

# Closing a charity

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## The law on dissolving, winding up or closing a charity

Most of the charities on the Register of Charities are required to be there: because they have charitable aims and enough income to require registration, and the only circumstances in which they can be removed are if they dissolve or wind up.

The Charities Act 2011:

- requires the trustees of registered charities to inform the Charity Commission if their charity ceases to exist; and
- requires the Charity Commission to remove from the Register any charity that has ceased to exist or does not operate

Failure to inform the Charity Commission that a charity has dissolved or wound up will lead to enquiries being made about what has happened to the charity and its assets.

The Charity Commission may take action against the former trustees if the assets have been wrongly applied. Former trustees remain responsible for decisions taken while they were in office and the Charity Commission can make enquiries about any actions they have taken even after their charity has been wound up or dissolved.

## First steps

If your charity needs to close, talk to Newcastle CVS as early as you can. Our services help charities in difficulties. We can help you understand what you need to do.

A charity facing closure should take steps to reduce its liabilities. This may include giving notice of redundancy to employees. Issuing redundancy notices is disruptive and demoralising, but not doing so may put trustees at risk of personal liability.

## Check your governing document for a dissolution clause

### If there is a dissolution clause...

The trustees must follow the procedure set out in the governing document of your charity. The process is usually for the trustees to call a Special General Meeting (SGM) of its members to recommend closure to them.

The SGM must be called giving proper notice including notice that closing the charity will be discussed at the meeting, and the meeting must be quorate.

The governing document will define the notice period and the quorum. If it doesn't ask us for help. Each charity is set up differently and your charity may have a slightly different process - trustees must follow the governing document.

### If there is no dissolution clause...

If your charity's governing document does not have a specific power for the charity to be dissolved, but all its assets can be spent, you should be able to bring the charity to an end by either spending all the assets to further its purposes or donating them to another charity with similar purposes. When you have done this, you must tell the Charity

Commission using its online form – see page 3.

If your charity has a permanent endowment, it cannot be legally dissolved. However there are options including changing your objects to cover new areas of work; changing your governing document to allow the endowment to be spent; and, amalgamating with another charity. You must get more information from the Charity Commission if your charity has an endowment (see FAQs on closing a charity) or ask Newcastle CVS for help.

### At the Special General Meeting

At the meeting the trustees must recommend closing the charity to the members. The trustees can do this in the form of a resolution, and trustees must keep minutes of the meeting. The minutes of the meeting should say something like

*A Special General Meeting of the above named charity, called for the purpose of recommending closure to the members, was duly convened and held at (place) ..... on (date) ..... It was agreed by the members present that the charity should close. The trustees were instructed to proceed with closing the charity in an orderly and proper manner.*

The minutes or resolution should also outline how the assets of the charity will be allocated after the settling of any outstanding liabilities.

### After the meeting

- The trustees should appoint someone to understand the charity's financial situation including identifying the charity's assets and liabilities. This is usually the treasurer
- The trustees should carefully plan closing the charity - it may help to ask a trustee, a small group of trustees or a small group

of trustees and staff to be responsible for making sure this happens. The plan should be written down with a list of tasks, dates and the people responsible. A plan will help to make sure everything happens when it needs to and nothing is forgotten. The plan must also include a budget for closure, including any redundancy costs. If you need help with the plan and budget, ask Newcastle CVS for help

- The trustees must talk to the staff about what is happening and when. It will be a difficult and stressful time for staff so open communication is vital. The trustees are responsible for redundancies and following employment law
- The final accounts must be prepared, before the formal winding up
- Liabilities must be paid e.g. staff salaries, redundancy payments, outstanding bills
- Any money remaining after all debts have been dealt with must be given to another registered charity (or divided between several charities) in accordance with the charity's governing document, unless the Charity Commission agrees otherwise
- If there is not enough money to pay the liabilities, professional advice must be taken from the charity's accountant, solicitor or an insolvency practitioner

### The following people and organisations should be formally told

- employees, employees' representative and unions
- the organisation's accountant and auditor or independent examiner
- the organisation's solicitor

- the organisation's insurers or insurance broker
- the organisation's bank manager
- the organisation's funders
- the Charity Commission (see below)
- immediate past trustees (current trustees should already know)
- anyone with a fixed charge or mortgage over any property the organisation owns
- all creditors
- service users
- other organisations, such as Newcastle CVS, that the organisation is involved with or are members of
- any other organisation or person that the trustees think relevant

### When the organisation has been formally wound up

- the bank account should be closed
- all paper records that do not need to be kept should be shredded (not just thrown away). See 'Keeping records' on this page for further information
- all computer hard drives should be cleaned or reformatted so that files and documents relating to the organisation are no longer available
- all headed notepaper, compliment slips etc. should be destroyed
- the website should be closed down
- all email accounts should be closed
- the trustees must inform the Charity Commission (see next)

### Informing the Charity Commission

If the income of the charity in the previous full year of operation was less than £5 million or the assets are worth less than £100 million you must read and follow the Charity Commission's operation guidance. To find this visit the Charity Commission website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission) and click on close a charity. If your charity has income and assets greater than this, you must get advice from the Charity Commission.

The charity must complete the online charity closure form. The form asks for the reason why the charity has closed. The Charity Commission will then remove the charity from the charity register. The Commission may contact a charity to find out more about the reasons for closing and how the process has been completed. If trustees fail to tell the Charity Commission, the Commission may investigate what has happened to the charity and its assets, and may take action against former trustees if assets have been wrongly applied. Even after a charity has been dissolved, the former trustees remain responsible for decisions taken while they were in office.

### Keeping records

After a charity has been dissolved or wound up, the trustees must arrange for business documents e.g. bank statements, invoices, receipts to be kept for seven years after the charitable company is struck off and also seven years for an unincorporated charity.

## Help from Newcastle CVS

- *Closing a charitable company information sheet*
- *Closing a voluntary and community organisation information sheet*

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