

Charity FAQ Series

The basics: structure and governance

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IMPORTANT NOTICE: Please note that the information given in this briefing paper relates to the law for England and Wales; whilst many of the responses may apply equally to Scotland and Northern Ireland, readers from those regions should seek legal advice before applying them.

Introduction and Health Warning

This Briefing Paper is a collection of common questions asked by charities. The answers are necessarily brief and are intended to provide an overview of the issues related to each. It may be necessary for your charity to obtain more specific advice relevant to your particular circumstances.

Stewardship's team of charity consultants will be pleased to help or to point you in the direction of appropriate advice. For details of our low cost consultancy helpline service for churches and Christian charities, please visit:

<http://www.stewardship.org.uk/smartweb/support-services/consultancy:-employers>

Q1. What are charities?

Charities are organisations set up for the benefit of the community. They enjoy some tax advantages from the government. To qualify as a charity, an organisation must meet strict conditions about its purposes (also referred to as its objects) and certain other aspects of its government. Its purposes must be **exclusively** charitable in law (in other words, a charity **cannot** have any non-charitable purposes).

Q2. What is a charity's governing document?

A legal document setting out the charity's purposes and, usually, how it is to be administered. It may be a Trust Deed, Constitution, Memorandum and Articles of Association, Will, Conveyance, Royal Charter, Scheme of the Charity Commission or other formal document.

Q3. Should we choose a charitable trust, a charitable company or a charitable incorporated organisation ('CIO')?

Charities need a legal structure, which is usually achieved through forming a trust or a company limited by guarantee. Charitable trusts are simple and less expensive to set up and run. Companies afford charity trustees more protection against their personal assets in the case of a third party claim.

The CIO is a new form of charity that gives trustees the same protection as companies, but will only be subject to charity law (unlike a company limited by guarantee, which is also subject to company law). If your charity will have a large income, employ staff, own land or otherwise considers the risks to the trustees are too high for comfort, we

would recommend a company or CIO structure. However, at the time of writing CIO's are not expected to be legally available until early in 2011.

Q4. My Church already has a Constitution. Do we need another governing document?

Very often a church Constitution relates to the internal, spiritual activities of the Church. The Charity Commission is interested in the holding and management of assets and it is usually necessary to create a Trust Deed or other structure (e.g. Memorandum and Articles of Association for a company, or CIO (for which, see Q3). Stewardship is very experienced in these matters. If you would like us to review your present arrangements, please contact our office.

Q5. What is an incorporated charity?

This is a charity which is also a company or has a similar legal status as a corporate entity in law. At present, the vast majority of corporate charities in the UK are 'charitable companies limited by guarantee'. The CIO (see Q3) will also have a corporate structure, but will not need to comply with company law or file documents with Companies House.

Q6. We have a really old deed / constitution. Is there any advantage in updating it or forming a new charity?

Yes, there is an advantage in having your old deed reviewed by a legal advisor. Over time, the needs of the charity and its beneficiaries change as does the law and external environment. It is, therefore, good practice to review your governing document every 5 to 10 years. It should always reflect the actual activities of your church / charity. A modern, functional document will help your trustees to run the charity well. Any revisions should be drafted by someone who is both experienced in charity law and practice and also in the governance of Christian charities. Stewardship's charity formation team will be pleased to assist you with your review.

Q7. What is the Charity Commission?

The Charity Commission is the independent regulator of charities in England and Wales. They ensure that charities are accountable, well run and meet their legal obligations in order to promote public trust and confidence.

Q8. Who are the charity trustees?

They are the usually the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members.

The law defines trustees as "the persons responsible for the general control and management of the administration of a charity". Note that this defines the persons' function rather than title. Therefore, it is possible that an individual can be a charity trustee, even though they are not named as such in any legal document.

Q9. Do all Trustees have to be UK based? Do they have to be UK citizens?

A majority of trustees must be normally resident in England and Wales. They do not have to be UK citizens.

Q10. What is permanent endowment?

This is the property of the charity (e.g. land, buildings, investments or cash) which the trustees may not spend as if it were income. It must be held permanently – sometimes to be used for in furthering the charity’s purposes, sometimes to simply produce an income for the charity. This will be determined by the original terms of the endowment. Generally, the income from permanently endowed assets will be available as general funds of the charity but the capital (including any capital gains arising) cannot be spent without the authority of the Charity Commission.

Q11. What is a Charity Commission Scheme?

A ‘Scheme’ is a legal document prepared by the Charity Commission normally under Section 16 of the Charities Act 1993 used to change almost any aspect of a charity’s purposes or administrative provisions. A Scheme is usually made by the Commission on the application of the Court or from the charity itself where there is good reason to seek such a Scheme. For example, the trustees of a charity formed many years ago may find that they can no longer fulfil a particular charitable purpose set out in the trusts of the charity because it is no longer applicable to modern society. A Scheme may be used to alter the charity’s purposes in suitable way to enable it to continue to function and apply the funds at its disposal.

Q12. Who is the Secretary of the charity?

In a non-company charity, the Secretary is an officer of a charity who may be a trustee, employee or other agent of the charity. Their duties may be to convene meetings, take minutes, etc. and their role may or may not be set down in the Charity’s Governing Document. Unless the governing document requires a Secretary, it is not essential to appoint one.

In a company charity, the ‘Company Secretary’ has duties set out in company law. See Q13.

Q13. What is a Company Secretary?

A Company Secretary is an officer of a charitable company, with duties set out in company law, to ensure compliance with the charity’s own governing document and various legal matters. The Company Secretary should be a person (whether or not a trustee) who will ensure that meetings are held regularly and that the Annual Report and Accounts and other documents are filed in good time with Companies House to avoid incurring a fine.

Although private companies are not now legally required to appoint a Company Secretary, the Charity Commission recommends that charities still do so. Each charity must, in any case, ensure that someone is responsible for calling meetings and

complying with the requirements of both Companies House and the Charity Commission.