
APPLEBY
Choosing the Right
Legal Structure
Association of Guernsey Charities – Charity Sector Conference 2026
Lisa Upham, Advocate & Notary Public
OFFSHORE LEGAL ADVICE & SERVICES
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Why Structure Matters?

Today I would like to look at the factors that should be considered when choosing or reviewing a charitable structure, including:

- personal liability exposure;
- the ability to hold assets and enter into contracts;
- fundraising and donor confidence;
- regulatory compliance obligations;
- governance and operational flexibility; and
- future growth and long-term sustainability.

The key message is that charity structures should not be viewed as a one-off decision made at inception. Instead, they should be reviewed periodically to ensure they continue to support the charity's objectives, comply with current regulatory expectations and provide an appropriate framework for future development.

Today’s route map

01
Key triggers for Review

02
Guernsey structures

03
UK equivalent structures

04
Regulation & protections

05
Four case studies

06
Discussion

Start with what the charity needs to do

Registration

Recognised forms include associations, trusts, guarantee companies and foundations.

Organisation Tax

Structure affects Guernsey income tax exposure and access to charitable exemptions or reliefs (for charity and donors).

Public fundraising and confidence

Donors and funders increasingly expect registration, oversight and a credible governance structure.

Enter agreements/ hold property

ASK FIRST: what do we need to be able to do — and for whom?

Four Guernsey structures at a glance

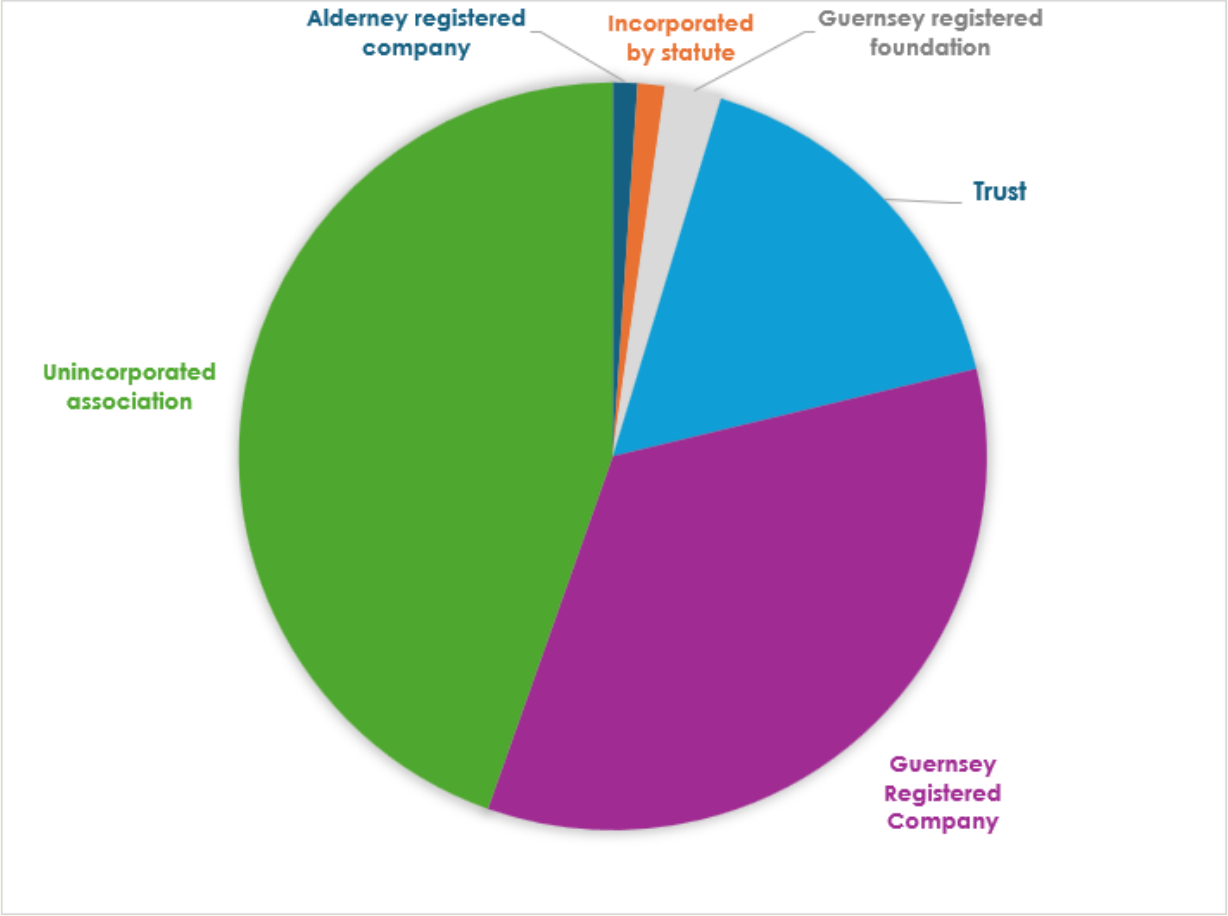
UNINCORPORATED ASSOCIATION
Simple and flexible
No legal personality

TRUST
Asset-holding / grant-making
Trustees hold assets

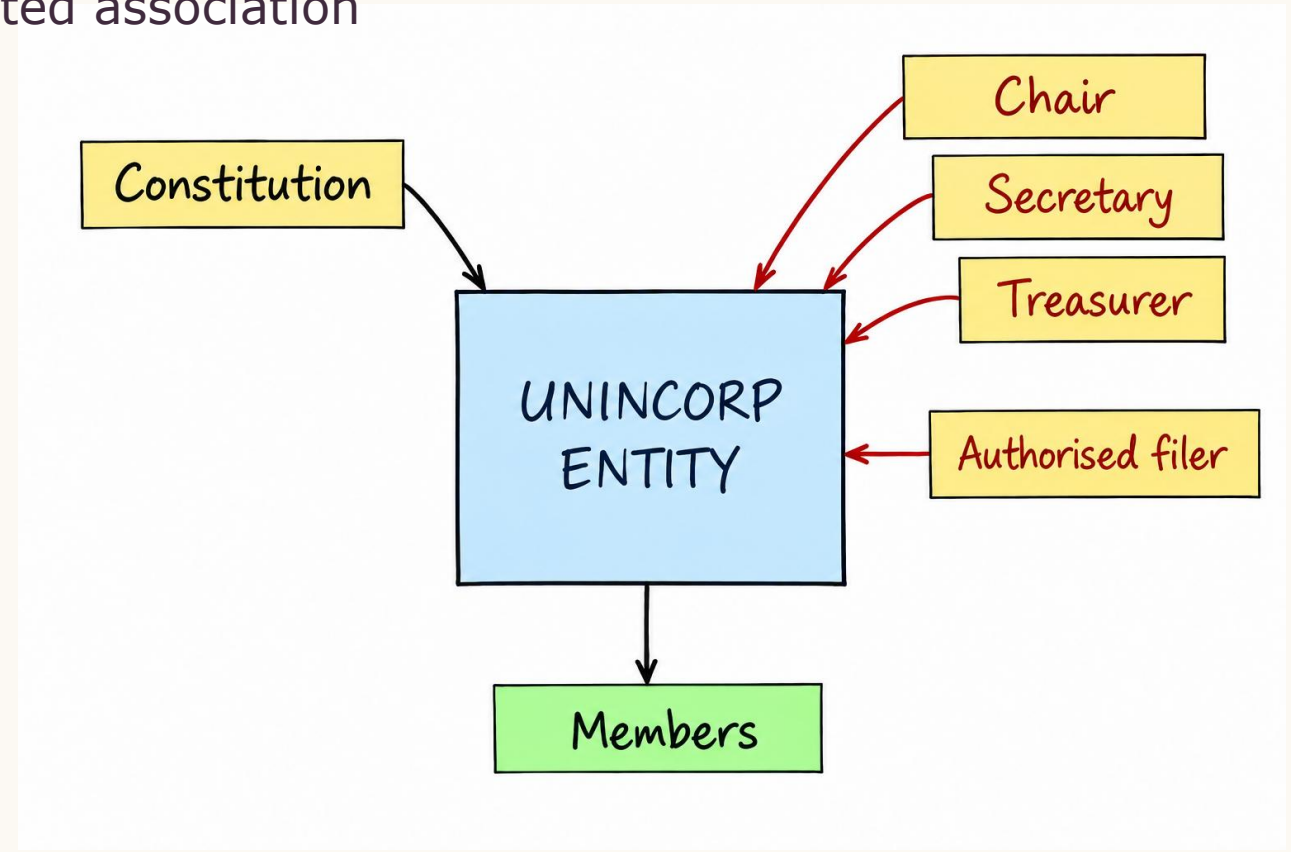
COMPANY LIMITED BY GUARANTEE
Operational and scalable
Separate legal personality

FOUNDATION
Founder-led flexibility
Separate legal personality

Number of registered charity and NPO entities in Guernsey



Unincorporated association



Unincorporated association

WHY IT WORKS

✓ Low cost

✓ administratively simple

✓ Constitution can be adapted informally

✓ Flexible

✓ Well suited to small, local activity

WHERE IT STRAINS

✓ No separate legal personality

✓ personal liability risk

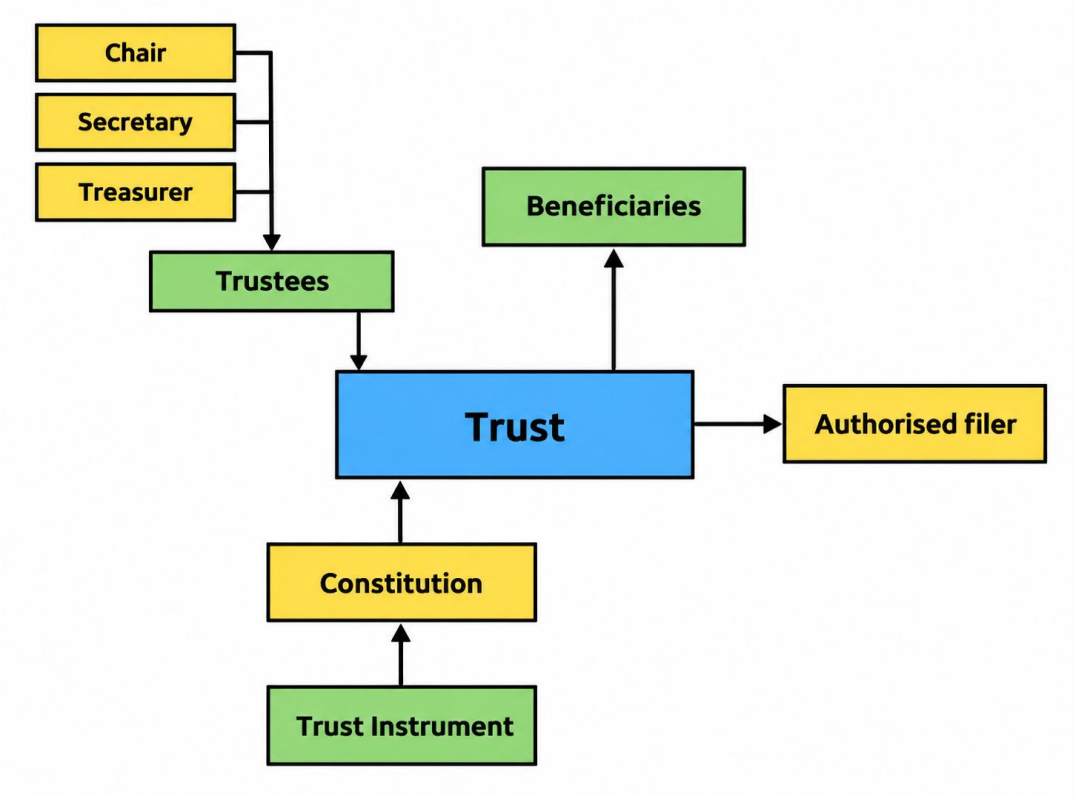
✓ No statutory formation or winding-up regime

✓ difficulties with asset ownership

✓ difficulties with bank accounts

✓ Banks and funders may expect a body corporate

Charitable trust



Charitable trust

WHY IT WORKS

✓ Established legal framework

✓ Strong fit for grants, endowments and asset holding

✓ Mature trust law and clear fiduciary duties

✓ Instrument can reflect the founder's wishes

✓ Can offer a high degree of confidentiality

WHERE IT STRAINS

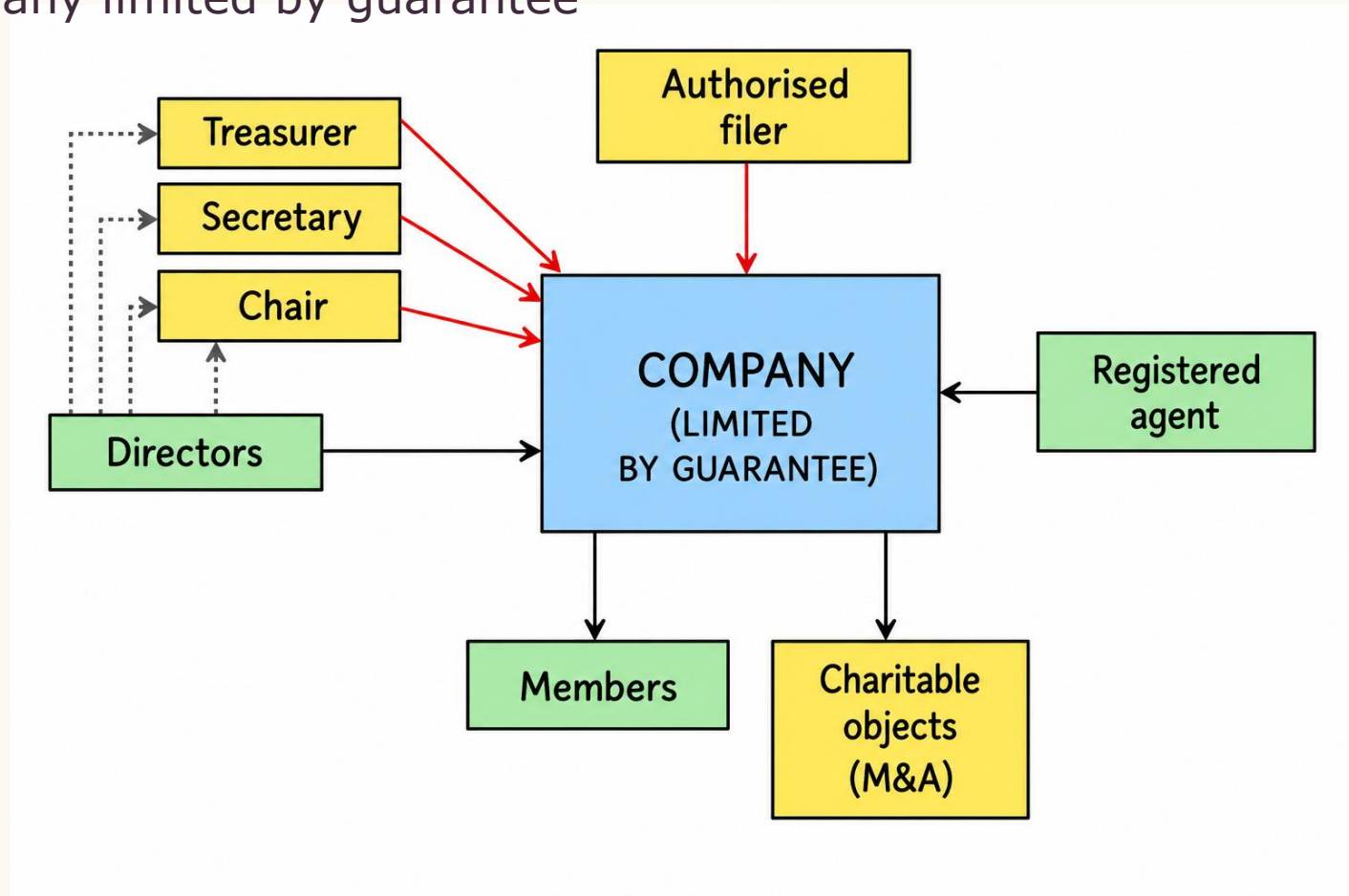
✓ trustees contract personally

✓ Indemnity depends on trust-fund solvency

✓ Less suited to staff, property operations or many contracts

✓ Amendments can require a more cumbersome process

Company limited by guarantee



Company limited by guarantee (recommended model)

WHY IT WORKS

✓ Company owns assets and contracts in its own name

✓ Members' liability limited to a nominal guarantee

✓ separate legal personality

✓ Familiar to banks, funders and regulators

✓ Clear rules for accounts, administration and winding up

WHAT IT REQUIRES

✓ Incorporation and annual validation

✓ Statutory registers and formal board process

✓ Audit / independent examination as applicable

✓ clear governance and winding up procedures

✓annual filings

✓annual costs

Caution: shares and hybrids

WHY THE FIT IS AWKWARD

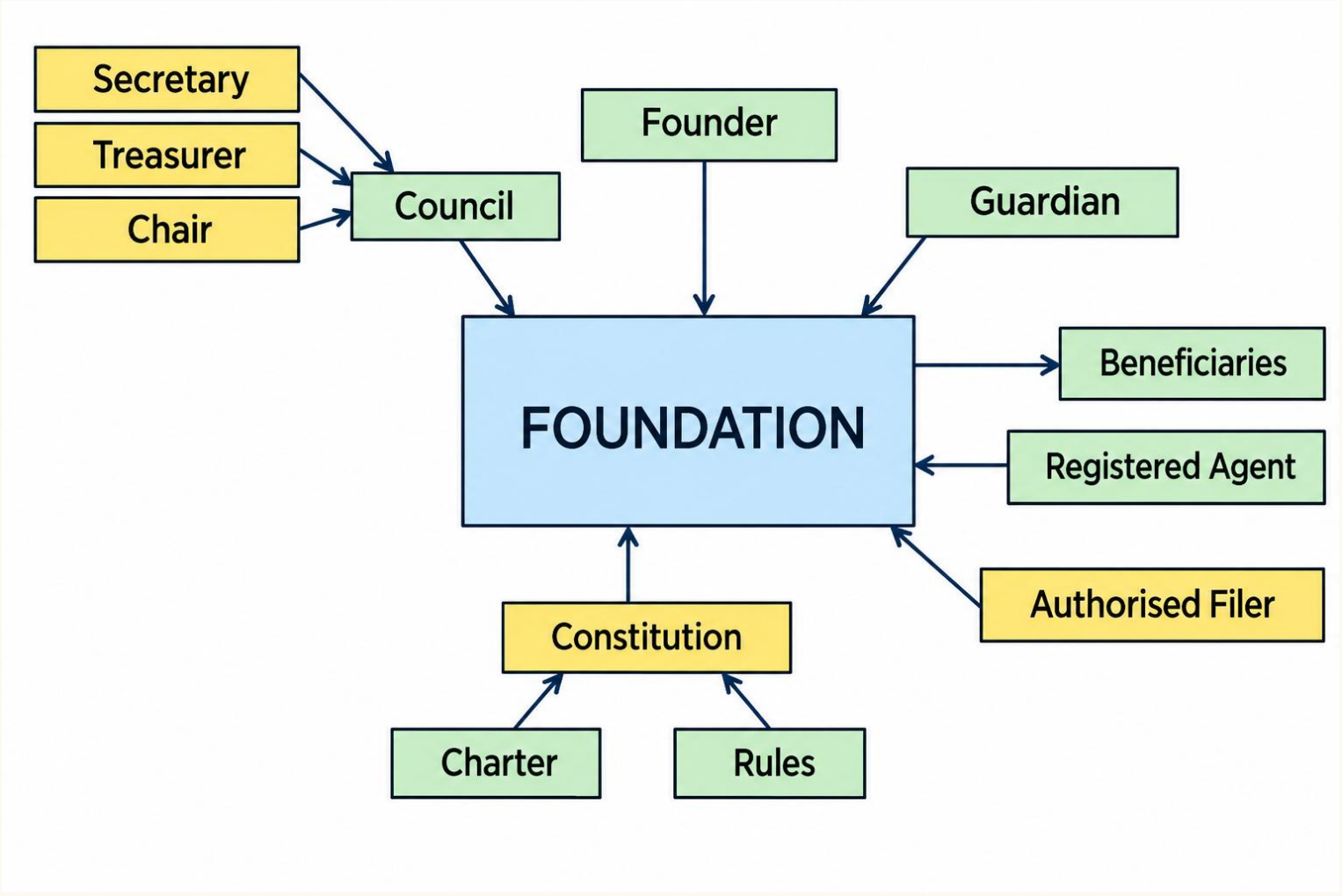
- Shares are designed for dividend and capital rights.
- Charity status requires no private benefit from income or assets.
- A hybrid only avoids the tension if shareholder economics disappear.

WHY "WE'LL CONVERT LATER" IS RISKY

- Shareholding and shareholder-attributable capital must be addressed.
- A new guarantee company, transfer and wind-up may be needed.
- Result: cost, delay and continuity risk.

IF CHARITABLE REGISTRATION IS A REAL PROSPECT, START WITH A RECOGNISED CHARITABLE FORM.

Guernsey foundation



Guernsey foundation

WHY IT WORKS

✓ separate legal personality

✓ The foundation itself owns assets and contracts

✓ No members or shareholders

✓ Founder-control flexibility without losing legal personality

WHERE IT STRAINS

✓ Less familiar than a guarantee company

✓ Banks or funders may require more explanation

✓ Smaller body of specialist law and precedent

✓ No membership base or member voting rights

A UK charity's Guernsey branch: starting point, not default

WHEN IT CAN FIT

Lean local presence

- Small, low-activity;
- no property, staff or significant local fundraising.
- Governance and reporting stay with the UK charity.
- Access to resources

WHEN TO REVIEW

Activity has outgrown form

Depends what the parent structure is but often leads to Property, contracts, people or local funds issues

ACTIVE REVIEW TRIGGERS: PROPERTY • SIGNIFICANT FUNDS • CONTRACTS • PEOPLE • LOCAL PUBLIC FUNDRAISING

UK structures — a brief comparison

CHARITABLE COMPANY

Guernsey analogue: LBG

Separate personality + limited liability

Companies Act 2006 and Charity Commission

CHARITABLE TRUST

Same core trade-off

No separate personality
Best for grant / asset holding

CIO

UK-only
no Guernsey equivalent

Personality + limited liability
Registers only with Charity Commission

INCORPORATION BUYS PERSONALITY AND LIMITED LIABILITY — IN RETURN FOR MORE FORMALITY.

Additional obligations apply whatever the structure

A GUARANTEE COMPANY'S FORMAL RECORDS CAN MAKE COMPLIANCE EASIER TO EVIDENCE.

Case study 1

TRANSFORMING TO MEET FUNDER REQUIREMENTS

A social-enterprise-style company limited by shares had employees and sought a multi-year grant from third party

FUNDER DUE DILIGENCE

- ❑ limited liability
- ❑ formal board structure
- ❑ audited / examined accounts
- ❑ corporate governance

THE ROUTE

- ✓ Incorporate new guarantee company with charitable objects
- ✓ Transfer assets, bank accounts, property and contracts
- ✓ Re-paper employment arrangements
- ✓ Update Registry
- ✓ charity registration
- ✓ Wind up the old company after completion

Case study 2

WINDING UP AN UNINCORPORATED ASSOCIATION

Founders retired; no successor committee; significant cash remained.

THE QUESTIONS

- ❑ Who still had authority to dissolve?
- ❑ How did the sparse dissolution clause apply?
- ❑ What evidence did bank and Registry require?

WHY IT TOOK MONTHS

- ❑ No statutory wind-up or automatic transfer
- ❑ Each asset and relationship dealt with individually
- ❑ Committee and counterparty consents secured

LESSON

An operating charity of scale benefits from incorporation or, at minimum, clear and workable dissolution provisions.

Case studies 3 & 4 — when a branch outgrows its form

AUTONOMY & REGISTRATION

- A local "friends of" committee grew into events, grants and public-facing activity.
- UK trustees retained control
- donors wanted on-island governance of monies raised

Response: a Guernsey LBG established with its own board, registration and relationship agreement. But break away from UK parent

PROPERTY & FUND USE

- A branch property was held personally by two committee members. Death and retirement triggered estate and conveyancing issues.
- Locally raised funds were swept to UK general purposes.
- Root fix: an incorporated Guernsey entity holding and ring-fencing property and funds under a formal UK-parent agreement.

Six signs that a structural review is overdue

01 Funding no longer fits the structure

02 The constitution is historic, inaccurate or weak on dissolution

03 Individuals are named personally on leases, contracts or banking

04 No one clearly owns Registry and regulatory compliance reporting

05 Staff, property or assets have grown without a risk review

06 Personal liability concerns deter new directors

DO NOT WAIT FOR A FUNDER, BANK, RETIREMENT OR DISPUTE TO FORCE THE REVIEW.

Annual structure & compliance check

- ❑ Registry details current; annual validation / return filed on time
- ❑ Constitution or memorandum and articles still match actual practice
- ❑ Amendments lodged within the prescribed period
- ❑ "International activity" status reconsidered
- ❑ Accounting records reviewed; correct examination / audit obtained
- ❑ Governance Regulations reviewed, including AML/CTF safeguards
- ❑ Insurance and indemnities remain adequate and current
- ❑ Structure still fits size, funding sources and risk profile

MAKE STRUCTURE A STANDING ANNUAL AGENDA ITEM — NOT A ONE-OFF FORMATION DECISION.
LBG PROBABLY BEST STRUCTURE AS PROVIDES BALANCE OF PROTECTION, GOVERNANCE AND CREDIBILITY – REVIEW STRUCTURE REGULARLY AS YOUR CHARITY GROWS

Key Takeaways

- Charity structures should not be viewed as a one-off decision at incorporation.
- Structures should be reviewed periodically as a charity's activities, assets and funding arrangements evolve.
- Regulatory expectations and governance standards continue to develop.
- A structure that was appropriate 10-20 years ago may no longer be the best fit today.
- Regular reviews help ensure ongoing legal and regulatory compliance.
- The right structure can reduce risk and provide greater protection for trustees, directors and members.
- An effective structure supports operational efficiency, fundraising and stakeholder confidence.
- The ultimate objective is to ensure the charity is well positioned for future growth, resilience and long-term sustainability.


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OPEN DISCUSSION
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applebyglobal.com



Lisa Upham

Guernsey

Advocate & Notary Public

E lupham@applebyglobal.com
T +44 (0)1481 755 605

Lisa Upham is an Advocate and Notary Public. She regularly advises Guernsey charities on governance, constitutional structures, regulatory compliance and director/trustee duties.

With more than 20 years' involvement in the local charity sector, Lisa combines legal expertise with practical board-level experience, including 14 years as a director of the Guernsey Blind Association LBG and her current role with the Guernsey Botanical Trust LBG.

She also leads Appleby's CSR Committee and was instrumental in the creation of the Museum and Education Centre at Lihou Island.

Lisa is a member of Lincoln's Inn and qualified as a Guernsey advocate in 2003. She was admitted as a notary public in 2021.

- Université de Caen (France)
- BBP Law School (England)
- University of Warwick (England)