



**LAW REFORM**  
COMMISSION/COIMISIÚN UM  
ATHCHÓIRIÚ AN DLÍ

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**Law Reform Commission Publishes**

**Consultation Paper on the Liability of Clubs, Societies and other  
Unincorporated Associations**

**Friday 16th December:** The Law Reform Commission has today published a Consultation Paper on the Liability of Clubs, Societies and other Unincorporated Associations.

This Consultation Paper forms part of the Law Reform Commission's *Fifth Programme of Law Reform*. It examines issues relating to civil and criminal liability, including matters of regulatory compliance and enforcement, connected with non-profit, unincorporated associations such as clubs and societies.

The Consultation Paper raises important questions as to how regulators and individuals can enforce legal obligations and, if necessary, sue unincorporated associations. It also explores the potential legal consequences, including personal liability, for individuals involved in non-profit unincorporated associations

The term "unincorporated association" is used to describe a category of voluntary non-profit associations, clubs, societies and other groups of persons who associate together in pursuit of one, or more, stated non-commercial lawful purposes, and that Irish law does not currently regard as having a legal personality that is separate and distinct from its members. As of June 2021, there were 19,410 unincorporated associations in Ireland, including 2,684 charities.

Central to the issues concerning unincorporated associations is that, because they are not recognised as legal entities, separate and distinct from their members, they cannot sue or be sued. They lack the capacity to enter into contractual relationships, including employment contracts. Furthermore, individual members cannot sue an unincorporated association on the basis that one cannot sue oneself. In addition, they cannot hold property in their own name and such assets are generally held by trustees for the benefit of unincorporated associations and/or their members.

While there are advantages for many clubs and societies in choosing to operate as unincorporated associations, there are also significant risks. The members are exposed to personal liability for the wrongdoing of others, even in cases where they played no active part. This position was clearly established by the Supreme Court in 2017 in the *Hickey v McGowan* case, in which the plaintiff alleged that he had been sexually abused between 1968 and 1972 by a member of an unincorporated association called The Marist Order of Religious Brothers (the "Order"). The Supreme Court held that while the plaintiff was entitled to seek and obtain judgment against individuals who were members of the Order between 1968 and 1972 by finding such members to be vicariously liable

for the actions or behaviour of other members of the Order at that time, he could not obtain judgment against the Order itself.

For litigants in such situations, identifying who is, or was, a member of an unincorporated association at a particular time can be difficult, and that is one of the many barriers that face persons who wish to deal with, or litigate against, unincorporated associations in Ireland.

The lack of capacity of unincorporated associations to enter into contractual relationships may cause significant difficulties for members in the event of claims or disputes with employees or contactors who are hired to provide services on behalf of an unincorporated association. Members may find that they are contractually bound rather than the association. This situation is equally unsatisfactory for third parties trying to contract with unincorporated associations, because it may be unclear who is liable for breaches of contract. A contractor would have to be certain that the person who signed the contract had authority to bind the whole membership. While suppliers and contractors may believe that they are contracting with a club, that is not the legal reality.

In Irish law unincorporated associations cannot own property. Instead, legal title to property must be held by trustees, for and on behalf of, an unincorporated association. This may pose difficulties in accessing association funds and assets to meet liabilities and may mean that assets held by an unincorporated association are beyond the reach of plaintiffs, prosecutors, and regulators.

In relation to statutory compliance, there is an absence of clarity concerning unincorporated associations: legislation ostensibly applies to unincorporated associations, but it does not specify how, in practical terms, laws designed for individuals and corporate entities apply to an association that is, legally speaking, the sum of its members and has no separate legal existence. Further, legislation does not specify exactly how an unincorporated association is to be held liable - whether liability is imposed on an unincorporated association, on all its members, or the member responsible.

In the area of criminal and regulatory enforcement, little consideration has been given to adapting the law to expressly include unincorporated associations and to set out how fines will be met. It may be desirable to provide for the criminal responsibility of unincorporated associations, as distinct from their members, in certain circumstances, for example in health, safety and welfare at work law. Rules relating to criminal procedure are also underdeveloped in Ireland in relation to unincorporated associations.

The Law Reform Commission is mindful of the fact that unincorporated associations play an important role in Irish society. They provide a wide variety of services to the public, on a not-for-profit basis, including in education, sport, health, social services, and emergency relief. They also contribute significantly to cultural and social life in Ireland. Many unincorporated associations choose to avoid the regulatory burdens and costs attached to incorporation, because of their scale and the nature of their activities. In presenting any recommendations for reform, in due course, the Law Reform Commission seeks to achieve a well-balanced approach and to avoid creating a chilling effect in terms of continuing voluntary participation in clubs and associations which operate in the interest of society.

In conducting its examination of the issues concerning the current position in Irish law relating to unincorporated associations, the Law Reform Commission has set a number of key objectives of law reform in the area:

1. The objective of bringing clarity to the law on unincorporated associations in Ireland;
2. The objective of protecting the interests of third parties dealing with unincorporated associations;
3. The objective of providing that the assets of an unincorporated association are available to meet its responsibilities;
4. The objective of minimising regulatory burdens placed on unincorporated associations;
5. The objective of providing that unincorporated associations can be sued in their own names;
6. The objective of clarifying the law on personal liability of members of unincorporated associations;
7. The objective of clarifying the applicability of existing legislation to unincorporated associations;
8. The objective of ensuring that existing legislation is enforceable in respect of unincorporated associations; and
9. The objective of removing the impediment to suing an unincorporated association of which you are a member.

It is the considered view of the Law Reform Commission that the company limited by guarantee (CLG), provided for by the Companies Act 2014, is an existing mechanism that can be used to protect members of unincorporated associations and third parties that deal with them. A CLG does not have share capital. It gives the protection of limited liability and the advantages of separate legal personality, which means that bodies organised as CLGs can own assets without the use of trustees, can enter contracts and can sue and be sued without the exposure of individual members to personal liability. For smaller, more informal unincorporated bodies involved in low-risk activities, incorporation is often seen as unnecessary and a drain on resources. However, for larger bodies that own assets, enter contracts and operate with employees or volunteers who engage in work activities for or on behalf of an unincorporated association to the extent that they resemble employees of the unincorporated association, the CLG is an available and sensible solution to addressing many of the problems of unincorporation.

However, the Law Reform Commission acknowledges that there are costs and regulatory burdens associated with incorporation as a CLG and has, therefore, considered other means of achieving protection for both members and third parties dealing with unincorporated associations that may wish not to incorporate.

### **Law Reform proposals**

The Law Reform Commission has presented three broad models for law reform in its Consultation Paper:

**Model 1:** Legislate to create a “non-profit registered association”, by which separate legal personality could be gained by registration;

**Model 2:** Confer separate legal personality on unincorporated associations that fulfil specified criteria; and

**Model 3:** Do not confer separate legal personality on unincorporated associations, but specify how they are to be held liable in contract, tort and for offences, with a series of focused reforms that do not alter their current legal status.

### **Accessing property of an unincorporated association to meet its liabilities**

Regardless of the legal form that a club, association or other unincorporated body takes, the use of trusts to hold funds and assets for and on behalf of an unincorporated association can have the legal effect of putting those funds and assets beyond the reach of plaintiffs, prosecutors and regulators. This is problematic from the perspectives of both members of unincorporated associations and third parties dealing with unincorporated associations. In the Supreme Court case of *Hickey v McGowan*, in the context of an unincorporated association which was a religious order, Judge O'Donnell noted the need for reform, saying that if a defendant succeeded in having a judgment awarded in their favour against members of an unincorporated association,

*"... the judgments are individual and whether or not such judgments will be met by insurance, or from assets which may be held for the benefit of the order more generally, may depend on the terms of the insurance, and indeed the terms upon which such assets are held, and perhaps the willingness and ability, of the order to make funds available to satisfy any judgment against an individual. Whether this is a desirable position as a matter of law and whether further changes should or could be made, is a matter which might usefully be considered by those charged with law reform."*

While trust property held for the general purposes of an unincorporated association could be accessed by trustees to meet liabilities, charitable trusts may put assets and property out of reach of plaintiffs, prosecutors and regulators without statutory intervention. In Australia, this issue arose in the case of *Trustees of the Roman Catholic Church v Ellis and Anor*, where the New South Wales Court of Appeal found that an unincorporated association (the Church in this case) cannot sue or be sued because it does not have a legal existence or personality separate from its members. The Court also held that the fact that the trustees held property for and on behalf of "the Church", did not mean that trust property could be used to meet all legal claims associated with Church activities. Following recommendations made by a Royal Commission into Institutional Responses to Child Sexual Abuse, and to address what was perceived to be an injustice, legislation was introduced in a number of Australian jurisdictions to compel the nomination of an appropriate defendant to act for and on behalf of an unincorporated association in such cases so as to address difficulties with vicarious liability and to provide that liabilities could be met from trust assets.

**Background Notes for Editors.** The Law Reform Commission is an independent statutory body whose mission is to keep the law under independent, objective, and expert review, to make recommendations for law reform, and to make current law accessible for all. The Commission strives to ensure that the Commission's law reform publications are practical, relevant, solutions-driven and focused on the end-users of legislation. To date, the Law Reform Commission has published over

200 publications (Working Papers, Issues Papers, Consultation Papers and Reports) containing reform proposals. The majority of these proposals have influenced the drafting and content of Irish legislation.

**Seeking views by Wednesday, 15th March 2023.** The Law Reform Commission seeks the views of consultees on the issues raised in this Consultation Paper by Wednesday, 15th March 2023. **The Consultation Paper will be available on the Law Reform Commission's website, [www.lawreform.ie](http://www.lawreform.ie), from 7am on Friday, 16th December.** Responses can be submitted to the Law Reform Commission by email at [UnincorporatedAssociations@lawreform.ie](mailto:UnincorporatedAssociations@lawreform.ie) or by post to the Law Reform Commission, Styne House, Upper Hatch Street, Dublin 2 D02 DY27.

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