

## Charities and Trusts

When starting up a 'not for profit' organisation there are a number of factors to take into account. A key consideration is what legal and organisational structure would be most appropriate. There are a number of different legal structures, all of which have different implications.



'Not for profit' does not always equal charitable, and being charitable does not always mean the organisation is a registered charity.

This briefing provides an insight into what charities and trusts are, and the pros and cons for these structures. Further resources are listed at the end and Community Southwark has many other useful factsheets on the other possible charitable legal structures on [the website](#).

### What is a charity?

1. *'an organisation set up to provide help and raise money for those in need i.e. "the charity provides practical help for homeless people".*
2. *Synonyms: non-profit-making organisation, non-profit organisation, not-for-profit organisation, voluntary organisation, charitable institution; the voluntary giving of help;*
3. *kindness and tolerance in judging others.'*

Dictionary Definition

When starting up an organisation and/or deciding upon a legal structure, it will be important to decide whether or not the organisation is intended to be charitable or not.

Charitable status does not simply come from registering with the Charity Commission. Instead it comes from the reason the organisation exists, i.e. **the organisations purposes**. If these purposes are '*wholly and exclusively charitable*' and the organisation operates for the benefit of the public, then in the majority of cases it will be considered to be legally a charity.

This means the organisation, whether registered with the Charity Commission or not, will be subject to charity law and therefore will also be entitled to the privileges as well as the restrictions of this status.

Many unincorporated associations will be considered charities and can describe themselves as a 'charity' or as a 'charitable unincorporated association'. If an organisation whose purposes are '*wholly and exclusively charitable*' starts earning £5,000 or above income per year, then it **must** register with the Charity Commission. Below this income level it is optional to register, which is decided on a case-by-case basis with the Charity Commission.

If an organisation does not wish to be a charity, it can either have purposes that are not wholly and exclusively charitable or choose a legal form such as a Community Interest Company (CIC).

There are clear guidelines on what constitutes a charitable organisation: it must operate for the public benefit and its purposes must fall under at least one of the 13 statutory charitable purposes introduced in the Charities Act 2013 – [see below](#).

## Public Benefit

Under the Charities Act 2006 the idea that charities act for the public benefit unless proved otherwise, was abolished. Now, to be a charity an organisation must show that the work they do meets public benefit criteria.

While the language in charity law around public benefit can be quite complex, and there is no actual definition in the Act, it is essential to running a charity.

The Charity Commission have a major role in interpreting Public Benefit and working with potential charities to clarify theirs. The benefit must be identifiable and related to the organisation's aims. It is also important to balance the benefits against any possible harm.

The Commission describe it as:

*'Basically, public benefit is about knowing:*

- *What the charity is set up to achieve – this is known as the charity's 'purpose'*
- *How the charity's purpose is beneficial – this is the 'benefit aspect' of public benefit*
- *How the charity's purpose benefits the public or a sufficient section of the public – this is the 'public aspect' of public benefit*
- *How the trustees will carry out the charity's purpose for the public benefit – this is what is known as 'furthering' the charity's purpose for the public benefit'*

Questions to think about:

- What benefit(s) does the organisation provide?
- How do those benefits help fulfil the organisations purpose(s)?
- Who is the organisation primarily set up to benefit?
- Does the organisation provide wider benefits to the community or society in general? If so how?
- What criteria does the organisation use to select beneficiaries?
- Is anyone excluded from being a beneficiary – If so why?
- Does the organisation have a membership where someone must be a member to benefit? If so, is it open to anyone to join? If not, who can join and why?
- Does the organisation provide facilities for or services to, the public? If so what, if any, restrictions are there on who can have access or what can be accessed?
- Does the organisation charge for its services? If so, how are charges set? Is everyone charged the full rate? How are people on low incomes able to benefit from the organisation?
- Does anyone receive private benefits from the organisation? If so, what benefits do they receive? How do those benefits contribute towards achieving the organisations purposes, and/or to what are they incidental?

Adapted from The Russell-Cooke Voluntary Sector Legal Handbook

For more on Public Benefit see the [Charity Commission guidance](#).

## Charitable Purposes

When starting a charity, the organisation will create the appropriate governing document (constitution). The charity's constitution will state the organisation's aims or objectives i.e. the

purpose it was set up for. To be a charity these must be exclusively charitable and must fit within at least one of the 13 statutory charitable purposes as set out in the Charities Act 2006:

1. The prevention or relief of poverty
2. The advancement of education
3. The advancement of religion
4. The advancement of health or the saving of lives
5. The advancement of citizenship or community development
6. The advancement of the arts, culture, heritage or science
7. The advancement of amateur sport
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality or diversity
9. The advancement of environmental protection or improvement
10. The relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage
11. The advancement of animal welfare
12. The promotion of the efficiency of the armed services of the Crown, or the efficiency of the police, fire and rescue services or ambulance services
13. Other purposes recognised as charitable and any new charitable purpose which are similar to another charitable purpose.

## Excepted Charities

There are always exceptions to the rule and 'excepted charities' are those that do not have to register with the Charity Commission, or send them annual returns, such as, independent schools, churches.

*'Apart from not having to register or make annual returns, excepted charities must comply with charity law. Their trustees have the same responsibilities as trustees of any other charity.'* (Charity Commission)

In order to be excepted, a charity has to have an annual income less than £100,000 and be one of the following:

- churches and chapels belonging to some Christian denominations
- charities that provide premises for some types of schools
- Scout and Guide groups
- charitable service funds of the armed forces

However, the Charities Act 2006 did bring in some changes – prior to 2009 Parliament or the Charity Commission could make regulations to 'except' charities. No new exceptions can now be made, apart from for charities that cease to be exempt charities.

For more information about excepted charities see [Charity Commission Guidance on excepted charities](#)

## Exempt Charities

Another exception to the rule are 'Exempt charities', so called because under the Charities Act 1993 a number of charities were exempt from registering with the Charity Commission because they were already regulated by/accountable to another body, for example, some universities, museums, and Industrial Provident Societies (IPS).

Again, the Charities Act 2006 brought in a few key changes to exempt charities:

- some previously exempt charities lost their exempt status, on the grounds that there is no suitable supervisory body
- most charitable IPS (or registered societies) will no longer be exempt

For more information about exempt charities see [Charity Commission Guidance CC23](#)

## Charity Overview– characteristics

1. Incorporation	No
2. Limited Liability	No
3. Governing document	Constitution
4. Can register as a company	Yes
5. Ease to set up	Must meet public benefit test and have charitable purposes
6. Costs	None (currently)
7. Sources of finance available	Grants, donations, fundraising events, contracts, commissioning, personalisation, trading, crowdfunding etc.
8. Regulator	Charity Commission. May have other regulators based upon what the org. does.
9. Members	Yes
10. Income requirement	Over £5,000 annual income
11. Converting to CIO	Yes
12. Asset Lock	N/A
13. Dividends & interest	N/A
14. Tax Benefits	If registered with HMRC and/or Charity Commission

## The Advantages and Disadvantages of a Charity

Advantages	Restrictions	Disadvantages
Well recognised	Resources can only be used for the charities purposes	Open to public scrutiny
Public trust is generally high	Governing body cannot be paid	Annual accounts and reports must be provided (another set for Companies House if a charitable company)
Access to a variety of sources of funding	Limits on trading	May have to have accounts examined or audited depending on income level
Some tax benefits	Limits on campaigning and political activity	Ethical issues may arise – trustees must ‘act with prudence’
Charity Commission oversight and scrutiny	Restrictions on how funds can be invested	Grant funding is often restricted and may not cover core costs
Volunteer trustees provide accountability and credibility	Compliance obligations with the Charity Commission	

## What is a trust?

*'An organisation with no need for members, unlikely to employ many staff and wants a simple structure to allow a small number of people to manage money or property for a charitable purpose.'* Voluntary but not Amateur

All charities hold their assets in trust i.e. charities have a duty to use the assets only for charitable purposes; but only some charities are set up with the legal form of a trust.

A trust is created when money or property of any sort is given by a settlor or donor to a trustee to be held on behalf of an identifiable beneficiary(ies) or for a charitable purpose. Whilst a trust can come into being as soon as money or property is given in this way, most trusts are formally created through a will or a trust deed or declaration.

It is important to remember that *'the term trust defines the relationship between parties, rather than an organisational form.'* (Voluntary Sector Legal Handbook; Russell-Cooke).

Charitable trusts register with the Charity Commission and are unincorporated. They are most suitable if:

- the organisation will have substantial assets or very secure funding and/or will not have long term financial commitments – it must be able to ensure (with some certainty) that it can meet all of its financial obligations.
- is unlikely to employ many, if any staff
- will not have a large membership
- doesn't need a corporate structure
- is unlikely to carry on any kind of business
- makes grants but doesn't do any other type of work

It is possible to have the word trust in your charities name but not have the legal form of a trust.

There may also be tax implications for trusts particularly around inheritance tax, properties and transferring money from a trust – for more information on the see the [Charity Commission guidance](#).

### Trust Overview – characteristics

1. Incorporation	No
2. Limited Liability	No
3. Governing document	Trust Deed or declaration
4. Can register as a company	Yes
5. Ease to set up	Simple but with rules
6. Costs	must specify a sum of money, land or some other assets that your charity will start with (it doesn't matter how much) in the governing document. Legal fees for setting up may apply
7. Sources of finance available	Investments, interest from original sum of money
8. Regulator	Charity Commission
9. Members	No
10. Income requirement	None
11. Converting to CIO	Yes
12. Asset Lock	N/A
13. Dividends& interest	N/A
14. Tax Benefits	If registered with HMRC and/or Charity Commission

## The Pros and Cons of a Trust

Pros	Cons
Simple and flexible	May need legal advice to ensure the trust is valid
Easy to create and to wind-up (as long as provision in governing document)	Trustees are personally liable for the trusts debts if it can't meet them
The number of trustees can be very small – private trusts can have just 1 although the Charity Commission require 3 for a charitable trust	Not suited to membership
If governing document has the provision to do so, amendments to it are easy	Governing document must include a power to amend them otherwise a court or Charity Commission will have to be involved
Trustees are generally appointed by existing trustees or an outside body, rather than elected	Trustees are generally appointed by existing trustees or an outside body, rather than elected – may be seen as undemocratic
Trustees can hold land or investments	Trustees rather than the trust itself hold property – may need to incorporate to hold property and protect trustees.
Charity Commission regulation gives trusts a level of credibility	
Small trusts are generally cheap to administer	

## The four main types of legal charity forms

Trust	Registered Charity	Charitable Incorporated Organisations (CIOs)	Company Limited by Guarantee / Incorporated
<p>An organisation that exists to manage property or money for a charitable purpose.</p> <p>The governing document is a trust deed or a will. There is no protection from liability for the trustees.</p> <p>There is no need for members.</p> <p>Trusts do have to register with</p>	<p>An organisation with charitable aims that meets the public benefit test and has over £5,000 annual income can register as a charity.</p> <p>The governing document is a constitution. There is no protection from liability for the trustees (unless also incorporated)</p> <p>Must have members.</p> <p>Register with the Charity Commission and have to produce annual accounts and reports.</p> <p>Prior to registering, an unincorporated</p>	<p>An organisation with charitable aims that meets the public benefit test and is incorporated without being a company.</p> <p>An organisation can register as a CIO with no manual income.</p> <p>The governing document will be a constitution. The trustees will be protected in most circumstances against contractual liabilities.</p> <p>Must have members.</p> <p>CIOs only register with</p>	<p>The governing document is a memorandum and articles of association for a company formed before September 2009 and articles of association for a company formed since then.</p> <p>The directors are protected in most circumstances against contractual liabilities.</p> <p>Must have members.</p> <p>Charitable companies must register with Companies House and, usually, with the Charity Commission.</p>

the Charity Commission.	association with charitable aims will be considered as a type of charity.	the Charity Commission.	The directors of a Charitable Company will also be its trustees.
-------------------------	---	-------------------------	--

## Resources

- The Russell-Cooke Voluntary Sector Legal Handbook, Third Edition
- Ruth Hayes and Jacki Reason: 'Voluntary but not Amateur – A guide to the law for the voluntary organisations and community groups': 8<sup>th</sup> Edition: Directory of Social Change (2012)
- Get Legal Website [www.getlegal.org.uk](http://www.getlegal.org.uk)
- The Charity Commission: '[Excepted Charities](#)' (2010)
- The Charity Commission: '[Exempt Charities \(CC23\)](#)': (2013)
- The Charity Commission: '[What Makes a Charity \(CC4\)](#)': (2013)
- GOV.UK. Personal Tax – Trusts Guidance: <https://www.gov.uk/topic/personal-tax/trusts>
- GOV.UK. [Setting up a charity: model governing documents](#)
- GOV.UK. [Corporation Tax: loans to participators, trustees of charitable trusts](#)

## Support

If you would like any support with setting up an organisation and picking a legal structure or any other issues facing your organisation, please contact the Development Team at Community Southwark: [development@communitysouthwark.org](mailto:development@communitysouthwark.org) or 020 7358 7020