

# What is civil society?

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PRO BONO ECONOMICS





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## Introduction

Civil society is a term that's widely used, rarely agreed upon, and not always understood – and it often means different things to different people. The academics Jeremy Kendall and Martin Knapp have even called it a 'loose and baggy monster'.<sup>1</sup>

As we said in the first report from the Law Family Commission on Civil Society, [Civil Action](#):

'At its broadest, civil society is the connections that exist between different individuals and institutions. We engage in civil society when a group of people find common interests and make their voice heard, when we debate about the sort of future we want to see, when we help our neighbours and friends, or when we make our communities better places to live. A narrower concept of civil society would be the set of organisations that provide the infrastructure for those connections, from charities to trade unions and from housing associations to social enterprises.'

The Law Family Commission on Civil Society is concerned with both broader and narrower concepts. Taking the narrower view, we are interested in how the subset of charities, community groups and social enterprises that together form the social sector, which sits alongside the private and public sectors, could be supported to achieve even more. But the broader view allows us to explore the integral role civil society plays in the success of our economy, the functioning of our democracy, the strength of our communities and the nation's wellbeing. In this case, having a rigid definition to identify what are inevitably blurry boundaries is less important than understanding what it is that makes civil society distinctive.

This page sets out clearly what this Commission will mean when it talks about civil society, with a particular focus on the features that distinguish it. Inevitably, our definition will not align with everyone's and will not capture everything. Some ambiguity is unavoidable and, indeed, necessary given the amorphous nature of civil society. But it is important that we establish some boundaries and definitions for the purposes of analysis and shared understanding. Nonetheless, while these definitions will guide our work, they are not intended to limit it or its ambition.

## Why is it so hard to determine whether something should be considered part of civil society?

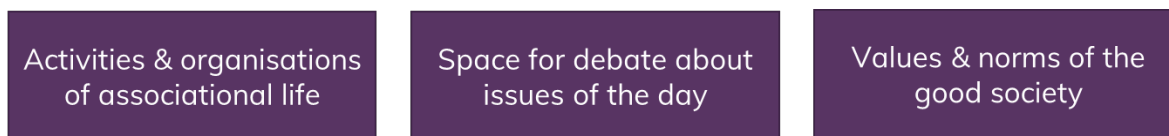
Civil society is a concept often connected to discussions of associational life, social networks, social value and social capital. These aspects of civil society exist in the activities and organisations that bring us together, the values and norms that make a good society, and the places and spaces where we come together to discuss the issues of the day.<sup>2</sup>

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<sup>1</sup> J Kendall & M Knapp, "A loose and baggy monster: boundaries, definitions and typologies", in *Introduction to the Voluntary Sector*, eds. R Hedley, C Rochester & J Davis Smith, Routledge, 1994, 66-95

<sup>2</sup> M Edwards, 'Civil Society', <https://fpc.org.uk/wp-content/uploads/2006/09/195.pdf>

Figure 1: Three dimensions of civil society



Notes: Drawn from discussions in 'Civil Society', Michael Edwards

While each of these is an important aspect of civil society, for the purposes of this Commission we are interested primarily in the activities and organisations that comprise civil society.

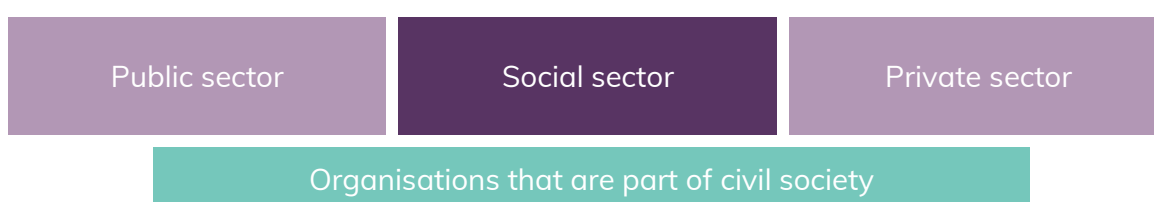
But identifying these activities and organisations is not necessarily straightforward.

### Organisations in civil society

'Civil society' is not a legal definition: the organisations that provide the structure and support for associational life span a range of legal forms. Equally, 'civil society' is not a sector of the economy, nor the equivalent of an industry in the Standard Industrial Classification of companies.<sup>3</sup>

Tempting as it may be to refer to a 'civil society sector' and to use this interchangeably with, say, the non-profit, charity, VCSE or social sector, these terms capture only part of what civil society contains, and limits our understanding of civil society and its contribution to society and the economy.<sup>4</sup> In particular, in its broadest conception civil society spans the public, private and social sectors – from statutory bodies with charitable status, to mission-driven, profit-making businesses. There are many examples of organisations that sit at boundaries between sectors. And because there is no formal or official bound on civil society, organisations may choose themselves whether or not they identify as part of it.

Figure 2: Organisations in civil society span sectors



### Activities in civil society

'Formal' volunteering – giving unpaid help through an organisation or group – is an important aspect of civil society. But lots of activity in the civil society space takes place outside of formal organisations. This includes 'informal volunteering' - voluntary activities

<sup>3</sup> A typical problem when developing policy for civil society is that it spans the [Standard Industrial Classification](#) of companies, hampering our understanding of its scope and contribution.

<sup>4</sup> For a discussion of these issues, see the introduction to A Evers & J Lavelle (eds), *The Third Sector in Europe*, Edward Elgar, 2004

that generate benefit for others and occur beyond the confines of family life, like helping out friends and neighbours with tasks like shopping or dog walking.

Civil society also includes associational life: the community activities through which we develop networks and form connections, from local sports teams to community choirs. But the boundaries here can be blurry too. If a group of friends gather together to play board games, this is a household activity. When they organise a board games club at a local pub, we can start to make an argument that it becomes part of civil society.

On top of this, the growth of digital tools for organising ('organising without organisations'<sup>5</sup>) are increasingly blurring the boundaries between private action and public benefit. While leaderless social movements, like Black Lives Matter or Extinction Rebellion, are certainly part of civil society, it is less clear whether Facebook groups that exist to exchange tips about wild swimming or discuss littering in the local area, are part of civil society or private/family life.

Figure 3: It's not always clear where the line falls between civil society and family life



The fact all of this is so messy matters. The state of confusion about what is and isn't part of civil society often results in a lack of understanding among policy makers, faced by an unassembled jigsaw of organisation types, with many of the pieces not even perceiving themselves to be part of the picture. While the situation is a little better in terms of volunteering, even this blurs into the realm of private/family life.

Little wonder that civil society is undervalued, and often unrecognised in policy.

## What does civil society incorporate?

There have been many attempts to define civil society. All of them emphasise slightly different elements, but we believe the three definitions below capture all the core points:

DCMS, in its *civil society strategy*:

'Individuals and organisations when they act with the primary purpose of creating social value, independent of state control. By social value we mean enriched lives and a fairer society for all.'

NCVO, in *Beyond Charities*:

'The area outside the community, market and state.'

World Health Organisation:

'The space for collective action around shared interests, purposes and values, generally distinct from government and commercial for-profit actors.'

<sup>5</sup> C Shirky, *Here Comes Everybody: How Change Happens When People Come Together*, Penguin, 2009

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Based on these definitions, for the purposes of the Commission's work we have identified four criteria on which to judge whether an organisation or activity falls into the broad civil society space.

We consider civil society activities and entities to be those that can reasonably demonstrate that they meet all of the following:

1. They are **independent of the state**: self-governing organisations or activities, where establishment or involvement is voluntary
2. They **do not distribute profit for private benefit**: any surpluses or profits generated are primarily for the public benefit. Any distribution of profits for private gain is legally constrained, eg through asset/profit locks
3. They **exist to create social value**: where social value is understood as 'enriched lives and a fairer society for all'.<sup>6</sup>
4. They are **organised**: an element of formality or organisation as the basis for association.

Being considered part of 'civil society' therefore doesn't depend on one characteristic – it depends on several. This is why there are so many organisations or activities that fall into grey areas, meeting some, but not all these criteria, or meeting these criteria to some degree, if not absolutely.

## A narrow and a broad conception of civil society

While the boundaries of civil society are necessarily blurry, for the purposes of this Commission we need clear definitions in order to develop analysis and build shared understanding.

### A broader conception of civil society: civil society institutions

As we set out in [Civil Action](#), our intention is to use a building blocks approach, allowing us to engage with both the broader and narrower definitions of civil society. A broad concept of civil society includes a breadth of organisations and activities that meet, to varying degrees, the four criteria we have set out above. We refer to these as 'civil society institutions'. Civil society institutions may include organisations that have some degree of state control, have some level of personal profit, and have a very informal existence that leaves them on the boundaries of household and personal communities.

For the practical purposes of measuring and counting in this Commission, when we refer to civil society institutions (and are therefore taking the broadest view of the organisations civil society incorporates) we will use the list of civil society organisations detailed in the NCVO Civil Society Almanac.<sup>7</sup> We are adopting this list as we believe

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<sup>6</sup> *Civil Society Strategy: building a future that works for everyone*, Department for Digital, Culture, Media & Sport, August 2018

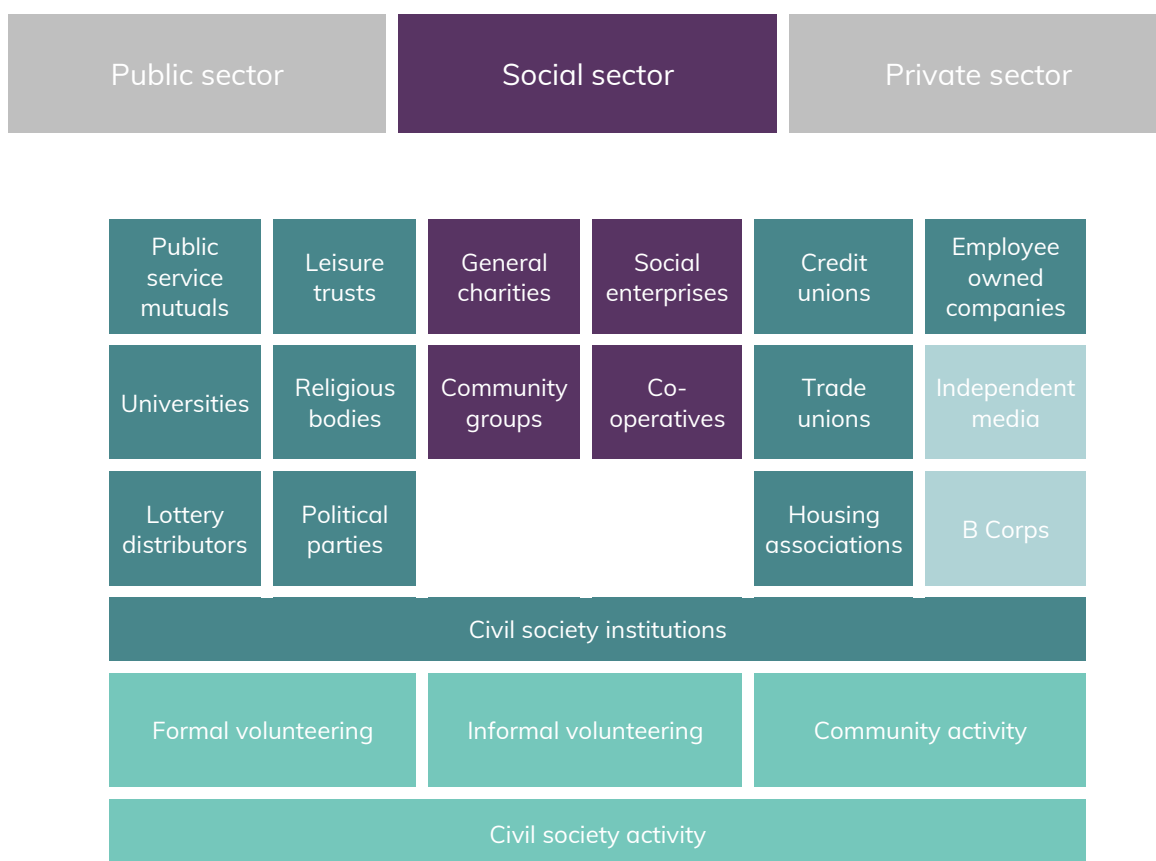
<sup>7</sup> The full list of civil society organisations detailed in the NCVO Civil Society Almanac includes: benevolent societies; building societies; common investment funds; community interest companies; companies limited by guarantee; co-operatives; credit unions; employee owned businesses; football/rugby supporter trusts; friendly societies and mutual insurers; general charities; housing associations; independent schools; community leisure trusts; political parties; religious bodies; sports clubs; social enterprises; trade associations and professional bodies; trade unions; and universities.

these organisations are closest to the definition used by the UN to estimate the value of the ‘third or social economy (TSE) sector’.

However, it’s important to note that some people may also include an even broader range of organisations with an interest in social mission, such as B Corps and independent media. A fifth feature of much of civil society, which we have not included in our definition above, is an element of voluntarism – people’s donations of time, expertise or resources. This is not a feature of some organisations, like purpose-led businesses, that could fall under a broader conception of civil society. Some people may argue that no conception of civil society should include organisations without an element of voluntarism. This is another reason for blurry, unclear boundaries.

Using our building blocks approach, our broader conception of civil society therefore includes the full breath of civil society institutions, volunteering and associational life.

Figure 4: Civil society - the broader view



### A narrower conception of civil society: the social sector, volunteering and community activity

However, in this Commission we are *primarily* interested in a narrower conception of civil society. This is in many ways a pragmatic way to deal with the loose and baggy monster - limiting our definition makes it somewhat easier to deliver analysis and develop policy ideas. This is not unique to this Commission. The Office for Civil Society, for example, is responsible for policy relating to volunteers, charities, social enterprises and public

service mutuals, and not organisations that fall into a broader concept of civil society, such as universities, trade unions or political parties.

Secondly, we want to focus the work of the Commission on organisations and activities that the public would recognise as part of associational life.<sup>8</sup> This approach means that we are interested in those whose *primary purpose* is the creation of social value and organisations that are separate from the state.

Using this narrower conception, for the purposes of this Commission, by ‘civil society’ we will mean the following types of entities and activities:

The social sector, comprising:

- General charities: currently defined by NCVO as: ‘Private, non-profit-making bodies serving persons. This excludes sacramental religious bodies or places of worship as well as organisations like independent schools, government-controlled bodies and housing associations’. Throughout the Commission we will use the term ‘charities’ to refer to general charities.
- The community organisations, mutual aid groups, clubs and societies which meet our four criteria. They may or may not have either legal status and/or a constitution.
- Social enterprises that take asset-locked legal forms: co-operatives, community interest companies, companies limited by guarantee, community benefit organisations, industrial and provident societies (see below for further discussion).
- Social movements, in as much as they have an element of organisation.

Volunteering, as defined by NCVO:

*‘Any activity that involves spending time, unpaid, doing something that aims to benefit the environment or someone (individuals or groups) other than, or in addition to, close relatives. Central to this definition is the fact that volunteering must be a choice freely made by each individual. This can include formal activity undertaken through public, private and voluntary organisations as well as informal community participation and social action.’*

Our conception of volunteering therefore captures both formal and informal volunteering (ie, volunteering through with or without an organisation).

Community activity

In our narrower conception of civil society, we have also chosen to include community activities that, even though they are not necessarily formed for the *primary purpose* of creating social value, do so through their very nature. These are community groups and activities like social clubs and sports teams – in short, the mainstays of associational life which play a significant role in generating the connections, community spirit and social capital that many associate with civil society.

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<sup>8</sup> This approach in part reflects work done in the early 1990s to incorporate nonprofit organisations into the national accounts: the OPCS/NCVO ‘general charities’ referred to a definition of the sector the general public would recognise. Just as importantly, it sought to focus on entities not already captured in the national accounts.

Figure 5: Civil society - the narrow view



It is important to acknowledge that this narrow conception of civil society ignores a breadth of organisations and activities that also meet, to varying degrees, the four criteria we have set out above. In particular, this narrower view excludes institutions like universities and trade unions, which are generally considered to form part of civil society in its broader conception, as well as some social enterprises or purpose-led businesses that are considered by some to also form an important part of civil society. While all of these organisations have an important role to play, for the practical reasons set out above, much of this Commission's work will be focused on the narrower view.

## Where do enterprises sit in our conception of civil society?

*Social enterprise* is neither a legal form nor a legal status. It applies to trading organisations with a social mission, meaning an organisation may decide whether or not it identifies itself as a social enterprise.

Social Enterprise UK, the infrastructure body for the social enterprise movement, says that to be a social enterprise you must:

- Have a clear social and/or environmental mission set out in your governing documents
- Reinvest the majority of your profits
- Be autonomous of the state
- Be majority controlled in the interests of the social mission
- Be accountable and transparent

According to SEUK's State of Social Enterprise 2019 survey, the most common types of legal status are Company Limited by Guarantee (28%), Company Limited by Shares (18%) and Community Interest Company (15%). 11% of social enterprises replying to their survey were also registered charities.<sup>9</sup>

<sup>9</sup> C Mansfield & D Gregory, *Capitalism in Crisis? Transforming our economy for people and planet*, Social Enterprise UK, 2019



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The choice of legal form can tell us something about the nature of the organisations. For example, community interest companies are argued to be ‘asset locked’ organisations because they have legal constraints on the distribution of their surplus or dividends.

Asset locked organisations can be contrasted with what have been termed ‘profit with purpose’ businesses that use governance arrangements to place a duty on their officers to deliver a social mission. Mechanisms such as external audit hold organisations to account: for example, *Benefit corporations*, or B corps, are also not a legal form. They are often companies limited by shares and remain profit maximising entities. However, a certification system checks that they also operate for a social purpose, placing them on the edge of civil society. These are sometimes referred to as ‘mission locked’ organisations.<sup>10</sup>

The fact that social enterprises take a variety of legal forms makes it challenging to identify them within larger datasets, but the legal form adopted is also likely to tell us something about the primacy of mission over profit. For these reasons, we are taking the pragmatic approach of using legal form to identify the social enterprises we will count in our narrower conception of civil society. These are the forms that are asset locked, namely: co-operatives, community interest companies, companies limited by guarantee, community benefit organisations, industrial and provident societies.

However, in our broader concept of civil society, we will be considering any business that meets the definition set out by Social Enterprise UK above.

## Conclusion: Definitions as means, not ends

As our launch essayist [Sue Tibballs](#) noted, civil society is a slippery concept, and this is a particular challenge for a Commission charged with looking at its future. To gauge the full extent of the value and distinctive contribution of civil society, we must think about civil society as more than just a collection of organisations, or a sector. Yet for the purposes of measuring, analysis and building shared understanding, we need to establish boundaries and definitions.

We have set out in this note a narrower conception of civil society, using short-hands like legal form to capture what we consider to be the core of civil society – those activities and organisations that most closely track our four criteria. But while we have adopted some pragmatic limitations on the nature of the organisation and activity types we will be counting in much of our analysis, we have also set out a broader view. Using the four criteria, we can judge whether something might be part of civil society in its wider sense. Thinking about these defining characteristics of civil society can help us recognise what is distinctive about civil society, even those organisations that span sectors or activities that blur into family life. And that is the beginning of us understanding the true, and distinctive, value of civil society.

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<sup>10</sup> See Orrick, Herrington & Sutcliffe LLP, *Balancing Purpose and Profit*, December 2014. <https://www.trust.org/contentAsset/raw-data/1d3b4f99-2a65-49f9-9bc0-39585bc52cac/file>