

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

1 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 is a local branch of a national charity. The charitable work in 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;

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- 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.

2 Disadvantages:

- a the association will not be not 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);

2 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 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 or 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.

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.

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.

3 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.

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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 investments and enter into commercial contracts in its own name.

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.

4 Charitable Incorporated Organisation (CIO)

From spring 2010, it should be possible to set up a charity as a Charitable Incorporated Organisation (CIO). This structure is to be available to new organisations and existing charities.

Some characteristics of the CIO will include:

- 1 incorporated legal form;
- 2 limited liability for members;
- 3 registration with and reporting to the Charity Commission and not Companies House;
- 4 simpler filing and constitutional requirements than for charitable companies.

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 January 2010 and may be

affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Jeremy Passmore by email at jeremy.passmore@ts-p.co.uk or call on 01892 510000.

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