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A legal guide to  
starting a charity

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## Are you thinking of starting a charity?

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Stone King's team of charity lawyers have considerable experience of setting up charitable organisations. We appreciate that, in deciding whether or not to establish a charity you will have many questions. We have produced this booklet to help you identify the key initial considerations and to answer the questions we regularly deal with when setting up charities on behalf of our clients to help you start the journey.

### 1. Is your idea charitable?

If you are thinking of setting up a charity you will probably already have a good idea of what the charity is going to do and what particular sections of society it is going to be targeted at helping. However, there are lots of organisations set up for the public good that are not considered charitable in law. To be recognised as a charity in England & Wales, your organisation must be set up with *exclusively charitable purposes* and exist for the *public benefit*.

Some purposes and activities that are for the public good are not actually charitable, for example, campaigning to change the policies of governments, sport for its own sake and any activity where the private benefit to individuals is substantial. If your proposed organisation is not charitable, we are skilled in dealing with other forms of social enterprise such as Community Interest Companies (CICs), B-Corps and co-operatives that are very similar to charities, although they do not have the same benefits. [Stone King's structure table here](#) sets out some of the benefits and disadvantages of the various structures.

There are thirteen established categories of purposes that are considered charitable which are set out in the Charities Act 2011. In order to be eligible to be a charity, the activities of your organisation must fall within one or more of these established categories. In some cases, it may be obvious which category is appropriate, in other cases your idea may straddle one or more of the categories and may need careful thought as to how the parameters of what you are going to do is best shaped. More detailed guidance on charitable purposes and how they apply can be found on the [Charity Commission's website here](#).

### 2. What kind of structure would suit my charity?

Once you have established that your concept is charitable, you will need to consider what structure will be most suited to the charity that you want to run and to put in place a suitable governing document. The structure will depend upon the activities of your charity, the size of your organisation and whether there is a particular need to limit the liability of trustees. The most common structures are a charitable company, a charitable incorporated organisation ("CIO") or a charitable trust.

## CHARITABLE COMPANY

The company will be set up as a company limited by guarantee as opposed to a company that issues shares and will cost £40 to register with Companies House. The company will have to comply with the same provisions of company law as a profit-making company and will be registered separately as a charity. You may wish to choose this option because:

- Trustees in most cases have limited or no liability for a charitable company's debts or liabilities.
- The charity can hold property and bank accounts in its own name, rather than in the name of individual trustees.
- Administration can be less complicated because the charity can undertake all its charitable activities.
- The concept of a limited company is well understood and well-recognised internationally (unlike the other structures, which may not even exist in other countries) so operating abroad can be much easier.

The disadvantage is that the company law system has not been set up with charities in mind, and is subject to changes aimed more at profit making companies which can have big implications for charities. The charitable company is dual-regulated by the Charity Commission and Companies House.

## CIO

The CIO is a more recent addition to charity structures. It was designed as a corporate entity specifically available for charities who only have to register with the Charity Commission (i.e. it has a sole regulator) meaning that there is no duplication in administration e.g. filing of accounts, filing of resolutions etc. As with a company Trustees in most cases have limited or no liability for CIO debts or liabilities.

The CIO has been a popular choice since becoming an available option and annually about two-thirds of all new charities are set up as CIOs. It could be argued that the main drawback is a lack of awareness of this form of charity, for example, it is much less well known than the charitable company. However, given its popularity, this is likely to decrease over time and does not mean that it should be ruled out, unless the charity is working internationally, where a charitable company may be advantageous.

## CHARITABLE TRUST

The perceived advantage of a trust used to be the simplicity of the idea that a few people could come together to pursue charitable purposes which they would declare in the objects clause of the trust deed.

There are some drawbacks of the trust:

- The Trust does not have 'legal personality'. What this means is that third parties, whether they be employees, builders, bankers or customers who deal with a charitable trust are technically

dealing with the individual trustees. The individual trustees will be indemnified by the charity where expenditure has been properly incurred but if the charity does not have enough funds to meet its debts, individual trustees become liable to make up any shortfall. This means that if you are going to employ people etc. then it is unlikely to be an appropriate structure.

- Trust deeds often lack provisions regarding the operation of the charity, which can lead to uncertainty and issues down the line.
- There is no implied power to accumulate income as capital (rather than income), and powers to accumulate in trusts are subject to legal restrictions, which can make the day to day management difficult as the charity is expected to spend all of its income within a reasonable period of receipt.

Each of these structures have different benefits and we would be happy to discuss this with you in more detail. You may also find it helpful to review the [structure chart](#) which lays out in more detail some of the different considerations.

### **3. Deciding on your charity's objects**

'Objects' describe and identify the purpose for which your charity has been set up. They do not say what it will do on a daily basis. The objects you choose need to cover your charity's current (and hopefully future) activities and they need to be exclusively charitable. It is fairly difficult to change your objects once established. The Charity Commission and HMRC will look at your objects when considering whether to register you as a charity and whether you qualify for charitable tax relief. The trustees will have to make decisions and run the charity in a way that is consistent with the objects.

The objects are often drafted using quite formulaic wording that is designed to ensure that the objects are exclusively charitable within the established categories. This is necessary to ensure legal compliance. Most charities will then interpret the objects in a mission statement that puts the objects into plainer English to give a better understanding to third parties of what the charity is established to do.

You can see many examples of different objects used by charities by searching the Charity Commission register and looking at the [governing document section](#) of the register for individual charities. You may find it helpful to identify if there are other organisations that provide similar activities and support and review their entry on the register to see how their objects are phrased.

### **4. Trustees**

You will need to decide who the first trustees will be and think about any specific skills that the charity may need when recruiting trustees. Trustees are ultimately responsible for running the charity in law and they have control of the charity. Trustee (and senior management) will need to sign a declaration

confirming that they are not disqualified from acting as a charity trustee. We would normally recommend a minimum of 3 trustees. There will need to be mechanisms for appointing and removing trustees and we recommend a maximum term for service of trustees (usually 9 years). Trustees' duties and responsibilities are set out in the [Charity Commission's guidance – The Essential Trustee \(CC3\)](#).

If you are setting up a charitable company, you need to decide whether the trustees and members of the charity will be the same people or whether there will be a separate membership group.

## **5. Benefiting the public**

Your organisation will need to benefit a sufficient section of the public to be a charity. The charity cannot substantially benefit any private individual unless they are a beneficiary under the charity's objects. There are also strict rules about conflicts of interest, so trustees will need to declare their involvement with other parties or property in which they have an interest. Trustees (and individuals who are connected, e.g. spouses, children, partners etc.) cannot generally receive a salary, although it is possible to be paid for certain services provided to the charity. If you want to be able to pay trustees or connected individuals or benefit them in another way, you will need to discuss this carefully with us and it will be necessary to get specific authority from the Charity Commission.

## **6. The constitution**

The charity's constitution will set out clearly the charitable objects of the charity and the powers available to the trustees in the administration of the charity, as well as the process by which trustees are appointed.

The Commission provide template constitutions that can be adapted and used, however these are drafted to be "one size fits all" and it is more often than not the case that the provisions need to be amended substantively to be suitable to your organisation and how you want to operate.

## **7. The name**

Choosing a name for the organisation is a key part of the process of establishing a charity. Not only does the name need to appeal to the relevant public, it also needs to be available and protectable – after all, the charity's name and its reputation will be inextricably linked.

There are therefore some important steps which should be taken prior to deciding on the name of the charity, including clearance searching for registered company names and registered trade marks. Once the availability of a name has been checked, thought should be given to protecting the name through trade mark registration in order to ensure that the charity can act effectively to prevent misuse of its name - or the use of names which are too similar by other organisations - and damage to its reputation in the future.

Please see the [Stone King guide to choosing a name for a charity or social enterprise](#).

More detailed guidance can be found in the [Charity Commission's guidance "Choosing a Name" guidance for charities and social enterprises](#).

## **8. The registration process**

Once you have adopted your governing document, the next step is to register the organisation with the Charity Commission. It is important to note that if you are setting up a company or a charitable trust you are a charity in law when you have exclusively charitable objects for the public benefit and not as a consequence of registration with the Charity Commission. Importantly for a charity, however, registration confirms charitable status to potential donors. If you establish a CIO then it will not become a charity, or exist, until the Charity Commission has completed the registration process.

The registration process involves completing a detailed application form that requires a lot of information about the charity, how it will work, its planned activities and administrative information. The information required will vary depending upon what activities the charity is planning to undertake. In some cases, additional information will be required from third party experts to substantiate the fact that the planned activities have merit or are charitable.

During the registration process, the Charity Commission will look at the activities of the potential charity and particularly the public benefit inherent in those activities. The process usually involves correspondence with the Charity Commission in relation to the activities, meetings with the promoters of the charity, or occasionally, a formal legal opinion about the charitable nature of the organisation's objects and its proposed activities. The Commission will normally ask a series of detailed questions about the application to ensure that they have a thorough understanding of the concept and how the charity will operate.

The registration process can take anywhere from 1 to 6 months depending upon the complexity of the application. We will offer pragmatic advice where there is an urgent need for registration so that a charity can start its operations or obtain funding.

## **9. Post registration**

Registration as a charity is just the start of the journey. Stone King are able to support you on this journey, for example, with registering with HMRC and putting in place policies to ensure that the charity is appropriately governed and compliant with legislation and good governance. We can offer advice and support in a number of areas which are set out below as well as a comprehensive trustee training programme to ensure that you are aware of your legal duties and responsibilities and kept up to date with key developments.

## 10. Why instruct Stone King to help you set up a charity?

- We are leaders in the charity sector, enabling us to provide tailored advice specific to your needs in relation to your charity structure and the application process for registration.
- The lawyers in our Charity & Social Enterprise team predominantly work for charity clients and are able to provide practical solutions to problems based upon our in-depth knowledge and experience of charities and how they operate
- We offer a range of options depending upon the level of input that you require from us and depending on the complexity of the structure and application process.
- We work closely with the Charity Commission on a daily basis, fostering positive relationships, which we see as being essential to our charity clients' best interests, and we strive to maintain this whilst making sure that our charity clients' views are heard and understood. As a result, we also have a deep understanding of how the registration process works and the areas on which the Commission will focus when looking at applications.
- We will work closely with you, seeking to build an exceptional working relationship, enabling us to develop a deep understanding of your issues. We hope to build a lasting relationship with you.
- We have a range of services to enable you to start your journey as a charity and support you in the future. We can offer you a set of policies (including data protection policies) to ensure your charity is fit for purpose and complies with legal requirements. We can provide advice on a range of complementary areas such as:
  - ▶ Brand protection
  - ▶ Intellectual property
  - ▶ Commercial and other contracts
  - ▶ Employment and HR
  - ▶ Policies
  - ▶ Tax and trading companies
  - ▶ Safeguarding and protecting beneficiaries' interests
  - ▶ Data protection and information law
  - ▶ Grant-making and grant-agreements
  - ▶ Property and construction
  - ▶ Legacies
  - ▶ Disputes and litigation
  - ▶ Immigration
  - ▶ Health & Safety
  - ▶ Reputation management



### **Next steps**

If you would like to discuss your proposed charity or social enterprise further or to find out more about the services we offer, please contact Tim Rutherford, Head of the Charity & Social Enterprise Sector Group on 01225 326776 or by email at [TimRutherford@stoneking.co.uk](mailto:TimRutherford@stoneking.co.uk). We will then arrange for a member of the team to have an initial chat with you about your ideas and how we can assist.

Before contacting us, it would be useful for you to have considered:

- ▶ WHAT the charity is going to do?
- ▶ WHO it is going to aim to help?
- ▶ HOW is it going to do this?
- ▶ WHERE is it going to operate?

Answering these questions will give you greater clarity on how your vision will become reality.

### **Further guidance**

[Set up a charity](#) (Charity Commission)

[The Essential Trustee CC3](#) (Charity Commission)

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