

Legal Structures

Governing Document

When an organisation is formally established it will adopt a governing document or set of rules. This governing document is the legal document which represents the rules for the way your organisation will operate.

The document usually sets out:

- The name of the organisation
- Its purpose or 'objects' – this is a statement of what the organisation is set up to do. It is usually worded in quite formal terms. For example, an organisation providing training for young people may have for its object 'the advancement of education for young people'
- Its powers – how it carries out its purposes
- Provisions around membership of the organisation
- Provisions around who can be a trustee and how they are elected or appointed
- Procedures for calling meetings, both general meetings (of members) and trustee board meetings
- Provisions for amending the governing document or closing the organisation

Common Types of Structure

Broadly speaking, there are four common forms of legal structure for charities, each with its own type of governing document (there are also a number of other, less common legal forms):

- Unincorporated association
- Company limited by guarantee
- Trust
- Charitable Incorporated Organisation (CIO)

Unincorporated Association

A charitable unincorporated association is a group of people who come together to pursue a shared aim. It is a particularly suitable structure for membership organisations, where it is important for the members to have close involvement with the running of the charity. The governing document for an unincorporated association is a 'constitution'. Model constitutions can be found on the Charity Commission website: www.charitycommission.gov.uk

It is typically used by:

- Self-help groups



- Local societies
- Local campaigning organisations

Advantages

Simple to set up and inexpensive to run

Very flexible as the constitution can be tailored to suit the needs of the organisation, so control can lie in the hands of either the membership as a whole or a smaller group of trustees (frequently called the management committee) elected by the members

Constitution can include a power to alter its terms, usually subject to the approval of a certain percentage of its membership

If you have charitable aims and an annual income of £5000 or more you can register with the Charity Commission and gain the benefits of being a registered charity

Disadvantages

No legal personality so legal transactions cannot be carried out in the name of the charity. A small group of holding trustees or a custodian trustee (a corporate body such as the official Custodian) who do not have any of the responsibilities of trusteeship must be appointed to hold the assets in their names

Trustees have unlimited liability so if the association has insufficient assets to pay its debts, or incurs any other liabilities (e.g. arising from negligence or libel or under breach of contract) the trustees will personally have to pay them

In exceptional circumstances the personal liability can extend to the wider membership

Relevant law is quite complicated as there is no statute applicable such as Companies Act

Company Limited by Guarantee

A charitable company is a limited company set up to carry out charitable objectives and enjoy the protection of limited liability. The governing documents for a charitable company are 'Memorandum and Articles of Association' often abbreviated to 'mem and arts' Model Memorandum and Articles of Association can be found on the Charity Commission website: www.charitycommission.gov.uk

Advantages

Has the legal status of being incorporated with its own legal personality

Property can be owned by the charity and it can also enter into contracts so names on legal documents do not have to be changed every time there is a change of trustees

Has a membership instead of shareholders, and members all guarantee to pay a nominal sum of usually £1 to £10 if the company becomes insolvent

Directors and trustees have limited liability so long as they are honest and prudent, act within the company's objects and powers, comply with their statutory powers and statutory duties

Increased public credibility and trust

Access to charitable funding that non-charitable bodies cannot have



Disadvantages

It's a more complex structure with the need to register with both Companies House and the Charity Commission

Dual registration is more time consuming. First you have to register as a company and then the company needs to apply to become a registered charity

Increased accountability to both Companies House and the Charity Commission – more paperwork! 2 annual returns each year

Possibility of fines if deadlines not met for filing accounts and other paperwork, especially from Companies House

Bound by Company Law

For more information visit both Companies House and the Charity Commission's websites:

- www.companieshouse.gov.uk
- www.charitycommission.gov.uk

Trust

A trust is the traditional structure used for setting up a charity to manage money or property for a charitable purpose. It is not a membership organisation but is run by a small group of Trustees. The governing document for a Trust is a 'Trust Deed'. A model Trust Deed can be found on the Charity Commission website: www.charitycommission.gov.uk

Many older charities are established as trusts and the structure is typically used today to set up:

- Grant giving trusts
- Church restoration or building repair funds
- Some smaller service-providing organisations
- Organisations not requiring a membership structure

Advantages

Relatively cheap to set up and run with no ongoing costs

Simple to administer as minimal formalities are required

Board is often self-perpetuating

Disadvantages

Trusts are unincorporated bodies so property cannot be held in the name of the charity; it has to be in the names of the trustees

When the trustees resign or new trustees are appointed, trust assets have to be transferred into the names of the new group of trustees, which incurs legal expense

Trustees of charitable trust do not have the protection of limited liability



A trust does not have a membership like an association and so may find it harder to demonstrate accountability to users

Charitable Incorporated Organisation (CIO)

This is a relatively new form of charitable organisation created by the Charities Act 2006. The accompanying regulations came into force in late 2012. The CIO gives a charity the main advantages of a Charitable Company – a legal personality and limited liability – but without the dual regulation of Companies House and the Charity Commission. CIOs are registered with and regulated by the Charity Commission. The appropriate governing document for a CIO is a 'Constitution'

Two model constitutions suitable for the new CIO structure can be found on the Charity Commission website: http://www.charity-commission.gov.uk/Start_up_a_charity/Do_I_need_to_register/CIOs/default.aspx

There is a procedure to change the structure of an unincorporated association into a CIO, and further regulations will allow an existing Charitable Company to convert into a CIO

Advantages

- New structure with all of the benefits of a Charitable Company – it has a legal identity and limited liability

- Single registration with the Charity Commission – no registration with Companies House required

- Fewer reporting requirements – only 1 annual return needed – should be simpler and cheaper

Disadvantages

- Brand new structure - possibility of teething problems

- Very little choice of model constitutions available

Visit the Charity Commission website for the latest guidance on this new legal structure: www.charitycommission.gov.uk

Getting further support

Comprehensive information on all of these legal structures can be found on both the Charity Commission website: www.charitycommission.gov.uk and Companies House website: www.companieshouse.gov.uk.

Northumberland Community Voluntary Action (Northumberland CVA) can give information, advice and support through the process of choosing an appropriate legal structure for your organisation. For more information, advice and support email enquire@northumberlandcva.org.uk or call 01670 858688.