



# Choosing a Structure for your Charity - Explainer

## (Incorporating a Summary of Advice from the Charity Commission)

### 1. Introduction

This paper is intended as a brief explainer, setting out the different organisational forms which Charities may take, therefore helping us decide which may best suit SHARP in the future. This is based primarily on a summary of the advice provided by the Charity Commission.

It also includes, within **Appendix 1**, however, the views from another archaeological charity concerning the practical implications of transitioning from one particular structure (an unincorporated charity) to another (an incorporated charity) .

### 2. Summary of NCVO guidance of Choosing a Structure for your charity

The following points are taken from the NCVO website setting out the different organisational forms which Charities may take, and helping to explaining which form may best suit your particular charity:

#### 2.1 Types of charity structure

The type of structure you choose affects how your charity will operate, such as:

- who will run it and whether it will have a wider membership
- whether it can enter into contracts or employ staff in its own name
- whether the trustees will be personally liable for what the charity does

There are four main types of charity structure:

- charitable incorporated organisation (CIO)
- charitable company (limited by guarantee)
- unincorporated association
- trust

You need to choose the right structure for your charity, depending on whether you need it to have a corporate structure and whether you want to have a wider membership.

## **2.2 About corporate structures**

Some charity structures are corporate bodies. If you choose a structure that forms a corporate body, the law considers your charity to be a person in the same way as an individual.

This gives your charity the legal capacity to do many things in its own name that a person can do, such as:

- employing paid staff
- delivering charitable services under contractual agreements
- entering into commercial contracts in its own name
- owning freehold or leasehold land or other property

If a charity structure is a corporate body, generally its trustees aren't personally liable for what it does.

If your charity isn't a corporate body ('unincorporated'):

- the trustees are personally liable for what it does
- it won't be able to enter into contracts or control some investments in its own name
- two or more trustees, a corporate custodian trustee or the charities' land holding service will have to 'hold' any land on your charity's behalf

## **2.3 About charities with a wider membership**

Some charity structures have a wider membership. If you set up a charity with a wider membership, it can have members who vote on important decisions (usually at AGMs). For example:

- appointing committee members who will run the charity (usually for fixed terms)
- making changes to the charity's governing document

A charity with a wider membership may carry out its work wholly or partly through the voluntary effort and contributions of its members. Having people your charity helps as members can help you take account of their views.

If you set up a charity with a wider membership, it mustn't be set up only for the benefit of your members unless:

- a sufficient section of the public can access those benefits by becoming members – for example, anyone can join
- the membership structure is a suitable way of carrying out your charity's purposes for the public benefit – for example, members of an amateur sport club

Some charity structures don't have wider members – the trustees decide how their charity is run and make all decisions on:

- how it spends its money
- how new trustees are appointed

## **2.4 Charities with a corporate structure: which type to choose**

### **2.4.1 Charitable Incorporated Organisation (CIO)**

#### **a. With wider membership**

Set up an association CIO if you want your charity to be a corporate body and have a wider membership, including voting members other than the charity trustees. You must:

- have a constitution as your governing document – use the Charity Commission’s model association CIO constitution (or stay very close to it)
- register your CIO with the commission for it to legally come into existence
- keep a register of its members and trustees
- send its accounts and annual return to the commission each year, regardless of its income

#### **b. Without wider membership**

Set up a foundation CIO if you want your charity to be a corporate body, the only members are the trustees and you don’t want a wider membership.

Use the foundation model if your original charity:

- is governed by a trust deed, will, scheme or conveyance
- is run solely by its trustees
- doesn’t have a voting membership

### **2.4.2 Charitable Company**

Alternatively, you could set up a charitable company: a corporate body which can be set up with or without a wider membership. Choose articles of association as your governing document.

Charitable companies can never be the same as commercial companies. Unlike commercial companies, a charitable company:

- can’t distribute its surpluses to its members or shareholders – a charitable company is usually limited by guarantee, not shares
- can only apply its assets to carry out its charitable purposes
- must operate in a way which is in the best interests of the charity

You must register your charitable company with both the commission (if eligible) and Companies House. You’ll also need to provide detailed information on its finances and activities each year.

## **2.6 Charities without a corporate structure: which type to choose**

### **2.6.1 Unincorporated Association - With wider membership**

Set up an unincorporated association if you want your charity to have a wider membership but it doesn't need a corporate structure (for example, if it will be relatively small in terms of assets). Choose a constitution as your governing document.

### **2.6.2 Trust - Without wider membership**

Set up a trust if your charity doesn't need a corporate structure or a wider membership. For example, if it:

- is unlikely to employ a significant number of staff or carry on any kind of business
- makes grants but doesn't do any other type of work

## **2.7 How to write your governing document**

Write your governing document once you've decided on a structure. This needs to set out your charity's purposes and how it will be run. Read [How to write your charity's governing document](#) for more information.

## **2.8 How to change your charity's structure**

A charity can usually change its structure if its trustees decide that a new structure would better suit the way it plans to operate.

This can be complex depending on what you want to do. Read [Change your charity's structure](#) for more information.

## **3 Experience of the transition from an Unincorporated Charity to becoming a CIO**

In order to determine the practical considerations of changing to become a CIO, in addition to the theoretical ones, SHARP contacted another archaeological charity, GlosArch, which had recently undertaken this transition. The feedback received from GlosArch is attached at **Appendix 1**

## **4 Further Information**

Links to further information and guidance are provided below:

[Charity types: how to choose a structure \(CC22a\) - GOV.UK \(www.gov.uk\)](#)

[Charitable Incorporated Organisation \(CIO\): Is it a Suitable Structure for Your Charity? - IBB Law](#)

[Technical factsheet: charitable incorporated organisations | ACCA Global](#)

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## Appendix 1

### Experience of the transition from an Unincorporated Charity to becoming a CIO

In order to determine the practical considerations of changing to become a CIO, in addition to the theoretical ones, SHARP contacted another archaeological charity, GlosArch, which had recently undertaken this transition.

The feedback received from GlosArch was as follows:

- *'The process was not too difficult*
- *Most info and resources on Charity Commission (CC) website*
- *GlosArch opted for CC template for constitution. This is much more in depth than previous but was OK to complete.*
- *You need to ensure that the Purposes are written in an acceptable form. If you get it wrong the CC will suggest alternative wording.*
- *Application is done online.*
- *New GlosArch replaced old GlosArch but kept same name. A bit long-winded but not terribly hard.*
- *Needed new constitution and declarations from all trustees for the application.*
- *Once the CC are happy they will give you a new charity number and then all you need to do is close the old organisation and transfer the assets over.*
- *Main benefits are providing protection for trustees who aren't individually liable in a CIO and the ability for the organisation to hold contracts with third parties, rather than the contracts being with an individual. SO for GlosArch it is about moving liability from the trustees to the organisation. There are slightly more stringent financial reporting requirements, dependent upon the organisation's income.'*