

Factsheet - Organisational & Legal Structures for setting up Community Broadband Organisations

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1. Introduction

Is your community interested in getting Superfast Broadband?

“...our goal is simple; within this Parliament we want Britain to have the best superfast broadband network in Europe” Jeremy Hunt, Secretary of State for Culture, Media and Sport (DCMS).

If the answer is YES, now is the time to act. BDUK, part of DCMS, is the delivery vehicle for the Government’s policies on broadband. The Government has invested £530m through to 2015 to support the rollout of broadband into rural areas. Community schemes are already playing a role in the deployment of broadband across the country and will be crucial in enabling the coverage and reach of superfast broadband. The Government’s 2010 strategy document, *“Britain’s Superfast Broadband Future”* promised that, where communities wish to extend or even build their own networks then Government will work with them to ensure this can be done, if it is practical to do so. BDUK is providing guidance and resources to help at <http://discuss.bis.gov.uk/bduk/resources>.

What does superfast broadband mean?

Superfast broadband is currently defined as speeds greater than 24Mbps. The EU has set a target of access for all of at least 30Mbps by 2020 and for half the population to have 100Mbps by then; the UK foresees that the user experience is just as important as any download speeds. Many rural communities currently experience very low broadband speeds of below 2Mbps and in many cases have no broadband connection at all.

What this Fact Sheet aims to do?

This Fact Sheet has been prepared to help community groups working to deliver rural Superfast Broadband in their communities decide how best to organise themselves as a legally recognised and constituted body. It aims to consider the different types of organisational structure and to select the most appropriate form to help deliver their objectives.

Experience to date is indicating that the majority of solutions to provide Superfast Broadband in rural communities will involve some form of partnership co-operation between the community concerned, the public sector (usually in the form of the local authority) and the private sector.

This recognises that delivering Superfast provision in many rural communities is beyond any form of commercially viable solution; therefore the private sector alone will not invest without some level of intervention by the public sector, but that any enabling finance that the public sector does bring forward will be within certain limits.

The need for community action

The key driver for action has to be the community itself. This is because it is only through community action that a rural area can demonstrate both the need for the service, likely demand take-up levels, access agreements with local land owners and provide a platform for negotiation with other partners.

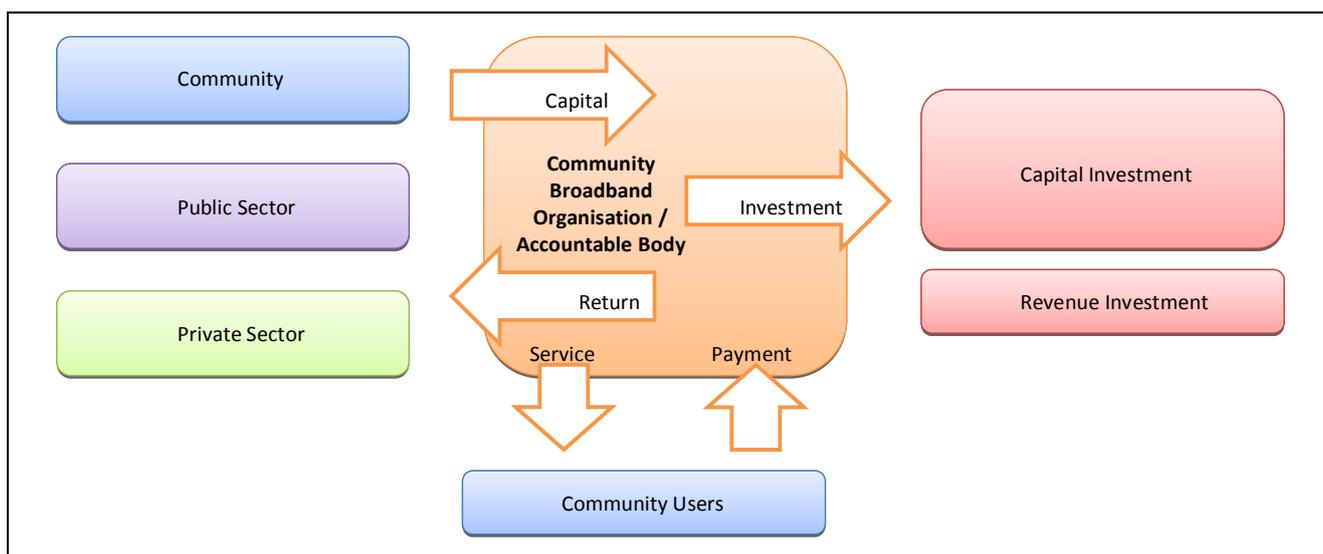
The need for an organisational and legal structure

In all cases, where a community group is accessing public sector grant, private sector or even third sector funding in the form of loans or the issuing of shares for capital or grants from third-parties, a degree of transparency and oversight will be required, which is commensurate with the requirements of those providing support.

The local community has to organise itself as a conduit for funds to deliver the project, so choosing the right organisation and legal structure is important. However, equally important is for the community to first decide what it is trying to achieve and what it needs or wants its Community Broadband Organisation to do – see Questions to ask at section 6.

The diagram below (Figure 1) is a simple illustration of the likely structure needed for broadband delivery and the relationships (financial and service delivery) between the community, public and private sector. In this example, the community intends to raise finance through grants, private sector investment (perhaps from a telecoms provider) and community finance through shares or loans from local people. The intention illustrated is that the community will own in whole or part the broadband infrastructure and to take an active role in delivering and managing the service in the future.

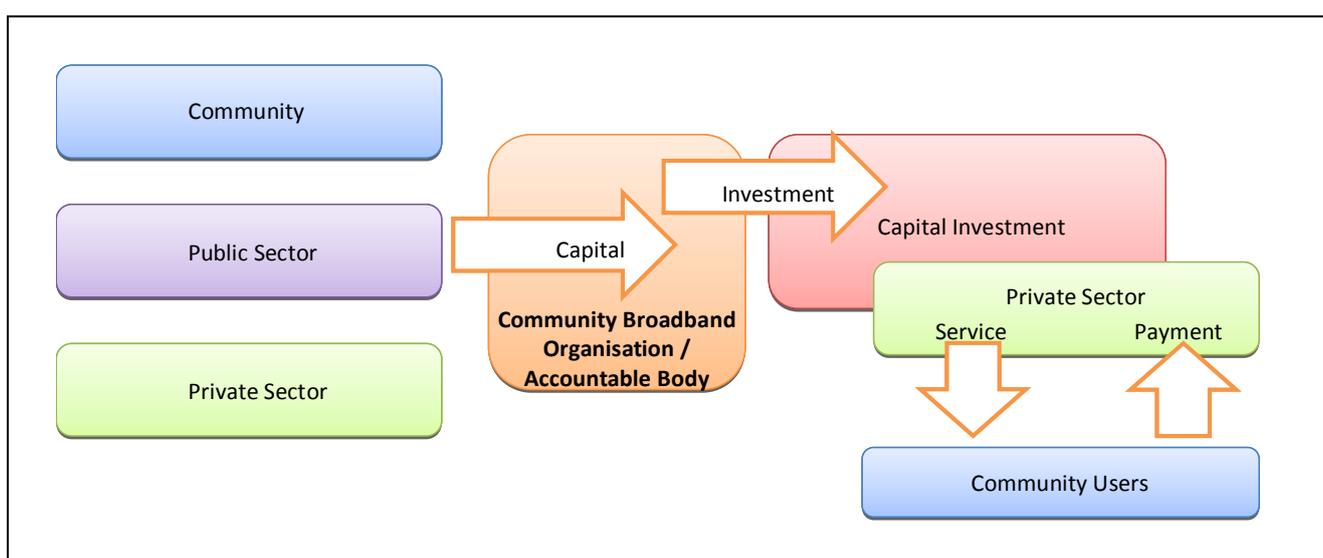
Figure 1: Community Broadband Delivery Model – invest, own and operate



The second diagram (Figure 2) below shows a slightly different arrangement where a community wishes to act as an ‘enabler’ bringing together and perhaps helping to make the demand and need case in their local community for public and private sector investment to deliver the broadband infrastructure but then to hand on the ownership of the infrastructure for the long term management and operation of the service by the private sector provider.

In this example, the community works to raise finance through public sector grants and private sector investment (perhaps from a telecoms provider) through cash and equipment.

Figure 2: Community Broadband Delivery Model – Build & Commission



2. Why do you need a legally recognised body?

Having a legally recognised and constituted body establishes how that body regarded in law. Having this recognition is essential where a community may be seeking to raise capital through various means; entering into legal agreements with third parties; employing staff and engaging in delivering services such as the provision of Superfast Broadband.

Having a legal constitution provides a structure, which sets out how an organisation is owned, managed and financed. It also determines how it trades and operates and provides contingencies to take account of any change in its circumstances such as personnel, finance or trading. If you are not incorporated, as a community group, the group still effectively has a legal form but this will have no existence separate to that of your membership.

In circumstances where a legally constituted body is acting on behalf of a community and particularly where it is seeking finance from shareholding, grants and loans etc, it is essential that adequate transparency exists so that the community can have management oversight of its operation and ultimately have the means to make changes if necessary.

3. Types of Legally Constituted Bodies (structures)

There is a range of organisational structures that communities looking to establish a community broadband organisation can consider, but as you might perhaps expect, some are more suitable than others. The choice to be made is usually through a process of logical elimination. Some structures for obvious reasons are not suitable; for example, a Private Limited Company works for a private enterprise (its purpose is to build capital and make profits for its individual shareholders) but is completely unsuitable for a community enterprise.

This fact sheet covers what are generally regarded as the most appropriate structures for setting up a community broadband organisation, based on case studies and the experience of others. These are:

1. Limited Company (Company Limited by Guarantee)
2. Community Interest Company (CIC)
3. Community Benefit Society (aka Industrial & Provident Society or 'BenCom')
4. Charitable Incorporated Organisation

A. Limited Company (Company Limited by Guarantee)

Company formations including companies limited by guarantee are regulated by Companies House and the latest guidance can be found at <http://www.companieshouse.gov.uk/about/gbhtml/gbf1.shtml>. This should always be checked for the up-to-date guidance.

i) What is a Company Limited by Guarantee?

A company limited by guarantee is similar to a private limited company but the liability of members, often volunteers is limited, usually to £1. Private limited companies are formed under the Companies Act, regulated by Companies House and as such its finances are separate from that of any individuals. Guarantee companies can be useful for a social enterprise that requires corporate status to trade. The profits made in a guarantee company are retained for the use of the company and are not distributed to members, as can be the case in a private limited company.

A guarantee company can own property, enter into contracts and trade just like a private company and its members are required to follow the laws and regulations that govern other types of limited companies. These regulations are set down by the Companies Act and regulated by Companies House. Just as with a CIC, a guarantee company provides a legal identity that is well understood by banks, suppliers etc.

A company limited by guarantee does not have shares; its members therefore do not own it but they make decisions on its behalf. Members cannot claim benefits such as dividends and they cannot use the assets of the company for personal gain.

The constitution of the company is defined by its Memorandum and Articles of Association (M&A), which sets out its Objects. They define unambiguously what the company is set up to do. These could be to benefit a particular segment of society or a geographic area, or to deliver a particular kind of service or combination of benefits. Often companies limited by guarantee are also registered as charities, in which case the Objects of the company need to pass a 'charitable' test defined by the Charities Commission, so it is important to decide if this is to be the case before agreeing the M&A – see http://www.charity-commission.gov.uk/Charity_requirements_guidance/.

It is quite common for charities to have a structure, where the registered charity is a company limited by guarantee and owns a 'wholly-owned subsidiary' that is used as a trading arm. This is useful where it makes financial sense for the charity (and all its fiscal and charitable grant benefits) to be separated from the trading functions; the common example most people will be familiar with is high street charity shops, and delivery of services such as social care.

ii) Why might you use a Company Limited by Guarantee structure?

A company limited by guarantee is the most straightforward vehicle to choose if the project is readily defined and limited in extent; for example, if it is a straight forward capital infrastructure project, where the delivery of the service that follows is going to be commissioned and delivered by others. However, a company limited by guarantee does not have share capital and so is unable to raise capital by this means, so if community investment is required, this model starts to become unviable. In addition, if community oversight is required, then it is again questionable whether this structure provides enough transparency or the ability to lock assets for community benefit.

iii) Using a Company Limited by Guarantee as a stepping stone

It might be appropriate to use a Company Limited by Guarantee (CLG) as a structure that provides a community with its first organisational step. This allows a community project to have legally recognised form, establish bank accounts, make applications for funding and continue to develop its business model while considering how it should ultimately be constituted.

The community may choose to remain as a Company Limited by Guarantee or to convert to a Community Interest Company (CIC); in which case the process is relatively straightforward as both a CLG and a CIC are regulated under the Companies Act.

If the project is only concerned with the delivery of infrastructure, then once delivered, the reason for the company to exist may cease and its members may choose to wind up its affairs and dissolve the company through a form of voluntary liquidation. In this case any remaining claims against the company will need to be met by the residual assets although the asset rules for a CIC differ in terms of the asset lock (see below).

B. Community Interest Company (CIC)

The CIC structure is a relatively new form, introduced by the UK Government in 2005. CICs are regulated by the Office of the Regulator of Community Interest Companies, part of the Department of Business Innovation and Skills (BIS). The regulator operates a web site which includes an extensive database of reports and guidance on CIC formation; see <http://www.bis.gov.uk/cicregulator> and this should always be used to check the latest information. The regulations governing CIC formation are quite onerous and the use of an accountant is recommended to ensure that paperwork is properly completed in establishing a CIC.

i) What is a CIC?

Community interest companies (CIC) are a type of limited company designed specifically for those wishing to operate for the benefit of the community rather than for the benefit of the owners of the company. This means that a CIC cannot be formed or used solely for the personal gain of a particular person, or group of people. In setting up a CIC, the Regulator has to approve the registration of the company as a CIC, and will look for a "community interest test" and "asset lock" to ensure that the CIC is established for community purposes and its assets and profits are dedicated to these purposes. The Regulator also has a continuing monitoring and enforcement role.

CICs can be limited by shares, or by guarantee. The statutory "asset lock" ensures the assets and profits are retained within the CIC for community purposes, and also prevents transfer to any other body other than another CIC or charity. Share issue can therefore be used as a mechanism to raise money from the local community.

A CIC cannot be formed to support political activities and a company that is a charity cannot be a CIC, unless it gives up its charitable status. However, a charity may apply to register a CIC as a subsidiary company.

CIC's are being recognised more and more as an effective legal form for social enterprises. They are particularly attractive to those wishing to enjoy the benefits of limited company status and to make it clear that they want to be established for the benefit of the community rather than their members, or when their members are clear that they do not wish to set up a charity.

Care is needed in setting up a CIC to ensure that proper definition of the 'community interest' is made, given that it can be broader than a local geographic community, for example an 'interest' might be concerned with any group of individuals that have a common interest. In its guidance the CIC Regulator states; *"Any group of individuals may constitute a community if they share a common characteristic which distinguishes them from other members of the community and a reasonable person might consider they constitute a section of the community (Regulation 5). However, a company which benefits a group which may be clearly defined, but which a reasonable person might not consider to be a genuine section of the community (e.g. "my family", "my friends", or "regular drinkers of ABC beer"), is unlikely to be eligible to be a CIC. In other words, in the CIC Regulator's view, regulation 5 has to be interpreted against the overall background of the view which a reasonable person would take of what constituted a section of the community for the purposes of the*

community interest test.” Seeking Next Generation Access (NGA) or superfast broadband for a community should pass the community interest test but if in doubt guidance should be sought from the office of the CIC Regulator.

ii) Why might you use a CIC structure?

The CIC form aims to meet the needs of organisations which trade with a social purpose (“social enterprises”) or carry on other activities which benefit the community. The different formats allowed under the CIC structure (limited by guarantee, public or private companies limited by shares) and the ability in some cases to pay limited dividends give a flexibility to tailor the CIC form to particular needs.

A CIC also uses a familiar company structure of shareholders and directors and a corporate governance system well understood by bodies such as banks, suppliers and advisers. This is useful for a community and makes work such as setting up bank accounts, establishing contracts with suppliers and staff, less onerous.

The asset lock provision gives confidence to those wishing to fund CIC’s, and those dealing with CIC’s, that the assets and profits will primarily be devoted to the benefit of the community rather than rewarding the owners or investors. The annual Community Interest Report which has to be submitted to the Regulator ensures transparency and that those affected by, and benefiting from the CIC’s activities, are being properly recognised as stakeholders.

Many CIC’s undertake activities to generate profits to support broader community purposes, and this can also be attractive as an ambition to some local communities, looking to set up a Community Broadband Organisation.

Although the landscape is still evolving, there is some evidence emerging to suggest that the CIC structure may be less attractive to some funding organisations, who may be concerned about the complexity of the CIC’s structure and whether a CIC actually fully reflects or represents its local community.

iii) Is a CIC a suitable structure for community broadband projects?

In some cases a CIC is appropriate; particularly where a small group from a community take the initiative in their community and don’t need wide community agreement and investment to proceed. The model also works where the CIC will continue to own and operate the ‘assets’ created by the project.

Caution is needed in using a CIC where there may be a need to allow other third parties to take over the ownership or operate assets of a CIC on some form of free of charge or reduced price and this applies to capital and revenue. This is due to the asset lock, which is a key element of all CICs.

The asset lock is designed to ensure that the assets of the CIC including any profits or surpluses generated are used for the benefit of the community. Assets must be retained within the CIC or, if transferred, must satisfy one of the following criteria:

- Transfer is made at full consideration (market value) so that the CIC retains full value of the asset,
- Transfer is made to another asset-locked body (CIC, charity, permitted IPS or equivalent),
- Transfer is made to another asset-locked body with approval of the CIC Regulator,
- Transfer is made in another way for the benefit of the community.

CICs assets cannot be returned to its members, apart from under certain circumstances, such as a dividend, but this is very limited.

iv) How does the regulator interpret the transfer of an asset?

Any transfer at less than market value will be given a very wide interpretation by the regulator. Payment for services must represent full market value and payment to staff or Directors must not be disproportionate to their ability or the services they perform. Management and services charges by third-parties must represent value for money.

v) CICs assets can be used as collateral

A CIC in these terms is just like a normal trading company with its usual duties and obligations. The asset lock is not a bar on a CIC using its assets for normal trading, to undertake business activities or to meet its financial obligations.

vi) What does this mean for community broadband projects?

A CIC can be appropriate for community broadband projects where the community intends to own (in whole or part) and operate assets on behalf of the community and potentially create a revenue stream from the activity.

If there is any prospect that the assets of the project (capital items or potential revenue streams) may need to be transferred for a sum below full consideration, then a CIC should probably be avoided as a structure until the project team fully understands the implications of such a transfer.

Under the RCBF guidelines (insert link when available) some of the models such as 'Build and Benefit, Partnership or Concession' may not suit a CIC model. Once the assets created by the project are in a CIC then the asset lock above applies and significantly reduces the flexibility of transfers.

One option is for projects to start with a structure such as a Company Limited by Guarantee, which is simple and has exactly the same corporate structure as a CIC. It will allow application to a range of funding sources such as RCBF and, if circumstances dictate, can be transferred into a CIC at a later date.

C. Community Benefit Society

A community benefit society is a form of co-operative and it used to be known as an Industrial & Provident Society. In shorthand it is also known as a 'BenCom'.

i) What is a BenCom?

A community benefit society is regulated by the Financial Services Authority (FSA) http://www.fsa.gov.uk/pages/doing/small_firms/msr/societies/index.shtml rather than Companies House. As its name implies, a community benefit society is required to operate for the benefit of the community it represents, not for the financial or other gain of investors.

In many ways, a BenCom can operate in much the same way as a limited company, for example:

- Its shareholder or members have limited liability, so they cannot be held liable for any debts above and beyond the value of their shares;
- It has a legal identity just like a limited company and can enter into agreements or contracts with third-parties; and
- It can own property, assets, borrow money and employ staff and contractors.

The main difference between a community benefit society and a limited company is that it is democratically controlled by its members on the basis of OMOV (one member one vote) so each member has the same amount of say, irrespective of their shareholding.

Legislation requires that a BenCom must have some special reason for registration as a society and not as a company. Usually this means that benefits will not be returned to members and that the business will be conducted for the community including adherence to the co-operative principle of one member, one vote, regardless of contribution.

Membership should normally be open to all. There may be grounds for limiting membership as long as these do not offend co-operative principles. A club membership might be limited by the physical size of its premises for example. A limit on membership for a broadband community project that does not offend co-operative principles might be more difficult to define.

ii) Why might you use a BenCom structure?

A community benefit society is not as simple to set up as a company limited by guarantee or community interest company but they have features which do make them very suitable for community broadband projects. They can offer shares for sale to the public, outside the requirements of the Financial Services Act 2000 (FSMA), and this makes them very useful for attracting shareholding members from across a community as well as raising necessary capital to make a project work.

D. Charitable Incorporated Organisation (CIO)

i) What is a CIO?

This is a new legal entity, the legislation for which has not yet passed through Parliament, see:

http://www.charitycommission.gov.uk/Start_up_a_charity/Do_I_need_to_register/CIOs/default.aspx

It will be a new type of incorporated charity, which is not a company. This means it only has to register with the Charity Commission and not with Companies House. It is intended to have all the corporate benefits of a company as well as limited or no liability for Trustees. It is also intended to reduce the burden of administration on charities.

ii) Why might you use a CIO?

A CIO is an incorporated form of charity which is not a company and it only has to register with the Charity Commission and not Companies House. A CIO can enter into contracts in its own right and its trustees will normally have limited or no liability for the debts of the CIO. The Charity Commission believes that a CIO will be most suitable for small to medium sized organisations which employ staff and/or enter into contracts.

4. Deciding on the most appropriate structure for your community broadband organisation

Step 1: Decide what you want your Community Broadband Organisation to do

Before considering the choice of organisational structure, it is really important to decide what the community is trying to achieve and how involved it wants to be in terms of installation of infrastructure and longer term service delivery. As part of the process for deciding on a preferred structure, it is always advisable to have written down and prioritised the objectives/action tasks that the community is trying to achieve and what it needs its community broadband organisation to do, and then to look for a best fit against each type of organisational structure.

To help do this, there are a set of simple questions which you can ask yourself in deciding on your objectives and what you are looking for your community broadband organisation to do. An important first question is to ask whether you are looking for your community broadband organisation to be involved in more than just infrastructure delivery:

Short or long term structure?

- Q1. Are you looking for your Community Broadband Organisation's purpose just to be about infrastructure delivery? This means you do not want ownership of any assets; you are just facilitating getting the network in place and then someone else will run it.

If the answer to this is Yes, it is recommended that you keep your organisational structure as simple as possible - Company by Guarantee. Your organisation may well be disbanded after the work is complete.

If the answer to this is No, and you want to do more than just infrastructure delivery, then you are recommended to consider the other options of CIC or Ben Com. You are also recommended to work through the following questions, which have been organised under the themes of Finance, Infrastructure, Service Delivery and Community re-investment, set out as follows:

1. Finance

- Q1. Will it need to apply for and act as the recipient of public sector grants and/or grants from third parties such as charities, endowments and trusts?
- Q2. Will it seek to raise and hold community capital, for example through share issues or loans?
- Q3. Will it need to operate a bank account and potentially raise finance through a bank loan and/or overdraft?
- Q4. Will it need to pay contractors or consultants during the development and set-up phase?

2. Infrastructure

- Q5. Will it seek to own or hold interests in infrastructure assets (even if only for a temporary period) such as telecoms equipment, leases on fibre, way leaves etc?
- Q6. Will it actively install infrastructure, either appointing contractors directly, or organising 'dig-you-own' solutions?
- Q7. Will it commission telecoms partners to install infrastructure?
- Q8. Will it need to retain the flexibility to transfer ownership or interests in any assets held either to a private sector, public sector, or third party?

3. Service Delivery

- Q9. Will it provide its own broadband service, i.e. sell access to its network to service providers and/or broadband connections to its local community?
- Q10. Will it seek to hand over service delivery entirely or in part to a telecoms provider?

4. Community re-investment

- Q11. Will it generate and hold surpluses to re-invest in the infrastructure and/or on other community ventures?

Step 2: Compare and contrast the relative merits of each organisational structure to meet the objectives you have for your Community Broadband Organisation

Question	CLG	CIC	BenCom
Finance			
Q1. Will it need to apply for and act as the recipient of public sector grants and/or grants from third parties such as charities, endowments and trusts?	✓	✓	✓✓
Q2. Will it seek to raise and hold community capital, for example through share issues or loans?		✓	✓✓
Q3. Will it need to operate a bank account and potentially raise finance through a bank loan and/or overdraft?	✓	✓	✓
Q4. Will it need to pay contractors or consultants during the development and set-up phase?	✓	✓	✓
Infrastructure			
Q5. Will it seek to own or hold interests in infrastructure assets (even if only for a temporary period) such as telecoms equipment, leases on fibre, way leaves etc?	✓	✓	✓
Q6. Will it actively install infrastructure, either appointing contractors directly, or organising 'dig-your-own' solutions?	✓	✓	✓
Q7. Will it commission telecoms partners to install infrastructure?	✓	✓	✓
Q8. Will it need to retain the flexibility to transfer ownership or interests in any assets held either to a private sector, public sector, or third party?	✓		
Service Delivery			
Q9. Will it provide its own broadband service, i.e. sell either access to its network or broadband services to its local community?		✓	✓✓
Q10. Will it seek to hand over service delivery entirely or in part to a telecoms provider?	✓✓	✓	
Q11. Will it generate and hold surpluses to re-invest in the infrastructure and/or on other community ventures?	✓	✓✓	✓✓

- ❑ **CLG = Company Limited by Guarantee**
- ❑ **CIC = Community Interest Company**
- ❑ **BenCom = Community Benefit Society**

The ✓ allocated to each organisation type is designed as guide to their likely relative suitability to the task(s) required by a community. These are only suggested as a guide and nothing replaces obtaining professional legal and accountancy advice concerning the particular circumstances and objectives of each individual community.

5. Next Steps

It is advisable to conduct a suitable amount of research and gain as much information about organisational structures as possible and this can mainly be completed on-line. Using the links within this fact sheet will be a good place to start. You will also want independent help and advice and here is a good place to start:

National Council for Voluntary Organisations (NCVO) 020 7713 6161 <http://www.ncvo-vol.org.uk/>

Business planning and community consultation are also very important to establish and address needs and to help narrow down the most suitable form of accountable-body to meet your community needs and to work out what you want your Community Broadband Organisation to do.

Most importantly, before any decision is made, appropriate legal and accountancy advice should be sort in all cases.

6. Recommended Reading

There is advice and guidance available for communities thinking about setting up some form of community organisation from a wide range of sources. The following is a list of recommended sources and/or reading, either available as hard copy by post, via local libraries or as downloads via the Internet. These include:

□ Co-operatives UK

Co-operatives UK is the national trade body that campaigns for co-operation and has worked to promote, develop and unite co-operative enterprises. Co-operatives UK have developed three 'Simply' guides; Simply Governance, Simply Legal and Simply Finance and each covers the subject matter in the title in detail but in an accessible and user friendly format. These guides provide useful, rigorous, and up to date information that will benefit any community enterprise. Each of these guides is available from Co-operatives UK, Holyoake House, Hanover Street, Manchester, M60 0AS, 0161 246 2900 or as PDF downloads here: <http://www.uk.coop/category/key-word-tags/simply-series>

□ Charities Commission

The Charity Commission, as the regulator and administrator of charities in England and Wales publishes a range of essential and specialist guidance on charity governance, legal and financial matters. This is freely available from the Charity Commission and can be viewed and downloaded here: http://www.charity-commission.gov.uk/Charity_requirements_guidance/

In Scotland, the charity regulator is known as the Office of the Scottish Charity Regulator or OSCR here: <http://www.oscr.org.uk/>

□ **Office of the Regulator of Community Interest Companies**

The regulator, charged with the regulation of CIC's maintains a significant body of advice and guidance on their website here: <http://www.bis.gov.uk/cicregulator/guidance>

□ **Plunkett Foundation**

The foundation is particularly concerned with finding economic solutions to rural issues, enriching rural life and tackling rural needs. They have a range of guides and publications, many of which are specifically concerned with community-owned rural services, accessible here:

<http://www.plunkett.co.uk/resources/publications.cfm>

7. Acknowledgments and sources

This fact sheet draws together information made available freely from a number of organisations, some statutory and others voluntary, that can help community groups choose the most appropriate structure for a legally recognised and constituted body for their needs. The information does not attempt to re-invent the wheel but utilises and acknowledges a body of published work, mainly Internet-based, that can help community groups in making their choices.

Although this information has been compiled to be directed at community broadband projects, it owes its origins in the lessons and experiences learned from the wide range of other projects and services operated by communities all over the country. As acknowledged by the Plunkett Foundation in their short paper entitled 'Community Broadband Models' published in May 2011:

"We would also recognise that it draws on the experience of a wonderful range of people who have chosen to solve the challenges that they face through community ownership. We have drawn on this learning from shops, pubs, churches, energy, food transport and many other vital services where ordinary people, with limited technical knowledge, have chosen to deliver those services by coming together as a community."

Wherever possible, this paper has provided the live source reference for the information provided and the contact information of the relevant organisations.

Acknowledgements:

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