

Is your school thinking of establishing a

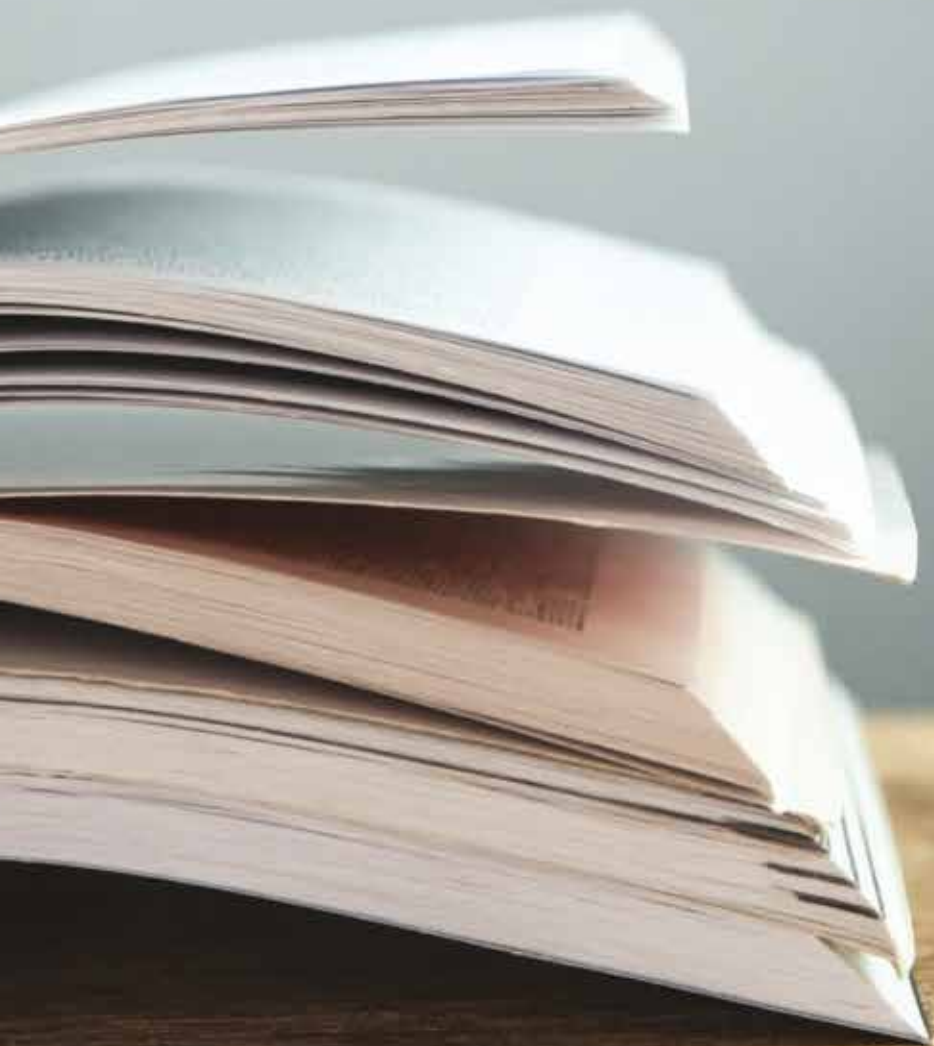
# CHARITABLE FOUNDATION?

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## WHY SET UP A CHARITABLE FOUNDATION?

The education sector is under greater financial pressure and political scrutiny than ever before, and some schools are considering establishing a foundation as a means of managing risk.

Advantages of having a foundation include (i) if anything happens to the school the foundation is structured separately (and should therefore be protected from creditors), and (ii) that the foundation will have a separate board, enabling appointment of board members with specific interest, skills, and expertise in investing and distributing funds, including those who may not wish to be a governor of the school.



## WHAT COULD YOU USE A FOUNDATION FOR?

A foundation can be used, for example, to focus on fundraising, for supporting bursaries, or for contributing funds towards capital projects for a particular school. It can also be established to provide a focussed means of fundraising for a group of schools.

## WHAT ARE SOME ISSUES TO CONSIDER?

Careful consideration must be given to the foundation's objects, including whether the objects advance education by reference to a named school or schools, and/or whether they might advance education more broadly, for the public benefit (and for other schools).

Will the foundation be funded by the school, by a large investment, or might it actively fundraise? If you are looking to raise funds for particular projects, will the school raise those funds or will it be the foundation? That can determine who holds the funds and who gets to decide where those funds go.

You will need to ensure you have measures to resolve any disputes or differences that can arise and to help manage conflicts of interest.

Finance and data protection are areas of risk that will also need to be carefully managed. You will need a separate bank account, investment strategy, and data protection policies and procedures.

A note of caution – charitable independent schools have used bursary funds to help evidence that they deliver public benefit. Accordingly, public benefit may diminish if bursary funding activities are transferred to a foundation. We can help navigate the complexities.

## DO YOU HAVE THE LEGAL POWER TO ESTABLISH A FOUNDATION?

This will depend on the provisions within your school's governing document, but we can check this for you, and if required can help you to obtain any necessary powers.

## **WHAT ONGOING ADMINISTRATION WILL THERE BE?**

The administration will vary according to the legal structure, the size of the foundation, and the type of activity undertaken. All charities are required to file annual returns with the Charity Commission and provide updates on the appointment and retirement of trustees. Charities formed as a company will also have additional Companies House filing obligations.

Purely grant-making foundations may only need trustees to meet two or three times a year. A school can assist with the administration of a foundation, particularly in the early stages, and may be able to recover some of its costs of doing so. A service level agreement between the school and the foundation may be necessary.

## **WHAT CAN BE GIVEN TO THE FOUNDATION?**

There are no restrictions on who may donate to the foundation, and it is possible for donations to be in the form of cash, shares, land, or any other property.

## **WHAT ARE THE TAX BENEFITS?**

Where alumni or other individuals make gifts, the foundation may benefit from Gift Aid. Donors may be entitled to certain capital gains tax or inheritance tax reliefs depending on their circumstances, and should take tax advice.

Corporate tax deductions may also be available on charitable gifts of cash and stock by companies.

## **HOW WILL YOU NAME THE NEW FOUNDATION?**

If required, the name of the foundation can be chosen to demonstrate links with its founding school. However, where the foundation uses a similar name, the school has to be conscious of ensuring it has powers to protect the use of its name and its reputation.

## WHO SHOULD THE TRUSTEES BE?

If you set up a foundation, it must be sufficiently independent from the school to satisfy the charity law requirement for independence, which means the foundation and school cannot use all the same trustees and governors (although some can be shared). Otherwise, like any charity, it is important to find individuals with the right interest, skills, and expertise. Appointments should not simply focus on individuals who will best serve the school, as conflicts of interest need to be properly managed. However, in setting up a foundation a school can still build into the foundation's constitution some simple protections, for example on the appointment and removal of foundation trustees.

We can help you prepare a conflicts policy to deal with situations where the interests of the school and the foundation might clash.

## HOW LONG WILL IT TAKE TO SET UP?

If you set the foundation up as a charitable trust or a charitable company it can 'exist' very quickly as a legal structure either by establishing a trust deed or by registering the new charitable company at Companies House. In these cases, you can start to use the foundation almost immediately. It will then need to be registered with the Charity Commission once it has income of over £5,000. If you chose instead to establish a CIO it will only come into existence once it is registered by the Charity Commission, and there is no income threshold for registration.

Whilst some charities are registered within a week, it is more likely it will take five or more months to obtain registered charitable status, so this must be planned for. Once registered with the Charity Commission, the foundation will need to be registered with HMRC.

## WHAT ARE THE SET UP COSTS?

Costs may vary depending on the legal structure adopted, the type of work the foundation will be conducting, and the nature of its relationship with the school. We will outline likely costs early on to help you plan.

## ABOUT WRIGLEYS SOLICITORS

Wrigleys Solicitors is a specialist charity and private client law firm with a dedicated Charities and Social Economy team that advises hundreds of charities and not-for-profit organisations across the UK and internationally.

As a leading charity law practice, and one of the few firms with specialist lawyers working exclusively for charity and social economy clients, we are recognised as experts in our field. We provide practical, common-sense, and technically excellent advice, forming valued long-term relationships with our clients.

*“The solicitors we deal with at Wrigleys are always on the ball. They are always willing to go above and beyond the normal level of service.”*

Client testimonial to Chambers & Partners

## CONTACT WRIGLEYS



If you would like to talk to one of our specialist advisors, please contact a member of our team on 0113 244 6100, or your usual Wrigleys contact.

*by appointment only*

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