



Incorporating a Charity

Did you know there are a number of steps involved in incorporating a charity?

Incorporation simply means that a charity has its own legal identity, separate from the trustees who run it.

For many charities and community organisations, this means setting up a Charitable Incorporated Organisation (CIO), which is registered with and regulated by the Charity Commission.

As a charity develops, it may start to take on more responsibilities, including employing staff, managing larger amounts of funding, entering into agreements or contracts or leasing or owning a building.

Having its own legal identity means the charity can take on these responsibilities in its own name. A CIO can also provide trustees with greater protection from personal liability, although trustees still have important responsibilities for making sure the charity is well run.

Changing structure isn't necessarily right for every charity, but it may be worth considering as an organisation grows or its activities change.

What does the process involve?

For an existing unincorporated charity, it isn't simply a case of changing its legal status. A newly incorporated charity will usually need to be set up and registered, with the activities and assets of the existing charity then transferred across.

For charities becoming a CIO, trustees will also need to decide which model is right for them:

Foundation CIO – where the only members are also the trustees.

Association CIO – where there is a wider voting membership as well as the trustees.

Once the new CIO has been registered with the Charity Commission, trustees can start looking at what needs to be transferred, including money held in bank accounts, equipment, funding, contracts, employees, leases and any land or buildings.

Making and recording decisions

The trustees of the existing charity will need to formally agree to the transfer.

Often the same people will be trustees of both the existing charity and the new CIO, so it's important to think about how decisions are made and recorded. Depending on the circumstances, additional steps or Charity Commission authority may also be needed before some assets can be transferred.

Keeping clear minutes and records throughout the process will help to show how decisions have been made.

Land and buildings

If the charity owns land or a building, there can be additional legal requirements when transferring it to the new CIO.

Trustees will need to understand how the property is currently held and whether there are any restrictions attached to it. This can be more complex, so we would recommend seeking appropriate legal advice before making the transfer.

Closing the existing charity

Once everything has been transferred, trustees can look at closing the existing charity. There may be a period where both organisations exist while everything is moved across, so it's important not to close the original charity too early.

Trustees should also consider whether the transfer needs to be recorded on the Charity Commission's Register of Mergers, particularly where the original charity may still receive gifts or legacies after it has closed.

The process can seem complicated when you first start looking at it, but breaking it down into individual steps can make it much more manageable.

Durham Community Action can support charities and community organisations that are considering becoming incorporated, helping trustees understand what it means, work through the process and identify where further or specialist advice may be needed.

If you're thinking about changing your charity's structure and aren't sure where to start, please get in touch by emailing info@durhamcommunityaction.org.uk or book on our training session around [exploring legal structures](#).