



## What is “Charity”?

The common understanding of *charity* is anything that is worthy, benevolent or good. However, it is important to realise that there is a more formal legal definition of *Charity*. Not everything that might be considered worthy, benevolent or good is necessarily *Charitable* in law. Legally, a *Charity* is an organisation that exists for the *Public Benefit*, and whose *purpose* is legally charitable. Purposes recognised as legally charitable are:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need, by reason of youth, age, ill health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services;
- other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

NB Fundraising is *not a charitable purpose*. It is a reasonable activity that a Charity might carry out in order to achieve its purpose. Trying to help an individual (e.g. a child with a disability) is not a *charitable purpose* however worthy that might be. To be charitable, an organisation would have to be set up to benefit the public, or a reasonable section of the public).

## How are Charities set up?

Any group of people who identify a need in society can associate together to form an organisation. They need to agree the purpose of the organisation which needs to be legally Charitable (see above) if the organisation is to be a Charity. They also agree the rules by which they are associated which need to be written in a *Governing Document*. The *Governing Document* is a legal agreement that sets out at least the following rules:

- The Name of the organisation
- Its purpose
- Its geographical area of benefit
- Rules about membership of the association if it has one (who can become a member, how, and voting rights etc)
- Rules about how the membership conducts its meetings
- Arrangements for appointing trustees (from among its members if it has a membership)
- Rules about what powers the members give to the trustees to achieve the organisation's purpose

- Rules restricting the use of the organisation's income and property
- Rules about how to change the rules
- Rules about winding down the organisation and disposing of any remaining funds or property.

The choice of a *legal structure* will dictate what form of *Governing Document* the Charity adopts. The most usual *legal structures* for charities are:

- *Unincorporated Association* with a *Constitution*
- *Trust* with a *Trust Deed* or a *Declaration of Trust*
- *Charitable Company* (limited by Guarantee) with a *Memorandum and Articles of Association*.

The Charity Commission publishes models of the three basic governing documents, which in most circumstances will suit any new charity. A Charity could write its own *Governing Document*, which may be necessary if there is anything special or unusual about what it intends to do, in which case, you would be advised to seek legal advice. It is not a good idea to copy the *Governing Document* of another organisation and adapt it to try to make it fit yours.

## Executing the Governing Document

The first thing that needs to happen is to *execute* the new *Governing Document*. This means the *Governing Document* has to be agreed by all the members of the Charity and adopted and signed.



If the Charity is to have a membership, a list of all those who support its aims and wish to be members needs to be collected, and all those people invited to attend the first, or *Inaugural General Meeting* of the Charity. At this meeting, the *Governing Document* is adopted, and the first *Trustees* appointed. The people who become the management committee of the Charity are its *Trustees*. In the case of a Charitable Company, the *Directors* of the Company are the *Trustees*.

In the case of a Charitable *Trust* (which does not have a membership) the *Trust Deed* needs to be signed and witnessed.

The date the Governing Document is adopted is the date the Charity begins.

Having *executed* – or put into effect – its Governing Document, the new Charity has a legal structure and can begin to operate.

## Registration of Charities

A Charity is a *Charity* because of its *purpose*, not because it is *registered* as a Charity.

A *Registered Charity* is a Charity which is registered with the Charity Commission, is entered on the Register of Charities and has been given a *Charity Number*.

Not all Charities are *Registered Charities*. Some Charities aren't registered anywhere either because they are too small (i.e. income under £5,000) or because they are what used to be considered exempt or excepted Charities (which will eventually be required to register) or because their *Trustees* have failed in their duty to register the Charity with the Charity Commission.

If the new Charity is a *Company limited by Guarantee* with a *Memorandum and Articles of Association* as its Governing Document, it must register with Companies House, for which a fee is payable.

Once the new charity's income (whatever its structure, and whether or not it is already registered with Companies House) exceeds £5,000 a year, it *must* be registered with the Charity Commission. (Voluntary registration for smaller charities will be introduced in the future).

The *Trustees* have a *legal duty* to register it, and do not have the option to choose not to register it.

Smaller charities (i.e. with less than £5,000 a year that are not required to register with the Charity Commission) may register with HM Revenue and Customs to benefit from tax advantages including to enable them to claim Gift Aid on donations. Otherwise Charities only need to register with HM Revenue and Customs if they undertake a large amount of trading and wish to reclaim VAT.

A Charitable Trust *may* need to register with HMRC if there is liability to income tax and/or capital gains tax. You would need to seek professional advice on this from a specialist accountant or solicitor.

All Charities (whatever their structure, and whether or not registered with the Charity Commission) are subject to Charity Law, and their management committee members are *Trustees* and must fulfil their duties as *Trustees*.



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