

Need to know:

SETTING UP A CHARITY



Certified



Corporation

We have helped countless organisations to establish themselves as charities. There's no 'one size fits all' approach to setting up a charity. However, there are common steps and issues to consider that we see every time.

Read on for our top tips.

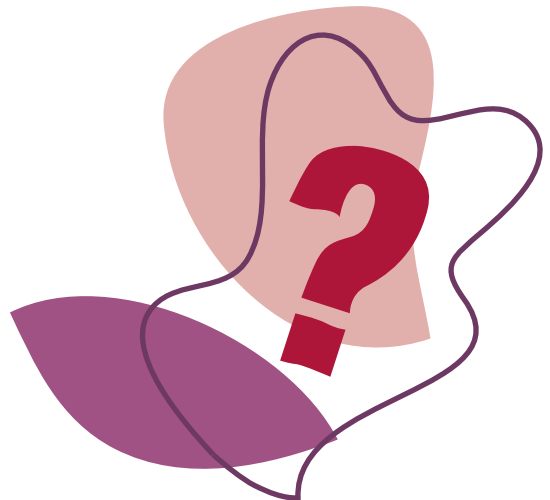
Contents

- 3** Make sure charitable status is right for your organisation
- 4** Choose the right legal form and governance structure
- 5** Find the right trustees
- 6** Check your chosen name
- 7** Choose the right charitable purposes
- 8** Draft a governing document that works
- 9** Get the charity application right
- 10** Put in place the right policies and procedures
- 11** And don't forget the practicalities

Make sure charitable status is right for your organisation

It is worth pausing to consider whether charitable status is the most appropriate choice for your organisation. Charitable registration is generally a one-way street – you can't go back!

Yes, being a charity has some distinct advantages – tax breaks, the kudos and public trust and confidence in charities and potentially increased access to funding. But these advantages bring with them some limitations and complexities. Charity trustees can only use the charity's resources for charitable purposes, and there are strict limits on when, and how, private individuals can benefit. This will impact on the types of activities that your organisation can carry out and how the organisation is governed. Most charities are also regulated by the Charity Commission, which has considerable regulatory powers to investigate and scrutinise the actions of a charity and its trustees. You may wish to consider other options such as a community interest company or a B-Corp.



Choose the right legal form and governance structure

You will need to decide the legal form your organisation will take. There are a number of options available including incorporated forms, such as a charitable incorporated organisation (or CIO) or a charitable company limited by guarantee, and unincorporated forms such as charitable trusts. It may be that a hybrid structure is needed, such as a charity with a wholly owned trading subsidiary. It's important to understand the advantages and disadvantages of each form and we can guide you in deciding what will be best for your organisation.

You'll also need to decide on the governance structure – for example, will you have just a group of trustees running the organisation and who will be its only members (often referred to as a 'foundation model')? Or is there a wider group of stakeholders to include in the governance structure somehow (an 'association model')? Or is there a founder who will be the only member of the organisation?



Find the right trustees

Your charity trustees will be ultimately responsible for the charity, and it is important to find trustees with the time, energy and commitment to take their duties seriously and be open eyed about the responsibilities they are taking on. Diversity of skills, experience and background will help build the charity to represent and best deliver for the charity's beneficiaries.

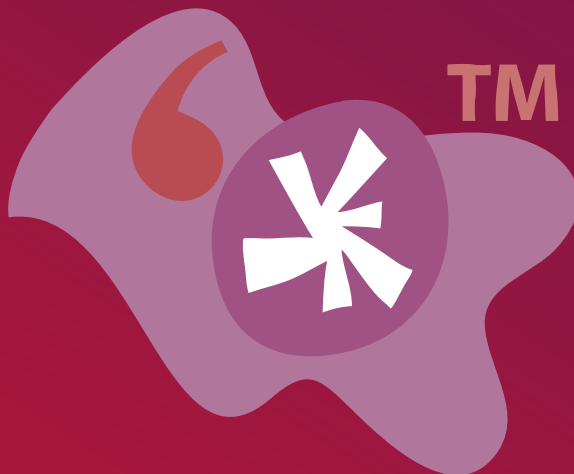
You should have at least three trustees in place at the start and will need to plan for finding, selecting, appointing and training your trustees. An effective induction process can help to make sure that new trustees are empowered to contribute fully and confidently to your charity's journey.



Check your chosen name

Settling on the right name requires some groundwork. You need to make sure that the name is not the same as or too similar to another charity's name and if the charity is to be a company, you also need to ensure it is not too similar to the name of another company. Searching the Charity Commission and Companies House registers is a good starting point, as well as doing a general Google search.


There are also rules about sensitive words for companies, such as 'charity', 'foundation' and 'institute', each of which require approval before the name can be adopted. It's really important that your charity's name or logo doesn't infringe anyone's registered trade mark. Our specialist branding and trade marks team can help you with the searches and any registrations you might want to make.



Choose the right charitable purposes

Your charity's purposes (also known as "objects") are the reasons for the charity's existence. They do not say what the organisation will do on a daily basis, these being the activities that the charity undertakes to fulfil its purposes. A charity's purposes must be exclusively charitable – there is a list set out in legislation and the Charity Commission website has a wide range of examples. Using the Commission's model purpose without alteration will speed up your registration application. The purposes must also be for the public benefit: essentially meaning they need to be beneficial to everyone, or to some section of the public – and there are detailed rules on this.

Preparing the purposes can be very difficult to get right, especially if your organisation is doing something new or controversial, or if it restricts benefit to a particular group of people, which may potentially fall foul of the Equality Act 2010. In such circumstances you should consider taking legal advice.



The Charity Commission has detailed guidance on the "public benefit" rules. You might find their **5 minute guides** a helpful starting place.

Draft a governing document that works

When drafting your governing document (depending on the structure, this can also be known as the articles, constitution or trust deed – we say “constitution” below for simplicity) there are a number of matters that you will need to decide on:

Membership – In most legal forms, the charity trustees are accountable to a separate body of members. The members of a charity typically have rights, under the constitution or the general law, to change the constitution and to appoint and remove the trustees. If setting up the charity with the association model (with a wider membership, as discussed above), you’ll need think about a number of things such as who the members will be, how they are admitted and removed, what voting rights they have and how members’ decisions are made. If it is going to be a company, in particular, there are some fairly old-fashioned and inflexible rules about communications, notice periods and physical attendance at meetings that should be navigated carefully and should ideally be provided for in the constitution.

Trustees – Some of the things to consider here include the number of trustees, how they are appointed and removed, their terms of office, who the chair is and how they are appointed, how trustee meetings are held and how decisions might be made between meetings.

Other matters – you may want to tailor other provisions in the constitution on matters such as how it is amended, financial controls, what happens to the assets if the charity closes, or amending trustee benefit provisions to be more flexible (or restrictive).

There are some model governing documents for various legal structures on the Charity Commission website. You may well require something more tailored – we can help to prepare a suitable bespoke governing document.

Get the charity application right

Generally charities will register with the Charity Commission (with some exceptions, including very small charities (except CIOs), “exempt” charities with different primary regulators – such as some museums and galleries; and “excepted” charities which don’t need to register with the Charity Commission but are still regulated by them).

Registration with the Charity Commission includes completing a lengthy charity registration form on its website which must be done online. It is important to get this right and to include all relevant information. Your trustees need to sign a trustee declaration form confirming they are not disqualified from acting as a charity trustee and not on the barred list for working with children and vulnerable adults. Registration can typically take between a month to six months or more.

You should also register with HMRC so that you can reclaim tax under the gift aid scheme and benefit from the charitable tax exemptions and reliefs.

You should also consider what other regulators might be relevant to your charity’s area of work such as the Fundraising Regulator, the Gambling Commission, the Information Commissioner, the Regulator of Social Housing, the Care Quality Commission and Ofsted. We have a full-service team that can help with both registration and meeting ongoing requirements with these regulators.



Put in place the right policies and procedures

At the start of your governance journey you will need to adopt certain policies and procedures to ensure the charity remains compliant with law and regulatory guidance

Whilst all organisations will want to put in policies dealing with financial procedures and authorities for example, much will depend on the charity's wider relationships, operations and size. Where there are inherent conflicts to manage (for example, if the charity is connected to another entity) you will want to put in place a conflicts of interest policy so that your trustees are able to identify and manage these appropriately. If you are employing staff then a staff handbook containing key employment policies will be essential. A robust safeguarding policy should be put in place before working with vulnerable groups. If you are handling personal data (and most charities do!), then consider privacy notices and a data protection policy.

Your lawyers will be able to tell you which of these you'll need and help you develop them.

This information is necessarily of a general nature and doesn't constitute legal advice. This is not a substitute for formal legal advice, given in the context of full information under an engagement with Bates Wells.

All content on this page is correct as of 20 February 2022.

And don't forget the practicalities

There are of course many other things you will need to think about and get in place. For example, opening a bank account, which can take some time so it's important to start this process as early as you can. Also think about insurance, making sure you get the right cover for your organisation.

Setting up a charity is an exciting journey, and one we'd be happy to guide you through.

Get in touch



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Making a profit is core to all businesses but our goal is to combine this with a real social purpose. Our values are pivotal to us, they shape our decisions and the way we live and work.

We focus on positive social impact as much as we focus on being a successful law firm. Our top tier legal advice is coupled with a real desire to drive change and we were the first UK law firm to achieve B Corp certification, awarded to businesses that balance purpose and profit.

Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

Bates Wells challenges what is possible in legal expertise delivery.

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