

# Charitable and Not-for-Profit Organisations

(Revised 10th December 2009 in the light of comments made by Paula Smith.  
Where text has been added or modified it is shown in red.)

*These notes are based on the handouts distributed by David Walton and Paula Smith (of [DWF LLP](#)) at the meeting of MCCN held in Harrogate in October 2009. The notes in square brackets and heavier type are based on comments by Paula or David or in exchanges with the audience. Where there is a reference to the Methodist Church then it is likely that what is being stated applies equally other churches and projects.*

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[The big question is why use any of the models described. Only if there is benefit in doing so. Adopting one of the models may provide a focus, ring fence finance, and legitimise specialised funding bids.

Charitable companies, Not-for-Profit companies and the proposed Charitable Incorporated Organisations **come under the general heading of** 'Social Enterprise Companies'. They are all 'limited by guarantee'. Trustees/directors liability is limited to a very small nominal sum (e.g. £10).

Constitutional links with the Methodist Church may be a problem. For example, some sources of funding may exclude 'religious purposes' and by having an organisation which is not linked to the Methodist Church may make these funds available.

There is no need to set up a 'sub-committee of the Methodist Church.

All of these organisation (except a Charitable Trust) has a public Constitution and Memoranda which clearly and unambiguously set out what it does, how it does it, and how it is linked to other bodies (such as the Methodist Church). This may be labelled as a disadvantage in what follows. However this was questioned. **With each of the various options discussed it is emphasised that a carefully drafted constitution is required so that its objects and actions compliment and adhere to the Methodist Church if the vehicles are to be subsidiaries of or associated with the Methodist Church.]**

## 1. Charitable Trust

*Why use it?*

- simple structure
- easy to administer
- avoids administrative burden of filing returns at Companies House
- charitable status facilities fund raising
- non-taxable body

*What type of organisation is it suitable for?*

- smaller charitable organisations
- **organisations that do not enter into commercial contracts**

*Disadvantages*

- unlimited liability for Trustees  
[Therefore need insurance to cover liability.]
- no separate legal identity so cannot enter into contracts in its own name  
[Contracts are entered into with the Trustees personally.]

## 2. Charitable Company

*Why use it?*

[This is the most frequently used model.]

- separate legal identity enabling it to enter into contracts in its own name
- limited liability for Trustees
- recognised corporate vehicle
- charitable status facilitates fund raising
- non-taxable body

*What type of organisation is it suitable for?*

- larger charitable organisations  
[Generally not suitable for small organisations, and those organisation that do not enter into commercial contracts as part of their operations.]
- organisations that deliver charitable objects by way of service delivery and/or trading
- organisations entering into commercial contractual obligations  
[This is a good reason for using this model.]
- organisations employing a number of employees  
[A trustee cannot also be an employee.]

Having a mix of volunteers and paid workers may cause problems with regard to the application of the minimum wage. Paid workers must be paid the minimum workers but what about volunteers – are they workers and hence are they entitle to the minimum wage?]

*Disadvantages*

- dual regulation of both company and charity law leading to confusion in relation to duties and responsibilities of Trustees/Directors  
[The two sets of regulations incur two sets of administrative obligations. The Charitable Incorporated Organisation (CIO) – see below – is being introduced to overcome these problems.]
- dual filing requirements and associated fees

## 3. Social Enterprise (Not-for-Profit) Company

[May have a 'social good']

*Why use it?*

- separate legal identity enabling it to enter into contracts in its own name
- limited liability for trustees
- social enterprise objectives that might not necessarily be charitable
- non-taxable body

*What type of organisation is it suitable for?*

- larger non-charitable organisations
- organisations entering into commercial contractual obligations
- organisations employing a number of employees

- social enterprise objectives that might not necessarily be charitable

#### *Disadvantages*

- non-charitable status may affect profile and ability to fund raise

### **4. Charitable Incorporated Organisation (CIO)**

[Not yet available – possible Spring 2010. Paula promised a e-bulletin on this matter.]

#### *Why use it?*

[This is recommended if conversion is straightforward. The **Charity Commission** has indicated that a lawyer **should** not be needed to carry out the conversion **process** and it will be a simple procedure for **both** Charitable Trusts and Charitable Companies **although the exact details are still to be confirmed.**]

- separate legal entity enables it to enter into contracts in its own name
- limited liability for the Trustees
- no dual administration – only charity law will apply and designed specifically for charities
- suitable for charities with or without a membership

#### *What type of organisation is it suitable for?*

- **all** charitable organisations
- organisations that deliver charitable objects by way of service delivery and/or trading
- organisations entering into commercial contractual obligations
- organisations employing a number of employees
- existing charities (both incorporated and unincorporated)

#### *Disadvantages*

- when introduced it will be a new style corporate vehicle and it will therefore take time for people to become familiar with it and the governing regulations
- not yet available – operative regulations not yet published
- there will be a certain level of cost and inconvenience associated with the conversion of an existing charity to a CIO notwithstanding that the Charity Commission have expressed a desire to make the conversion process as straightforward as possible

### **5. Trading Subsidiary**

#### *Why use it?*

- enables a charitable organisation to benefit from non-primary purpose trading  
[The Trading Company 'normally' covenants its profits to the parent charity. No tax is paid on these covenanted profits. However, if monies are retained within the Trading Company then the issue of tax may have to be faced.]

#### *Disadvantages*

- funding often required from charitable parent, particularly at the outset  
[Care must be taken to ensure that invested funds from the charity are protected if the Trading Subsidiary gets into financial difficulties. In relation to the Methodist Church, in particular, consideration must be given to restrictions on funding as a result of the

**requirements of the Model Trusts.]**

- control required over use and protection of charity 'brand'
- active participation required in operation of the business by the Trustees and others  
[Trading Companies are **traditionally companies 'limited by share'. The liability of shareholders is limited to any amount unpaid on their shares.**]
- will face the same challenges as any other business

## **6. Community Interest Company**

*Why use it?*

**[Social entrepreneurs use this model as it is not regulated by Charity law.]**

- separate legal identity enables it to enter into contracts
- limited liability trading vehicles
- suitable for organisations with objects to benefit the community, **but which may not necessarily be charitable**
- enables payments to directors (not Charity Trustees) so enabling key employees to be involved in decision making
- familiar company vehicle

*What type of organisation is it suitable for?*

- trading company
- organisation with employees  
[Having a mix of volunteers and paid workers may cause problems with regard to the application of the minimum wage. Paid workers must be paid the minimum workers but what about volunteers – are they workers and hence are they entitle to the minimum wage?]
- subsidiary of a charity (thus being able to take advantage of Gift Aid)

*Disadvantages*

- initial and continuing obligation to demonstrate to the Community Interest Company Registrar that it satisfies community interest test
- taxable body unless profits are covenanted/paid to charitable parent
- 'asset lock' protects disposal of assets at anything less than market value

*The next page has a table of key characteristics*

## 7. Key Characteristics

	<i>Charitable Trust</i>	<i>Charitable Company</i>	<i>Not-for-Profit Company</i>	<i>Charitable Incorporated Organisation (CIO)</i>	<i>Trading Subsidiary</i>	<i>Community Interest Company</i>
				<b>Does not yet exist</b>		
	<b>Social Enterprise Companies/Organisations</b>					
<i>Limited liability</i>	No	Yes	Yes	Yes	Yes	Yes
<i>Separate legal entity</i>	No	Yes	Yes	Yes	Yes	Yes
<i>Can own property</i>	No (unless there is a 'custodian trustee')	Yes	Yes	Yes	Yes	Yes
<i>Will have membership</i>	No	If required	If required	If required	No	No
<i>Must publish and file accounts</i>	No	Yes	Yes	Yes	Yes	Yes
<i>Public constitution</i>	No	Yes	Yes	Yes	Yes	Yes
<i>Must file an annual return with</i>	The Charity Commission	The Charity Commission and Companies House	Companies House	The Charity Commission	Companies House	Companies house <i>and</i> an annual community interest report
<i>Taxable Body</i>	No	No	No	No	Yes (on funds not covenanted to charitable parent body)	Yes (on funds not covenanted to charitable parent body)
<i>Charity law applies</i>	Yes	Yes	No	Yes	No	No
<i>Company law applies</i>	No	Yes	Yes	No	Yes	Yes