

Running a Charity

Fourth Edition

Mark Mullen BA (Dunelm.)
of Lincoln's Inn, Barrister

Published by
Jordan Publishing Limited
21 St Thomas Street
Bristol BS1 6JS

Whilst the publishers and the author have taken every care in preparing the material included in this work, any statements made as to the legal or other implications of any transaction, any particular method of litigation or any kind of compensation claim are made in good faith purely for general guidance and cannot be regarded as a substitute for professional advice. Consequently, no liability can be accepted for loss or expense incurred as a result of relying in particular circumstances on statements made in this work.

© Jordan Publishing Limited 2015

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

Crown Copyright material is reproduced with kind permission of the Controller of Her Majesty's Stationery Office.

Crown copyright. The model documents contained in Appendices A to I have been reproduced with the kind permission of the Charity Commission. www.gov.uk/government/organisations/charitycommission.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 1 78473 021 5

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by Hobbs the Printers Limited, Totton, Hampshire SO40 3WX

CONTENTS

Preface to the Fourth Edition	v
Chapter 1	
Introduction	1
1.1 What is a charity?	1
England and Wales	1
Scotland	3
Northern Ireland	4
The Republic of Ireland	4
Exclusively charitable purposes	4
1.2 Who is a charity trustee?	5
1.3 Responsibilities of charity trustees	6
Public trust	6
Conflict	6
Delegation	7
Contracts with third parties	7
Other duties	8
1.4 Charitable status – examples	8
Chapter 2	
Constitutional Requirements	11
2.1 Setting up	11
2.2 Choosing the legal form	12
2.3 Registration in England and Wales	13
Exempt charities	14
Excepted charities	14
Registration process	14
Name of charity	14
Registration number	14
Significance of registration	15
2.4 Registration in Scotland	15
2.5 Registration in Northern Ireland	15
2.6 Changing the constitution	15
Alteration to the constitution of a charitable company	16
Alteration to the constitution of a CIO	17
Express power of alteration of the constitution of unincorporated charities	17

	Alternative procedures	17
	Statutory power in England, Wales and Northern Ireland	18
	Scheme in England, Wales and Northern Ireland	18
	Scheme in Scotland	20
	Reviewing aims and procedures	20
	The new governing instrument	21
2.7	Merger	21
	Transfer of assets	21
	Statutory power	22
	Scheme	22
	Amalgamation of CIOs	22
2.8	Winding up	23
	Express power to wind up	24
	Statutory power	24
	Winding up of CIOs	25
2.9	Cy-près schemes – examples	25
Chapter 3		
Money and Property		27
3.1	Accounting	27
3.2	Accounts and record-keeping	27
	Structure	27
	Small charities that are not limited companies	28
	Formats	28
	The annual report	29
	Branches	29
3.3	Independent audit	30
3.4	Tax and rates	31
	Income and capital gains	31
	Property used for charitable purposes	31
	Gift Aid	31
	Payroll Giving Scheme	32
	Gifts	32
	HM Revenue and Customs guidance	32
3.5	Insurance	32
	Fire, other damage and theft	32
	Vandalism and terrorism	32
	Legal expenses insurance	32
	Public and employer's liability	33
	Fidelity insurance	33
	Particular risks	33
	Liability insurance	33
	Other means of financial protection	34
3.6	Investment	34
	Common investment funds	34
	Powers of investment	35
	Statutory powers (unincorporated charities)	35

	Advice on investments	35
	Investment advisers	35
	Holding of investments	36
	Incorporation	36
3.7	Land and buildings	36
	Holding of land	37
	Certificate of incorporation	37
	Land vested in the Official Custodian	37
	Sale, exchange or leasing of land in England and Wales	38
	Proceeding without consent	38
	Formalities	39
	Mortgage of land	39
3.8	Making grants	39
	Objective of grant	40
	Applications for assistance	40
	Policy guidelines	40
3.9	Raising funds	41
	Managing fundraising	42
	Methods of fundraising	42
	Restrictions on fundraising	42
	Fundraising records	43
	Fundraising agreements	44
3.10	Accepting gifts and legacies	45
	Refusal to accept gifts	45
	Gifts subject to conditions	46
	Failure of purpose	46
	‘General charitable intention’	46
	Identifiable donors	47
	Avoiding failure	47
3.11	Patrons and sponsors	47
3.12	Trading	48
	Trading activities as an adjunct to charitable purpose	48
	Trading for the purpose of raising funds	48
 Chapter 4		
Management		51
4.1	Choosing trustees	51
4.2	Trustee meetings	52
	Preparation	53
	Quorum	53
	Chairmanship	53
	Minutes	54
	Frequency of trustee meetings	54
4.3	Dealing with professionals	55
	Choosing a professional	55
	Fees	55
	Relationship between adviser and trustees	55
	Effectiveness	55

	Problems with advisers	56
	Mistakes to avoid	57
	Particular specialists	57
	Beauty parades	58
4.4	Employees and volunteers	59
	Interviewing candidates	59
	Security	60
	Annoyance	60
	Encouragement or praise when deserved	60
	Support for weaknesses	60
	Training	60
	Fairness	60
	Remuneration (including pension rights)	60
	Remuneration of trustees	61
	Health and safety legislation	61
	Relationship between director and trustees	62
4.5	Good management	62
	Time	62
	Contract culture	63
	Coherence	63
	Charity consultants	63
4.6	Stationery	63
	Cost	64
4.7	Computers	65
	Websites and social media	65
4.8	Premises	66
	Appearance of premises	66
	Regulations	66
	Listed buildings	67
	Moving premises	67
	Neighbours	67
4.9	Training	68
	Self-help	68
	Academic institutions	68
	Technical skills training	68
	Special courses	69
	Opportunities for staff	69
	Informal training	69
4.10	Troubleshooting	70
	Physical emergencies	70
	Insurance	70
	Negligence	70
	Tenants' defaults	71
	Compensation	71
	Problems	71
	Running out of money	71
	Charity Commission inquiry	72
	OSCR inquiries	73

Mediation	73
Chapter 5	
Europe	75
5.1 How charities fit in	75
Social economy	75
5.2 European law	76
Treaties	76
Regulations	76
Directives	76
Decisions	76
Recommendations and Opinions	76
5.3 European institutions	76
Council of the European Union	77
Committees of Permanent Representatives	77
European Council	77
European Commission	77
Directorates General	78
European Parliament	78
Committees	78
European Economic and Social Committee	78
Committee of the Regions	79
European Foundation	79
The Structural Funds	79
Council of Europe	80
5.4 Interaction	80
European Commission	80
European Parliament	80
European Economic and Social Committee	81
European Foundation	81
International non-governmental organisations	81
5.5 Networks and umbrella bodies	81
Appendix A	
Charitable Trusts: Model Trust Deed	83
Appendix B	
Company Not Having a Share Capital	103
Articles of Association for a Charitable Company	103
Appendix C	
Company Not Having a Share Capital	127
Memorandum of Association	127
Appendix D	
Charitable Associations: Model Constitution	129

Appendix E	
Charitable Incorporated Organisation: Model Constitution for a CIO with a Voting Membership (in addition to the charity trustees)	149
Appendix F	
Charitable Incorporated Organisation: Model Constitution for a CIO Whose only Voting Members are its Charity Trustees	187
Appendix G	
Charitable Objects	217
Advancement of Education	217
Advancement of Religion	218
Advice and Counselling	219
Animal Charities	220
Carers	221
Community Amateur Sports Clubs	222
Community Capacity Building	223
Community Centre	224
Community Transport	225
Conciliation and Mediation	226
Conservation of the Environment	227
Disasters	228
Elderly People	229
Equality and Diversity	230
The Establishment and Maintenance of a Museum and/or Art Gallery	231
Family Planning	232
Promotion of the Law, Police and Crime Prevention	233
Promotion of Human Rights	234
Racial Harmony	235
Recreational Charities Act 1958	236
Recycling	237
Refugees / Those seeking Asylum	238
Relief of Financial Hardship	239
Relief of Poverty	240
Relief of Sickness	241
Relief of Unemployment	242
Religious Harmony	243
Social Inclusion	244
Sustainable Development	246
Urban or Rural Regeneration	247
Village Halls	248
Young People	249
Appendix H	
Model Annual Report for an Unincorporated Charity	251

Appendix I	
Model Annual Report for a Larger Charitable Company	263
Index	283