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Charity Structures Compared: A guide to your options

Updated: May 2021

Introduction

This briefing is designed to help you to understand the main differences between the different types of charities and to help you to decide the most suitable option for your proposed charity. It is important to take advice specific to your situation.

Charity Structures – quick overview

If you plan to set up a new charity, you have a choice between four main structures. They are split into what is called 'Incorporated' and 'Unincorporated' set ups. An immediate key difference to look out for between them is in an incorporated charity the Trustees are not liable personally for what it does so the element of risk is a key in choosing a structure.

Incorporated

The main feature of these are that the law considers your charity to be a person in the same way as an individual. This gives you the legal capacity to do many things in its own name that a person can do, such as:

- employing paid staff
- delivering charitable services under contractual agreements
- entering into commercial contracts in its own name
- owning freehold or leasehold land or other property

Incorporated set ups would be:

1. **A Charitable Company Limited by Guarantee** (governed by a Memorandum and Articles of Association).

It can be set up with or without a wider membership. You register with Companies House and the Charity Commission and report to both. Charitable Companies are not the same as Commercial Companies:

- They can't distribute its surpluses to its members or shareholders – a charitable company is usually limited by guarantee, not shares.
- They can only apply its assets to carry out its charitable purposes.
- They must operate in a way which is in the best interests of the charity.

2. **The CIO (Charitable Incorporated Organisation)** (governed by a Constitution).

This option has been available since 2012 to allow Charities to not have to go through everything associated with a company, in other words to be simpler and easier to manage. You only register with Charity Commission but can do the same sort of things.

Set up a CIO if you want your charity to be a corporate body and have a wider membership, including voting members other than the Charity Trustees, employ, etc.

To make things more confusing there are a couple of types of CIO's. A Foundation CIO, which is run by its trustees, so easier to manage, or an Association CIO, where there are members, so there's better accountability. CIOs can convert from one to the other.

Please do contact us at www.trustadvice.co.uk for further information advice on how to set up a CIO from scratch or transfer to one and which type to go for.

Unincorporated

An 'unincorporated charitable association' is a simple way for a group of volunteers to run a charity for a common purpose.

Unincorporated set ups would be:

3. **A Charitable Trust** (with a Declaration of Trust or Trust Deed as the constituting document).

Set up a Trust if your charity doesn't need a corporate structure or a wider membership. For example, if it is unlikely to employ a significant number of staff or carry on any kind of business, or makes grants but doesn't do any other type of work.

4. **An Association / Unincorporated Charity** (Governed by a Constitution / the Governing document)

Set up an unincorporated association if you want your charity to have a wider membership but it doesn't need a corporate structure (for example, if it will be relatively small in terms of assets). Unincorporated charitable associations can't employ staff or own premises. Trustees are liable.

All four are equally charities; they simply have different legal structures. They can each provide the full range of charitable objects and powers that you may need. With each structure, the trustees remain subject to general charity law and must always act with appropriate care and must keep within the charitable objects and powers. The type of charity you should register generally depends on what the proposed new charity is intending to do and the risks involved.

NB. There are still many older charities that fall outside the 4 structures mentioned above, e.g. charities set up by Royal Statute. Charities falling outside the normal structures need to be considered in the light of their specific circumstances, and the potential liability of the trustees.

Considerations

There are key considerations when deciding whether to register as an incorporated type of charity, or an unincorporated charity:

1. **Who is going to run it and how?** Consider are you will the Trustees do everything or do you need staff, and do they need to be paid staff. What about Membership and the governance, who gets to vote?
2. **What's the risk?** Is liability likely to be an issue? If the charity plans to do things that may involve liability, being an incorporated charity will provide '**limited liability**' for members and trustees. In an unincorporated charity, the trustees will almost inevitably be personally liable in respect of what a charity does and how it does it. **(It is important to be aware that trustees could still be held personally liable regardless of the charity's legal structure, if they were deemed to have behaved recklessly, fraudulently or to have operated outside the charity's objects and powers).** Importantly, limited liability can help to attract new Trustees in the future
3. **Will the charity own assets?** An incorporated charity has its own **legal identity** and as such can hold assets in its own name. Assets of an unincorporated charity are instead held by a nominee (often 'holding trustees') on behalf of the unincorporated charity - this results in the charity having to go through an administrative and/or legal process each time trustees are appointed or retire, which can cause a problem if it is not done at the time.
4. As a corporate body with its own legal identity it can sue and be sued in the name of the charity (rather than trustees personally)
3. **Will the charity be entering into contracts?** Again, as an incorporated charity has its own legal identity, it can enter into contracts in its own name. On the other hand, trustees of unincorporated charities must enter into contracts personally on behalf of the unincorporated charity. This can add to the burden of administering the charity and risk that it is not done properly.

Therefore, incorporated status is likely to be an advantage for any charity that plans to:

- Take a lease or buy the freehold of a property, with or without a mortgage
- Raise finance
- Employ people
- Give advice or to enter into contracts to provide goods or services
- Organise events involving members of the public
- Carry out activities that incur any degree of risk

When it may be more appropriate to become an unincorporated charity

This type of charity is likely to be suitable when:

1. The intention is to do no more than to hold funds with a view to making straightforward grants and donations to other charities or other organisations, or individuals fulfilling appropriate charitable purposes e.g. a grant making trust/foundation.

2. The charity is established for a particular purpose that does not involve significant potential liability e.g. a league of friends organising hospital visits, or a charity promoting a particular religion.
3. The charity is established simply to raise funds for a particular purpose e.g. raising funds for school equipment.

Please note that a “*Friends of.....*” charity would become a charitable association (as opposed to a charitable trust) on the basis it has a voting membership. It would be governed by a constitution but would equally be an unincorporated charity.

An unincorporated charity is generally simpler to administer and cheaper to establish than an incorporated charity.

You should not be looking at an unincorporated charity if there is any element of risk.

Characteristics and key differences between types of incorporated charities

If it is felt an incorporated structure is the most suitable vehicle for the new charity, the next decision will be the type of incorporated charity to become.

1. The Charitable Company Limited by Guarantee:

This is a long established legal form governed by a well-developed body of statute and case law. As a company, it is subject to company law and therefore is answerable to both Companies House and the Charity Commission. However, the filing and reporting requirements of both these bodies are very similar, although Companies House does impose financial penalties for the late filing of accounts. The directors of the company are also the charity trustees. (You have to be both, you can't be one or the other.)

The charitable company comes into existence as a legal entity as soon as the company has been registered with Companies House (which is generally a straightforward formality) and before it has been registered by the Charity Commission (which can take 6 to 8 weeks). This can be an important consideration if there is urgency in taking out a contract or lease, or a building is being purchased.

The existence of a Register of Charges in company law means lenders should be more confident lending to a company.

Following legislation implemented in 2018, a charitable company can directly convert to a CIO. For those cautious about the workability of the CIO, they may prefer to opt for the ‘traditional’ charitable company in the knowledge that they could convert, if, with the benefit of hindsight, the CIO turns out to be the best option. Please note there is currently no reciprocal option for a CIO to convert to a company.

2. The CIO (Charitable Incorporated Organisation):

A CIO is a corporate form of charity designed for, and only available to, charitable organisations in the UK. The CIO has been modelled on the company framework and has the advantages of being an incorporated structure but without the burden of dual

registration with Companies House and the Charity Commission. It is regulated by the Charity Commission only which simplifies annual filing requirements.

As a relatively new legal form, the CIO is likely to be less recognised by third parties than a company limited by guarantee would be, which could lead to practical difficulties. That said it now been a few years and CIO is fast establishing itself as a popular choice. **CIO is the preferred recommendation - 8 out of 10 new charities are opting for CIO Status.**

Consideration may need to be given to the fact that a CIO only comes into existence as a legal entity once it has been registered by the Charity Commission, which can take approximately 6 to 8 weeks. This timescale may become an issue if the trustees need to take a contract/lease etc out in the name of the CIO in a shorter time frame.

One notable gap in the CIO legislation is the lack of a Companies House style Register of Charges, which some felt could result in CIOs finding it difficult to secure lending arrangements. In practice this is only likely to be an issue for very large charities that are secured by *floating* charges (something that most medium to small charities are unlikely to engage in). The ability to register some charges with the Land Registry and the requirement to disclose them in a CIO's accounts should provide reassurance to a lender. Therefore, a CIO should, subject to the relevant restrictions on mortgaging land in the Charities Act 2011, be able to enter into secured lending arrangements. (Professional advice should be sought if this is likely to be necessary.)

Accounting Requirements

The requirements are broadly similar for all types of Charities. The Charities Accounting Regulations have placed equal expectations on keeping accounting records and producing annual accounts to certain standards.

- A Charity of any type with annual income more than £1 million will require a full audit. (£500,000 in Scotland)
- A Charity of any type with annual income less than £1 million but with fixed assets totalling £3.2 million or more will require an audit.
- A Charity of any type under these limits, will require an Independent Examination when its income exceeds £25,000. Below that figure accounts must still be prepared but an Independent Examination is optional.

We recommend you read our “Briefing on Legal Structural Differences between a Trust and Company” found in our members library.

Recommended reading from Trust Advice Briefing documents:

- What organizational structure is right for us?
- Charity structures compared
- The Register of Charities and why it is Important
- The process of setting up a new Charity
- Legal structural differences between a Trust and Company

References

<https://www.gov.uk/setting-up-charity/structures>

Useful places to go for help:

Trust Advice – for all your Charity set up needs contact support@trustadvice.org.uk

Independent Examiners – for all financial matters <https://iel.org.uk>

This is the end of the document:

We hope this has been helpful to you. Please get in touch if something isn't covered here you want to ask about. We will be very pleased to hear from you. If you would like more information, further details around membership or to upgrade your membership, visit: www.trustadvice.org.uk. Please also see our website for details of ways we can help you and services we offer.