



# Public Participation Network Wicklow

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**Submission to:**

**The Law Reform Commission Consultation Paper on the  
Liability of Clubs, Societies and Unincorporated Associations**

**By  
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May 2023**

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**17** PARTNERSHIPS  
FOR THE GOALS



## Introducing County Wicklow Public Participation Network

County Wicklow Public Participation Network (PPN) was established in July 2014 under the directive of the Department of the Environment, Community & Local Government and in accordance with legislation in the Local Government Reform Act 2014 (Section 46). Public Participation Networks were established to be an independent structure that would become the main link through which local authorities connect with the community, voluntary and environmental sectors in a process to facilitate communities to articulate a diverse range of views and interests within the local government system.

Co Wicklow PPN has 411 diverse member groups, some of these groups are networks in their own right. PPN representatives serve as a voice for the community on structures including: the Local Community Development Committee; all of the Wicklow County Council Strategic Policy Committees; Wicklow County Childcare Committee; Co Wicklow Children & Young People's Services Committee; Co Wicklow Local Sports & Recreation Partnership; Co Wicklow Volunteer Centre, County Wicklow Partnership, South East Fisheries & Local Action Group, Ring a Link, Co Wicklow Joint Policing Committee and Wicklow Heritage Board. PPN Representatives strive to ensure that the needs of the community sector are prioritised within local policy processes.

### Basis for Submission

Throughout, May 2022, Co Wicklow PPN in collaboration with Wicklow County Council held consultations across the 5 Municipal Districts of Co Wicklow, asking people "What is your vision for your community?" We asked them to consider this question under the following headings:

- Environment & Sustainability
- Health (physical & mental)
- Work, Economy, & Resources
- Social & Community Development
- Participation, Democracy & Good Governance
- Values, Culture & Meaning



We received approximately 2,000 inputs (ideas/issues/suggestions) from over 300 people who represented 74 community groups & networks.

Co. Wicklow PPN liaised with the Law Reform Commission on the organisation of a zoom call on the 1<sup>st</sup> March 2023 for our PPN colleagues from other Local Authority areas. The aim of the zoom was to support PPNs to engage with this consultation. Attendees found out more

about this consultation, gained a better understanding of the proposed changes to the law in relation to Unincorporated Associations and shared their insights with the Law Reform Commission.

This submission is based on what we heard from our member groups and on the zoom call with the Law Reform Commission held on March 1<sup>st</sup> 2023

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#### Aims for changing the law

- Make the law on unincorporated associations easier to understand.
- Reduce the work that unincorporated associations need to do to comply with the law.
- Help individuals deal with unincorporated associations.
- Make it possible for the assets of an unincorporated association to be used so that the association can meet its responsibilities.
- Change the law so that unincorporated associations can sue and be sued.
- Make the law on how members can be found liable clearer.
- Make it easier to understand how the law applies to unincorporated associations.
- Make it possible to enforce the law on unincorporated associations.
- Make it possible for people to sue an unincorporated association even if they are a member.

*Do you agree with the aims of law reform that we have listed above?*

Yes

*Please explain your answer*

As a Network for a diverse range of community and voluntary groups/clubs we are very aware of the following issues for unincorporated associations:

Most unincorporated associations depend solely on volunteers who did not volunteer their time to spend it dealing with administrative bureaucracy and wading through legal documents and forms. Clarity and simplification of the law in relation to their operation would be very welcome.

Smaller unincorporated associations may not have the human or financial resources within its membership to deal with the paperwork currently associated with registering and operating as a legal entity and/or registering as a Charity.

Volunteers and members of all unincorporated associations need to be protected from personal legal liability in relation to their voluntary work. A volunteer's liability should not be impacted by the legal status of the organisation they choose to volunteer with.

We regularly hear from our member groups about the real concern and fear amongst community volunteers of being personally sued in relation to their involvement with an unincorporated association. This fear is resulting in people not initiating or getting involved in voluntary community activity.

*Do you disagree with any of the aims of law reform that we have listed above?*

No

*Please explain your answer*

Our member groups are reporting that they are overwhelmed and disillusioned by the bureaucratic burden placed on volunteers who may not have the time or the skills set to deal with all the governance & regulatory procedures that they are now required to address. Ensuring that the law on unincorporated associations is easier, clearer, fairer and that it removes the risk of volunteers being personally sued is necessary.

*Can you think of any other aims of law reform that we should think about when talking about unincorporated associations in Ireland?*

Yes

*If 'Yes', please tell us about them here.*

If it becomes possible for unincorporated associations and other small community groups to be sued this could create difficulties in relation to:

Increases in insurance premiums which in turn will put further pressure on the already stretched financial resources of community groups. Therefore, we would suggest that the book of quantum be reviewed and a National Insurance Scheme for the non-profit sector be explored.

The contribution of volunteers within our society needs to be acknowledged and protected. Volunteers should not be expected to lead work in essential services and risk being sued.

Consideration of the following within the context of unincorporated associations is suggested:

- Can a member/volunteer have the same rights of protection as a paid worker?
- Can members/volunteers be protected under law for a mistake they might make?
- Can a voluntary organisation and its clients be protected from a mistake the member/volunteer might make?

What ways could we change the law in Ireland? There are many ways we could change the law to achieve the same aim.

There are three models of reform that we could choose from.

Model 1: Change the law to create 'non-profit registered associations. If an association registered, it would become a legal entity separate from its members.

Model 2: If an unincorporated association fit certain criteria, it could become a separate legal entity from its members.

Model 3: If an unincorporated association is not a separate legal entity from its members, the law must say how an unincorporated association could be held liable in contract, tort and criminal law (defined in Chapters 2 and 3). This would mean changing a lot of laws, in particular legislation.

### Company Limited by Guarantee

What about becoming a company limited by guarantee (CLG)?

Unincorporated associations turning into companies limited by guarantee would help solve many of the problems we have talked about. In a company limited by guarantee members do not have to buy shares or invest their own money. Becoming a company limited by guarantee might be a good solution for a large unincorporated association because it can:

- own its own property
- enter contracts
- hire employees.

However, this option can be expensive and requires a lot of paperwork. This means that it may not work for smaller unincorporated associations.

Questions: Becoming a company limited by guarantee

An association could become a company limited by guarantee (CLG) and this would solve some of the problems.

Do you think there is a need for another way to give unincorporated associations legal personality?

Yes

Please explain your answer

There currently exists huge diversity of size, capacity and focus amongst Unincorporated Associations in Ireland and therefore a one size fits all option would not seem appropriate or sufficient. Consequently, we believe there is a need for another way/s to give unincorporated associations legal personality, if they choose to follow that course of action.

The Company Limited by Guarantee option can be too costly and burdensome for many smaller organisations many of whom may not need to own property, enter contracts or hire employees.

The extra burden on a group of having to become a Company limited by guarantee could dissuade volunteerism.

#### Model 1

Change law to create 'non-profit registered associations' This model would make it easy to register to become a new type of association called a 'non-profit registered association'. If an association registered, it would become a legal entity separate from its members.

*Do you approve of Model 1?*

Yes

*If you said 'Yes', what information should be recorded when an association is registering?*

- Name of the association
- Main purpose of the association
- Contact details – email address should not be a personal email. Organisation should set up an email for the group/organisation
- Committee members and officers if not a flat structure.

## Model 2

If an unincorporated association fits certain criteria, it can become a separate legal entity from its members. In this model, associations would automatically become separate legal entities from their members. Associations that fit the criteria would not have to register. This model could apply to any association that is registered for a Revenue tax exemption. There would be a different way to choose which associations automatically became a separate legal entity. This would be to set out in law and show the exact criteria required which could include or require:

- a minimum number of members
- a constitution-type document
- a set of rules.

*Do you think Model 2 is the right approach?*

No

With changes in volunteer committee members and administrative work done on a voluntary basis, a group may not be aware that it has a separate legal entity.

Important for a group/members to make a decision around their governance and in so doing understand its implications for the group.

Many smaller groups do not register for a Revenue Tax exemption, and many are still not registered with the Charities Regulator so they would fall outside the qualification criteria for this Model.

Our experience is that almost all groups do have a constitution-type document, which includes a set of basic rules of operation.

In addition, with this model, confusion about the legal entity of the organisation may continue and someone entering into a contact with the group may also not be clear about the legal status of the group.

*If you said 'Yes' to 2, what do you think the criteria should be?*

### Model 3

No separate legal entity but subject to law Using this model, an unincorporated association would not have a separate legal entity from its members, but existing laws would change to make it easier to make an unincorporated association liable in contract, tort and criminal law. The problems discussed could be resolved by making changes to the law so that it is clearer and fairer. This could be achieved by making changes to a number of laws. Here are some examples of what might be done:

**Contracts** The law could be changed to allow unincorporated associations to enter contracts and be part of contracts.

**Legal cases** The law could be changed

- To allow Individuals to take a case against an unincorporated association as if it were a company.
- To say that members of an unincorporated association would not be liable in contract law, tort law, criminal law or regulatory law.
- To say that members would only be liable for their own wrongdoing.

**Legal documents** The law could be changed so that rules about where legal documents should be sent, and other relevant rules would be the same as if the unincorporated association was a company.

**Identify members** The law could be changed so that an unincorporated association would have to identify who its members were.

**Cases against association not individual** The law could be changes so that cases taken against unincorporated associations would be brought against the unincorporated associations and not against the members of unincorporated associations. Members could sue The law could be changed to allow members to sue their unincorporated association.

*If you think Model 3 is a good approach, which of these changes should be made to civil law?*

*Tick each one that applies.*

*Contracts: An unincorporated association should be able to enter contracts and be part of contracts. However, they should only be able to do this if they followed the rules of their unincorporated association.*

Agree

*Legal cases: Individuals would be able to take a case against an unincorporated association as if it were a company.*

Agree

*Liability: Members would not be liable in contract law, tort law, criminal law or regulatory law. They would be liable only for their own wrongdoing.*



Agree – only if they have not adhered to group policies and procedures.

*Documents: Rules about where legal documents should be sent and other relevant rules would be the same as if the unincorporated association were a company.*

Agree – but this must be straightforward and not overly burdensome.

*Identify members: The unincorporated association would have to identify who its members were.*

Agree – only name committee members and office holders. Groups should have a clearly worded statement about their membership rules.

*Association responsible not members: Cases taken against unincorporated associations would be brought against the association, but not against its members.*

Agree

*Members could sue: Members could sue their unincorporated association.*

Agree – Circumstances where members can sue must be clearly identified. There is a concern that this could result in an increase in claims and a subsequent increase in insurance costs.

*Are there any other practical things that should be considered in the law for Model 3?*

*Do you have any other thoughts on Model 3?*

Yes

*If 'Yes', please tell us about them here*

Ownership of Property/land – how would this be addressed.

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General Comments:

As we understand it

- All three models outlined in the paper expand the potential liability of clubs (as they can be sued)
- And Eased litigation will result in increased insurance costs.

The changes suggested in the consultation paper if implemented could negatively impact on volunteerism (dissuade volunteers),

However, the current situation where a person who has not paid their membership fee can sue a club if injured, yet a paid-up member suffering injury in the same way, could not, is unjust as is a situation that members of the group can be sued personally because of their involvement in the unincorporated association.

Limiting the personal liability of volunteers and addressing the discrepancy between members and non-members of a group being able to sue is essential. While addressing these issues any reform must take cognisance of:

- Additional bureaucratic and administrative burdens
- Increases in insurance costs for groups if the reform makes it 'easier' for people to take a case against the association.

As Unincorporated Associations include a diverse range of groups, with different levels of capacity, addressing different activities including sporting, social, community and environmental the liability of these associations does require reform and one model may not be the solution due to the diversity of UAs.

Based on what we hear from our members achieving a balance between clarity re liability in law and nurturing the volunteerism is the challenge and one which may require ongoing consideration and review and reform.

While not within the remit of this consultation, we feel it is important to report that our membership is calling for:

Additional resources to support them to implement good governance, including for example the implementation of volunteering risk assessments.

Recognition and acknowledgement of the different levels and responsibilities of volunteering roles is needed and there needs to be supports for each level e.g. a voluntary boards need support to fulfil their legal responsibilities and protect themselves and their relevant stakeholders from risk and litigation.