**Options for forming a
Community Led Plan group[[1]](#footnote-2)**

1. **Introduction**

It is up to each community to decide how to set up its Community Led Plan group. Parish councils and CLP groups need to be aware of where the responsibility lies. There are two options for CLP groups to consider.[[2]](#footnote-3)

1. **Options**



In non-parished areas, option 2 is not available so mitigation such as purchasing insurance and ensuring good practice are more important.

1. ***Arms-length community group[[3]](#footnote-4)***

The Rural Community Councils have for many years advised community led plan groups based on ACRE’s CLP toolkit. This encourages CLP groups to be set up at arms-length from the parish council, separately constituted which means that the group is an unincorporated association. This has worked well for many years for thousands of CLPs across the country. CLP groups are small, time-limited, have no contracts and no employment liabilities, usually no bank account, and are not doing anything inherently risky. ORCC and other VCS support organisations across the country work with communities to ensure that they use best practice including anonymising questionnaire responses, protecting personal data and carrying out risk assessments for events.

This set up encourages the perception of the CLP being “owned” by the wider community and encourages the wider community engagement which is so crucial to the success of CLPs. It can be particularly helpful in cases where the relationship between the parish council and the wider community is poor.

However, in unincorporated associations, individuals are personally liable if anything should go wrong and someone decides to take them to court. In addition, as set out in the case study below, liability could still fall on the parish council if something goes wrong. It is important that the parish councils realise this.

**To insure or not?** Some VCS support agencies (eg Cheshire, Wiltshire) advise CLP groups to purchase insurance. Others do not, as this is a significant cost for a very low risk and insurance does not cover every eventuality. Liability and trustees indemnity insurance can cost £100 to £300pa. Household insurance sometimes covers a householder for legal costs. There are examples where Parish Councils have arranged fairly cheap insurance cover for councillors who are involved with outside bodies such as CLP groups. In Sussex, volunteers are covered by parish council liability insurance as long as the parish council informs their insurer with the names of the individuals. (This would depend on the parish councillor’s insurer and the terms of their policy). ORCC is looking into blanket Oxfordshire CLP group insurance as we did for Community Transport schemes, or an understanding with one or more insurers of the nature of CLP activity at a reasonable rate for individual groups to pay.

1. ***Parish council working group***

CLP groups can set up as a parish council working group with terms of reference, delegated authority to produce the CLP, and ability to co-opt members of the public to the committee.

A Parish Council is a corporate body, a legal entity separate from that of its individual members. Parish Council decisions are the responsibility of the whole body. Parish Council liability insurance covers the organisation. Individuals serving on a parish council committee (both councillors and non-councillors) will not be held personally liable and the council itself is covered by liability insurance. The Parish Council needs to inform their insurer about the group and check any requirements for the insurance cover.

Technically this is a parish council “advisory committee” under the Local Government Act[[4]](#footnote-5). The advisory committee structure allows both councillor and non-councillor members to vote[[5]](#footnote-6). The parish council sets a terms of reference for the group, and standing orders can be drafted as well setting out the aims and how the group will work together. The working group has to be run in accordance with parish council meeting rules including notification of meetings five days in advance, meetings being open to the public, and the minutes made public.

1. **Experience**

**Case study on liability**

A CLP group was placed at risk of being taken to court over mistakenly publishing personal information. The CLP group was constituted as an unincorporated association of individuals at arms-length from the parish council. However, the CLP group was seen by lawyers as not a solid enough entity so the responsibility and liability would fall back on the parish council as well as on individual CLP group members.

When asked about who was responsible, solicitors told the CLP group “nobody wants to go there” as it is an ill-defined grey area and costly to sort out through the courts. The parish council is closely connected with the CLP process, as it initiates the CLP, adopts the completed Plan, holds any grant money from the district councils on behalf of the CLP group and carries out the ongoing monitoring of actions when a Plan is complete.

The chances of CLP groups ever going to court are remote. There is no other example of this happening in over 4,000 CLPs nation-wide. The risks are very low.

Solicitors told the CLP group that if the case went to court they might have to pay one hundred thousand pounds of legal fees but that they might well win. The parish council did not at first understand that they too could be held responsible for mistakes made by the separately constituted CLP group. The CLP group members faced a great deal of worry. They had a year or more of anxiety while waiting to see whether the potential litigation might re-emerge. Both the CLP group and the parish council incurred costs. Some CLP group members felt disinclined to contribute to any further activity on behalf of the community.

Now that housing development issues are typically included in CLPs, and with increasing overlaps between CLPs and Neighbourhood Plans (see ORCC’s recent workshop report “Which Plan?”) the stakes are possibly now higher than previously.

**Decision by one CLP group**

Recently, a CLP group forming just after this case study example came up looked at the options together with ORCC, discussed the risks, and decided to form a parish council working group. The liability risks that the group discussed included

* personal injury while engaged in CLP activities;
* inadvertent disclosure of information; and
* people using the threat of litigation to “go after” money.

While accepting that the likelihood of legal difficulties is low, this CLP group felt that because one group has faced this risk they wished to protect against it. They did not want to spend money on separate liability insurance and realised that, as an unincorporated association, if even one of their 16 strong group wanted it, they would have to purchase insurance.

This CLP group had the support of the parish council to set up as a parish council committee if they wished to. Their parish council clerk is also a local government lawyer and so was able to advise. The clerk recognised that the parish council already holds financial responsibility as the accountable body for CLP expenditure, and was alert to the potential liability concerns, however remote.[[6]](#footnote-7)

The parish council requested confirmation from their insurance company that the committee would be covered by the council’s liability insurance and got confirmation that as long as the committee met several requirements relating to publication of minutes, accounts being part of the parish council accounts, and meetings being open to the public, they would be covered.

As a parish council working group, it needed a TOR agreed by a Parish Council resolution, along the lines of the example below.

**Terms of reference for the CLP Advisory Committee of ……………………. Parish Council**

1.The committee comprise at least 5 members (Including at least 1 Parish Councillor)

2. All meetings will be advertised and open to members of the public in the same way as those of the Parish Council.

2.The committee has power to co-opt members who are not Parish Councillors, but are parishioners of the Parish of Piddington

3. The Parish Council delegates authority to the Committee to prepare a Community led Plan on behalf of the Parish

4. The committee will normally report formally to the Parish Council on a quarterly basis on the progress of the Community led Plan, by presenting a written report for incorporation into the Minutes of the Parish Council

5. The committee will provide, where appropriate, quarterly accounting statements of income and expenditure for incorporation into the Parish accounts, and will provide an annual accounting statement by 31st March in every year.

6. The committee will be time limited to the period required for the preparation of the Plan

1. This note sets out Community First’s experience in working with groups and speaking with advisory bodies on these issues. Community First does not offer legal advice. [↑](#footnote-ref-2)
2. Community First has spoken with several communities, District Councils, OALC, ACRE and compared experience and methods with other VCS support agencies in Oxfordshire and six other counties. [↑](#footnote-ref-3)
3. A CLP group could consider incorporating eg as a company limited by guarantee. This is simple, fast and low cost and would remove the problem of personal liability. However the reporting requirements (Companies House) and the disconnect between a separate legal entity and the parish council make this an uncomfortable fit. [↑](#footnote-ref-4)
4. Legal Topic Note 1 “Councils Powers to Discharge their Functions” August 2014, NALC [↑](#footnote-ref-5)
5. Legal Topic Note 7 “Non-Councillor Members of Committees” October 2013, NALC [↑](#footnote-ref-6)
6. For example a case could be made that because the Parish Council holds the finance there is an implicit duty on the Parish Council to undertake “due diligence” with regard to the CLP’s activities and a claim could arise out of perceived Parish Council’s failure to do this. [↑](#footnote-ref-7)