

Becoming a Charitable Incorporated Organisation (CIO): how and why?

1. Current status of CCHA and its consequences

CCHA is a charitable unincorporated association registered under the Charities Act 2011 with the Charity Commission.

It has a relatively short and simple written Constitution but which contains a clause permitting the winding up of the charity and the transfer of its assets and liabilities to another charitable body.

Because the Association has no separate legal identity from its members and trustees, any land it owns has to be vested in the name of the Official Custodian for Charities to guarantee continuity. Otherwise the title would have to be vested in nominated trustees and transfers into new names would be needed whenever a trustee retired.

This status does not offer any limit to the liability of the trustees who will be jointly and individually legally liable for all acts or omissions of the Association and required to meet any debts which cannot be paid from its assets and when financial commitments have been entered into which it cannot fulfil. In plain language, if someone believes they are owed money by the Caryford Hall Association then they will have to sue one, some or all of the Trustees.

2. Charitable Incorporated Organisation

This was introduced in law in 2013 and provides the following novel type of body:

- the status is specific to charities and **ONLY** a registered charity can be one, so there is no doubt about the nature and purposes of the organisation which will be for recognised public benefit.
- approved registration with the Charity Commission creates the CIO and confirms that it has charitable status i.e. you do not form the body and THEN apply.
- it is a CORPORATE BODY, distinct from the individuals who are admitted as its members and those elected or appointed to serve on its committee of Trustees. It can hold its own property, enter into agreements, employ staff etc. in its own name and sue and be sued in the name of the charity. If someone believes they are owed money by Caryford Hall CIO then they will generally only be able to sue the CIO - not one, some or all of the trustees.
- thus, those participating in the running of the CIO or its activities as members or trustees will not become personally legally liable for its debts if they acted properly and reasonably nor will they have any obligation to contribute to the assets of the charity if it is wound up.
- Trustees will still have a duty to act properly, with due care and within the law. Thus if they act fraudulently they could face prosecution or in another case be ordered to make a personal contribution to the charity if they continued to run up debts knowing the CIO would be unable to meet these.
- although it is incorporated, a CIO is not a limited company and therefore it is not subject to the Companies Acts and is not regulated by Companies House - it only has to file annually a report and accounts with the Charity Commission i.e. what CCHA already has to do.
- its written constitution is the CIO's governing document. The Charity Commission has approved a model constitution.
- the charity trustees of the CIO are responsible for the management and governance of the CIO.
- (as already happens with CCHA) an annual report and annual accounts must be prepared at the end of the accounting year, approved by the members and then filed with the Charity Commission
- the letters "CIO" have to appear at the end of the charity's name unless the status of the organisation is clearly stated "in legible characters" on all its official documents.

3. The advantages and disadvantages for CCHA of becoming a CIO

Advantages/benefits

- CCHA would in law become a legal personality separate from its changing committee members, which is probably how it is now generally perceived having been in operation for 25 years. This would provide a form of continuity which is not available under the current constitution.
- Legal ownership of the Hall would be transferred from the Official Custodian for Charities into the name of the CIO.
- Committee members acting with ordinary prudence and integrity and not in breach of trust would be relieved of personal legal liability as a trustee for any indebtedness of the charity and would not be required to contribute to its assets if it could not meet its financial obligations. It might therefore become easier to recruit to serve as CIO charity trustees people currently discouraged from doing so because of personal legal liability and the uncertainty resulting from this.
- The CIO would be constituted formally as a membership body and would have to be run as such. This would offer a fresh opportunity to encourage and tie-in supporters of the Caryford Hall.

Disadvantages

- The CCHA would have to include the letters "CIO" in its name unless all documents included wording which referred to this status.
- Bodies which have funded the Hall extension Phase 1 and offered grants for Phase 2 would need to agree to the transfer of the Hall and the benefit/liability resulting from these grants to the new body.
- The model constitution is a longer and more complex document than the current CCHA constitution because the law says it has to include certain elements.
- The CIO must formally maintain a register of members and a register of trustees.

3. How would we convert CCHA to a Charitable Incorporated Organisation?

- CCHA is already a registered charity of longstanding. The CIO would be created on the basis that it would then take over the assets, liabilities and activities run by the CCHA. Its constitution would provide for it to have the same charitable objects as the CCHA. Most of the requirements prior to creation (showing public benefit, identifying initial trustees etc.) would therefore appear to be met in principle.
- Summary of Steps needed to be followed may be as follows, spread over a 9-12 months timescale:
 - ★ CCHA Committee agrees in principle to convert to CIO
 - ★ Members, funders, local authorities consulted and banks, utilities informed and asked for their requirements.
 - ★ Draft CIO constitution, plan transition and actions resulting from change in status/name and then obtain independent legal advice on intended constitution, plan and draft transfer agreement (CCHA to CIO) to confirm that these are lawful, comprehensive and appropriate.
 - ★ Hold Special CCHA members meeting to approve in principle winding up (or table resolution at AGM).
 - ★ Apply to Charity Commission to create and register CIO as a new charity
 - ★ Deal with any queries from the Charity Commission
 - ★ After successful registration: first meeting of CIO trustees
 - ★ Open new bank accounts/utilities accounts arrange new insurance policy. Register with HMRC for gift aid, Information Commissioner for GDPR, licensing with Local Authorities, PRS etc.
 - ★ Transfer date: all assets and liabilities of the CCHA transferred to the CIO and from that date it undertakes all work of the charity. Website amended, hire contracts and other user documents amended.

- ★ Instruct solicitors to arrange Transfer of registered title in Hall from Official Custodian for Charities to CIO
- ★ Recruitment drive to build up registered membership of the CIO prior to Annual Meeting
- ★ Trustees of old charity meet to approve final accounts and annual report and thereafter file these with Charity Commission.

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