

# Incorporating an Existing Charity

'If an unincorporated association wants to change from unincorporated to incorporated it cannot simply go through a company registration procedure. Legally the new incorporated body has to be set up, the assets and legal obligations of the existing organisation transferred to it, and usually the existing organisation dissolved'.

The Russell-Cooke Voluntary Sector Legal Handbook, p.89

If your organisation is an unincorporated registered charity, but your Trustees have decided it is necessary to register as a Company, there are two courses of action which must be followed:

1. Register the new Company with Companies House and the Charity Commission
2. Dissolve the existing charity and transfer the assets.

The two procedures can be worked on simultaneously; however, the new Company must be set up, before the assets are transferred.

## 1. Registering the new Company

**Step 1:** The governing document for a Company is a Memorandum and Articles of Association. This will need to be prepared in order to register as a Company. Some clauses can be transferred from your existing governing document. The Trustees must ensure that the objects are still charitable and also still reflect what your organisation does.

The Company can register with a small group of people, it does not have to be all of the existing Trustees. Others can join as Company Directors when the Company is established.

**Step 2:** When the Memorandum and Articles are approved by the Committee, they should be sent to Companies House for registration (see Information Sheet 1.5 Becoming a Charitable Company for a legal checklist and additional information about registration documents).

**Step 3:** When the certificate of incorporation has been sent from Companies House, the organisation can now register as a charity. (See Information Sheet 1.4 Registering as a Charity for more information.) When the new Company receives its Charity Registration details, the transfer of assets can then take place, from the old unincorporated charity, to the new Company, and the old charity can be dissolved.

## 2. Dissolving the existing charity

As there are lots of elements to this procedure, the process can be started whilst some Trustees are registering the new Company.

### Step 1: Dissolution clause

Look at your current governing document (the one currently logged with the Charity Commission) and note the relevant constitutional procedures. This will be under the 'dissolution' clause. This explains how your organisation should proceed with a wind up.

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### Step 2: Special General Meeting

A Special General Meeting (SGM) needs to be called. According to your governing document, it will state something like: 'An SGM may be held at any time if called by the Executive Committee or if at least four members of the Charity make a written request to the Executive Committee. An SGM must be called within two weeks of such a request.'

The reason why you need to have this meeting is to begin the process of formal wind up of the Charity. If it has not already be minuted (in the meeting where the organisation first decided to become a company), it needs to be minuted that: *'the members of the committee agree to close the unincorporated organisation in an orderly and proper manner. All the existing assets, liabilities and obligations will be transferred from the old unincorporated charity to the new company.'*

Basically this means that it is agreed that the new company will be the accountable body for the old charity and any business that may arise, once the original organisation is wound up. Even though the new Company will carry out the work of the existing charity, work with the same beneficiaries and in the same area, it is still a new organisation and everything must be transferred from the old to the new. If this is not done there could be future problems about the ownership of assets or who is responsible for outstanding liabilities.

It will be useful to produce a deed of transfer, which will set out the relationship between the old and new. Trustees should consider:

- Information and assurances about the extent of assets and liabilities transferred (lists of assets or level of liabilities)
- Promises by the new organisation (to protect members of the old body against later claims)
- Authorisation to the new body to enforce obligations or collect monies due to the old organisation
- An obligation by each party to preserve and make available for inspection any documents and records
- Provision for any steps that need to be taken after the transfer date

### Step 3: Contracts of Employment

Staff members should be informed of the situation. The transfer of employment conditions is covered by TUPE (Transfer of Undertakings Protection of Employment Regulations). Their contracts, statutory rights and virtually all contractual rights are transferred automatically to the new body. New contracts do not need to be issued, but employees must be notified in writing of the identity of the new employer.

### Step 4: Other contracts

If the unincorporated body has equipment leases, hire purchases agreements, service contracts (such as with cleaners) maintenance contracts (such as with IT technicians) or contracts to provide goods or services etc (such as with the Local Authority), it must seek the consent of the parties to the contracts in order to transfer the contracts to the new Company. A supplier or purchaser can not be forced into a transfer – some parties may not want to contract with a company.

### Step 5: Funding arrangements

Grants, service agreements, contracts and other funding arrangements must also be transferred to the new Company. Funders must also be kept aware of the situation.

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### Step 6: Bank Accounts

All bank and building society accounts must be in the full name of the new Company. (Depending if the name has changed between the old and new organisation, existing accounts may not need to be closed and new ones opened – check with your bank.) When a formal date of transfer is agreed all monies should be transferred to the new Company, then you should close the unincorporated account.

### Step 7: Insurance

Insurances must be transferred to the new Company. You will have to have a discussion with your policy provider and get their advice on the best way forward. It may be necessary to cancel the existing policy and take out a new one. Again this transfer should happen on the date agreed for the formal transfer.

### Step 8: Membership

Membership can not be automatically transferred from the old to the new. Members of the original body must apply for membership of the new body and be entered in a new register of members. You will need to reassure members that the organisation is the same, it will just have a new legal structure.

### Step 9: Policies and Procedures

The new Company must formally adopt (or change) all of the original organisation's policies, procedures, activities etc. This can be done through a minuted decision at the first meeting of the directors of the new organisation.

### Step 10: Written materials

New stationary, cheques, leaflets, posters and other written materials must be produced with the required information (the Company's full registered name, Company registration number, and address of registered office and the registered charity number.) You must ensure that anything with your old charity number on is not used after the formal date of transfer.

### Step 11: Accounts and final date set to transfer

Once you have taken the above steps and are close to completing the dissolution of the original organisation, you must decide on a final transfer date. Once this has been agreed and minuted, a final set of accounts will need to be produced. A copy of these accounts must be sent to the Charity Commission, showing the destination of the assets along with a copy of minutes which details the resolution to wind up the Charity. Then the original organisation will be deregistered.

VODA can offer support to groups who need help with:

- Preparing Memorandum & Articles of Association
- Registering as a Company
- Registering as a Charity
- Dissolving an existing organisation

If you would like further support, contact our Development Team on 0191 643 2636 for more information.



## Information Sheet 1.6

# Incorporating an Existing Charity

For other information visit:

Charity Commission website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)

Companies House website: [www.gov.uk/government/organisations/companies-house](http://www.gov.uk/government/organisations/companies-house)

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