

Charitable review paper

Community Rail Network has started working towards becoming a charity. The organisation is eligible to pursue this status without making any changes to its operations, and we hope the process will be relatively straightforward.

The reputational and funding benefits a charity status will afford, particularly in support of partnership development and funding diversification, are likely to be significant and outweigh the costs, which are mostly temporary implications for our staff team that we feel confident can be planned in without detriment.

Background: What is a charity

A charity is a specific status for an organisation. As per the [Charities Act 2011](#), to have charity status the organisation must meet the following criteria:

1. **The purpose of the organisation must be exclusively charitable.** A charity's 'purpose' is what it's set up to achieve (sometimes called the organisation's charitable objectives). 'Charitable' purposes must fall within one or more of the [13 descriptions of purposes](#) listed in the Charities Act. The main, although not sole, charitable purpose that aligns with Community Rail Network's work is 'The advancement of citizenship or community development'. There are numerous other purposes that align, including: the advancement of education; health; arts, culture and heritage; and the protection of the environment.
2. **The charity's purpose/s must be for public benefit.** This is called 'the public benefit requirement'.
 - i. The 'public aspect' of this requirement means the charity's purpose must:
 - benefit the public in general or a sufficient section of the public ('a sufficient section of the public' varies from purpose to purpose);
 - not give rise to more than incidental personal benefit. Personal benefit is 'incidental' where it is a necessary result or by-product of the carrying out the purpose.
 - ii. The 'benefit aspect' of this requirement means that:
 - a purpose must be beneficial in a way that is identifiable and can be proved by evidence where necessary and not based on personal views;
 - any detriment or harm that results from the purpose must not outweigh the benefit. This must also be based on evidence not on personal views.

Background: Charity status and legal structures

There are different types of charity status and legal structures that support these. However, if an organisation has charity status, this means:

- A **board of trustees** controls it (minimum of three) and the assets are held in trust by them;
- It will need to follow **charity law** as well as **regulatory restrictions and requirements**;
- It should be able to **receive tax relief**.

There are four main types of charity structures: (i) charitable incorporated organisation (CIO); (ii) charitable company (limited by guarantee); (iii) unincorporated association; and (iv) trust. Due to the existing nature and set up, of Community Rail Network we would only explore **incorporated charity** structures (i.e. CIO or charitable company) as unincorporated legal structures (i.e. unincorporated associations and trusts) would not be appropriate.

The charity structures most suited to Community Rail Network is:

1. **Charitable Company (limited by guarantee):**
 - Charitable Companies are set up less frequently now, and are usually formed by people who are used to dealing with companies and understand company legal frameworks. This can include, as

in the case of Community Rail Network, not-for-profit organisations who are operating as a private limited company but want to shift to charitable status.

- Charity trustees can be held liable for any financial loss they cause or help to cause. Trustees pre-agree a guaranteed limited liability amount (usually £1).
- Being a charitable company is a two-stage process as you need to first incorporate the company, via Companies House¹, and then apply to register as a charity with the Charity Commission. This means the board members are both 'company directors' and 'charity trustees' and the charitable company has to make filings with both Companies House and the Charities Commission. This option does require ongoing management and maintenance of the two separate registrations, and while this will create additional administration, it should not be overly burdensome.
- A charitable company can have a wider membership structure (enabling member voting rights).
- To register as a charitable company you must demonstrate a minimum income of £5,000.

Advantages of becoming a charity

a) Eligibility/ability to access additional funding: Many funding bodies, and some corporate funders, will only fund registered charities. Without charity status we are automatically eliminated from a significant pool of funding. Our lack of charity status may also put off corporate funders who are approached afresh and don't have the background awareness of community rail: being able to say that we are a charity positions us in their eyes as a worthy 'cause'.

Charitable status could also in future help us to maintain existing, and further develop, grant funding from central and devolved government and other public sector bodies, and to ensure we have suitable funding agreements and arrangements in place that respect our independence and the nature of community rail as a grassroots movement.

b) Reputation and standing, for ourselves and our members: The public and funding bodies can be confident that the charity is administered correctly and funds will be used for the purpose they are intended. Fundraising, and communicating our purpose and nature as an organisation, may therefore be easier. Community Rail Network is often already viewed, and referred to, as a 'charity' by external organisations and industry/government partners. They are often surprised to hear we are not a charity given our remit. Official charitable status, could provide extra authority and influence, particularly when developing new relationships.

In addition, if we are able to assert our identity officially as a charity, it may help our members to more confidently position their work and demonstrate community rail's social value, within the community and voluntary sector. This may in turn help members to build partnerships and bring in wider funds, and enable us to provide some guidance if they are considering charity registration for their organisation.

c) Tax reliefs: There are a number of tax breaks available to charities, and charities don't pay tax on most of their income and gains if used for charitable purposes. This includes donations, profits from trading, investment/bank interest income etc. This is likely to be a more minor benefit for Community Rail Network given the nature of our work and fundraising.

d) Although not a benefit as such, it should be noted that **our existing structure, set-up and objectives would enable a smooth transition to charitable status.** Our organisational purpose and objectives already meet the requirements for charity status so there would be no need for a change in operations or focus. A lot of our structure and governance documentation would hold true and could be transferred across easily with straightforward updates. We would inevitably need to review and update our key governing documents, such as our M&As but this shouldn't be an onerous task.

¹ Community Rail Network is already registered with Companies House as a 'Private Limited Company by guarantee without share capital use of 'Limited' exemption'

Impact on members

Subject to successful application, Community Rail Network becoming a charitable company will not directly impact members. Our organisation's purpose and objects essentially remain the same, and our current operations already meet both the 'public benefit' and 'charitable objectives' requirements (as explained [above](#)). A change in status for our organisation has no bearing on our members' organisational structure or the work that they choose to do. There are many similar third sector membership organisations with charitable status, some of which members will hold memberships for already, including: NCVO, Women in Rail, ACEVO and TCV.

It should be noted that if the vote to seek charitable status is passed (and subsequently achieved), members are advised that the members of a charitable company have a fiduciary duty to exercise their votes in the way which would best further the charitable purposes and is in the best interests of the charity (i.e. without self-interest, even if there would be incidental benefit to the member).

Next Steps

Member vote re. charitable status

- Following previous feedback from the Board, and in line with our M&As (item 44-49: Resolutions), pursuing charitable status requires a decision by special resolution.
- A special resolution can be passed at either general meetings or by written resolution:
 - i. Special resolution at a general meeting is passed by *"a majority of not less than 75% of the votes cast at a general meeting."* See item 45 of the M&As; or
 - ii. Special resolution by written resolution is only deemed to have passed if, within 28 days of circulation, *"written approval has been received from at least 75% of the Members."* See items 46-48a of the M&As. With 400 strong membership, this would require a written response from a minimum of 300 of our members within 28 days.
- A special resolution is put to the vote at our next AGM on Tuesday 28 January; this requires 75% of the votes cast to be in favour.
- Special resolution papers and supportive documents (included draft Articles of Association for Community Rail Network as a charitable company) will feature on our [AGM web page](#) no later than 4 weeks before the AGM.

If you would like any further information in advance of the meeting in January, then please contact Sarah Fatica on sarahf@communityrail.org.uk.