THE TRUST VERSUS THE COMPANY UNDER THE CHARITIES ACT 1992 & 1993

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The title of this article is "The Trust versus the Company under the Charities Acts 1992 & 1993", but there are, of course, other types of constitution which are available and which are often used by charities. The intention of this article is to show why, by and large, when considering which would be the most appropriate form of constitution for a charity, it does boil down to a choice between these two types.

When it comes to choosing between the two, there are a number of factors which will govern the ultimate decision. The purpose of this article is not to give a definite answer as to which form of constitution is preferable but to show how particular circumstances should lead to a choice of one or the other.

The article will look briefly at the different types of constitution and for what they are commonly used, will show the reasons for eliminating all but the trust and the company, and finally will compare the trust and company structure under a number of different headings. To complete the picture it will consider how to change from a trust to a company structure should this prove necessary.

The Types of Constitution

(a) Incorporated

(b) Unincorporated

(c) Hybrid.

(a) Incorporated Charities

There are three types of incorporated charities:

(i) Those incorporated under the Companies Acts 1985 to 1989;

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(ii) Those incorporated under the Industrial and Provident Societies Act 1965;

(iii) Those incorporated by Royal Charter.

(i) **Charities incorporated under the Companies Acts 1985 to 1989**

These companies can be incorporated either with unlimited liability or with limited liability. Companies incorporated with unlimited liability are mentioned simply for the sake of completeness, as it is difficult to see any reason why a charity would wish to adopt this form of constitution, and they are rarely, if ever, come across.

The more usual form is that of the limited liability company. A limited liability company can take one of two different forms: a company limited by shares or a company limited by guarantee. In very simplistic terms, the difference between the two is that a company limited by shares has members who purchase shares in the company, whilst a company limited by guarantee has members who guarantee its debts. The members of a company limited by shares pay money, initially to the company, when they subscribe for shares and the liability of each member is limited to the value of the shares purchased. Thus, once the members have paid the full purchase price of the shares into the company making the shares fully paid up, they have no further liability. Members can each buy a different number of shares and there can also be different classes of shares with different rights attached to each.

With a company limited by guarantee on the other hand, the members do not pay in any money at all, but each of them guarantees that he or she will pay a certain sum into the company should it ever be wound up. The liability of the members is limited to the amount of that guarantee. All members must guarantee the same sum, so there is no difference in the class of membership for a guarantee company. The sum which they guarantee is usually £1.

There is no reason why a charity should not take the form of a company limited by shares, and, indeed, some do. The Charity Commission have also confirmed that they agree that a charity could be constituted in this way. However, in fact, this form of constitution is not very often used for charities, partly because the whole structure of such a company is geared towards making profits and distributing them to the members of the company. Obviously, that is entirely inappropriate for a charity. Where a company limited by shares is more usually found in the field of charity is in the role of a charity's wholly-owned trading subsidiary rather than as the charity itself.

Thus, the company form which is usually used for a charity is a Company Limited by Guarantee. In such a company the members are the equivalent of the shareholders. They guarantee debts of up to £1 each and they exercise the powers of the company in general meeting, which means, amongst other things, that they appoint the Directors. The Directors of such a company are often known as Governors or Council Members or something similar, and it is they who run the charity. This type of constitution is most appropriate for functional rather than grant-making trusts, and particularly for large national charities with a wide membership.

(ii) Charities incorporated under the Industrial and Provident Societies Act

This is a form of constitution which is used less frequently than it might be. It is, in a way, a cross between a company and an unincorporated association (of which more anon). Its constitution takes the form of the Rules of the Association in the same way as for an unincorporated association, but it can act as an incorporated body and, indeed, has the benefit of limited liability. The association incorporated under this Act makes its returns to the Registrar of Friendly Societies, rather than the Registrar of Companies, and the reporting requirements and formalities generally are slightly less stringent than they are for a company.

The main attraction for a charity, however, in this form of constitution is that every charitable Industrial and Provident Society is automatically an exempt charity. That means that it will not be subject to the general jurisdiction of the Charity Commission and, particularly attractive perhaps, it won't be subject to the majority of the accounting requirements under the 1993 Act. Such a charity does not escape the requirement for an audit, because this is imposed by the Industrial and Provident Societies Act itself, but there are a number of other reporting requirements which would not apply to an Industrial and Provident Society.

There are restrictions on the kind of charity which can be incorporated in this way and incorporation can be expensive and time-consuming, but it is a form of incorporation which may become more common in the future than it has been in the past. For the moment, however, because it is something of an unknown quantity, it is not the most obvious choice of vehicle for an incorporated charity.

(iii) Charities incorporated by Royal Charter

These tend to be national institutions, such as museums, universities or hospitals. Many of them, but by no means all, are exempt charities. The format is very similar to that of a company limited by guarantee. Adopting this form of constitution is not a matter of choice for the charity. Charter companies are governed by the Privy Council, and it is the Queen, as advised by her Privy Councillors, who decides whether or not a Royal Charter is to be given to any particular charity. Even where it is felt that it would be appropriate for a Royal Charter to be issued, it is a long drawn out process. Usually, therefore, a charity will first be incorporated in some other form, or constituted as a trust, and thereafter, in due course, the Charter will be issued and the constitution changed.

Reviewing the three forms of incorporated charity, therefore, it is clear that, for the time being at least, the obvious and most appropriate constitution for an incorporated charity is that of a Company Limited by Guarantee.

(b) Unincorporated Charities

There are two main types of unincorporated charities:

(i) The trust;

(ii) The unincorporated association.

(i) The Trust

This is most appropriate where a charity is a grant-making rather than a functional charity. The governing instrument of the trust is the Trust Deed and this sets out the objects of the trust and the powers of the trustees. It is run by the trustees who are responsible for all that the charity does. There is no obvious structure to accommodate a large membership or local branches, or even widespread activities carried out by numerous employees or volunteers. The trust format works best, therefore, in the case of a grant-making charity where the trustees will have an endowment fund which they are responsible for investing, and they then distribute the income in accordance with the requirements of the trust.

(ii) The Unincorporated Association

Constitutionally this is exactly what it says - it is a group of people associated together for a common charitable end. The governing instrument of an Unincorporated Association is usually known as the Rules of the Association, and the charity will be run by a Committee whose members are appointed by the members of the Association in accordance with the Rules. The charity's property is usually held in the names of a few of the members of the Committee, for this purpose to be known as "the Trustees". This sort of charity is usually to be found where the charity has had a small beginning, perhaps a local choir or a civic amenity group. Whilst the charity is small and all the membership are closely involved in its activities, it is a perfectly acceptable and, indeed, in many cases, preferable, form of constitution.

However, as soon as the charity grows beyond that stage, it is by no means so satisfactory. There are two main reasons for this. First because, as an Unincorporated Association has no separate legal identity other than that of its individual members, the Committee can only be acting as the agents of the members (or in certain circumstances on their own account) when they enter into contracts or other business arrangements on behalf of the Association. Thus, depending on the precise provisions of the Rules, the members will often find that they are personally liable for contracts entered into by the Committee. It is true that, provided the contract was properly entered into, the first call on assets to cover any such liability will be on those of the charity but it does (or should) nonetheless worry the members, if they are not aware of all that the Committee is doing, to know that they, the members, may well find themselves liable to satisfy any obligations arising from the Committee's activities.

The second reason why the Unincorporated Association is not an ideal constitution for larger organisations is that there is often considerable confusion between the respective roles and responsibilities of the Committee on the one hand and the Trustees on the other. Many Committee Members of Unincorporated Associations think that the responsibilities laid on trustees by the recent Charities Acts, and the general law, apply only to the Trustees. Usually they will be wrong in that because as shown below, the "trustees" for the purposes of the Charities Acts will in circumstances such as this be the Committee and not the Trustees. The potential for confusion inherent in this situation is clear. Accordingly, Unincorporated Associations have a place in the field of charitable constitutions, they also have drawbacks and are by no means universally appropriate. Thus, when unincorporated forms of charity are being considered, the trust is more likely to be the vehicle under review.

(c) **The Hybrid**

This is convenient shorthand to describe a trust, the trustees of which have incorporated under the Charitable Trustees Incorporation Act 1872 as amended, particularly as amended by the Charities Act 1992. The effect of such incorporation is that the charity itself continues exactly as it has been. It is still a trust with all the rules that govern the running of such a trust. The only change relates to the trustee body itself, and that becomes incorporated. The result of this is threefold.

First, the trustees are treated as a continuing body. That means property can be vested in the body of the trustees under the name of the charity rather than in all the individuals by name. This, in turn, means that it is not necessary to change the names on all the Stock Exchange certificates and the Land Certificates every time there is a change of trustee.

Secondly, trustees can sue and be sued in the corporate name.

Thirdly, deeds can be executed by the Trustees in the same way as a company can execute its deeds. In other words two officers of the company can be authorised to execute deeds on behalf of the charity.

The Charities Act 1992 made a number of amendments to the 1872 Act, which were designed to make the procedure for incorporation much simpler. However, it did not do the one thing that would really have made a difference. It did not give to a body incorporated under this Act any limited liability. Section 5 of the 1872 Act remains substantially unchanged by the 1992 Act and the 1993 Act, and that section makes it perfectly clear that the trustees' liability remains exactly as it would have been had there been no incorporation.

The Charity Commission are advocating incorporation under this Act as a means of dealing with the problems which are arising from the partial demise of the Official Custodian. She is currently divesting herself of all the Stock Exchange investments which she has been holding as Custodian Trustee for a number of charities and in their booklet on the subject the Charity Commissioners have recommended that the trustees of a charity should incorporate under this Act in order to enable the Official

Custodian to vest the Stock Exchange investments in that incorporated body. On the face of it, this sounds sensible. However, there was also another amendment in the 1993 Act which says that, before granting a Certificate of Incorporation under this Act, the Charity Commissioners must consider that it would be in the interests of the charity to do so. Before the amendments introduced by the 1992 Act (now consolidated into the 1993 Act) the only thing that the Charity Commissioners had to consider before granting a Certificate of Incorporation was that it was expedient to do this. This distinction is apparently exercising the minds of the Charity Commissioners quite considerably, and they have decided that before they can issue large numbers of these Certificates they must formulate a policy on what is, or is not, in the interests of the charity. Unfortunately, it seems that they have not, as yet, formulated that policy. As a result, Certificates are taking rather a long time to obtain at the moment.

Furthermore, there are easier ways of achieving the same results as those obtained from incorporation under this Act.

Trustees can vest investments in the name of custodian trustees or nominees. If the governing instrument of a charity does not contain a power to do this, and if the trustees are not authorised to amend the trust instrument, it will be necessary to obtain a Charity Commission Scheme to give that power. However, the Charity Commission will usually be willing to make such a scheme, and in the circumstances it may be quicker to do this than it would be to obtain a Certificate of Incorporation.

In addition, there are provisions under ss.29 & 30 Charities Act 1993 (the section dealing with the Official Custodian's divestment) which would authorise the Official Custodian to vest assets, initially at least, in the name of a nominee for the charity, even, it seems, where there is no power under the governing instrument authorising it. The difficulty arising here is that without such a power there would be no ability for the trustees to vest replacement assets in the name of the nominee. In other words, once the original investments coming from the Official Custodian were sold and investments bought to replace them, in the absence of a power in the governing instrument, there would be no ability to vest those replacement investments in the nominee name. Clearly, therefore, it would be necessary to obtain the requisite power through a Scheme in due course. It seems, however, that, provided this has been achieved by the time any changes in investments are made, its absence need not prevent the initial vesting of the investments in the name of a nominee by the Official Custodian.

The second advantage of incorporation of the trustee body concerns the execution of documents. However, a resolution of the trustees under what is now s.82 Charities Act 1993 could give very much the same result. That section empowers trustees to resolve to authorise any two or more of their number to execute documents on behalf of all the trustees, which in effect is very much the same as being able to sign as a company under the Charitable Trustees Incorporation Act.

It must be admitted that there is no other way of arranging to sue or be sued in the corporate name rather than the name of the individual trustees. It is probably true to say, however, that that is not an activity which charity trustees undertake on a regular basis and certainly it is not so desirable as to be, alone, a sufficient reason for incorporation under this Act.

There is one further reason to consider carefully before deciding to incorporate the trustee body, and that is a conceptual rather than practical reason. It is quite difficult to grasp the concept of a charity which is not itself incorporated and remains an unincorporated trust, but where the trustee body is incorporated but has not been formed into a corporate trust company. This creates something which is neither fish nor fowl and the confusion which can arise from the trustees not really understanding quite what kind of an animal they are must be worth avoiding.

From all this it is clear that, when choosing the constitution for a charity, the choice lies primarily between an incorporated charity and an unincorporated charity. Since, in most cases, the most apposite form of incorporated charity is the Company Limited by Guarantee and of an unincorporated charity, the trust, this decision translates into a choice between a Company Limited by Guarantee and a trust.

In order to make that decision, the two forms of constitution must be compared and it is useful to do so under five different heads. These are:

(i) Trustee liability

(ii) Flexibility

(iii) Formalities

(iv) Insurance

(v) Permanent endowment.

(i) **Trustee Liability**

The first and most important point about trustee liability is that nothing can affect or reduce the duty of the trustee towards his charity. The trustees of a charity are defined by s.97 Charities Act 1993 as "the persons having the general control and management of the administration of a charity". This means the trustees of a trust, the directors of a company, the committee members of an unincorporated association, and so on. The duties which are imposed on the trustees by the general law and by the Charities Acts towards the charity bind all of them and are quite unaffected by any limited liability which might be obtained on incorporation.

Where limited liability makes a significant difference, however, is in the legal relationship with third parties. A trust has no legal identity apart from that of the trustees as individuals, and thus when the trustees enter into a contract with a third party, for example, to build a school or to supply emergency medical aid, they are entering into it as individuals who, in the final analysis, will be liable under it. It is perfectly true that if anything goes wrong the first source of funds to settle the liability will be the charity - that is assuming, of course, that the trustees have acted properly in entering into the contract in the first place and have not acted in breach of trust. Assuming that they have acted properly, the charity's assets will be available to cover the liability, if they are sufficient. If the charity's assets are insufficient, however, then no matter how correctly the trustees have acted in entering into the contract they will be liable personally for the shortfall.

Compare the position in the case of a charitable company. A company does have a separate legal identity from that of its directors, and so when the directors agree to enter into a contract it is, in fact, the company that enters into it and not the directors personally. If the funds are insufficient to meet the liability under the contract in circumstances where the directors have not acted in breach of trust that is an end of the matter - it is the third party contractor who loses.

In these circumstances, unless the directors have entered into the contractual liability at a time when they knew, or ought to have known, that the company was not in a position to meet its liabilities, the other contracting party cannot recover from the directors personally.

The same is true of tort, for example the tort of negligence. If, for example, the charity is running an almshouse and one of the occupants trips over a faulty step and breaks an arm, then in the case of a trust the trustees might be personally liable to cover the damages. In the case of a charitable company the company may well be liable but, even if the assets are not there to meet the claim, the directors will not be.

(ii) Flexibility

Where there is a relevant factor flexibility can be a most important reason for choosing a company. The Memorandum and Articles of Association of a company are infinitely more flexible than the terms and provisions of a Trust Deed. For example, where a group of committed people wish to set up a charity but will have to work full time for the charity and, having no other resources, will have to be employed and paid by the charity, those individuals would not be able to be trustees of the charity because a trustee cannot profit from his trust. But they could quite easily be members of the company and as such would have the ultimate control over who is appointed as the company's directors. Equally, if the original promoters of a charity do not have time to run the charity as its trustees but do want to have overall control to make sure that the charity goes along the track that they had planned for it, it would be quite possible to make those people the members of the company and, indeed, to give them enhanced powers of sacking and appointing directors.

The company in general meeting, that is the members, controls the appointment of the directors and also fundamental changes, for example changes to the Memorandum and Articles of Association. This can, therefore, be used to supply checks and balances to the power of the directors in running the charity, and by structuring the membership accordingly, subtle variations of control can be put in place. Very often in a charitable company the members will be the same people as the directors and that is, in many cases, exactly the right way to set things up. But, in circumstances where something is needed that is more sophisticated, there are infinite possibilities within the format of a company's Memorandum and Articles of Association for structuring the powers rights and obligations of these two groups and their relationship to one another.

So far as the trust is concerned flexibility is virtually nil. The legal concept of a trust is that of a group of people holding assets upon trust to apply those assets for certain purposes. There are no other personae in this drama, and there is little scope for any significant structure. In fact, where a membership structure is established or committees of people who are not trustees become involved in running a charitable trust structure, it can create what is, in effect, an unincorporated association running alongside the trust. In these circumstances it would be the Trustees and not the members of the Committees who are the "trustees" for the purposes of the Charities Acts, and this is, of course, quite opposite from the similar situation which can arise under an Unincorporated Association with Trustees holding the charity's properties. The potential for confusion here is considerable. Accordingly, the constitution of a Trust Deed should really only be used in circumstances where very little more than the basic trust structure will be necessary.

(iii) **Formalities**

When it comes to formalities, undoubtedly this is an argument against adopting the constitution of a Company Limited by Guarantee. Since the Charities Act 1992 introduced accounting requirements for non-corporate charities and imposed an obligation on all charities whether corporate or not to submit an Annual Return with a Trustees Report attached, the difference in the formalities required has been lessened, but there are still far more formalities with which to comply for a charity which is incorporated than for one which is not.

(a) Formalities applying only to Companies:

(i) Statutory Books must be up-to-date and available for inspection at Registered Office.

(ii) Any change of director or secretary must be notified to Companies House.

(iii) Change of accounting reference date or Registered Office must be notified to Companies House.

(iv) Annual General Meeting must be held each calendar year (unless an Election is in place not to hold one).

(v) Annual Return must be submitted to Companies House within stringently enforced time limits.

(vi) Audited Accounts must be sent to Companies House within stringently enforced time limits.

(vii) Company notepaper requirements.

(b) Formalities applying to non-corporate charities only:

(i) Running Accounts must be kept sufficient to show the financial position of the charity at any time.

(ii) Audited or certified (as appropriate) accounts must be sent to Charity Commission each year.

(c) Formalities applying to all charities:

(i) Annual Report of Trustees must be submitted to Charity Commission each year.

(ii) Annual Return must be submitted to Charity Commission each year.

(iii) Charity notepaper requirements.

Leaving aside those three formalities listed under (c) above which apply equally to both types of charity, there are seven different formalities required of a charity which is a company as opposed to only two which will apply to an unincorporated charity. It is thus quite an administrative burden for a charity to bear. There would, therefore, need to be other reasons for forming a charity as a company limited by guarantee in order to justify such a burden.

(iv) **Insurance**

The position with regard to insurance, and whether the rules are different for the different types of constitution, is by no means clear. The history of the insurance question is as follows:

Originally, the Charity Commission took the view that a charity could not pay the premiums of a policy insuring trustees against liability arising from their acts or defaults because that would be a benefit accruing to the trustees from their trust which, as we know, is not permitted. Then in 1989 the Companies Act of that year amended the Companies Act 1985 by the introduction of section 310(3)(a). That provision removed the statutory provision which previously had precluded directors of companies from insuring against loss resulting from their negligence, default, breach of duty, or indeed breach of trust. The Charity Commission seem to take the view that the withdrawal of this restriction does not automatically authorise a charitable company to insure in this way. In fact, in many constitutions the Charity Commission will seek to have the provisions of this section excluded from operation by the Memorandum and Articles of Association of the charitable company, although it must, in fact, be a moot point whether it is possible in law to exclude the operation of this provision. In any event, it is clear that, at that point in the story, the Charity Commission accepted that, given the appropriate power in the Memorandum and Articles of Association, a charitable company was able to insure their risk where the trustees of a charitable trust were not.

The next step in the story was that, in the face of the growing awareness of individual trustees of the risks that they were running by becoming such trustees, the Charity Commissioners felt the need to revise their views on what should or should not be permitted. In 1991 in the Annual Report of the Charity Commissioners they announced that in future they would have no objections to a charity insuring itself against loss to its own funds which arose as a result of acts or defaults of trustees, and further that they would have no objection to a charity providing insurance for its trustees against liability arising from acts properly undertaken, or indeed liability from acts which were undertaken in breach of trust, provided that such breaches of trust were the result of an honest mistake. So at that point, assuming that the Charity Commission's reading of section 310 as amended was right, the position was very much the same for corporate and unincorporated charities.

However, the Charity Commissioners have now become rather concerned that the statement they made in their 1991 Annual Report may have overstated the case and may be giving rise to trustees taking out insurance cover which is far wider than the Commissioners feel comfortable with.

At the launch of the 1992 Annual Report it was announced that the Commissioners are considering the question of insurance further and that their considered view will be announced once it has been formulated. In the meantime, it seems that they have reverted to their previous position, namely that trustees of an unincorporated charity have no right to pay out of charity funds premiums for a policy covering the trustees personally against liability arising out of acts which they knew or ought to have known were in breach of trust. If this position is maintained it must mean that for such trustees there is no point in taking out personal liability insurance at all. If the charity itself is covered against liability the proceeds of a claim under that policy will be available to indemnify the trustees unless they have acted improperly - if the charity is not permitted to insure them against liability arising from improper acts and liability arising from proper acts is already covered by the charity's policy, there is nothing left for a personal liability policy to cover.

(v) **Permanent Endowment**

Permanent endowment property is property of a charity which is not available to be expended on the objects of the charity. In most modern trust deeds you will find a provision that says that the trustees can expend capital or income without distinction in furtherance of the objects of the charity. In the absence of such a provision so that only the income is available for this purpose, the capital of the charity will be its permanent endowment, and there are considerable restrictions on the ability to dispose of such property. This mechanism is used where the donor wants to be sure that a particular capital asset cannot be sold to fund the daily needs of the charity.

A company, constitutionally, can make no distinction of this kind between capital and income and, therefore, by definition, a charitable company cannot have permanent endowment. The distinction used to matter a great deal more than it does now because under s.29 Charities Act 1960 there were provisions which imposed a requirement for Charity Commission permission for sale of permanent endowment land in circumstances where it would not otherwise have been necessary. Since the 1992 Act the question of whether or not land is permanent endowment is not relevant for the purposes of the sale of charity land. However, the question is still very relevant if a donor wants to give property to a charity in such a way as to ensure that it cannot be sold. Where, for example, a stately home is being given to a charity to administer, or valuable pictures are donated which the donor feels ought not to be sold to provide funds to run the charity from day to day, he may well wish to make those assets part of the permanent endowment of the charity. This is not difficult if the governing instrument of the charity is a trust, but very much more difficult if it is a company.

It will be clear from what has been said above that the choice of structure depends on what the charity will be doing. Before making a choice careful consideration must be given to the financial risks that the charity will be running and the sophistication of the structure required. The following chart shows the decision-making process:

CHART

It may be, however, that, having chosen a trust constitution, the charity subsequently develops to a point at which its activities would be better carried out by a company. It is, in fact, often said that it is a good idea to start with a trust and incorporate later if necessary. This latter approach is not a good idea. It is, of course, highly desirable for a charity to change to an incorporated form if the situation requires it, but if it is likely that an incorporated constitution will eventually be the appropriate one then it is important to start as such because to change later can be a major exercise. To incorporate a charity involves forming and registering with the Charity Commission a new incorporated charity, which will have a quite separate charity number from the old charity, and then transferring the old charity's undertaking to it.

This involves, first of all, ensuring that the governing instrument of the original charity contains the requisite powers for this to be done. If not, it is necessary to seek a Charity Commission Scheme to give the requisite powers. Before making such a Scheme the Charity Commissioners will wish to satisfy themselves that it would be in the interests of the charity to incorporate and, even if they are so satisfied, if the charity has permanent endowment there can be really quite serious procedural difficulties to overcome.

Having got over the procedure problems (if this proves possible), the next step is to incorporate the new charity with the same objects as the old and to execute a Transfer of Undertakings document transferring the entire undertaking of the old charity to the new. This document is similar to that which is signed in commercial situations where one company takes over a business from another. It must be followed by the formal transfer of the legal title to all the charity's assets, including the benefit of contracts and deeds of covenant.

Next, the contracts of employment for all the charity's employees must be transferred from one charity to the other. This is particularly complex at the moment due to the current uncertainties of the law in this area. Very briefly, the Transfer of Undertaking (Protection of Employment) Regulations 1981 which in a commercial situation would automatically transfer the contracts of employment of employees in circumstances such as this, do not under English law, as it is at present, apply to a non-commercial undertaking. The EC Directive on which the English law is based, however, says that such regulations should apply to non-profit making organisations. The resulting conflict is in the course of being resolved. Infraction proceedings are currently threatened against the Government for failure to implement the Directive properly and legislation is going through Parliament which should put the position right. The Act received the Royal Assent on 1st July 1993 but so far no commencement order has been made. It is hoped that it will be effective from 31st August 1993. At present, however, the current state of the law remains uncertain.

Having got over that rather technical problem, the charity must then address itself to more mundane points. The new charity will, for example, have to open a new bank account and arrange new borrowing facilities. That may not be as easy as it sounds because the bank will be faced with a change from trustees, who were, in the final analysis, personally liable for the borrowing, to a company limited by guarantee whose directors will not be so liable. It may feel, therefore, that the security being offered is not as good as it was!

Thus, although a change in constitution from trust to company can be done and where necessary should be done, this is not something that should be entered into lightly and certainly it is
entirely inappropriate to regard the trust phase as a temporary measure which can easily be changed later.