

Charity governing documents

Introduction

A governing document is the formal document required to establish a charity. The Charity Commission recommends that the governing document should include the following:

- 1 Objects - the purpose of the charity;
- 2 Powers - to be used by the charity to achieve its objects;
- 3 Charity trustees - who will run the charity;
- 4 Amendment provision - to allow changes to the administrative provisions if required; and
- 5 Dissolution provision - if the charity needs to be wound up.

The governing document should also contain administrative provisions to set rules dealing with how the charity trustees will run the charity and the internal arrangements for meetings, voting and looking after money.

Main types of governing document

- 1 Constitution or Rules
- 2 Trust Deed
- 3 Memorandum and Articles of Association of a company

Standard governing documents

Some large national charities produce a standard governing document which can be

used by organisations associated with that charity. The Charity Commission provides an information sheet with a list of organisations for which a standard governing document has been agreed. The application procedure for organisations with a standard governing document is more straightforward because the Charity Commission has already agreed the objects and administrative provisions.

The Charity Commission also produces model governing documents and, again, it is easier for the Charity Commission to consider drafts based on these because the administrative provisions have already been agreed. The Charity Commission will still have to consider carefully the objects of the organisation to ensure that the purpose of the charity is exclusively charitable.

You should consider whether a standard governing document or one of the Charity Commission's model governing documents is suitable for your organisation.

Type of organisation

The four main types of organisation are discussed below with their advantages and disadvantages.

1 Charitable Incorporated Organisation (CIO)

The Charity Commission has published two model constitutions to govern a CIO. The Association Model constitution is suitable for a CIO which has a voting membership other than its trustees. The Foundation Model constitution is suitable for a CIO with voting members who are also the trustees.

This type of structure is generally suited to all charities as it is an entity governed

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entirely by charity law and created specifically to provide charities with a structure which has limited liability without the burden of having to comply with company law.

1 Advantages:

- a The protection of limited liability is important. The trustees of a CIO are not normally liable personally for the CIO's debts. The members are only liable for the debts of the CIO to the extent to which they have undertaken to guarantee them (a nominal amount of, for example, £10);
- b A corporate identity means the CIO can own property and investments and enter into commercial contracts in its own name;
- c There are less administrative formalities than a company and the administration may therefore be simpler and less costly;
- d The ability to register with the Charity Commission even if the income of the charity is under £5,000.

2 Disadvantages:

- a CIOs are still very new and charitable companies are supported by the long established company law framework;
- b There is no public register for charges granted by CIOs as there is for companies which could make it harder for CIOs to borrow money;
- c A CIO must have both trustees and members, charitable trusts only need trustees;
- d CIOs are only established once they are registered with the Charity Commission which can take a long time. This means that the charity

cannot really begin its charitable work until registration has been completed.

2 Company limited by guarantee

A company's constitution is its Memorandum and Articles of Association. A charitable company is limited by guarantee and not by shares. This means that the assets of the company are used for the beneficiaries and the company's charitable objects, and not for the private benefit of shareholders. The directors of the company will be the charity trustees.

1 Advantages:

- a The protection of limited liability is particularly important if the charity is likely to be involved in quasi-commercial activities. The directors of charitable companies are not normally liable personally for the company's debts. The members are only liable for the debts of the company to the extent to which they have undertaken to guarantee them (a nominal amount of, for example, £10);
- b The ability to involve the members in the running of the charity which provides an element of accountability and allows participation from a wide section of the community. The directors are answerable to the members for the conduct of the company's affairs and are capable of being removed from office by a resolution of the company. It is possible to admit new members without much formality and a power can be included in the governing document to dismiss members;
- c A corporate identity means the company can own property and

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investments and enter into commercial contracts in its own name;

- d A company can be incorporated very quickly which means that the charity can begin its charitable work as soon as incorporation is complete and there is no need to wait until the charity is registered with the Charity Commission.

2 Disadvantages:

There are additional formalities required to run a charitable company because it must comply with both company and charity law. It is a good idea to have somebody involved with the running of the company who is familiar with the requirements of the Companies Acts so that all the necessary requirements can be complied with.

3 Unincorporated association

The governing document will be a Constitution or set of Rules. The trustees are usually known as the management committee. This type of structure suits organisations which are relatively small in terms of assets or a local branch of a national charity. The charitable work of unincorporated associations is usually undertaken wholly or partly by the members.

1 Advantages:

- a There are less administrative formalities than a company and the administration may therefore be simpler and less costly;
- b The membership of the association allows the views of local residents, local councils and other bodies easily to be represented;

- c The members elect the trustees and this provides accountability;
- d An unincorporated association can be established very quickly which means that the charity can begin its charitable work as soon as it is established and there is no need to wait until the charity is registered with the Charity Commission.

2 Disadvantages:

- a The association will not be a legal person and therefore individual people will have to be appointed to sign the legal documents on behalf of the association (nominees can be appointed to carry out this function);
- b It does not have limited liability and therefore the trustees may be liable for any debts the charity may incur (but if the charity trustees have acted prudently, lawfully and in accordance with the governing documents, such liabilities can be met from charity funds).

4 Trust

A trust is established by a Trust Deed which will contain the names of the individuals who are to act as the first trustees of the charitable trust. The trustees then appoint any subsequent charity trustees.

This type of structure is most suited to organisations where a small number of people are involved. An organisation should also consider being a trust if it is a grant making body, there is a restriction on spending capital or the land and buildings are to be held on trust for permanent use for the purposes of the charity.

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1 Advantages:

- a Confidentiality - the deliberations of the trust may be in private and the trustees are only responsible to the Charity Commission, and ultimately the courts, for their conduct (the trustees do not have to give reasons for the way in which they have exercised their discretion);
- b The trustees can regulate their proceedings as they wish, although always in accordance with the Trust Deed;
- c The organisation is not reliant on a membership for any part of the administration and therefore a smaller body of people will be involved, in other words just the trustees;
- d Less formality also means that the cost of administering the charity should be less;
- e A trust can be established very quickly which means that the charity can begin its charitable work as soon as it is established and there is no need to wait until the charity is registered with the Charity Commission.

2 Disadvantages:

- a A trust cannot own land or sign documents in its own name and therefore individual people will have to sign legal documents on behalf of the trust (nominees can be appointed to undertake this function);

- b The trustees do not have the advantage of limited liability, which may mean that volunteers are less inclined to become trustees;
- c If new trustees are appointed there will be some expense since they are usually appointed by deed and the trust's assets must be transferred into the new trustees' names;
- d It is only possible to remove a trustee, against their wishes, in limited circumstances.

Disclaimer

This information sheet has been prepared to highlight some key issues relating to Charity Governing Documents. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at October 2021 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Nicola Plant or Clare Morison on 01892 510000 or by email at:

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