Guide to setting up a UK charity
INTRODUCTION

This guide takes you through the steps required to set up a UK charity and the responsibilities of charity trustees.

Why should you set up a new charity? You may have a specific charitable purpose in mind and wish to create an organisation to fulfill this. Alternatively, you may wish to have your own, named grant-making foundation to create a culture of family philanthropy for current and future generations, with your children perhaps becoming trustees in due course. Charities also pay reduced business rates, benefit from tax relief and can apply for certain types of grants and funding.

Why might setting up a new charity not be the right option for you? Charities are restricted in what they can do and how they work. They must follow charity law and report publicly to the Charity Commission. The trustees of charities have their names in the public domain, have a fairly onerous role and generally cannot benefit financially from the charity. It can take several months to register a charity, registration is not guaranteed and correspondence with the Charity Commission can be extensive, although we would guide you through this process. In some cases you may be able to achieve all the same benefits of a new charity simply by working with an existing charity, by setting up a named fund with UK Community Foundations or by way of a Charities Aid Foundation (CAF) charitable trust. We are happy to discuss these options with you should you have any queries about whether setting up a new charity is the right option.
Who are charity trustees?
The charity trustees are the people who serve on the governing body of a charity. Charity trustees are responsible for the general control and management of the charity. They are the people who lead the charity and make sure it is doing what it was set up to do. Most trustees do not receive payment for their role but they can claim reasonable expenses. There should generally be at least three charity trustees.

What do charity trustees do?
Trustees must ensure that the charity has the money it needs and spends its money sensibly on the activities it was raised for, that it follows the law, including preparing reports and accounts to send to the Charity Commission, and that it does not break the rules set out in its governing document. Trustees of smaller charities generally take on all or most of the work of running the charity. In larger charities, trustees often delegate the day-to-day operations to staff and senior management. Trustees can also seek advice from external sources like solicitors or other experts if they need to.

What do you need to decide in relation to the trustees of your charity?
You should consider who the trustees will be, how they will be appointed, how long they should be in office and how their office will be terminated. When recruiting your first trustees you should aim to stagger the lengths of the first appointments so that the trustees do not all change at once and you have a stable body of experienced trustees.

Is there a recommended type of trustee?
You should aim for a minimum of three trustees who are unconnected with each other and who have a good range of skills. You need enough trustees to govern the charity effectively but your board should be small enough to arrange meetings easily and allow effective discussion and decision-making. The trustees must be interested in your charity’s work and willing to give up their time free of charge to help run it. Being a trustee takes commitment and you should avoid appointing trustees based purely on their status or position.

Are there any restrictions on who can be a trustee?
In most cases a charity trustee must be at least 18 years old. Some people are also disqualified by law from acting as charity trustees, including those who have unspent convictions for dishonesty offences, those who are currently declared bankrupt or disqualified from being a company director, and those who have previously been removed as a charity trustee due to misconduct or mismanagement.

Are there special requirements if your charity works with children or vulnerable adults?
If your charity works with children or vulnerable adults, it will need to have a child or vulnerable adult protection policy. Disclosure and Barring Service (DBS) checks will need to be undertaken for all trustees of charities working with children or vulnerable adults. These used to be known as CRB checks.

Can non-UK resident individuals be trustees of your charity?
Non-UK resident trustees can be appointed provided the appointment is in your charity’s best interests. However, you will have to consider the practicalities of how and where to hold meetings and be sure the benefits of the appointment outweigh any difficulties.

Can your trustees be paid by the charity?
Beyond reasonable expenses, your trustees should not receive any financial benefit from the charity without specific authorisation from either its governing document or the Charity Commission. Trustees must avoid situations where their duties as trustees conflict with their own personal interests. Charities cannot benefit anyone connected with the charity – for example, giving work to a trustee’s family member or company – unless it is authorised. This also applies if you have trustees who are solicitors or accountants and they or their firms do any paid work for your charity.
YOUR CHARITY’S CHARITABLE PURPOSE FOR THE PUBLIC BENEFIT

What makes an organisation charitable?
To be accepted as a charity, your organisation must be exclusively charitable. It must fall within a range of accepted charitable purposes which include the prevention or relief of poverty, the advancement of religion, education, health, citizenship, the arts, amateur sport, human rights and animal welfare. Your organisation must also be for the public benefit.

Why is a political purpose not a charitable purpose?
A political purpose means any purpose aimed at furthering a political party or securing or opposing a change in the law or public policy, anywhere in the world. This cannot be a charitable purpose as it is not objectively for the public benefit.

Does this mean a charity cannot carry out any political activity?
A charity can sometimes carry out political activity or campaigning provided that supports the delivery of its charitable purposes. For example, a charity promoting health might lobby the government to run a public awareness campaign and this would not generally prejudice its charitable status.

What is the meaning of public benefit?
To be charitable your organisation must either benefit society as a whole or benefit a section of the public. It cannot exclude the poor. It must not discriminate on the basis of age, gender, disability, race or religion unless this is clearly designed to overcome a minority problem or is a proportionate means of achieving a legitimate aim. You may choose to focus on certain beneficiaries. You can do this provided that you have proper reasons for doing so and can justify these to the Charity Commission.

How do you formulate your charity’s purpose?
Your charity’s purpose should make it clear what the outcomes of your charity’s work will be, where these outcomes will happen, how your charity will achieve these outcomes and who will benefit from these outcomes.

Why is your charity’s purpose so important?
Your charity’s purpose is important for the Charity Commission to decide whether it is a charity and for HM Revenue & Customs to decide whether it qualifies for tax relief. The purpose is also made public so that anyone joining, supporting or benefiting from your charity can understand what your charity does, who it helps, and where and how it works. Your trustees must also make decisions and run the charity in a way that is consistent with its purposes.

CHOOSING A NAME FOR YOUR CHARITY

How do you choose a name?
You should choose a unique name and avoid names which are the same or similar to the name of another charity or company. The name should also not be misleading about the charity’s status, size, role, purpose or royal connections and it must not be offensive in any language. The Charity Commission and/or Companies House can refuse to register your organisation if its name is inappropriate or they may direct you to change the name and your charity would then be responsible for any costs involved.

What practical steps should the trustees take when choosing a name?
The trustees are responsible for choosing the name of your charity. You should search the Charity Commission register of charities to check there are no other charities with the same or a very similar name. We would also recommend you do not use the words “charity” or “charitable” in your name. You must include a translation of any non-English words used in your charity’s name.
What are the different types of charity structure?
To set up a new charity you must decide what sort of legal structure it will have. This will depend on whether you need it to have a corporate structure. Charities with corporate structures are either charitable companies or charitable incorporated organisations (CIOs) and charities without corporate structures are generally either trusts or unincorporated associations.

What are the advantages of a corporate charity structure?
If you choose a corporate charity structure (i.e. a CIO or company), your charity has the legal capacity to do things in its own name, such as employing paid staff, entering into contracts and leasing premises. Generally your charity's trustees would not be personally liable to third parties for the charity's actions.

What are the advantages of a charity without a corporate structure?
Charities without a corporate structure are generally quicker to set up and simpler to run but their trustees have potentially unlimited personal liability to third parties. These charity structures are only really appropriate for small, grant-making organisations and family foundations.

What are the advantages of a CIO?
For most charities, we would recommend a CIO. As well as having all the advantages of a corporate structure as set out above, all CIOs must register with the Charity Commission regardless of their income level. Registration with the Charity Commission gives clear acknowledgement of an organisation's charitable status, lends credibility to the organisation, opens up the possibility of applying for grants that are only available to charitable organisations, and allows donors and the organisation to benefit from tax reliefs.

Summary chart of charitable structure options

<table>
<thead>
<tr>
<th>Type of organisation</th>
<th>How is it governed?</th>
<th>Advantages?</th>
<th>Disadvantages?</th>
<th>How is it established?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charitable Incorporated organisation (CIO)</td>
<td>Run by trustees and governed by a constitution which is registered by the Charity Commission.</td>
<td>Limited liability for trustees. The charity itself is a legal person so it can enter into contracts itself. Only registered at and regulated by the Charity Commission and no involvement from Companies House. Specifically designed for charities.</td>
<td>New and relatively untried structure. Unfamiliar to banks and other commercial bodies. Need for Charity Commission involvement in any amendments.</td>
<td>Constitution, trustee declaration and registration at Charity Commission.</td>
</tr>
<tr>
<td>Charitable trust</td>
<td>Run by trustees and governed by a trust deed.</td>
<td>Generally simple to establish and easy to amend. Fairly informal structure.</td>
<td>Trustees have unlimited personal liability. The charity itself is not a legal person, meaning that the trustees themselves have to enter into contracts. Only generally suitable for family foundations and grant-making charities.</td>
<td>Trust deed, trustee declaration and registration at Charity Commission.</td>
</tr>
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# Creating a Governing Document for Your Charity

**What is a governing document?**
A governing document effectively acts as a rulebook for your charity, setting out its charitable purposes, what it can do to carry out its purposes, who runs it and who can be a member, how meetings will be held and how trustees will be appointed. The governing document also covers any rules about paying trustees, holding investments and land, whether the trustees can change the governing document and how to close the charity down if necessary.

**What are the different types of governing documents for a charity?**
The governing document for a Charitable Incorporated Organisation (CIO) is a foundation or association constitution, for a charitable company it is a memorandum and articles of association, for a trust it is a trust deed or Will, and for an unincorporated association it is a constitution.

**How do you choose a governing document?**
Once you have decided on a charity structure, we will assist with drafting your governing document. We recommend basing your governing document on one of the Charity Commission’s model governing documents, as this makes it easier to register your charity. There will still be some decisions you need to make within the template and we will work closely with you on these. We would only recommend preparing a bespoke governing document if there is genuinely no approved template that is right for your charity. We would charge an extra fee for this service.

**Which CIO governing document should you choose?**
If you have chosen a CIO as your charity structure, there are two options for your governing document. First, the “foundation constitution” is used where the only members of the CIO will be the trustees. This will be for smaller charities which are run solely by the trustees. Alternatively, the “association constitution” is used where your CIO has a wider membership including voting members. If in the future you decide that the other CIO constitution better suits your charity, you can amend your constitution to make the changes.

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### Choosing a Structure for Your Charity

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</thead>
<tbody>
<tr>
<td>Charitable company (company limited by guarantee)</td>
<td>Run by directors (who are normally also the trustees) and governed by memorandum and articles of association. Registered with Companies House.</td>
<td>Limited liability for directors and trustees. The charity is a legal person so it can enter into contracts itself.</td>
<td>Potentially more expensive to establish. Must register twice – with both Companies House and the Charity Commission - and regulated by both, Company rules and governance apply.</td>
<td>Memorandum and articles, trustee declaration and registration at Charity Commission.</td>
</tr>
<tr>
<td>Charitable unincorporated association</td>
<td>Governed by a constitution.</td>
<td>Generally simple to establish and no formality. Trustees have unlimited personal liability. The charity itself is not a legal person, meaning that the trustees themselves have to enter into contracts. Only generally suitable for small community associations.</td>
<td>Constitution, adoption by resolution at meeting of members.</td>
<td></td>
</tr>
</tbody>
</table>
How do you start using your governing document?
For all types of charity, all the trustees should meet to discuss and agree the draft governing document, agree to start using the governing document, sign and date the governing document and then record that this was agreed in the minutes of the meeting.

Are there any additional steps before you can use your governing document?
If you choose a charitable company, it must be registered with Companies House to get a certificate of incorporation before you can start using its articles of association.

If you choose a CIO, its constitution must be registered with the Charity Commission before you can start using it.

For a charitable trust, at least one independent person must witness the trustees’ signatures on the trust deed so that the trust deed is validly executed.

Must your charity be governed by the law of England and Wales?
Yes. Your organisation cannot be a charity in England and Wales if it is subject to another country’s jurisdiction. Your governing document must adopt the law of England and Wales to govern it.

Do you need to register your charity with the Charity Commission?
All Charitable Incorporated Organisations (CIOs) need to register with the Charity Commission. Most other charitable organisations with an annual income of more than £5,000 per year also need to register. We recommend applying to register your organisation with the Charity Commission in all cases.

What do you need to consider before registration?
Before applying for registration you should decide what your charity’s purpose is, decide what type of structure it will have, have a governing document, choose a name, recruit at least three trustees and decide how your charity will be funded. If your charity is not a CIO, you will need to show an annual income of at least £5,000 for registration. You need to think about the identity of the trustees. There need to be at least 3 trustees. Your application needs to satisfy the Charity Commission that your organisation is a charity and should be registered and that your trustees understand their role and responsibilities. We will need to liaise with you closely throughout the registration process.

What information about your charity needs to be provided to the Charity Commission for registration?
For the online registration process we will need the following information about your charity:

- A copy of your charity’s certificate of incorporation and memorandum if it is a company
- Proof that your charity’s annual income is over £5,000 (unless it is a CIO). This can be its latest annual accounts, a recent bank statement or a formal offer of funding.
- A copy of your signed trustee declaration form
- Family foundations will need a grant-making policy and we can assist with drafting this
- A copy of your charity’s business plan
- Clear evidence of your charity’s public benefit

What is the trustee declaration form?
Each trustee must read and sign a trustee declaration form to confirm they can act as a trustee of the organisation. It is a criminal offence to make a false or misleading statement on this form. The Charity Commission will check that all those named in the application as trustees are eligible to act.

What further information about your trustees will need to be sent for registration?
We will also need the following information about your trustees:

- The full name and any previous names of each trustee
- The full address and postcode of each trustee
- The dates of birth and email addresses of each trustee
- Whether any trustees or their close family members will personally benefit from the charity in any way
- Confirmation that each of your trustees has read and understood the Charity Commission’s “Essential Trustee” guidance
REGISTERING YOUR CHARITY WITH THE CHARITY COMMISSION

Are there special requirements if your charity works with children or vulnerable adults?
Disclosure and Barring Service (DBS) checks will need to be undertaken for all trustees of charities working with children or vulnerable adults. The trustees will need to confirm that they have read the Charity Commission’s guidance on protecting vulnerable groups and sign a declaration that the trustees have carried out all necessary safeguarding checks required by law.

Will your details be in the public domain?
All trustee names (but not addresses) are displayed on the Charity Commission public register. The postal address and email address for the charity are also on the public register.

How long will the Charity Commission take to register your organisation once it has all the documentation?
The registration process can take up to a few months to complete. Making an application for registration does not guarantee success but we will guide you through the process and seek to overcome any issues raised by the Charity Commission in response to your application. The Charity Commission may have questions about your charity’s purposes and how you will carry them out or how they are for the public benefit, especially if they are novel or unusual. Delays are caused by not using a Charity Commission model governing document or not showing that your charity’s purposes are consistent with its activities. In most cases the Charity Commission will raise queries and there will be detailed correspondence before registration is completed.

What happens if your application to register as a charity is successful?
If the Charity Commission decides your organisation is a charity and should be registered, it will enter your charity on the register of charities. It will email your charity number to your charity’s main contact and email each trustee a list of online guidance relevant to their role as trustee. Sometimes the Charity Commission will only register your charity on condition that the trustees take certain actions. In this case, the Charity Commission may monitor your charity’s activities after registration and ask you for evidence that the trustees have taken the required steps.

What happens if your application to register as a charity is unsuccessful?
In the unlikely event that your application is unsuccessful, the Charity Commission will confirm to you in writing the reasons your application was rejected. You can then reapply, providing you have addressed the reasons for rejection, or you can ask the Charity Commission to review its decision to reject your application, or you can appeal to an independent tribunal against the Charity Commission decision.

Do you need to register separately with HM Revenue & Customs?
You will need to register separately with HM Revenue & Customs for recognition as a charity to receive charity tax reliefs and become eligible for Gift Aid. We can assist with this registration process.

Which charities cannot register with the Charity Commission?
If your charity is not a CIO and has an annual income of less than £5,000, it cannot register with the Charity Commission. Other charities that cannot register are excepted charities (churches, charitable funds of the armed forces, and scout and guide groups for example) with income of less than £100,000 and exempt charities, including most universities, national museums and galleries. The Charity Commission is also unable to register charities that are not based in England or Wales.

What first steps should you take once you have registration?
You should ensure the charity has insurance in place for public liability, employer’s liability, fire, theft, vandalism or accidental damage and (if appropriate) terrorism. You should appoint an accountant, bookkeeper, VAT consultant, auditor, investment adviser and legal adviser (as appropriate).
What are the ongoing responsibilities of the charity trustees after registration?

All trustees must carry out the charity's purposes for the public benefit. They must understand their responsibilities and liabilities. Each trustee must be given a copy of your charity's governing document, accounts and financial information, policies and anything else that explains how it works. They must follow the law and the rules in your charity's governing document, manage the charity's resources responsibly and only in the best interests of the charity, use reasonable skill and care, make well-informed decisions and take advice when they need to. They must comply with reporting and accounting requirements (which vary depending on the size of the charity) and they must plan for the future.

What is meant by acting in the charity's best interests?

Trustees must always act in the best interests of their charity, thinking about the long term as well as the short term. They must not let their personal interests, views or prejudices affect their conduct as a trustee. They must act responsibly in all matters relating to their charity with as much care as if they were dealing with their own affairs. They must only use their charity's income and property for the purposes set out in its governing document and they must make decisions in line with good practice and the rules set by the charity's governing document. This means excluding any trustee who has a conflict of interest from discussions or decision-making on a matter.

What are the specific trustee responsibilities in relation to public benefit?

The trustees must explain in their trustees' annual report how they have carried out their charity's purposes for the public benefit. A detailed report is only required if the charity's gross annual income exceeds £500,000. Otherwise, a brief summary will suffice. The Charity Commission expects trustees to address and resolve situations in which the charity's purposes have not been carried out for the public benefit. The trustees must also state whether they have had due regard to the Charity Commission's public benefit guidance when exercising their powers and duties.

Do trustee decisions have to be unanimous?

No. Trustees usually make decisions by majority.

Are there specific trustee roles you should appoint?

You should appoint a chair to plan trustee meetings, represent the charity at events and work as a link between trustees and any staff. You should also appoint a treasurer to ensure the charity is keeping proper accounts and to take the lead on making its finance and investment policies. However, all the trustees are equally responsible for the charity's finances.
PERSONAL TRUSTEE LIABILITY

Can trustees be liable to the charity for their actions?
If the trustees have acted lawfully, responsibly and reasonably, have followed the rules in the charity's governing document and have taken reasonable steps to manage risks, they will not be liable for any loss or liability caused by decisions they have made. However, trustees can be liable to their charity if they cause it to lose funds through negligence, recklessness or deliberate wrongdoing. The Charity Commission can take trustees to Court to recover funds lost to their charity. Trustees act jointly when running a charity so the trustees as a group would be liable to repay any loss to the charity, regardless of whether they were individually responsible for the loss.

Can trustees be liable to third parties?
Trustees of charities which are not incorporated (trusts or unincorporated associations) can be liable to third parties as they do not have the benefit of limited liability which is offered by a corporate structure (CIO or charitable company). This means that trustees of unincorporated charities could be personally liable for any debts or claims the charity cannot pay from its own money or assets.

What can trustees do to reduce the risk of personal liability?
To reduce the risk of becoming personally liable, trustees should:
- Make sure the charity can meet its financial obligations, particularly before agreeing to any contract or substantial borrowing
- Make sure trustees understand their responsibilities
- Hold regular trustee meetings and keep proper records of decisions made
- Ensure they prevent conflicts of interest from influencing decisions
- Ensure any benefits to trustees or connected persons are properly authorised
- Take advice from a suitably qualified person when they need to
- Give clear written instructions to anyone they delegate to and ensure the instructions are being followed
- Ensure the charity has effective management and financial controls in place
- Consider whether the charity and the trustees have sufficient insurance in place
- Consider whether the charity needs to become incorporated

CONTACTS

For more information please contact:

Andrew Goldstone
Partner, Head of Tax
T +44 20 7440 7205
E andrew.goldstone@mishcon.com
Twitter @GoldstoneTweets

Kassim Meghjee
Partner, Tax Group
T +44 20 7406 6295
E kassim.meghjee@mishcon.com

Sarah Albury
Senior Associate, Tax Group
T +44 20 7440 7042
E sarah.albury@mishcon.com