

CONSULTATIVE EVENT

Wicklow Public Participation Network

1 March 2023

ABOUT US

Our purpose is to review Irish law and make proposals for reform.

We also work on modernising the law to make it easier to access and understand.

Our proposals are developed in a process which starts with a Consultation Paper. Consultation Papers examine the law and set out questions on possible changes to the law.

Once a Consultation Paper is published, we invite submissions on possible changes to the law. We consult widely, consider the submissions we have received and then publish a Report setting out the Commission's analysis and recommendations. Many of the Commission's proposals have led to changes in Irish law.





INFORMALITY

No red tape, easy to organise with a focus on core activities rather than on administration and regulatory compliance.

NO LEGAL IDENTITY

Unlike a company, an unincorporated association has no distinct legal identity. It is a group of people with fluctuating membership rather than an entity with a legal existence of its own.

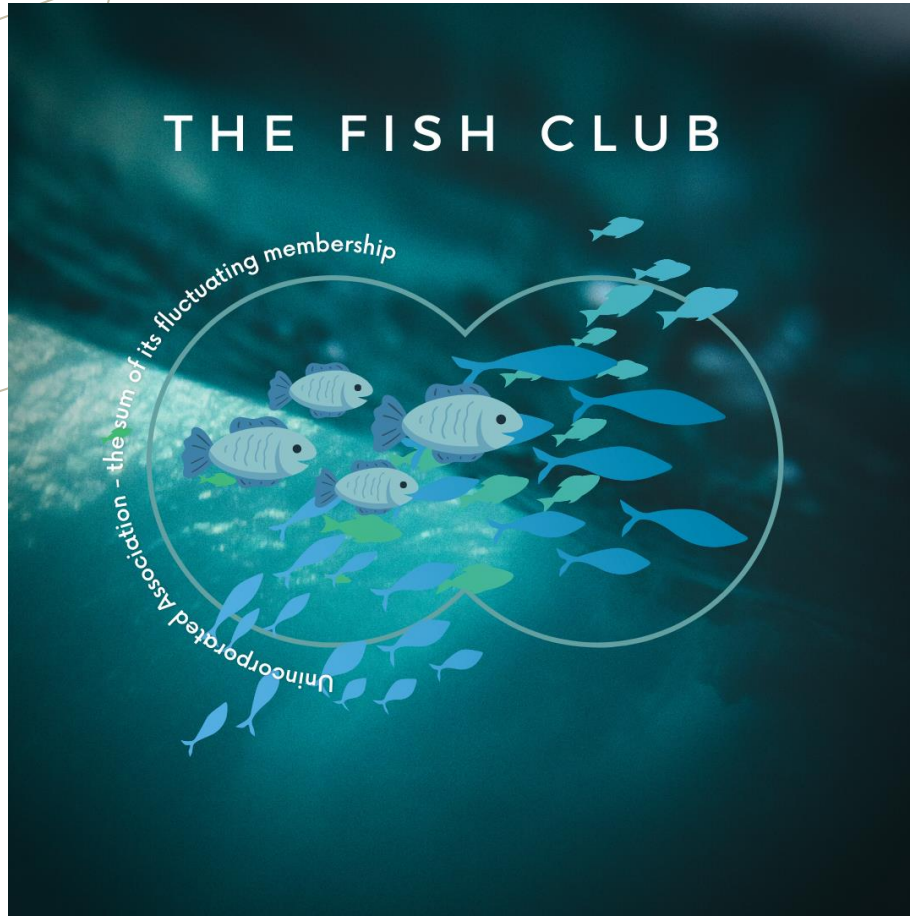
CONSEQUENCES
FOR MEMBERS

Individual members are exposed to personal risk of liability. The extent of that liability is unclear, and will depend on the circumstances of the case. That uncertainty, and individual exposure, is considered by the Commission to be undesirable.

CONSEQUENCES
FOR LITIGANTS

It can be very difficult to sue and to enforce judgments against the various members of a club.

LIABILITY OF UNINCORPORATED ASSOCIATIONS



SEPARATE LEGAL PERSONALITY



LEGAL DIFFICULTIES

CONTRACT LAW

Unincorporated associations cannot be a party to a contract. While suppliers and contractors may believe that they are contracting with a club, that is not the legal reality.

OWNERSHIP OF PROPERTY


Unincorporated associations cannot own property. Instead, legal title to property must be held by trustees. This may pose difficulties in accessing association funds and assets to meet liabilities.

STATUTORY COMPLIANCE

Legislation often purports to apply to unincorporated associations, but, in practical terms it is hard to see how laws designed for individuals and companies can actually be applied to unincorporated associations.

CRIMINAL & REGULATORY ENFORCEMENT

Little consideration has been given to adapting criminal and regulatory law to expressly include unincorporated bodies and to set out how fines will be met.





If a club is **incorporated**, a litigant can sue the club directly. Otherwise they must identify who to sue, which can involve having to identify past and present members.

The litigant may have to serve papers on all those people. That is costly and can result in breaches of privacy.

Judgments may be awarded against members jointly and severally. That can make it difficult for a successful litigant to recover.

Assets held in trust may be beyond the reach of the litigant, if they are held for the benefit of the association, or for charitable purposes.

PRACTICAL ISSUES FOR LITIGANTS



If a club is **incorporated**, a member is insulated from liability for wrongdoing in which they played no part.

If a club is unincorporated, members may be exposed to civil and criminal liability in which they played no part.

It is not possible for a member to sue an unincorporated club of which they are a member. This is treated in law as the same as suing yourself.

A member can sue an incorporated club of which they are a member, as the club has a distinct legal identity.

PRACTICAL ISSUES FOR MEMBERS



REFORM OPTIONS

MODEL 1

Legislate to create a “non-profit registered association”, by which separate legal personality could be gained by registration.

MODEL 2


Confer a separate legal personality on unincorporated associations that fulfill specified criteria.

MODEL 3

Do not confer a separate legal personality, but specify how unincorporated associations are to be held liable in contract, tort and for offences, with a series of focused reforms that do not alter the legal status of unincorporated bodies.

TRUSTS

Holding funds and assets can put those funds and assets beyond the reach of litigants. In Australia, the law has been reformed to force associations to nominate defendants, and to provide that assets held on trust should be made available to meet liabilities that arise from child abuse.





THANK YOU

Commissioners Richard Barrett & Niamh Hyland

Rebecca Coen, Director of Research

Colin Grant, Legal Researcher

Meabh Sexton, Legal Researcher

UnincorporatedAssociations@lawreform.ie



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLI