

## Forming a charitable trust

**This resource is to support your start-up of a charitable trust. This will also allow you to consider if a foundation is an appropriate option.**

### What is a charitable trust or foundation?

Most frequently are charities with an income that fulfil their purposes by funding or otherwise supporting individuals or other organisations e.g.

- Relieve poverty
- Promote education or religion
- Benefit animals or locality
- Not for profit
- Not have purposes that are not charitable
- Can't campaign for political or legal change
- Trustees:
  - Administer
  - No relationship with beneficiaries; trustees are freer to act and beneficiaries can't bring a court case against trustees.
- The high court of justice and charity commission have jurisdiction over disputes.

### What are the differences between a trust and a foundation?

A trust is a form of legal arrangement where assets are passed to an organisation or individual for the benefit of others, to be valid a trust must have beneficiaries. The trust is not a separate entity but a relationship where the trustee(s) will hold assets on behalf of a settlor for preservation or enhancement until it is an appropriate time to distribute to beneficiaries.

A foundation is an incorporated legal entity traditionally used by trusts. It is neither a company nor a trust, but has characteristics of both. The foundation may hold assets on behalf of beneficiaries, for example, as to remove the items from their estate for inheritance tax purposes. The foundation can contract and hold items in its own name, also hold liabilities and benefits in its own name. The foundation has no obligation to have beneficiaries to be valid.

There are variations between trusts and foundations in structure, establishment, duties, tax and statutory fees etcetera. It is advised that you seek legal advice from a solicitor and carefully weigh up the appropriateness of either a trust or foundation in line with your planning goals before making a final decision and starting up.

### What is needed to set up a charitable trust?

Before you begin it is recommended that you visit the Charity Commission website. This will help you to decide if a trust is appropriate, how to set up a charity, what you will need and to understand the role of trustees.

When you begin to start up you will need to agree a governing document or deed. This will show the aims or the trust and rules of running the trust to meet those aims. The deed should be as flexible as possible to cover all eventualities. The deed should show how the trust will meet the charitable objectives. Ensure to meet / not to contradict statutory law within the deed.

The deed once agreed will need to be signed by the trustees and each signature witnessed.

A deed template is available on the Gov.UK website:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/586357/GD2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/586357/GD2.pdf)

The template in the link above also includes information on the next steps you will need to take to register your charitable trust and to decide if your deed would need to be stamped by HMRC. In brief:

- **Registration:** To register a new charity, apply online. Please attach a copy of your executed trust deed and your trustee declaration.  
If you are unable to attach these documents to your application, then you may still proceed to apply on line and the charity commission will contact you with information on how to send in the documents.  
If you are unable to apply on line please contact the charity commission via the link on their website homepage. The Charity Commission website can be found here: <https://www.gov.uk/government/organisations/charity-commission>
- **Stamping:** Deeds executed on or after 13 March 2008 do not require stamping, if the deed is executed prior to this date it may require stamping.  
For more information about if you will need to have the deed stamped by HMTC please visit [www.hmrc.gov.uk](http://www.hmrc.gov.uk) or telephone the Stamp Duty Helpline: 0845 603 0135.

## Support

You can find further information on the Charity Commission website here:

<https://www.gov.uk/government/organisations/charity-commission>

If you wish to set up a charitable trust in Rotherham and would like support, please contact Voluntary Action Rotherham by telephone 01709 829821 or email [triage@varotherham.org.uk](mailto:triage@varotherham.org.uk)

