

## Winding up an unincorporated charity

**NB: This briefing assumes that the charity is solvent on winding up, that is, that it is able to pay all its debts.**

Trustees should do all they can to ensure that they are aware of the financial position of the charity to ensure that insolvency is avoided. If at any stage you suspect that your charity is or might become insolvent you should seek advice as a matter of urgency.



[Community Action Southwark](#) can assist you in assessing your financial situation and looking at the options that are available to you.

Under the Charities Act 1993:

- trustees of registered charities must inform the Charity Commission if their charity ceases to exist; and
- The Commission must remove from the Register any charity that has ceased to exist or does not operate.

Failure to inform the Charity Commission that a charity has dissolved or wound up will lead to enquiries being made about what has happened to the charity and its assets.

Even after they have dissolved their charity, the former charity trustees remain responsible and the Charity Commission may take action against them if the assets have been wrongly applied.

### Procedure with the Charity Commission

If you have decided to dissolve or otherwise wind up your charity, there are three situations you may find yourself in. You should check the charity's governing document and its financial records to see which situation will apply in your case. If you are in any doubt about this, you should consult the charity's legal advisers, the Charity Commission or Community Action Southwark.

The three situations are:

#### **1. There is a dissolution clause in the charity's governing document**

You must follow the procedure set out in the dissolution clause of the charity's governing document. You must ensure that, after meeting any liabilities, all the assets have been used for the purposes of the charity or in accordance with the dissolution clause. When you have completed the dissolution procedure, you must inform the Charity Commission using the online declaration form CSD-1077 on their website.

#### **2. There is no specific power to dissolve but all the charity's assets can be spent**

If the governing document does not contain a specific power for the charity to be dissolved, but all its assets can be spent, you may be able to bring the charity to an end by:

- spending all the assets to further its purposes; or
- donating them to another charity with similar purposes.

When you have spent or donated all the charity's assets, you must inform the Charity Commission using the online declaration form CSD-1077 on their website.

### **3. There is no power to dissolve and the charity has permanent endowment**

If the charity has assets that represent permanent endowment, it cannot legally be dissolved. However, if you are satisfied that the charity is not serving a useful purpose its objects may need to be changed to allow greater scope for the use of its assets. See the Charity Commission briefing 'How can an unincorporated charity be dissolved and removed from the Register?' (At <http://digbig.com/5bcydx>) for further information.

#### **Process within the charity**

The trustees recommend closure to the members at a Special General Meeting; the meeting must be quorate.

The trustees must give members the period of notice of the date of the Special General Meeting required by the constitution. The notice must state that the business of the meeting is to discuss the committee's recommendation that the charity be closed.

#### **Inquorate meeting**

If an inquorate general meeting has been held or the meeting is expected to be inquorate the trustees must ask for written advice from the Charity Commission. The letter to the Charity Commission (they will not deal with this matter on the telephone) should state the situation (either good reason to believe the meeting will be inquorate or it was called and was inquorate).

#### **Quorate meeting**

Minutes of the meeting must be kept and must record the wording of the special resolution worded:

*A Special General Meeting of the above named organisation, called for the purpose of recommending closure to the members was duly convened and held at (place) ..... on (date) ..... It was agreed by the members present that the organisation should close. The members of the committee were instructed to proceed with closing the charity in an orderly and proper manner.*

The minutes or resolution should also record what will happen to the assets of the charity after the settling of any outstanding liabilities. The dissolution clause will usually say that remaining assets should be passed on to a charity with similar charitable objects, unless the Charity Commission agrees otherwise.

#### **After the meeting**

If not already done the trustees should appoint someone whose job it is to ensure that assets and liabilities are identified.

Staff members should have been informed of the situation from the time it became a possibility that the organisation might close. Redundancy issues should have been dealt with by the committee, in line with current employment legislation

The final accounts must be prepared before the formal winding up

Liabilities such as staff salaries, redundancy payments, outstanding bills should be settled. Ensure that you are aware of all liabilities including equipment leases which may be longer term.

If there is not enough money to satisfy liabilities, professional advice must be taken as a matter of urgency from the organisation's accountant, solicitor or an insolvency practitioner

## Remaining funds

You should ensure that all the charity's debts and liabilities have been cleared before you spend its remaining assets and dissolve.

You must ensure that any grant or donations received for a specific purpose (restricted funds) are:

- used for the intended purpose;
- used for a different purpose of the charity with the agreement of the donor; or
- returned to the donor.

Any money remaining after all debts have been dealt with must be given to another registered charity (or divided between several charities) in accordance with the charity's governing document, unless the Charity Commission agrees otherwise.

## Payments to employees

If you want to make payments to any employees of the charity (on top of those you must make under their employment contract or by employment law) you should contact the Charity Commission for advice unless they are also beneficiaries no additional payments can be made to trustees or members.

## Records retention

After a charity has been dissolved or wound up, the trustees must arrange for its accounting books and records to be kept for:

- at least three years after the year they were made if it is a charitable company;
- or at least six years after the year they were made if it is an unincorporated charity.

The accounting records that must be kept include cash books, invoices, receipts and any similar record of the charity's financial activities.

Records retention is often a problem when a charity is wound up. A solution is to make an agreement with charities that you are donating remaining assets to.

## When the organisation has been formally wound up:

Once wound up there will be a number of loose ends to tie up:

- the bank account should be closed;
- all paper records that do not need to be kept should be shredded;
- all computer hard drives should be cleaned or reformatted so that documents relating to the organisation are no longer available;
- all headed notepaper, compliment slips etc. should be destroyed ;
- the website should be closed down;
- all email accounts should be closed.

## The following people and organisations should be contacted:

- employees, employees' representative and unions;
- your accountant and auditor or independent examiner;
- your solicitor;
- your insurers or insurance broker;
- your bank manager;
- your organisation's funders;
- immediate past committee members;

- anyone with a fixed charge or mortgage over any property the organisation owns;
- all creditors;
- service users;
- other organisations that the organisation is involved with or are members of;
- any other organisation or person that the trustees think should be told.

**Note:** We advise you to seek independent professional advice if you suspect your organisation is, or is about to become, insolvent.

### Further information

- Specific advice relating to your charity can be requested: By email - [enquiries@charitycommission.gsi.gov.uk](mailto:enquiries@charitycommission.gsi.gov.uk) or By Post - Charity Commission Direct PO Box 1227, Liverpool L69 3UG
- [Dissolution and Removal from the Register of Charities](#) Charity Commission guidance
- ["Managing financial difficulties and insolvency in charities"](#) from the Charity Commission (CC12).
- The Insolvency Service website at <http://www.insolvency.gov.uk/fip/> has a database of insolvency practitioners.

### Support

If you would like any support with winding up or any other issues facing your organisation, please contact the Development Team at CAS: [development@casouthwark.org.uk](mailto:development@casouthwark.org.uk) or 020 7358 7020.