

Working with a new name

There are a whole host of legal and practical issues to consider when a charity adopts a new name as part of a rebrand.



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Mathew Healey outlines the key considerations

It's not unusual for a charity to rebrand. This could happen for a number of reasons: a merger with another charity; aiming to reflect a change of purposes; or simply looking to refresh how the charity is perceived by the outside world.

Why change your name?

In many cases, the rebrand will involve a change of name. A key question is often: do we change the legal (or 'registered') name of the charity; or are there advantages to simply adopting the new name as a working/operational name, whilst retaining the 'old' name for legal purposes?

Preparing the ground

First and foremost, it would be galling to undergo the rebrand process to find that someone else owns a conflicting right in the same or a similar name. Even if the charity doesn't plan to change its registered name, we'd always recommend carrying out detailed searches as an initial step to ensure the chosen name is free to use. Problems can arise where the name is used by an existing organisation, or infringes registered or unregistered trade mark rights. In particular, the Charity Commission can reject a proposed name change if it considers the name is 'too like' that of an existing charity. Worse still, if your proposed name cuts across someone else's trade mark rights, they may be able to block you from using the name, and even potentially pursue you for compensation.

Once you are confident the name is free to use, you should consider trade mark registration to protect your interest in it.

Practical steps

Inevitably, changing your legal name gives rise to administrative burden – and may also need buy-in from your membership. The exact process will depend on your legal form and the terms of your governing document. For a charitable company the name change must usually be approved by a special resolution of your members – a 75% majority vote. For charities

with a large membership, this is more likely to go smoothly if you have given your members due warning, and, where appropriate, involved them in the process.

Once the necessary resolution has been passed, you need to record the change at Companies House. This is usually a simple process, but bear in mind that if someone else already has a company with the exact (or very nearly exact) same name as yours, you will not be allowed to register the change. This will apply even if the existing company does something different from you (or indeed nothing at all): this is something we'd expect to pick up as part of the clearance process.

These steps are only strictly necessary if the charity is changing its registered name. But bear in mind that it may be apposite to take a proposed rebrand to your membership even if you propose to retain the charity's registered name 'as is'. There are all kinds of things to be considered here and there is no 'one size fits all' analysis.

Informing the Charity Commission

Once the registered name has been changed at Companies House, you will need to tell the Charity Commission about the change. Again this is usually a formality but again, as touched on above, the commission could refuse to record a name if it is too close to the name of an existing charity. This can be controversial: see the report on the recent Upper Tribunal case involving a charity name change on page 23 of this Update.

Even if you choose not to change your registered name, it would still be advisable to record your new operating name as a 'working name' with the commission. The main practical effect is that the working name shows up on a search of the commission's records – so potential donors, service-users and anyone else can easily verify the charity's details.

Note, however, that in practice the commission applies similar criteria for entry of a working name on the Register of Charities as for a registered name.

Other administrative steps

If you change your legal name, there are various other



administrative steps that you will need to consider. It's impossible to list all these here but the sort of things you'd need to think about include:

- updating bank accounts with your new name (while, if your bank will allow it, retaining an account in the previous name to allow for paying in of cheques etc. made out in that name);
- recording the change of name against various legal registers, such as the land registry and intellectual property registers; and
- informing partners and others with whom you have a legal relationship.

However there are still administrative considerations if a charity only changes its operating name, and not its registered name. For example, it is a legal requirement for websites, publications and letterheads to continue to bear the charity's registered name, even if only in a footer.

How might this affect legacies?

There should usually be no difficulty with a charity receiving a legacy made in favour of a charity before it changed its name, although practical issues can arise if an executor fails to identify a charity from its former registered name. Former names are listed at both the

Charity Commission and Companies House, which should reduce the risk of this happening.

One note of caution however: professionals who prepare wills often use standard 'boilerplate clauses' when drafting charitable legacies. One example, published by the Society of Trust and Estate Practitioners, and widely used, features a provision that '*If any charity... changes its name... before the time that a gift to the charity takes effect the gift shall instead be paid to such charity as the [executors] decide having regard to the objects that were intended to benefit*'. Similar provisions are common.

This wording raises at least the possibility that, in some instances, a change of name may allow executors to direct a legacy elsewhere. We're hopeful that, in most cases, executors would not seek to interfere with the testator's wishes and would simply pass the legacy to the renamed charity; but there are no guarantees, and the possibility of a large legacy being re-directed is a real one.

Changed your mind yet?

Rebranding is a big decision for any charity, with all kinds of implications: this article can only scratch the surface, and of course focusses on just one part of the picture – a new name.

Find out more

We'd be delighted to help with any questions you may have: please don't hesitate to get in touch with one of our in-house Trade Marks team at trademarks@bwblp.com