



Access Panel Network

Training Guides

A guide to structure

This guide will inform about the structure of Scottish Disability Equality Forum (SDEF) and how our members and Access Panels feed into SDEF. SDEF is the umbrella organisation for all Access Panels in Scotland. We will also identify and describe the four basic structural models that an Access Panel may wish to adopt.

Disability Access Panels

Every Access Panel in Scotland is autonomous and is an entity in its own right. SDEF is the umbrella organisation and not the governing body of access panels.

As such, each Access Panel runs slightly differently depending of its membership, geographical location and work of the panel.

There are four basic types of structure that an Access Panel may use depending on the needs of the members, the work that they are involved in and their funding position.

- All members are on the committee: this is usually when the membership is not large and there is room on the committee to accommodate all the members of the Access Panel. The Access Panel is governed by a 'constitution' and the 'Trustees' are the Office Bearers, i.e. Convener (or Chairperson), Secretary and Treasurer. There may be other office bearers such as Vice Convener, Minutes Secretary, Membership Secretary, Press Officer, etc.
- The management Committee of an Access Panel will usually be responsible for the running of an Access Panel when that panel has quite a lot of members and there are too many to form a cohesive and workable size committee. Similar to a Panel where all members are on the committee the Trustees will be the Office Bearers elected at an AGM or Additional General Meeting.

(For Draft Constitution please see Appendix 2)

- SCIO (The Scottish Charitable Incorporated Organisation) is a new legal form for registered Scottish charities. The SCIO is a corporate body which is a legal entity able to enter into contracts, employ staff, incur debts, own property, sue and be sued.

As the transactions of the SCIO are undertaken by it directly, rather than by its charity trustees on its behalf, the charity trustees are in general protected from incurring personal liability.

The SCIO also differs from other charities on the Register in that its existence is dependent upon its charitable status that is, upon being entered in the Register.

For further information please see Appendix 1 sourced from OSCR or see this [Office of the Scottish Charity Regulator pdf](#)

Charity limited by guarantee

(Charity that is a limited company registered with Companies House).

A Charity Limited by Guarantee is in some ways similar to a SCIO in that it is a legal entity in its own right and the organisation can take decisions in its own right as opposed to a group of members taking decisions in their names.

In most cases the liability of the Charity Trustees is limited too, normally, £1.00. The Charity must be registered by Companies House and as such is subject to the wide-ranging duties and requirements set out by company law including duty to keep registers of members and directors.

What is a Company Limited by Guarantee?

(Information from [Small Firms Service Ltd](#))

A guaranteed company does not have shares. The members of the company do not own the company but are the decision makers for the company. Therefore members have no claim to any surplus that the company may make and do not have any claim upon the assets of the company. The members of the company may appoint Directors often called 'Trustees', who are given the responsibility for creating and implementing policies for the company. The Directors also enjoy limited liability, provided that they have not acted negligently, or fraudulently, and have not allowed the guaranteed company to continue trading when it was insolvent (this is known as "wrongful trading").

The constitution of the company limited by guarantee is the Memorandum & Articles of Association. The Memorandum sets out the objects of the company and the powers of the company may be exercised to meet these objects. If the Access Panel is to be registered as a charity then the Memorandum must be acceptable to the Office of Scottish Charity Regulator (OSCR). The Memorandum will also state how much money the members of the company will guarantee to pay in the event of the company being wound up.

For further information please see [Small Firms Services Ltd](#) website and Appendix 3 sourced from their website.

Appendix 1 - SCIO

Scottish Charitable Incorporated Organisation

The Scottish Charitable Incorporated Organisation (SCIO) is a new legal form for registered Scottish charities. The SCIO is a corporate body which is a legal entity able to enter into contracts, employ staff, incur debts, own property, sue and be sued.

There are important differences between being a SCIO and being any other type of body with charitable status in Scotland. Before applying to become a SCIO, organisations need to be fully aware of the implications that this form of charitable status brings. Please read the OSCR publications, [SCIOs: A Guide](#) and the [SCIOs: FAQs](#) for further information.

This new form of charitable status has been available from 1 April 2011 to individuals thinking about applying for charitable status for a new organisation and, on a phased basis as follows, to existing charities wishing to change their legal form:

- existing charitable companies and charitable industrial and provident societies are able to apply to convert to SCIO form as of 1 January 2012;
- existing Scottish charities which are any other type of legal form have been able to apply to change legal form to a SCIO from 1 April 2011.

Managing your SCIO

SCIOs, as with all other types of charitable bodies registered in Scotland, have certain legal requirements to meet, for example reporting to the Office of the Scottish Charitable Regulator (OSCR) on an annual basis.

It is important for organisations to understand the operating and reporting requirements for SCIOs. Further information is available from section 5 of OSCR publication, [SCIOs: A Guide](#), and the [Managing your charity](#) section of the OSCR website.

Help in setting up your SCIO

While OSCR can advise you on the application process and meeting their requirements, OSCR are unable to help you with setting up your SCIO. Information and guidance about setting up a SCIO is available from:

- Your local [Third Sector Interface](#), organisations which offer support to voluntary organisations.
- The [Scottish Council for Voluntary Organisations \(SCVO\)](#).
- Organisations considering applying to become a SCIO may also wish to consult a professional adviser. The [Law Society of Scotland](#) and the [Institute of Char-](#)

[tered Accountants in Scotland](#) may be able to help you identify a professional firm with expertise in charity law and accounting.

- [HMRC](#) will be able to help you with any questions you may have about tax.
- The Scottish Government's website has an [Enterprising Third Sector Zone](#) which gives details of the help and practical support available.

Applying for SCIO status

OSCR's [How to Apply](#) page provides advice on the SCIO application process. If you are an existing charity wishing to change legal form to a SCIO, please read OSCR's [Making changes to your charity](#) page for further information and an application form.

Can a charity registered with the Charity Commission become a SCIO?

Charity trustees of unincorporated charities that are registered with both the Charity Commission and with OSCR (known as 'cross-border charities') may decide that they wish to incorporate by becoming a SCIO.

While this is possible, the charity trustees must be aware that changing the charity's legal form to a SCIO will result in the charity ending its registration with the Charity Commission and being regulated solely by OSCR. This is because SCIOs are established under Scottish law, and therefore do not fall within the Charity Commission's jurisdiction.

Cross-border charities which wish to become SCIOs should firstly apply to OSCR to incorporate a new SCIO. If that application is successful and the new SCIO is registered, the charity trustees should then apply to dissolve the unincorporated cross-border charity and transfer its assets to the SCIO.

Once the Charity Commission has received confirmation that the unincorporated charity has been dissolved and the assets have been transferred to the SCIO, it will remove that unincorporated charity from its charity register.

Working with SCIOs

OSCR's [Working with SCIOs](#) leaflet gives anyone who is working with, or planning to work with, SCIOs more details about this new legal form and how it is regulated. OSCR explain what is different about SCIOs, the rules they must comply with, and what you need to know if you are considering working with a SCIO.

Applications to dissolve a SCIO

SCIOs must apply to OSCR if they want to dissolve. Note that, as part of charity law, OSCR is required to publish these applications.

Sourced from the OSCRs downloadable pdf [SCIOs: A Guide](#).

Appendix 2 - Draft Constitution

1. The name of the organisation is (thereinafter referred to as the Panel or Panel)

2. Objects

In particular the Panel is established to advise and assist in the creation and maintenance of access provision and equal access to all aspects of life for disabled people throughout and the surrounding area.

In furtherance of these objects:

- To receive and respond to requests for consultation, involvement and advice, and to liaise with other agencies on relative matters of both Policy and Practice.
- To encourage, participate in and enhance awareness of architects, surveyors, planners and other relevant professional personnel
- The activities of the Panel shall advance citizenship and community development, for those affected by disability, through increased and enhanced participation in raising community awareness.
- The objects of the Panel are also designed to assist in improving and promoting better physical and mental health.
- The panels main thrust shall always be disability but will also take into cognisance the other equality characteristics when going about our business.
- Panel members holding the positions of Convener, Treasurer and Secretary shall be the Trustees of the organisation and shall be legally responsible for the governance and legal obligations of the organisation.

3. Powers

The Access Panel shall have powers:

- To engage and pay fees to professional and other persons who provide specialist services, such as training and organisation of services, to The Access Panel.
- To pay out of pocket costs to volunteers for services provided to the Panel.
- Set a membership fee at Annual General Meeting and raise other funds as appropriate.
- To raise and receive donations, gifts and finances.
- To receive and respond to requests for consultation, involvement and advice and to liaise with other agencies on relative matters of policy and practice, and to actively take part in the planning, building standards and execution process of new/renovated buildings, roads, footpaths, transport, healthcare, countryside, open space and the general environment.
- While the main thrust of the Panel's work is concerned with disability and disabled people the panel nevertheless will take into cognisance and recognise all other equality characteristics in advancing equality and diversity and work to

promote the Principles of Inclusive Living.

4. Membership

Membership is open to all disabled people and to others with an interest, affected by disability and/or concern with regard to access for Disabled Persons. Membership is open for those who live, work or visits and the surrounding area.

Being a member of the does not necessarily mean that a person must be a member of the committee. Persons affected by disability can be members of the panel without necessarily being involved in the day to day running of the panel but can nevertheless become involved in areas of particular interest.

5. Government of the Organisation

The Panel shall be appointed annually at the Annual General Meeting and shall consist of as far as are possible 51% disabled persons and should also include persons with expertise and others as defined in the Access Guide of the Committee on Access for Scotland (1986).

The Panel shall, whenever possible, have a minimum of 3 office bearers being:

- Chairperson
- Secretary
- Treasurer

The Panel can democratically appoint additional members i.e. Vice-Chairperson, Press Officer, Minutes Secretary, Membership Co-ordinator, etc.

The office bearers should hold office for a maximum of 3 years after which time they can be considered for re-election at the AGM or an AG MEETING held for that purpose.

The panel committee shall have power to co-opt such members as are deemed appropriate to carry out its objects or/and to co-opt such members for individual projects.

Any members of the panel who are paid officers of a public organisation, or receive payment for work on behalf of a public organisation shall be 'ex officio' members only and will have no voting rights.

The Panel shall meet at least 4 times per year; more if deemed necessary but not less.

6. Annual General Meetings

The AGM shall be publicly advertised not less than 28 days prior to the meeting.

The AGM will be to:

- Hear and accept annual reports
- Appoint the panel committee for the ensuing year
- Elect a Chairperson and other officers as deemed necessary
- Receive the accounts
- Appoint a 'person of good standing' to scrutinise the accounts for the ensuing year if necessary
- Deal with all other business which can be construed in terms of the constitution
- Any member requiring raising an issue at the AGM shall inform the secretary or nominated office bearer in writing or whatever format is suitable for use by that person if the written word is not possible at least 21 days in advance of the meeting.

7. Additional General Meeting (AG Meeting)

The Panel may at any time call an Additional General Meeting. Two thirds or more Panel members may call an AG MEETING by giving the Secretary (if appointed) 28 clear days notice. If no Secretary is appointed, notice to be submitted to the Chairperson or other office bearer.

Any member requiring raising an issue at the AG MEETING shall inform the secretary or nominated office bearer in writing or whatever format is suitable for use by that person if the written word is not possible at least 21 days in advance of the meeting.

8. Finance

All monies raised by or on behalf of shall be applied to the furtherance of the objects of the Panel and no other purpose. The treasurer shall keep accounts showing all income, expenditure and assets of the group. A bank account shall be opened in the name of the with office bearers as signatories. Two from three bank registered signatures will be required to issue cheques.

A simple Income and Expenditure Account will be kept by the treasurer to keep account of all monies in and out of the panel. All receipts and Invoices will be kept in a safe and secure environment.

The Accounts shall be independently scrutinised at the end of each financial year by a person of 'good standing'.

The financial year shall be from 1st April to 31st March each year. The AGM will be held within two calendar months of the end of the financial year.

9. Rules for procedure at all meetings

Minute

A minute of the meeting shall be taken by the Secretary, minute's secretary or by a panel member designated at time of meeting.

Voting

Subject to the provision of clause 10, decisions shall be made by a majority of those panel members present at a legitimately called meeting. In the case of an equality of votes the Chairperson shall have a second or casting vote.

Lapsed Membership

Any member, who indicates that they no longer wish to be a member of, will be entitled to leave the panel without prejudice unless there are legal reasons that require the members delay in resignation.

Quorum

Three members shall form a quorum at both panel and general meetings.

10. Alterations to the constitution

There must be at least 5 members present, plus 2 office bearers, in attendance at the AGM or an AG MEETING specially called for the purpose.

A majority of two thirds of those present at the AGM or AG MEETING specially called for the purpose, shall be necessary to carry any resolutions involving an alteration or change to the Constitution.

11. Dissolution

If the Panel decides by a majority vote at any time that there are justifiable grounds to dissolve the Panel, the Panel shall call a General Meeting giving not less than 21 days notice stating the terms of the resolution to be proposed thereat. If this resolution is subsequently confirmed by two thirds majority of those present any remaining assets after the satisfaction of all debts and liabilities shall not be paid to or distributed among the members of the organisation, but shall be given or transferred to a recognised organisation having similar objects to those of the Panel.

Signed: _____

Name: _____ Date: _____

Position Held: _____

Signed: _____

Name: _____ Date: _____

Position Held: _____

Appendix 3 - Limited Company

What is a Company Limited by Guarantee?

Companies limited by guarantee are private limited companies where the liability of the members is limited. A guarantee company does not have a share capital, but has members who are guarantors instead of shareholders. Limitation of liability takes the form of a guarantee from its members to pay a nominal sum in the event of the company being wound up while they are a member or within one year of their ceasing to be a member. The amount of money that is guaranteed can be as little as £1 and will be stated within the constitution of the company (the Memorandum & Articles of Association).

Why form a Company Limited by Guarantee?

Guarantee companies are useful for non-profit organisations that require corporate status. This means that its profits are not distributed to its members but are retained to be used for the purposes of the guarantee company. Of course this does not mean that the guarantee company cannot make a profit, as indeed it is almost paramount that it can and does so. Where an organisation is likely to enter into contracts it may need the benefit of limited liability to protect its Board of Trustees and its members, who may be involved on a voluntary basis. The following are examples of these contracts:

- Employment contracts
- Purchasing land, buildings or property
- Contracting with service or product providers
- Contracts with fund raisers

A guarantee company provides a clear legal identity. This provides the ability for the company to own property in its own name and a democratic structure where its participants are required to adhere to the strict laws and regulations governing limited companies generally.

What are the differences between a company that is limited by guarantee and a company that is limited by shares?

A guarantee company does not have shares. The members of the company do not own the company but are the decision makers for the company. This means that the profits of the company cannot be distributed to the members through dividends and that they do not have any claim upon the assets of the company. The members of the company may appoint Directors often called 'Trustees', who are given the responsibility for creating and implementing policies for the company. The Directors also enjoy limited liability, provided that they have not acted negligently, or fraudulently, and have not allowed the guarantee company to continue trading when it was insolvent (this is known as "wrongful trading").

What is the constitution of the company?

The constitution of the company limited by guarantee is the Memorandum & Articles of Association. The Memorandum sets out the objects of the company and the powers of the company may be exercised to meet these objects. At this point it is important to understand whether the company is to operate as a registered charity or not. If the company intends to register as a charity then the Memorandum must be acceptable to the Charity Commission. The Memorandum will also state how much money the members of the company will guarantee to pay in the event of the company being wound up.

The Articles of Association state when meetings of the company will be held and proceedings of the meetings. They also state the voting rights of members, number of trustees and the powers of the trustees. The Articles also include the procedures for appointing and retirement of members and trustees. This is a brief overview to provide an understanding of the constitution of the company.

If you are unsure which type of Memorandum & Articles of Association would be most suitable for your company please contact us to discuss your situation. It is important that you have the correct type for your needs as it may affect application for charitable status and regulations relating to payment of the members.

What are objects?

The objects set out what a company limited by guarantee (charity) is set up to do. They should therefore be described clearly and unambiguously in the governing document, using words with a commonly accepted meaning. A charity may have more than one object.

It is important to remember that if you intend to register as a charity:

- all of the objects must be charitable, because if any aspect of them is not, the organisation cannot be accepted as a charity because it will not be exclusively charitable;
- the objects should reflect what the organisation intends to do; and
- the objects should be understandable.

Tailoring your company's objects carefully will also assist you in obtaining funding from other associations or government bodies as they will be able to clearly see your intended objects in the constitution.

Describing beneficiaries of the company's objects

If the organisation is to benefit a particular section of the public rather than the public as a whole, it is recommended that you make it clear in the objects clause. Similarly if the organisation is not going to benefit individuals we suggest that this is made clear.

If the benefits of the organisation are to be confined to a particular geographical area, again it is recommended you mention that area in the objects clause. A local government area (county, district, parish etc) is usually the clearest and simplest to adopt.

If you wish to benefit a particular ethnic group, you will need to take care with the wording of the objects. For example, the effect of the Race Relations Act 1976 on the objects of charities is to discount words relating to colour from the wording. So a charity that has objects to advance education amongst black women would in effect be a charity to advance education amongst women generally. Although the beneficial class in the objects cannot be defined by reference to colour, it can be defined by reference to race, nationality, ethnic or national origin, or other criteria other than colour. The Race Relations Act 1976 does not affect the name of the charity.

Payment of Trustees (Directors)

If you are forming a company limited by guarantee but do not intend to register as a charity then we can form the company using memorandum and articles of association that permit payment to Trustees for acting as trustees.

If you intend to register as a charity then the Charity Commission has strict guidelines regarding payment of Trustees. In most cases it is not recommended to allow payment for acting as a Trustee as this is seen as a conflict of interest.

The law states that trustees cannot receive any benefit from their charity in return for any service they provide to it unless they have express legal authority to do so.

"Benefit" includes any property, goods, or services which have a monetary value, as well as money. This legal authority will come either:

- from a clause in the charity's governing document; or
- where there is no adequate clause in the governing document, from the Charity Commission or the Court.

The rule that a trustee cannot receive any benefit from his or her charity trust without explicit authorisation is based on the principle that trustees should not be subject to any conflict between their duties to their charity trust and their personal interests, unless the possibility of personal benefit which gives rise to that conflict is transparent. Transparency is achieved by requiring explicit authorisation of the benefit, and by ensuring any potential conflict of interest is properly and openly managed.

The principle does not apply to reimbursement of reasonable out-of-pocket expenses for trustees - see the next paragraph.

The concept of unpaid trusteeship has been one of the defining characteristics of the charitable sector, contributing greatly to public confidence in charities. However, there may be circumstances in which it is in the interests of a charity for one or more of the trustees to be paid. If this is to happen, trustees will first need to consider

whether or not the governing document of the charity contains a power to pay trustees.

We recommend you consult the Charity Commission if you are unsure about any aspect of remunerating Trustees.

Paying Expenses for Trustees

Expenses are not payments in return for services. There can often be confusion over this. Expenses are refunds by a charity of payments which a trustee has needed to meet personally (or which have been met on his or her behalf) in order to carry out trustee duties. Even in the absence of any specific authority in the governing document, the law clearly entitles a trustee to reimbursement of expenses that have been properly incurred.

As a general rule, claims for expenses should be supported by bills or receipts from third parties, except where it is unreasonable to expect this (e.g. where small amounts are claimed). Any costs that are reasonably necessary to allow trustees to carry out their duties can be classed as expenses, and repaid to them or met directly by the charity.

The following are examples of legitimate expenses:

- the reasonable cost of travelling to and from trustee meetings, and on trustee business (including taxi fares where necessarily incurred, and petrol allowances permitted by the Inland Revenue before tax becomes payable);
- the reasonable cost of childcare whilst attending trustee meetings;
- the cost of postage and telephone calls on charity business;
- communication support: translating documents into Braille for a blind trustee, or into different languages; provision of alerting and listening devices, and other special aids for people with hearing impairment;
- providing special transport, equipment or facilities for a trustee with a disability; and
- reasonable overnight accommodation and subsistence while attending trustee meetings or other essential events (e.g. specialist or voluntary sector conferences).

Sourced from: [Small Firms Services Ltd \(SFS Ltd\)](#)



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