



Oxfordshire Community and Voluntary Action

Incorporation of an existing charity – how we did it

This factsheet has been produced by OCVA to help other organisations that are considering incorporation. We hope it will answer some of your basic questions but it should not be taken as a definitive statement of good practice or the law.

Stage 1 Choosing the Memorandum and Articles of Association

We needed a Memorandum and Articles of Association which was recognised as charitable by the Charity Commission. There are standard ones available from the Charity Commission or from a number of different umbrella bodies. Luckily we could get ours from NAVCA, who have agreed a standard one with the Commission. The full list is on the Charity Commission website. It's called 'List of standard governing documents'. If you use a standard format and don't change it, the registration process is very quick and easy. The Commission also publishes a more general model memorandum and articles and model charitable objects on its website. If you think you're going to have problems, you may want to take legal advice and/or phone the Commission to discuss.

All the directors of the new company (see below) signed our memorandum and articles.

Stage 2 Getting the agreement of members

We are a membership organisation. Our members didn't have to sign the application but they had to approve the incorporation and the transfer of funds to the new company. We put a motion to our AGM but you could call an extraordinary general meeting if the timing of your AGM doesn't fit. If you're not a membership organisation you just need your board of trustees to agree to the incorporation. It's good to choose a date for the incorporation to take effect well in advance so if it all goes horribly wrong you've got time in hand. We chose the end of our financial year to make things easier still.

AGM Agenda (November 2004)

- *Incorporation of the charity from 1 April 2005 according to the model Memorandum and Articles of Association for Councils of Voluntary Service*
- *Dissolution of the unincorporated association and transfer of funds to the new company from 1 April 2005*

AGM Minutes

- *The Chair of OCVA, Martin Conway, proposed the incorporation of the charity from 1 April 2005, as a company limited by guarantee, according to*

the model Memorandum and Articles of Association for Councils of Voluntary Service. The proposal was accepted by a show of hands.

- *The Chair of OCVA, Martin Conway, proposed the dissolution of the unincorporated association and transfer of funds to the new company from 1 April 2005. The proposal was accepted by a show of hands.*

Stage 3 Registering the company

We registered with Companies House as a company limited by guarantee and got a company number in February 2005. We downloaded the application pack from their website but you can also phone them to get a hard copy. We used Forms 10 and 12. It only costs £20 to register but don't do what we did and forget to enclose the cheque!

www.companieshouse.co.uk

Who are the directors?

We got all our existing trustees to fill in their details as directors of the new company. It took weeks for the forms to do the rounds of everyone!

Company secretary

We needed a company secretary to be responsible for all the paperwork. Our chief executive took this on. She is not a director of the company but can sign documents on its behalf. If you've got a paid chief executive, she/he often takes on this role. She did a half-day training course to make sure she understood her responsibilities.

Note: There will soon be a change in company law and you won't have to have a company secretary. But someone will still have to keep the paperwork up-to-date.

Four important things the company secretary has to do:

1) keep the information about directors up-to-date. Forms 288a, b and c are available for download on the Companies House website if a director changes name or address, resigns or joins the board.

2) submit the annual report and accounts to Companies House

Note: Companies House required format is plain text without pictures.

3) call an AGM each year

4) if you're a membership organisation, keep the list of members up-to-date.

Naming the company

We decided to change our name at the same time as incorporating but you don't have to.

Be careful of your name. Some names are restricted. The Companies House website tells you which words need special approval because they are 'sensitive'. These include the word 'charity'.

We applied not to have to use 'Ltd' in our company name. There's an extra form to fill in for this - 30(5)(a) - and we sent it off with our application.

Accounting date

Your new end of financial year will be the date that Companies House approves your application. This will be quite random. We were given a date in February. So we applied to change it to 31 March to get back to our original date, using Form 225.

Stage 4 Registering with the Charity Commission

Once you've heard back from Companies House with a company number, you can apply to register with the Charity Commission. Download the application pack with forms APP 2 and DEC 2 from their website or phone them to get a hard copy. It's free.

www.charitycommission.gov.uk

We were already a registered charity but when we incorporated, we became a different charity and got a new charity number. This can be confusing but remember you are effectively setting up a new organisation to replace the old one.

Stage 5 Changing all the other paperwork

We changed all our stationery to show our new charity number and company number and 'Registered in England and Wales'.

Since we were no longer the same organisation, all our contracts (including staff contracts of employment), leases, bank accounts, insurance policies, etc. had to be transferred to the new organisation. This may be what you need to pay a solicitor to help you with. We made a checklist of all our contracts, insurance policies etc.

We found quite a few hidden costs. For example, our pension provider wanted to charge us to transfer the pension scheme to the new company. The county council sent us a 'deed of novation' to transfer our funding contract and we had to pay for legal advice on this.

Our leases turned out to be a minefield too. We were told our trustees would have to sign an 'authorised guarantee agreement', which effectively meant they would remain liable for the lease if anything went wrong in future. Again, this is where our solicitors were helpful in unravelling the legalese.

And finally... everyone we spoke to at Companies House 0870 33 33 636, and the Charity Commission 0845 3000218 was really helpful. So don't be afraid to phone them.

Also, don't hesitate to phone OCVA on 01865 251946.