



Thinking of forming a charity?

Some points to consider

There is a strong tradition of charitable giving and philanthropy in the UK. People give for many reasons, including compassion, personal experience of a particular cause or tax incentives. Donors use their wealth principally to make a difference in society, often to support those less fortunate than themselves. There are many ways of supporting charities, one of which is to form a charity yourself.

Establishing a charity allows the donor to support the specific purpose or purposes in which they are interested, to demonstrate their interest and concerns both now and in the future and, if desired, to

maintain a degree of strategic control as a trustee of the charity. Many also like to involve their families, and establish a pattern of family giving which can continue after they have died.

Charitable purposes

There are many charitable purposes, some of which are familiar to everyone such as relief of poverty, advancement of education, health or the arts. A charity may be formed for a particular purpose, multiple specified purposes, or for general charitable purposes. The latter is commonly used to support a variety of causes and gives maximum flexibility.

Legal structure

Charities can take a number of legal structures, the most common being a trust or a charitable company limited by guarantee. Which legal structure is most appropriate depends on the work to be done by the charity. If it is simply a grant-making organisation, a trust may be sufficient. However if it is to enter into contracts, own land, have employees, or carry out any other activity which involves an element of risk, a charitable company limited by guarantee is likely to be more appropriate.

Administration

As with every organisation, charities must keep records and produce accounts. The administrative burden varies according to the legal structure and type of activity undertaken. For a purely grant-making organisation, it is quite usual for the trustees to meet a few times a year to decide what donations to make. The administration of such a charity could well be undertaken by the trustees themselves or they may wish to employ an administrator if the cost is justified, or use a trust administration service which undertakes the work for a modest fee. Grant-making trusts generally receive regular requests for grants from other charities because of the accessibility of the Charity Commission's website.

Donors often set charities up from the outset with a view to minimising administrative costs: collective investments of a kind specifically designed for charities, for instance, can save the complication of tax repayment claims, and can minimise the time that needs to be spent on managing the investments or keeping accounts.

Donations

Donations to charities can be in the form of cash, land, shares or any other property. To register a new charity, the Charity Commission require a minimum annual income of £5,000.

A donor may typically "test the water" by settling a relatively modest amount in the first instance, and then adding more, perhaps by way of Gift Aid, and possibly eventually by Will. There are no restrictions on who may donate to the new charity. One attraction for different family members of adding to a charity in this way, as contrasted with giving the money direct to a national charity, can be that it enables family members and trustees, who may support those national charities with grants from the family charity, to keep an eye on the way the national charities are performing in terms of their own policies, administrative costs, and other areas which can sometimes worry individual donors.

Tax

Gift Aid can be claimed on donations of cash, listed shares, land, buildings and securities

to charities to maximise the benefit to the charity and reduce the donors' taxation liability accordingly. Gifts to charities are also exempt from capital gains tax, so gifts of non-cash assets also have beneficial tax consequences for donors.

Profile

Charitable giving undoubtedly enhances the public profile of an individual. The high net worth individual may encourage other members of the family to donate to the charity, thereby encouraging philanthropy in the family, enhancing the reputation of the family, and supporting and furthering the charity's purposes. The name of the charity can be chosen to demonstrate strong links with the individual or the family.

Conversely, many donors wish to keep donations anonymous in which case the name of the charity need not have any connection with the family. In this situation the public address of the charity may be that of an administrator. The charity's accounts will be available to the public, but do not need to identify individual donors. The Charity Commission publish

the names of trustees on their website, but not addresses.

Trustees

The Charity Commission recommend a minimum of three trustees, whatever legal structure is used. There are few restrictions on who can be a charity trustee. When setting up a new charity, often the initial donor will also be a trustee to provide direction for the charity, at least in its initial stages. The donor may encourage family members to act as trustees, further linking the charity with the family.

Personal benefits and conflicts of interest

It is a general principle of charity trusteeships that trustees must not benefit personally from their positions as trustees. Furthermore they must not put themselves in a position where their personal interests may conflict with that of the charity. A trustee should not be paid and cannot be involved in any decision making process where the charity makes a grant to or contracts with persons connected to them, such as their spouse or dependent

children or companies they run. Donors also need to be careful about new tax rules introduced to prevent donors and connected persons from receiving benefits from a charity for several years after a major donation has been made to the charity.

Set up costs

Costs vary depending on the legal structure adopted and the type of work the organisation will be conducting.

Please contact Malcolm Lynch, Chris Billington or Godfrey Smallman for an estimate of costs.

About Wrigleys

Wrigleys is a specialist charity and private client firm with offices in Leeds and Sheffield. It is considered one of the top 20 charity law firms in the UK by the Caritas Data publication 'Top 3000 Charities 2007/08'. The Legal 500 consider Wrigleys the leading charity law firm of the North East and Chambers has also given the firm a premier ranking.

The firm was created on 1 May 1996 and employs some 120 staff, 21 partners, 24 assistant solicitors, 3 consultants, 7 trust managers and 3 trainees. The firm was established from the Private Client departments of DLA in Leeds and Sheffield and was joined by the Private Client departments of Eversheds and Hammonds in Leeds. The niche charity law firm of Malcolm Lynch merged with Wrigleys in 2000 to make the firm what it is today. In May 2006 Wrigleys converted to a Limited Liability Partnership.

For further information please see www.wrigleys.co.uk

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