

Charity Trustees

Has your charity outgrown its structure?

Many charities, sports clubs, members' clubs and other not-for-profit organisations operate as unincorporated associations. Maybe you have operated this way for many years, or maybe you set up in this way due to the low initial costs and the informality and flexibility with which they can be run. However, a lot has changed in recent years and the law applying to charities has become increasingly complex. As the charity or club grows and dealings inevitably become more complex, the informal nature of an unincorporated association and lack of a separate legal identity can cause problems and leave trustees exposed to the risk of incurring significant personal liability.

For example, a small sports club may have started life with a handful of members and the informal weekly rental of a local village hall was sufficient for their purposes to begin with. However, membership has grown significantly over the years and the club has now reached the stage where it needs to take a lease of a local property. As an unincorporated association, the club has no separate legal identity from its trustees and so is not able to enter into the lease in its own name. Instead, the club's trustees will need to enter into the lease in their personal names on behalf of the club, exposing themselves to personal liability for the rent and other obligations owed under the lease should the club default. Though leases and other contracts can be carefully drafted to limit the personal liability of the individual trustees entering into the contract on the charity's behalf, such clauses will often not be acceptable to the other contracting party. As a charity operates in an increasingly commercial world, and as charity trustees responsibilities become ever more heavy, taking on personal risk for trading liabilities can become an increasing issue, which may even make it difficult for you to recruit new trustees.

What options are available?

There are a number of corporate structures available to the trustees including setting up a company limited by guarantee, a community interest company, a co-operative and community benefit society or a charitable incorporated organisation. Each of these structures are different and the structure most appropriate to your charity depends on both the current circumstances and future plans for the charity. That being said, all the above structures give the charity legal capacity to employ staff, enter into contracts (including funding contracts), enter into commercial contracts and own or lease property in its own name. Not only will this limit trustees' liability, but it will also lay the foundations for the charity's future with a smoother process on trustee retirement or handover.

Contact

If your charity is considering restructuring or for any further advice, please contact Jamie Bourne – jami bourne@girlings.com or Caroline Armitage – caroline armitage@girlings.com in our Corporate and Commercial Team.

Girlings Solicitors, Stourside Place, Station Road, Ashford Kent TN23 1PP

T: 01233 664 711 F: 01233 664 722