

# Structure and governance



## What is it?

Structure “the manner of construction or organisation” (Collins English Dictionary)

Governance “the action, manner or system of governing” (Collins English Dictionary)

Childcare businesses are in the **private sector**, the **voluntary sector** or the **public sector**.

- The private sector may include the independent sector (e.g. the initials “PVI” are used to abbreviate private, voluntary, independent)
- The voluntary sector includes childcare providers set up as charities
- The public sector is sometimes referred to as the maintained sector (usually local authority provision e.g. schools, leisure centres)

## Why do we need it?

Childcare businesses can be structured in many different ways, but a well defined structure enables the childcare business to govern its affairs in a clear way.

## How do we do it?

The structure of private sector childcare businesses may be:

- **Sole trader** – the simplest form of a business where one person has total responsibility and control. Any profits belong to them as do any losses. The individual is personally responsible for the debts of the business. [www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1073789606](http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1073789606)
- **Partnership** – more than one person working together. Partners share skills, resources, profits, losses and risks. All partners are personally responsible for the debts of the business. It is good practice to formalise a partnership by drawing up an agreement.
- **Limited liability partnership** – enables partners to limit their liabilities if the business fails. There are legal obligations in relation to being registered with Companies House. [www.companieshouse.co.uk/infoAndGuide/llp.shtml](http://www.companieshouse.co.uk/infoAndGuide/llp.shtml)
- **Limited liability company** – set up and operated by one or more directors and exists as a company in its own right, which means that the company’s finances are separate from the personal finances of the owners. The most usual form is a **private limited company**. The company must be registered (incorporated) with Companies House. [www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1073789612](http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1073789612)

## The structure of voluntary sector childcare businesses may be:

- **Charity** – many voluntary sector businesses are registered charities as this enables them to apply for funds and grants from charitable trusts and foundations. Charities are usually managed by a voluntary committee of trustees. To be a charity an organisation must have charitable purposes (the objects or aims, which are usually stated in the constitution) that are for the public benefit. Childcare charities are often **unincorporated** associations and do not have a separate legal existence; this means that the individual committee members (trustees) could potentially be held liable for the organisation's debts. Charity Commission publication CC3 – The Essential Trustee, states: "The Charity Commission offers information and advice to charities to help them operate as effectively as possible and to prevent problems arising. In the few cases where serious problems do arise, we have wide powers to look into these problems and to help resolve them. Trustees may also be personally liable for any debts or losses that the charity faces as a result. This will depend on the circumstances and the charity's governing document. However, personal liability of this kind rarely occurs and trustees who have followed the requirements in this guidance will generally be protected."  
[www.charity-commission.gov.uk/](http://www.charity-commission.gov.uk/)
- **Charitable company** – is registered as a charity with the Charity Commission and is also registered as a company limited by guarantee with Companies House. This means that the charity is **incorporated** and has a separate legal identity from its members, thus reducing their liabilities. The disadvantage is that it involves dual registration and dual reporting to both the Charity Commission and Companies House.  
[www.charity-commission.gov.uk/](http://www.charity-commission.gov.uk/)  
[www.companieshouse.gov.uk/](http://www.companieshouse.gov.uk/)
- **Charitable Incorporated Organisation (CIO)** – this is a new structure, introduced in the Charities Act 2006, designed specifically for charities. The CIO will combine the advantages of a corporate structure, such as reduced risk of personal liability without the burden of dual regulation. It is anticipated that the CIO structure will be available during 2009.  
[www.charity-commission.gov.uk/registration/charcio.asp](http://www.charity-commission.gov.uk/registration/charcio.asp)
- **Community Interest Company (CIC)** – introduced in 2005, this structure is a limited company, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", which ensures that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator who also has a continuing monitoring and enforcement role

[www.cicregulator.gov.uk/](http://www.cicregulator.gov.uk/)

- **Social enterprise** – this is a business that trades in the market to deliver its social aims and may be a cooperative, owned and run by its members. It may be a Community Interest Company or a limited company with a social purpose.

[www.cabinetoffice.gov.uk/third\\_sector/social\\_enterprise/guidance\\_resources.aspx](http://www.cabinetoffice.gov.uk/third_sector/social_enterprise/guidance_resources.aspx)

[www.cicregulator.gov.uk/](http://www.cicregulator.gov.uk/)

[www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1077475767](http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1077475767)

It is possible to move from one form of legal structure to another as an organisation develops and its need change.

#### **The structure of maintained sector childcare businesses may be:**

- **Children's Centres** - operated by the local authority for families and young children
- **Crèches** - run by leisure centres, for children
- **Holiday playschemes** - run by local authorities for children and young people

#### **Sources used:**

Business Link website - legal structures: the basics

Team Steps to Success (SureStart/A4e)

Voluntary but not Amateur (Ruth Hayes & Jackie Reason)