- Law Society www.lawsociety.org.uk
- A solicitor
- Citizens Advice Bureau www.citizensadvice.org.uk
- Other membership organisation helplines, e.g., NDNA, PACEY, FSB (Federation of small businesses).

Useful links:

- <https://www.cambslearntogether.co.uk/early-years/business-support/support-for-childcare-business-and-governance>
- <file:///C:/Windows/ie/TempInt/yc358/IE/IRQ7AXD5/legal-checklist-for-businesses-2019.pdf>
- <https://www.gov.uk/government/publications/legal-forms-for-business-a-guide>
- <https://www.gov.uk/set-up-business>
- <https://www.eyalliance.org.uk/>
- <https://www.ndna.org.uk/>
- <https://www.gov.uk/government/organisations/charity-commission>
- <https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>
- <https://www.gov.uk/government/organisations/companies-house>
- <https://www.cambridgeshire.gov.uk/residents/working-together-children-families-and-adults/early-years-childcare-providers-support/support-for-early-years-childcare-providers>

Getting it Right Legally (GIRL) was published in 2005 to support early years and childcare organisations navigate successfully setting up a community early years and childcare facility. This has been subsequently updated in 2011 and is available to purchase at <http://www.playwork.co.uk/information-resources/publications/getting-it-right-legally.aspx>