

Paper 1- National Trails Representational Options
1st Draft Discussion Paper
20 October 2016

Purpose of this report

1. To consider the options for setting up a National Trails body to aid future management of the family of National Trails. At the meeting of the representatives of the National Trails held in Birmingham on 12 July 2016, it was agreed to establish a working group of six.
2. The working Group's overall aim is to establish the parameters for a new National Trails body. The group was asked to explore the options and present back to the other National Trail representatives at an appropriate time. This report aims to do that.

Background

3. The idea of establishing some form of body to represent the National Trails is not new. It was first explored in 2001 when the then Countryside Agency appointed consultants to consider a range of options which was presented to a National Trails Conference 16 & 17 April 2002: Identify what other delivery mechanisms might be available eg one Trust covering all Trails; an individual Trust for each Trail; franchising; a charitable company and a combination of models. After considering options officers recommended to the Agency Board, that it approve in principle, the setting up of a National Trails Trust to cover all trails. However, the outcome from the conference from the overwhelming number of participants was not to pursue a Trust at that time.
4. In April 2008, the issue of whether a Trust should be established was raised once again when Natural England conducted a review of trails and routes their aim included to identify:
 - A new model for the future management and funding of national trails.
5. The review resulted in the establishment of the 'New Deal'.
6. The key driver for interest in creating a body to represent all National Trails resulted from the announcement by Natural England on 9 June 2016 that all National Trails budgets were to be cut by 50% in year 2016/17, and that there would be a programme of further cuts which would basically result in the demise of the 'New Deal' agreements.
7. Following a successful lobbying campaign the decision was reversed. However, DEFRA requested (Rory Stewart OBE MP 17 June 2016) that all National Trails work with Natural England to identify other sources of funding in order to reduce reliance on the public purse in the future.
8. There appears to be the assumption that the creation of some form of body could provide a lifeline for National Trails; by acting as a single voice; with an option to raise funding on behalf of all trails.
9. To aid a better understanding of this a "Guide to Legal Forms" has been set out (**Appendix 1**) which whilst listing some options that are wholly inappropriate, does

allow for at least a deeper understanding of the legal and future Governance complexities, which will be need to be considered in some depth.

10. However, by way of a Health Warning this draft discussion document has been prepared without the benefit of legally qualified advisors. It is therefore strongly advised that there will be a need for thorough examination of any proposed status for a body to represent National Trails, and what that actually means in terms of the governance and operational management.

What are the Governance options?

11. It is very important for all National Trails to give considerable depth of thought in advance as to precisely what we are seeking to achieve as being the purpose of National Trails and working together into the future. To set the chosen body's top priorities and agree its governance structure, management chain and independence. Once this is all very clearly established then and only then, will it be possible and necessary to agree upon the most appropriate "legal form" to use.
12. There are number of options that could be considered, but to try and understand the best options these have been narrowed down for the Partnerships to consider.
13. In essence the following summarises the following options.
 - Status quo – continuing as we are with each National Trail acting independently;
 - Company Limited by Guarantee;
 - Community Interest Company (CIC);
 - New charitable trust – a non profit delivery organisation;
 - Sub trust or organisation operating unit of a larger pre-existing trust or organisation;
 - Support from a Local or Lead Authority;

Status quo (National Trails acting independently)

This does not appear to be an option and although individually Trails could lobby and seek funding independently (and that this is likely to continue). There is however, a strong feeling that we should also have an option of being 'Better Together'.

Company Limited by Guarantee

Members of the company give a guarantee to pay a set sum if the company should go into liquidation, commonly limited to £1.00. The personal assets of the owners are not at risk.

A company must have at least one member. In a Company Limited by Shares, each share usually has a voting right attached to it so the members are able to vote on important decisions affecting the company. The arrangement is normally one share one vote, although many companies will create different classes of share with different voting rights attached. In a Company Limited by Guarantee the arrangement is usually one member one vote (OMOV).

Day to day management of a company is nominally separate from its ownership and undertaken by a director or board of directors, with the core principle that they act in the interest of the company and its members. However, directors may also be members, thus the simplest form of Limited Company is a single member who owns the whole company and is also its sole director. A company must have at least one

director (public companies described below must have two) and at least one director must be a real person.

More detailed information is available in (Appendix 1)

Community Interest Company (CIC)

A Community Interest Company (CIC) is a form of company (limited either by shares or by guarantee) created for so called 'social enterprises' that want to use their profits and assets for community benefit. CICs are easy to set up and have all the flexibility and certainty of the company form, but with several special features which ensure they serve a community interest:

- First, all companies applying to be registered as CICs must submit a community interest statement to provide the CIC Regulator with evidence that they will satisfy a community interest test defined in law. The company must continue to satisfy the test for as long as it remains a CIC, and must report annually to the Regulator.
- Second, a CIC must have an "asset lock" which restricts the transfer of the company's assets (including any profits generated by its activities) to ensure that they are used for the benefit of the community.
- Third, CICs are subject to caps on dividends and interest payable – to strike a balance between encouraging people to invest in CICs and the principle that the assets and profits of a CIC should be devoted to the benefit of the community.

Charitable Trust

A newly independent Trust would need some level of reserves (a 'endowment or dowry') to enable it to manage itself (working capital, cash flow, speculative developments etc.) This probably goes for the previous two options as well. This could be managed by creating a guarantee from the Partnerships to an independent Charitable Trust at a suitable level of funding or seeking an endowment or dowry from Natural England.

Trusts are unincorporated and have no legal identity of their own. They are essentially legal devices for holding assets so as to separate legal ownership from economic interest. A Trust holds assets on behalf of an individual or another organisation and governs how they are to be used. A Trust is run by a small group of people called Trustees who are legally responsible for the administration of the Trust and personally liable for any debts or claims against it that cannot be met out of the Trust's own resources. Trusts make their own set of rules – enshrined in a Trust deed – which sets the Trust's objectives and may be used to ensure that assets and profits are used for a particular purpose. Trusts do not typically raise finance – they simply manage assets and do not distribute profits. Trusts are often used in conjunction with unincorporated associations, which cannot themselves own property.

A Trust would need a Chief Executive-type figure. All independent Trusts appear to have one and also a number of Trustees. Fundamentally it's difficult to estimate what the costs associated with a Trust could be, but it would benefit from gift aid status.

Sub Trust or Organisation

There are a number of existing Trusts and organisations that may well be interested in acting as a body to represent National Trails. The Ramblers Association being one, having recently produced a paper 'National Trails, A Fantastic Future' looking at the ongoing management of National Trails.

There may well be other established Trusts or organisations that may be worth approaching. None have been contacted to date but there are already Trusts who specialise in environmental fund raising. There are also organisations currently representing National Park and Areas of Outstanding Natural Beauty that may be interested in also campaigning on behalf of National Trails.

Local/Lead Authority

Another option would be to formalise the current working group which appears to be currently performing the roles that any potential body we are seeking to establish would perform. This could be linked to a Local Authority or Lead Authority. The Partnerships would need to establish a clear governance structure, funding formula and membership, but this could be supported by an existing Lead Authority. For example, many Lead Authorities provide background support for current Partnerships; this could be expanded on by the provision of funding from Partnerships as outlined earlier. This could then provide specific staff support to a National Trails body as well as administering running costs (expenses for Members of the working group as required, room booking etc). There are also potential VAT benefits.

Funding

14. The report recognises the current restraints on resources and the expectation of further cuts that Partnerships may face. It notes that during the early phases of 'transfer to what ever solution' the delivery body usually receives some form of an endowment or dowry fund in this case this would be expected from Natural England. This would be to establish the financial stability of the new body and also provided capital for investment for the medium term and this needs further exploration with Natural England. This would appear to have been a factor in the stability and success of early Trusts such as the Canals and River Trust and Historic England.
15. To conduct further investigation of options thoroughly there will be a cost. Again in the first instance we should approaching Natural England to determine what financial or other resources may be available. Only after doing this should we look to our own resources as Partnerships to take forward any proposals.
16. There may however be another option in relation to the Heritage Lottery Fund resilient heritage fund, which on first view may be suitable to fund further investigation and potentially set up any future body.
<https://www.hlf.org.uk/looking-funding/our-grant-programmes/resilient-heritage>

What are Partnerships being asked to do?

17. To decide what form of status for National Trail should be explored further at this stage. This would potentially involve appointing independent consultants to look seriously at the feasibility and providing a report. Consider how this could be funded.

Steve Good
Alan Hulme
September 2016

A Brief Explanation of Unincorporated legal forms:

The distinguishing feature of unincorporated forms is that they have no separate legal personality. There are three main forms:

Sole Trader

This is the simplest way to set up and run a business:

Ownership and control of the business rests with a single individual. Being a Sole Trader is inherently risky because the individual is not separate from the business and has sole unlimited personal liability for the business, its debts and contractual obligations, and any claims against it. They own all the assets of the business and can dispose of them as they wish, and may employ staff and trade under a business name. However it is unlikely that sole trader status will be suitable for businesses which need more than a small level of external investment – being unincorporated limits borrowing and prevents the business raising equity finance by issuing shares.

Regulation for the Sole Trader is minimal: there is no requirement for a formal constitution for the business, and no need to register or file accounts and returns with Companies House. Sole Traders are treated as self-employed by HMRC and must register and make an annual self assessment tax return – profits from the business are treated as personal income subject to income tax and national insurance contributions.

Unincorporated Association

Unincorporated Associations are groups that agree, or 'contract', to come together for specific purpose. They normally have a constitution setting out the purpose for which the association has been set up, and the rules for the association and its members. They are typically governed by a management committee. All members of the management committee will again have unlimited personal liability, unless they are specifically indemnified in the constitution. As for a Sole Trader, there is a limitation on raising finance, minimal regulation, and self-employed tax status for management committee members.

Partnership

A Partnership is a relatively simple way for two or more legal persons to set up and run a business together with a view to profit. A partnership can arise, without any formal agreement, when people carry on a business in common, but typically there is agreement to trade as a partnership. Partners will usually draw up a legally binding partnership agreement, setting out such matters as the amount of capital contributed by each partner and the way in which they will share the profits (and losses) of the business.

Again the Partnership has no separate legal personality. Partners share the risks, costs and responsibilities of being in business. Because partners generally bear the consequences of each other's decisions, partners usually manage the business themselves, though they can hire employees. Partners usually raise money for the business out of their own assets, and / or with loans, although again being unincorporated limits borrowing in practice, and not being a company with a share capital prevents the business itself from raising equity finance by issuing shares.

Each partner is self-employed and pays tax on this basis on their share of the profits: The partnership itself and each individual partner must make annual self-assessment returns to HMRC, and the Partnership must keep records showing business income and expenses.

Legal persons other than individuals – such as Limited Companies or Limited Liability Partnerships – can also be partners in a partnership. They are treated like any other partner except that they have additional tax and reporting obligations – for example companies must pay corporation tax rather than income tax on their profits from the partnership.

Limited Partnership

Not to be confused with a Limited Liability Partnership (see below) – a Limited Partnership has two sorts of partner: general partners and limited partners. The form is similar to a Partnership, with the main differences being that the limited partners may not be involved in the management of the business and their liability is limited to the amount that they have invested in the partnership. Note that limited partners are different from ‘sleeping’ partners in a Partnership or Limited Partnership, who do not take part in running the business but remain fully liable for its debts. Limited partnerships must register at Companies House, and do not come into existence until they are registered. Changes to the partnership must also be registered.

Trust

Trusts are unincorporated and have no legal identity of their own. They are essentially legal devices for holding assets so as to separate legal ownership from economic interest. A trust holds assets on behalf of an individual or another organisation and governs how they are to be used. A trust is run by a small group of people called trustees who are **legally responsible for the administration of the trust and personally liable for any debts or claims against it that cannot be met out of the trust's own resources.** Trusts make their own set of rules – enshrined in a trust deed – which sets the trust's objectives and may be used to ensure that assets and profits are used for a particular purpose. **Trusts do not typically raise finance – they simply manage assets and do not distribute profits.** Trusts are often used in conjunction with unincorporated associations, which cannot themselves own property.

A Brief Explanation of Incorporated legal forms

Limited Company

The Limited Company is the most common legal form in use for running a business. Companies are ‘incorporated’ to form an entity with a separate legal personality. This means that the organisation can do business and enter into contracts in its own name.

On incorporation under the Companies Act, these days a company is required to have only one constitutional document namely Articles of Association – often just referred to as the Articles – which are essentially a contract between the company and its members, setting the legally binding rules for the company, including the framework for decisions, ownership and control. The Companies Act provides significant flexibility to draw up articles to suit the specific needs of the company, provided it acts within the law.

A Limited Company is owned by its members – those who have invested in the business – and as the name suggests they enjoy limited liability – i.e. the company's finances are separate from the personal finances of their owners and as a general rule creditors of the business may only pursue the company's assets to settle a debt. The personal assets of the owners are not at risk. There are two mechanisms for company membership:

Company Limited by Shares Most companies fall into category. Members each own one or more shares in the company and are therefore known as shareholders. Shareholders' limited liability means that they only stand to lose what they have already invested or committed to invest (amounts unpaid on shares), commonly £1.00 shares.

Company Limited by Guarantee

Members of the company give a guarantee to pay a set sum if the company should go into liquidation, commonly **limited to £1.00. The personal assets of the owners are not at risk.**

A company must have at least one member. In a Company Limited by Shares, each share usually has a voting right attached to it so the members are able to vote on important decisions affecting the company. The arrangement is normally one share one vote, although many companies will

create different classes of share with different voting rights attached. **In a Company Limited by Guarantee the arrangement is usually one member one vote (OMOV).**

Day to day management of a company is nominally separate from its ownership and undertaken by a director or **board of directors**, with the core principle that they act in the interest of the company and its members. However, directors may also be members, thus the simplest form of Limited Company is a single member who owns the whole company and is also its sole director. A company must have at least one director (public companies described below must have two) and at least one director must be a real person.

In a Company Limited by Guarantee, finance comes from the members, from loans or from profits retained in the business as working capital. A Company Limited by Shares can also raise capital from shareholders in return for a stake in the business – any profits from the business are usually distributed to shareholders in the form of dividends, apart from profits retained in the business as working capital. Limited Companies have a greater capacity to finance themselves with loans than unincorporated businesses, as they can use their assets as security for loans, creating a 'charge' over the company's assets. These charges are registered at Companies House, providing transparency about the extent of a company's secured credit. Lenders, including banks and building societies will therefore typically make incorporation a condition of providing a business loan.

The Limited Company form is subject to stricter regulatory requirements than unincorporated forms: greater accountability and transparency is the price to pay for the benefit of limited liability. Accountability is both to the company's shareholders and also to the public who may wish to deal with the business. **Companies are registered at Companies House, and it is the directors' responsibility to maintain the company's public records – including annual accounts and an annual return about the company – and to file them at Companies House.** They must notify Companies House of changes in the structure and management of the business.

If a company has any taxable income or profits, it must tell HMRC that it exists and is liable to corporation tax. Companies liable to corporation tax must make annual returns to HMRC. This does not prohibit ALL annual profits being gifted to individual National Trails.

A Company Limited by Shares is either a Private Limited Company (Ltd) or a Public Limited Company (Plc). The key difference is that the Public Limited Company is permitted to offer shares for sale to the public. The Private Limited Company is the most common legal form used by the vast majority of businesses – ranging from a business with a single shareholder director to large companies which have attracted large investments of private equity capital. Public Limited Companies usually begin life as Private Limited Companies but later go public for the advantage that this provides in raising finance. A Public Limited Company must have at least two directors and a qualified company secretary. It must have issued shares to the public to a value of at least £50,000. Public companies attract stricter regulation than private companies to ensure transparency and protection for the public investor, who is often more separated from the management of the company than in a private company.

A Public Limited Company may also become a Listed Company by floating its shares on a recognised stock exchange, creating a wider market for its shares. Listed companies are subject to even greater regulatory requirements in the form of listing rules and information disclosure requirements put in place to ensure the market works and maintains its integrity.

Limited Liability Partnership (LLP)

A Limited Liability Partnership is a body corporate with a separate legal personality similar to a company. Unlike in a normal partnership, the members of an LLP enjoy limited liability as the name suggests – liability is limited to the amount of money they have invested in the business and to any personal guarantees they have given to raise finance. Each member takes an equal share of the profits, unless the members' agreement specifies otherwise.

Much like a Partnership, each non-corporate member of an LLP needs to register as self-employed with HMRC, and both the LLP itself and each individual member must make annual self-assessment returns HMRC. Non-corporate members of an LLP pay income tax and national insurance contributions on their share of the profits. Additionally, LLPs must register and file accounts and annual returns at Companies House. At least two members must be “designated members” who hold additional responsibilities – it is they who appoint auditors and sign off and file the accounts at Companies House.

Limited Liability Partnerships have much more freedom than companies over arranging their internal affairs, for example in the way in which decisions are made, and the way in which profits are distributed to members.

Community Interest Company (CIC)

A Community Interest Company (CIC) is a form of company (limited either by shares or by guarantee) created for so called ‘social enterprises’ that want to use their profits and assets for community benefit. CICs are easy to set up and have all the flexibility and certainty of the company form, but with several special features which ensure they serve a community interest:

- First, all companies applying to be registered as CICs must submit a community interest statement to provide the CIC Regulator with evidence that they will satisfy a community interest test defined in law. The company must continue to satisfy the test for as long as it remains a CIC, and must report annually to the Regulator.
- Second, a CIC must have an “asset lock” which restricts the transfer of the company’s assets (including any profits generated by its activities) to ensure that they are used for the benefit of the community.
- Third, CICs are subject to caps on dividends and interest payable – to strike a balance between encouraging people to invest in CICs and the principle that the assets and profits of a CIC should be devoted to the benefit of the community.

Charitable Incorporated Organisation (CIO)

The Charitable Incorporated Organisation (CIO) is a relatively new legal form which became available to charities in England and Wales in 2012. Formerly charities wanting to incorporate normally did so as a Company Limited by Guarantee – which means dual registration with Companies House and the Charity Commission and dual regulation under company law and charity law. CIO status offers the benefits of incorporation, but the organisation only need be registered with the Charity Commission and regulated under charity law. The new form is intended to be used primarily by small and medium charities. Like any charity the organisation’s profits and assets will be locked in for charitable purposes.

Industrial and Provident Society

An Industrial and Provident Society (sometimes referred to as an I&P, or IPS) may take one of two forms:

Co-operative Society (Co-op)

A Co-operative Society is a membership organisation run for the mutual benefit of its members – serving their interests primarily by trading with them or otherwise providing them with goods, services and facilities – with any surplus usually being ploughed back into the organisation, although profits can be distributed to members. A Co-operative Society may or may not be a social enterprise, depending on its activities and how it distributes its profits.

A Co-operative Society is governed by rules, which must reflect the co-operative values and principles set out by the International Co-operative Alliance. The Alliance defines a co-operative as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through jointly owned and democratically controlled enterprise.

A Co-operative Society is incorporated – and so has a separate legal personality – and must register and submit annual accounts to the Financial Services Authority (FSA) rather than Companies House. As with a company, the members' liability is limited to the amount unpaid on shares. They have a principle of open membership and can therefore raise funds by issuing shares to the public. They are run and managed by their members, usually through a committee of officers, similar to a company's board, that manages on members' behalf. However, members always have democratic control on a "one member one vote" (OMOV) basis, regardless of size of respective shareholdings, under the co-operative values and principles.

Community Benefit Society (BenCom)

A Community Benefit Society (BenCom) is similar to a Co-operative Society except that it conducts business for the benefit of the community, rather than the members of the society. Indeed a BenCom must be run primarily for the benefit of people who are not members of the society and must also be in the interests of the community at large. Profits are not distributed among members, or external shareholders, but returned to the community. BenComs also often apply an asset lock, which protects their assets for the future benefit of the community. It is unusual for the BenCom to issue more than nominal share capital (eg one share valued at £1 per member. If more than nominal share capital is issued or if members make loans to the BenCom, dividends and interest paid are capped at a reasonable rate needed for the business to retain the capital it needs.

A BenCom can be established as a charity, providing it has exclusively charitable objects that are for the public benefit, allowing them to raise capital through public grants and charitable trusts. If approved, they're known as exempt charities – reporting only to the Financial Services Authority (FSA), not the Charity Commission. Charitable BenComs must have an asset lock.

Financial Mutuals

There are three other types of mutual form, not covered in detail here, that specifically exist to provide financial services. These are also registered with the FSA.

- **Building Society**

Building Societies are mutual financial services institutions, primarily providing residential mortgage lending, but also other financial services such as other forms of lending and investment, money transmission services, banking and insurance services. They are funded substantially by their members.

- **Credit Union**

A credit union is a cooperative financial institution that is owned and controlled by its members and operated for the purpose of providing credit at reasonable rates, and providing other financial services to its members.

- **Friendly Society**

A friendly society is a voluntary mutual organisation whose main purpose is to assist members financially during sickness, unemployment or retirement, and to provide life assurance.

Source of the above information is: Department for Business, Innovation and Skills