

charity formation

transferring the work of an existing charity to a charitable company

Introduction

Stewardship is able to assist Christian organisations in transferring the work of an existing charity to a charitable company.

This service is delivered in association with Anthony Collins, a specialist firm of solicitors, which has extensive experience of working with churches and christian charities.

Features of our service

1. Advice on the most appropriate legal structure for the charity. For larger, more complex charities or those with higher risks a charitable company limited by guarantee may be more appropriate, and we are happy to discuss the reasons why you want to transfer.

The company provides greater protection to trustees personally but is a slightly more expensive option and does require greater administrative care to operate.

A further information sheet setting out the different advantages and disadvantages of trusts and companies is available on our website or on request.

2. Preparation of the necessary legal document for forming the new charitable company. This will be based on drafts which have been developed and refined over time and which will be acceptable to Companies House and the Charity Commission.
3. Advice and help with transferring assets from existing charity to new charitable company. Depending on circumstances this may not need legal help but in other circumstances help is crucial. These issues are covered further in this information sheet.
4. Filing of the agreed documents with Companies House and providing you with the articles of incorporation.
5. Completion of the detailed Charity Commission application form.
6. Handling of all correspondence with the Commission up to registration.
7. The provision of detailed guidance notes on the legal and financial aspects relating to church/charity trusteeship, and other related Stewardship Briefing papers to help keep you on the straight and narrow!

Standard charges

We set a standard charge for each category and this charge applies in the vast majority of cases. We endeavour to work within the standard charge wherever we can.

Our current standard charges, exclusive of VAT currently 20%, are £750.00 (Stewardship £150, Anthony Collins £600) (plus £40.00 Companies House fee).

All payments are made payable to "Stewardship"; initial payment £180 inclusive of VAT. We will request the balance of the charge payable approaching the completion of the work.

Extra charges

We appreciate, and are sensitive to the fact that at the outset of a charity's existence extra costs can be difficult to meet.

In unusual or complicated cases an extra charge may need to be made. Extra charges can arise in the following types of circumstances:

- Where meetings are required. We have assisted in the formation and registration of thousands of charities and it is only the exceptional case that requires meetings to achieve this. In nearly all instances telephone discussions are fully satisfactory.
- Detailed reviews of an existing charity's documents to establish, and address difficulties over the desired course of action.
- Assisting in transferring property from one charity to another. Should you wish for this to be provided, the solicitors can provide an estimate based on the nature of the assets being transferred.
- Extensive re-drafting of the proposed governing document where there is a

change from what the initial information indicated was required or where there are preferred styles of wording which do not materially affect the legal stance. (NB: There is no additional charge for the first re-draft that may be required except in the most unusual of circumstances).

- Unusually complex governance structures (e.g. weighted voting at membership level, unusual appointment of directors/trustees, three tier governance).
- Handling extensive enquiries raised by the Charity Commission as a result of their review of the proposed charity's website or other material. This is not usual – we have needed to make an extra charge in this respect in less than 1 in 100 formations.
- Advice or amendments to documents after successfully completing the charity formation.

Our approach to situations where any extra charge becomes likely is to discuss it with you to explain the issues, available alternatives and to give an estimate of the likely additional cost. Charges are not made without prior discussion of this nature.

Refund Policy: Should work not reach completion because the applicant has required us to cease work, refund of fees may occur but this will be at Stewardship's discretion and will be subject to deduction for costs which have been incurred.

Proof of Identification: As with other legal and financial service providers, Anthony Collins Solicitors will require personal identification from two of the proposed trustees. Since the requirements are governed by Law Society guidance they will request this from you themselves.

transferring assets from unincorporated charity to new charitable company

The level of formality required in relation to the transfer of assets and liabilities from a charitable trust or association to a new charitable company limited by guarantee will depend upon the extent of the assets and liabilities to transfer and the nature of the risks if problems arise. If the assets and obligations being transferred are minimal (for example just cash in bank accounts, minimal equipment and one or two supplier contracts) then a simple exchange of correspondence will probably be sufficient. If the assets and liabilities are more numerous/varied (for example freehold or leasehold property, a number of employees, funding agreements or other significant contracts, extensive equipment and so on) then a formal legal agreement documenting the transfer will be sensible so as to give clarity for the future.

As well as the preparation of a formal agreement (where appropriate) the transfer may necessitate other background work, on some of which you may need to have legal assistance.

1. Areas that do not normally need legal help would include:

- new bank accounts will probably need to be opened;
- investments may need re-registering in the company name;
- suppliers will need to be advised of the change of legal structure;
- other 'stakeholders' (interested community groups or grant funders) also should be advised;
- new stationery and publicity material will be required;
- Gift Aid declarations altered for the new charity. For those that have already signed Gift Aid declarations, HM Revenue and Customs have historically accepted that the declarations in favour of the 'old trust' still remain valid for the new company but, for the sake of good order, you may want to arrange for all givers to sign new declarations.

2. There are areas that some trustees would wish to have legal help on and some that are happy to do this for themselves with their own knowledge; for example:

- employees transferring to the new company pursuant to the TUPE Regulations and appropriate processes to be followed;
- dealing with grant funders over transferring the responsibilities under the grant funding to the new company;
- ensuring the registered owners of any properties to be transferred from the old charity are current and correct.

3. There are areas that we would strongly recommend having legal help to achieve. These would include:

- freehold property needing to be re-registered at HM Land Registry;
- leasehold property needing to be assigned to the company and the correct process followed to obtain the consent of the landlord where necessary.
- permanent endowment property; whether this is investments or land and property, needing to be handled correctly. (Most churches and charities do not have 'permanent endowment' property, but there are legal limitations over companies holding permanent endowment funds).

This list is not exhaustive and there may be other issues to be addressed depending upon the specific assets and liabilities involved.

Cost

We understand that the use of professionals can often seem an expensive and unnecessary luxury, especially when compared to the value of what can be achieved in ministry or the cost to a family in giving that amount for the work. It helps if the costs are seen in the context of protecting you against risks that may not be obvious, but sadly which we do see in practice even in Christian charity situations, and also that a transfer such as this only occurs infrequently.

There are some situations where we would advise against you trying to 'do it yourself' unless you have experts on your team. These would involve any transfers of freehold or leasehold properties where there are important legal formalities that can have crucial implications years into the future. Also, we would strongly recommend legal help when there are people or situations where conflict may arise or obligations may be called into question.

- Where a formal transfer agreement is desired the cost will depend upon what is required. If it is only items such as those in 'Section 1' above this will normally be in the range of £250 - £350 plus VAT.
- Where there are employees being transferred, general guidance can be provided where required (cost £100 plus VAT). If you want further help from Anthony Collins such as detailed advice, meetings or drafting of any documents relating to transfer of employment rights do discuss this with them and they will provide an estimate of costs. We would advise that if your staff are members of a defined benefits pension scheme the issues can be very significant and we recommend discussing this with us before going any further.
- Where there is freehold property to be transferred which is already registered with the Land Registry and held by the current trustees the cost of handling the transfer to the new company will normally be in the region of £250 plus VAT. Where the registered owners wrongly include trustees that are no longer current or the property is not properly registered then extra steps will be required to correct that.
- Where there is leasehold property to be transferred the extent of legal help required will depend on the terms of the lease and the extent of co-operation from the landlord. Once the assignment of the lease has been achieved cost of helping re-register the lease will normally be in the region of £250 plus VAT.

Very occasionally situations which appear 'standard' can turn out to have hidden problems (e.g. property where the legal owners are not the ones that are expected, leasehold properties where there are issues over assignment or transfer, or unusual restrictions placed on gifts/grants by those that have funded the charity). The approach we take to these is not to 'load' all the cost in case this happens but ask for you to be aware that this can happen, that none of our team wants to profit from your difficulties and that, if any extra charges will be needed to achieve what you need, then they will always be discussed with you in advance.

In considering whether or not to proceed with a move to corporate status, if you foresee there may be problems on the legal issues of transferring the assets and obligations, please feel free to complete the 'transfer sheet' at the end of the application form reflecting the items to be transferred and then discuss your situation with the team at Anthony Collins (0121 212 7450: e-mail phil.watts@anthonicollins.com) so that they can discuss the concerns and provide you with an estimate of the likely legal costs in relation to the help you need on the transfer process.

Keeping the "old charity"

One question that needs to be answered is whether to keep the existing charitable trust in a 'dormant' state or to wind it up altogether. The starting point would usually be to wind it up altogether and register the new company charity as having 'merged' with the old one. This has the advantage of leaving only one charity requiring any administration. It is recommended that this is recorded in the Charity Commission register of mergers because if this happens then, generally speaking, any subsequent gifts to the old charity take effect as gifts to the new company charity. There is a small cost for lawyers to deal with registering this 'merger' with the Charity Commission which is normally between £100 and £200 or you can deal with this directly using the Commission's online form.

The potential problem that arises is if the organisation expects to receive significant legacies. The general view is that Wills which leave a legacy to the unincorporated charity and use wording along the lines of 'provided that it remains in existence at the date of my death' will fail to result in the new charity receiving the legacy since the old charity won't exist when the donor dies and the provisions of the Charities Act 2006 are not thought sufficient to save the gift.

This problem with the current legal position is widely recognised and it is hoped that changes will be recommended as part of the review of the current law which will begin before the end of 2011. However, it remains to be seen if any recommendations made will be accepted and, even if they are, how long further legislation will take.

As a result, if a charity expects to receive significant legacies it will probably not wish to take the chance of losing income if Wills are poorly worded and best advice is to retain the old charity as a shell simply to receive such income and pass it across to the new company charity.

There is not much administration involved in administering the 'old charity' if it is dormant; at least one Trustees' meeting a year and the preparation of an annual return for the Commission is normally all that is required.

TRANSFERRING AN EXISTING CHARITY TO A COMPANY AND REGISTRATION WITH CHARITY COMMISSION - TIME LINE

This time line is designed to give clients a rough idea of what to expect when the application is relatively straightforward and the client is able to return the documents quickly. However, where a charity has a number of trustees (or some living abroad), further time will be required.

DAY 1 Completed application arrives at Stewardship	DAY 2-4 Application to our solicitors	WEEK 2 Client receives engagement letter from solicitors plus ID requirements	WEEK 2-4 Client returning documents required by solicitors	WEEK 3-5 Draft documents sent to client
WEEK 5-7 Client comments and returns draft documents	WEEK 5-8 Originals and draft Charity Commission Application sent to clients for comment and signature	WEEK 7-10 Originals and draft Charity Commission Application returned	WEEK 8-11 Originals sent to Companies House for Incorporation and receive company number	WEEK 10-12 Application sent to Charity Commission
WEEKS 13-20 RECEIVE CHARITY NUMBER (This timetable can be affected by whether the charity will work with children or young adults or if there are unusual aspects that raise queries from the Charity Commission) NB: This timetable is based on the prospective trustees completing and returning all required information promptly				

charitable company transfer questionnaire

Please complete all relevant sections. This form may seem long, but completing it fully will assist smooth progress. This will enable us to complete most of the Charity Commission application. If there is insufficient space use the continuation section or attach extra sheet(s)

name, administration and location of charity

Name: check first with the Charity Commission (www.charitycommission.gov.uk) in case your preferred name is already used. They will refuse to register if your name is the same as or too similar to an existing charity. If in doubt, ask for our advice.

1 Full name of existing charity: Charity Nr:
New charitable company name:

2 Any working name you use or wish to use:

3 Details of the main (official) correspondent including, where relevant, office address (if no office give home address):

Name Mr/Mrs/Miss/___ Capacity (*eg trustee*).....

Address.....

..... Postcode:

Daytime tel (.....) Alternative tel (.....) Fax: (.....).....

Email Charity website

Is the above an office or home address? Office Home

4 Date started (this may be approximate) _____

5 Location or locations where based or where main activities carried out (include relevant District/London Borough):

.....

6 If you will be working overseas give details of the countries where you are or will be operating:

.....

details of trustees

7 The trustees are the people having the legal powers and responsibilities to run the affairs, notably the financial affairs, of the charity. Their selection is therefore very important. Trustees do not have to have professional qualifications but ought to be actively involved in the affairs of the charity, and able to give time to attend regular meetings. Other requirements: ■ There are restrictions on trustees benefiting financially from the charity (see at 8 over). ■ There must be at least 3 ■ Avoid family members in the majority. ■ The majority of the trustees of a UK charity must be normally resident in the UK (ie, they must spend at least six months of the year in the UK) **Now list the intended trustees** (please include middle names where relevant):

Full name Home Address

.....

Full name **Home** Address

Full name **Home** Address

Full name **Home** Address

Full name **Home** Address

If there was insufficient space to show all the trustees, use the continuation page and tick box

8 Trustee remuneration or other benefits

The normal rule for charities is that trustees should not receive payment for their services, nor otherwise benefit from the charity (this does not prevent reimbursement for actual expenses incurred on behalf of the charity). The idea is to avoid any conflict between their own interests and the wider interests of the charity. However, it is possible to include power to pay trustees (with certain limitations, principally that the number of 'paid trustees' should be in the minority) to cover some ministry leader positions in organisations. If you think you may need this power in the future, include it now. It is harder to persuade the Charity Commission to allow it by later amendment.

NB: The Charity Commission will not normally register a charity when it wants to pay a majority of its trustees or close relatives of trustees. The restrictions on benefit also extend to the spouse or close relative of a trustee. So if the wife or husband of one of the trustees receives payment for some work done, this is classed as a benefit to the trustee.

We would like the power to pay trustees:

YES (recommended unless it is unlikely that there will be a need in the future)

NO

Is the requirement likely to be used in the near future: YES NO If YES please provide the following:

Name of trustee(s):

.....
.....

The nature and amount of the pay/benefits (if this is not yet determined then please put an indication of the likely bands of income and approach to setting the level of payment that is likely)

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.....
.....
.....
.....

9 Apart from your answer to 8, will any of the following benefit in any way, (including occupying any property owned or rented by the charity or renting/selling to the charity any property they own) directly or indirectly from the organisation:

(i) trustees; (ii) others involved in managing the organisation; (iii) a relative or business associate of (i) or (ii)? If so, give details:

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.....
.....

income, funding & financial arrangements

The Charity Commission have set a minimum financial threshold of £5,000 income per annum to register a charity. You will need to provide evidence of gross annual income with your application form; such as income/expenditure sheet for the past year; copies of your annual accounts or copies of bank statements showing at least £5,000 is deposited. For organisations that are unable to provide any of the above, a letter of pledge signed by a supporter(s) used to be satisfactory, but the only other indication of income that is now acceptable is a formal offer of funding from a recognised funding body.

We will also need details of your bank account (see section 'what you need to send with this form')

10 Financial Year

Every charity needs to work to a financial year and the Trustees can decide for themselves when this should run to. Common year ends are the 31st December, 31st March, 30th June, but it is entirely up to you which would suit you best.

What is, or will be, your financial year end? *Month* _____ *Date* _____ (eg, December, 31st)

11.1 Total income for last full year: _____

12 Funding and Fundraising

12.1 How do you intend to raise funds in the future?

.....
.....

12.2 Do you intend to make use of a professional fundraiser? YES NO

If yes you will need a written agreement with the fundraiser which meets minimal standard requirements which the Charity Commission may want to see.

15 Directors and members:

Select option for tenure of office of trustees/directors:

- Indefinite (ie until resignation or removal) retiring and offering for re-election each year
- All retiring and offering for re-election every _____ year(s) - *specify frequency.*
- Retiring by rotation (one third retiring each year over a three year cycle)

Should the chairman have a casting vote? YES NO

Rarely, provision is needed for organisations to be members of the company. Do you need this? YES NO

Companies limited by guarantee have both **directors** (the trustees) and **members**. Normally the trustees are left to run the charity but have to report to members at the Annual General Meeting. We normally make the trustees/directors and the members the same people for simplicity. If you think you may prefer some other structure, please discuss with us.

16 Child Protection

Some charities may work with children and under 18s and/or vulnerable adults. If you do, the Charity Commission will require (i) that you have a suitable Child Protection Policy and (ii) that every trustee has a CRB (standard) disclosure certificate dated within 3 years from the date of application.

Do you work with children and or vulnerable adults YES NO

If yes: Do you already have a policy, please tick the box and send a copy with this questionnaire. If you do not already have a policy you will need to start the process of putting one in place. If you need assistance, we recommend that you use the services of the Churches' Child Protection Advisory Service, who are specialists in this field. Contact details: www.ccpas.co.uk; e: info@ccpas.co.uk; t: 08451 20 45 50.

Do you make Criminal Records Bureau checks for:

Trustees YES NO **Employees** YES NO **Volunteers** YES NO

17 Existing Governing Documents

We will need to see all existing governing documents even if they are mainly about spiritual matters rather than legal matters. This is primarily to ensure that what goes into the new document doesn't contradict the existing.

Please provide copies of any of the following:

- Existing Trust Deed or 'conveyance' governing use of property
- Existing Trust Deed governing operation of the church activities
- 'Church Constitution' Document
- 'Church rules'

Other that have been used in regulating the activity of the church

what you need to send with this form

Please tick the box in each applicable case to indicate items you are enclosing.

- Copy of any existing governing documents (Existing Trust Deed, Constitution etc – see question 17)
- Copy annual statements of account for up to last 3 2 1 years (or if not available other information as indicated earlier)
- Bank paying-in slip or original piece of bank stationary (we understand that you may not have this currently but the charity commission require your bank account details so please send as soon as possible)
- Copies of any promotional literature
- Copy of any preferred Statement of Faith (*please also e-mail a copy to enquiries@stewardship.org.uk and mark it 'charity formation'*)
- Cheque payable to *Stewardship* for initial payment of: £150 + VAT = £180

A receipted invoice will be sent to you. The second part of the fee will be payable before the end of the process.

The solicitors will request from you identification information, please expect this.

signature

date

If different from official correspondent, complete the following:

Name

Address

Postcode Daytime tel (.....) Email

how did you hear of us?

Please send with all relevant enclosures to:

Stewardship, PO Box 99, Loughton, Essex, IG10 3QJ.

Telephone 020 8502 5600. Fax 020 8502 5333

TRANSFER OF ASSETS / LIABILITIES

1. Bank Accounts – details of all bank, building society or other similar accounts which are held in the name of the Charity

ie: bank, branch, sort code, account number and account name

2. Investments – full details of any investments other than the accounts mentioned above

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3. Contracts – details of any major contracts to which the Charity is a party, for example hire purchase or grant funding agreements and any contracts with self employed persons. Copies of the documentation may be required.

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4. Premises – details of all premises in which the Charity has an interest. Copies of title deeds, leases, licence, warranties and management agreements etc may be required.

5. Loans – details of any significant loans to you or by you and the likely position in respect of each of these as at the proposed transfer date. Copies of all documentation including mortgages, loan agreements, overdraft facility arrangements may be required.

6. Major Equipment – a list of those significant items of equipment (value of over £5k) to which specific reference would need to be made in the Asset Transfer Agreement.

7. Gift Aid – Is Gift Aid being claimed from HMRC YES NO