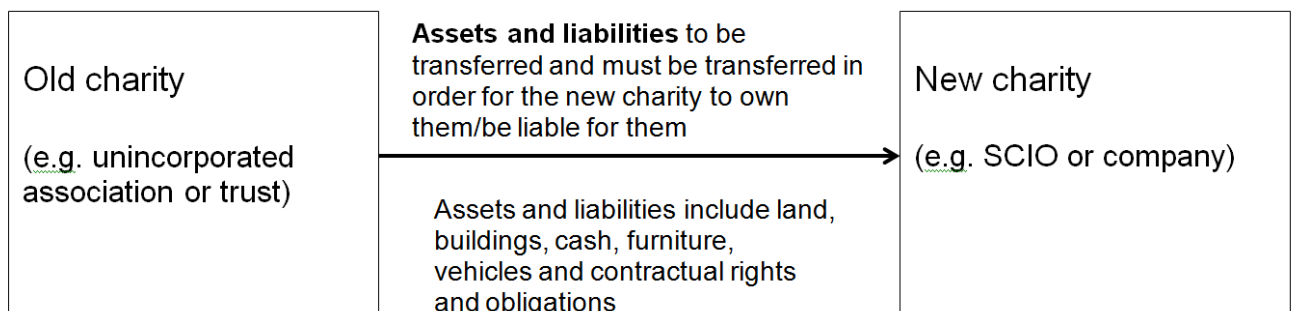


## Transferring assets and liabilities Factsheet

As part of the incorporation process, the existing charity must transfer all the assets and liabilities to the new SCIO charity and provide sufficient evidence to OSCR about the transfer.

Assets and liabilities can vary in type and value. Assets can also vary as to what process is required to give the SCIO control over the assets currently owned by the unincorporated association or trust. Liabilities will also need to be assumed by the SCIO and the process involved for different types of liabilities can vary.

The new SCIO will need to make sure it knows what assets and liabilities (see the asset registers factsheet) are intended to be transferred and put in place paperwork to record and document that the transfer has taken place. This puts the SCIO in control of the assets and makes sure there is clarity over the liabilities. The SCIO's charity trustees will want and need to have certainty over the assets and liabilities they hold and manage at the point the SCIO takes over the operations and activities of the unincorporated association or trust.



### The intention to transfer assets and liabilities

There needs to be some form of documentation to show that the unincorporated association or trust intends for the assets and liabilities to transfer to a new SCIO. The form of paperwork will differ depending on the type and value of the assets and liabilities. In some cases it could be as little as a letter from the unincorporated association or trust to the SCIO, whereas in other situations it might be a transfer agreement. It may also be that third parties (for example a landlord, a supplier or a contracting party) will need to agree and consent (in writing) to some liabilities being taken over by the SCIO.

The documentation should have regard to any particularly important or complex assets and liabilities that need transferred. It should also include wording that captures or sweeps up all assets and liabilities held by the unincorporated association or trust and which the SCIO should receive and take on.

To give the SCIO proper control of the assets and clarity over liabilities further steps might need to be taken; and next we look at some common examples as well as assets and liabilities that need particular care and attention.

## Examples of common assets needing transferred

### Assets

#### What are “assets”?

“Assets” are any things that a charity owns. It is not just land and buildings and would include everything from cash in a bank, to shares to vehicles to furniture and computers. It would also include “rights” such as any entitlements to funds from a trust or endowment (there is more on legacies below) and under a contract.

Some assets, due to the process or value, will need particular consideration. The transfer of **land and buildings** owned by an unincorporated association or trust is likely to involve the most process and potential cost. Charity trustees should identify the process required and costs involved (such as legal conveyancing, plans and registration in a public property register) at the very outset of the incorporation.

For charities that **lease a building**, they will wish to transfer the lease to enable them to occupy their premises. A lease is a two-way relationship and while it is a form of asset that should be transferred, it is very likely that the landlord would need to consent before the transfer could proceed. Again, early consideration should be given and discussions should be had with the landlord at the right time and the appropriate legal documents prepared.

There will be assets that will need transferred connected to branding and materials such as copyright and other **intellectual property**. Charities should consider what intellectual property they have and what steps are required to enable the new SCIO to continue to use these.

A new **bank account** in the name of the SCIO will be required (because the **cash** held needs to transfer). It may take time to arrange for a new account to be opened and for regular payments and other banking arrangements to be up and running for the SCIO. Charities will wish to engage early with the bank to agree the process that is required to smoothly enable the SCIO to carry on the operations and activities.

Most charities with **investments or a share portfolio** will be able to discuss with their financial adviser or investment manager about the process to transfer the portfolio to a new account in the name of the SCIO. There are likely to be forms and

other paperwork required for a new account. If the unincorporated association or trust's shares or investments are held in certificated (i.e. paper) format, there may be some more paperwork required to transfer the investments. Shareholdings would also include transferring the share held by the unincorporated association or trust in a subsidiary/trading company.

**Office equipment and vehicles** should be straightforward to transfer and if owned by the unincorporated association or trust, taking possession of the assets will be the key step (as well as registration with the DVLA in the case of vehicles). If these are leased or on hire purchase, for example, it will be necessary to seek agreement to the transfer to the SCIO.

## **Liabilities**

### **What are 'liabilities'?**

Often these are thought of as risks associated with being sued. However, in the transfer process, 'liabilities' can appear in other places and are part and parcel of relationships with third parties. For example, liabilities can appear in leases, supplier contracts and service agreements.

### **Why are liabilities important for the process of becoming a SCIO?**

They are important because liabilities usually need the consent of a third party before they can be taken over by someone else, including the SCIO. So, as noted above, a landlord would usually need to consent to the transfer of a lease, a supplier would normally need to consent to the SCIO taking over responsibility to accept and pay for goods and supplies and a party (such as a local authority) engaging the unincorporated association or trust to deliver services will likely have to consent to another party, including the SCIO, taking on the services.

In good time ahead of the anticipated date for the SCIO taking over operations or activities, the appropriate consents and agreement of third parties need to be identified and obtained to ensure the SCIO can smoothly take on these responsibilities and liabilities. Particular points to consider include any clawback or termination provisions contained in grant and funding agreements and early termination penalties found in equipment leases.

In the context of liabilities, consideration should be given to the new SCIO indemnifying the charity trustees of the unincorporated association or trust to appropriately protect them against personal liability for residual liabilities.

## **Legacies under wills**

Future potential legacies under wills are technically not assets that can be transferred. However, the possibility of future legacies should be considered when

the charity trustees are seeking to dissolve an unincorporated association or trust and create a new charity. The old charity (with its charity number) may be named specifically in a will and when that person passes away it might not necessarily be the case that the legacy will be then payable to the new charity. What happens will depend on the terms of the will. Charities should consider this issue and perhaps undertake wider engagement with donors or potential legacy givers. See the FAQs section of A Guide to Incorporation for how OSCR views this.

### **OSCR consents**

Once the new SCIO is created, the unincorporated association or trust must seek consent from OSCR to wind up and following that it must then provide evidence that all assets and liabilities have been transferred to the SCIO.

Any property, land or staff that will be transferred to the SCIO will require differing forms of evidence to be provided to OSCR to show that the transfer process has been completed and the unincorporated association or trust cease to exist and no longer holds any assets or liabilities.

### **Other transfer considerations: things that do not just ‘transfer’**

It may be useful to think about some things, such as pensions, insurances, registrations, licences and exemptions ‘transferring’ from the unincorporated association or trust to the SCIO. However, that is not technically the case and each SCIO will need to make sure that it is certain that it has the necessary arrangements in place to be able to lawfully and prudently conduct its activities. These arrangements will importantly include the right insurances and the right registrations and licences (such as for entertainment and theatrical, housing, rates relief and the Care Inspectorate).