

Charitable Incorporated Organisations

An opportunity or a threat?

A critique from the perspective of religious organisations through the lense of public benefit

Abstract

Religious organisations that are charities are only so because the law recognises their activities are charitable, that is they provide public benefit. It is not the other way round: Religious organisation do not undertake religious activities because those activities are charitable.

Charitable Incorporated Organisations turn this on its head. They are charities. A religious CIO can only undertake religious activities that are in law charitable.

Not all religious activities are in law charitable. Recognition as a charity rests upon the fluid legal concept of public benefit. A day may come when further religious activities may not be seen as satisfying the public benefit test. Evangelism can cause conflict. Religious moral views which are often contrary to the views of the secular society, can cause conflict. If religious organisations continue to practice those things that cease to be understood to satisfy the public benefit test, though they are free to continue to practice them, they shall lose their status as charities and shall cease to fall under the supervision of the Charty Commission.

A CIO does not have this option. It is a charity; it cannot conduct activities that are not charitable. It never ceases to be supervised by the Charity Commission, who may step in to take control or dissolve the CIO.

Contents

1.	Background	2
2.	Geographical, temporal and other limitations.	2
3.	Warning to the reader	3
4.	The question.	3
5.	Advantages of a CIO	3
6.	The problem.	4
7.	The history	4
8.	The importance of public benefit	5
9.	The loss of presumption.	5
10.	The new test of charitability	5
11.	Public benefit	6
12.	How does this affect a CIO?.	6
13.	The impact on a religious organisation.	6
14.	Pressures which may change the understanding of public benefit	7
15.	Consequences of such changes	7
16.	The hidden danger for a religious organisation	7
17.	An element of State control	8
18.	How to respond	8
19.	Summary	9
20.	Contrary opinions	9
21.	Conclusion	9
22.	Further reading.	10

Appendices

5 further thoughts on Charitable Incorporated Organisations	11
Charity Commission	15
FIEC	28
Walker Morris	32
Stewardship	36

Postscript

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

1. Background

It was quite an innocent question really, a local charity had been thinking about trustees' liabilities. There was a management group which looked after all of the day to day affairs of the charity, whilst the trustees held the assets, which consisted some land and buildings from which the charity conducted its affairs, and bank accounts, which were actually operated by the management team. The trustees had little to do, as trustees, with the day to day affairs and conduct of the charity. They had however woken up to the fact that should anything go wrong at the charity, they would be held responsible for it, and had in mind that the financial penalties may not be trivial.

For many years that had not been the case. There was no or little possibility of damage arising out of the activities of the charity, but things were changing. People did not have the same trust in each other as before, and there were some who, in order to indulge or facilitate illegal activity looked for easy targets, gaining confidence of the local people and acquiring places of responsibility, which could be used to cover up their lawless deeds. Others outside the charity began to look for ways in which they could criticise the charity for no other reason than they wanted to shut it down, or obtain some pecuniary advantage for themselves by claiming damages for a personal injury which they had suffered. Often the difficulty with defending such claims is that the 'injured' had no connection with the actual event, occasion or individual whose words or actions gave rise to the 'injury', the injurious action may simply have been reported to them by a third party.

In the past such claims would have been dismissed as, as they might say in law, nefarious, illegitimate or capricious, but changing views and attitudes in society, as well as the increasing propensity of those who are looking for opportunities to take offence at views with which they simply disagree, to take matters to law, has started to mean that the courts are taking seriously the claims and awarding in some case substantial damages for offence taken, when no offence was intended. It had become so bad that even comedians were disinclined to commence their stories with 'Did you hear about the Englishman, Welshman and Scotsman?' it having become far too dangerous to use Irishman as the second guy even many years ago.

2. Geographical, temporal and other limitations

Whilst every effort has been made to ensure that this article conforms with current law and practice, the writer is not a solicitor but a Chartered Accountant and Chartered Tax Adviser. The contents of this article have a limitation in time and space to his understanding in February 2023 and to the geographical region known as England and Wales. It is thought that similar considerations would apply elsewhere in the United Kingdom, but would not be expressed in the same way as they have been here.

Independent legal advice should be sought before any action is taken as a consequence of reading this article. The writer accepts no responsibility for any actions taken on the basis of the information given here.

This article is not advice, it is merely informative and instructive with the intention to inform the debates concerning the questions addressed herein.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

3. Warning to the reader

Now before you read on, you may care to note that I might here say, and perhaps already have said, things which some would want to consider offensive, or at least suggest have an element of conspiracy theoretics about it, so let me say that I do not subscribe to conspiracy theories and anything in here that may suggest otherwise is a misconstruction or misconstrual of my meaning or alternatively the consequence of an extrapolation from what has been said to an insupportable conclusion. And for those who would want to consider something as offensive, let me add that if what I say is read correctly, and as I intended it to be read, there will be found to be no offence in it, but if it is deliberately misunderstood because I have used an ambiguous grammatical construction, placed a gerund where an adjective should sit, used a preposition to leave it dangling at the end of a sentence or caused an infinitive to be split into its inseparable parts, then let it be known that such may or may not have been deliberate upon my part, or may have been quite accidental, and where clarification of the particular grammatical device is required, then I shall be happy to receive due corrections explaining the error into which I have fallen providing it clearly explains fully all the possible misconstructions of meaning that may arise, or have arisen, as a result of the alleged gaffe, together with a reworking of the text such that its correct inoffensive meaning may be fully, perfectly and completely be understood by the newly proposed text. With that in mind, let on the reader read.

4. The question

The question involved the possible conversion to a Charitable Incorporated Organisation (CIO). Now CIO is a type of corporation which is regulated by the Charity Commission. This document is not the place to discuss the types of CIO available nor the manner of their incorporation. Information may be found on the Charity Commission website to address these issues and to help you to understand which type of CIO is most suitable for the purpose that you have in mind. [CIO Practice Guide 14a](#) is a good place to start if you have questions about this. [The writer](#) will also be happy to take questions from you.

5. Advantages of a CIO

A significant advantage of a CIO over a company incorporated under the Companies Acts, is that it is not regulated by Companies House. As a consequence there is a reduced administrative burden for charities which operate through a corporate structure to be a CIO than for example a company limited in any other way, eg as is often the case, by guarantee. A company limited by guarantee is registered under the Companies Acts, and if a charity also, is required to make annual returns etc to both Companies House and the Charity Commission. For many larger charities this is not a significant burden, as they will have professional staff to deal with these matters, but for many smaller or local charities, we may have amateur trustees who may not have ready access, or only expensive access, to the necessary professional skills. Incorporation as a CIO is an advantage to them.

A CIO has advantages also for charities that do not operate through corporate structures, but as unincorporated associations or as trusts. Most of these charities are, and in due time, all of them shall be, registered with the Charity Commission and must make annual returns etc to them. None of the objects of such organisations must change, apart from one particular group of organisations recognised as charitable to which I shall revert later, nor, in general terms at least, their governance. The chief advantage for the unincorporated charity is that incorporation as a CIO gives the trustees, governors,

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

managers, or whatever else the charity trustees might call themselves, the financial protection of limited liability.

Whilst unincorporated trustees can protect themselves from financial liability to some extent by insurance, this may not be such good protection as that afforded by a limited liability company (a CIO or a company limited by guarantee), additionally trustee insurance may be more expensive for the unincorporated charity than the incorporated, which puts a greater pressure on the limited resources of the charity which are used to support its work.

The introduction of the new incorporated organisation, the CIO, was welcomed by the charity sector for providing the possibility of both a simplification of their regulatory obligations and financial protection to trustees in an increasingly litigious environment. However, it is not a suitable vehicle for all charities.

6. The problem

Some sub-sectors of the charity sector had objects, some of them very long standing – the writer is aware of charities whose objects and structures have remained unchanged for upwards of 100 years – which are incompatible with the requirements of the CIO. How can this be? you may well ask.

7. The history

Well to understand that we have to look briefly at the history of charitable causes. Whilst the list in the preamble to the Statutes of Elizabeth I did not form part of the law, the contents of that list have for four hundred years informed the law so that by the twentieth century it could be said that a charity is a organisation set up for one or more of the following purposes:

- The relief of poverty
- The advancement of education
- The advancement of religion or
- Any other purpose beneficial to the community.

These categories did not however provide a definition of what a charity is, they merely provided guidance to those who needed to assess whether a particular organisation was a charity or not. It was not until early in the twenty-first century that a definition was brought into law. In the Charities Act 2006 the original list of ten specific things, which had become a short list of four characteristics at least one of which should be found in a charity, became a new list of thirteen:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

- the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- any other purpose already recognised in law as charitable, along with other purposes analogous to, or within the spirit of, other purposes that are recognised as charitable.

It is a new age, calling for new things. One could argue that the nine new items inserted into the 19th century list between the third and the fourth are all included in the fourth item of the 19th century list. What then was the point? Well, one could point to the greater and greater specificity introduced into the law in during the twentieth century. Perhaps one only need ask: in law how many different ways can you kill a man? Do we really need more than two, murder and manslaughter? But we do not like the law to tell us what we can and cannot do, so we multiply laws as people invent ways around the ones that are already there. Is this propensity in our natures the cause of the rapid expansion of Elizabeth's list? Or is it much simpler than that? The nineteenth century short list of guidance gave far too much leeway to the courts to interpret matters, so a statutory definition was introduced to provide certainty.

8. The importance of public benefit

As the same time however the idea of public benefit was given a much greater role in assessing whether an organisation set up for any of these purposes was a charity. There would no longer be a presumption that organisations set up for the first three, and the fourth, elements, of the nineteenth century guidance conferred public benefit, though there was no suggestion that those who had already been recognised as charitable under those heads would lose their status, it would become necessary to demonstrate a continuing public benefit in the activities of the organisation. This is why organisations in their report will in describing their activities say something to the effect that 'the trustees ... believe the charity satisfies the public benefit test'.

9. The loss of presumption

Public benefit has always been at the heart of what is charitable, but there had been a presumption that particular types of activity would always have a public benefit. It was of the essence of the activity, so the maintenance of the walls of a city would be a charitable activity. Nobody would have any doubt about that. Certain other activities would also be seen as essentially providing public benefit. So, religious activities notwithstanding the often hard opposition of the establishment, were seen as providing public benefit. Not all religious activities were recognised as charitable however, but not because they did not provide public benefit, but that the benefit they did provide was not susceptible of legal proof.

10. The new test of charity

The new position today really is not 'does the organisation qualify under any of the heads of the new list?', but firstly 'does it confer public benefit?'. If it does confer public benefit, then it may qualify under one of the specific items in the list, but if not under the final catch all, any other purpose. So why have a list at all? It helps us to think about the particular aspect of public benefit that may be provided by, and therefore what to look for in, any particular type of organisation.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

11. Public benefit

Now we have to be careful when we talk about public benefit. It is a concept as slippery as quicksilver. It is not benefit to the public. You may hear some presenters turn the words around in this way, perhaps thinking it will make the idea easier to understand, but instead that clouds and misrepresents the meaning. The maintenance of the city walls is of no immediate benefit to the public. The charity whose object is for the relief of poverty in the parish of Nevernewthem in a well-to-do area of the Home Counties, may struggle to actually find any thing it can do in any particular year. Perhaps for many years in a row it provides no benefit to anyone let alone to the public. It is nevertheless established for public benefit. Things can be done for public benefit, which provide no benefit to the public. So, a statue may be placed on the harbour wall in Bristol for public benefit, but parts of the populous, perhaps even a significantly large part consider that it confers no benefit on the public at all. It is a hideous statue, much like a carbuncle on the nose of an old friend. The public do not have to agree that there is a public benefit for there to be public benefit. That there is public benefit is a matter of law not of fact. And, perhaps in the context of this article two things to note about public benefit (see [Public benefit: an overview](#)) in relation to the organisations that we are about to consider are: it has not been considered by the courts in relation to every charitable purpose and it keeps changing. We are back to where I started on this matter: the law of public benefit is like quicksilver.

12. How does this affect a CIO?

We may now return to our questions about the CIO. Why would it, being a charitable company, not be suitable for all charities? The answer lies hidden in the depths of what is public benefit. As we have seen it is a legal concept, and furthermore it is an unstable concept. The Charity Commission acknowledge that it has not been tested for all charitable activities, perhaps because there has not been any need to test it as before the 2006 Act there was a presumption that it existed in certain types of activity that were considered to be charitable.

13. The impact on a religious organisation

Before the 2006 Act it was the objects of an organisation that determined whether it would be charitable, whatever those objects were. If the objects determined under the then current understanding of the four headings public benefit would be presumed and the organisation would be charitable. Unless it fell under a limited number of exemptions it would have to register with the Charity Commission. So an organisation with a trust deed which sets out a number of specific objects, without calling them charitable but fell under the general heading of religious, concluding with a final statement that 'the remainder of such moneys funds and property shall be applied for such purpose of a religious or benevolent nature as the Trustees or Trustee shall in their or his absolute and uncontrolled discretion think proper' was considered to be a charity. But note here, that the Trustees had power to apply funds firstly to purposes of any religious nature. The deed does not require that the religious nature be charitable, and it is known that not all religious activities provide a public benefit which is susceptible to legal proof and thus they fail to qualify as charitable.

This particular organisation was established as a religious organisation not a charity. It was an accident of the understanding of what constituted public benefit at that time, and the presumption of public benefit that religious organisations provided, that it was considered to be a charity. It was not envisaged at the

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

time, not indeed later, that any of the funds of the organisation would ever be applied for the purposes of a religious organisation that was not considered to be charitable, but the trustees had unfettered power to do so, and if the only religious organisation that could benefit because of restrictions elsewhere in the trust deed the trustees would be obliged to apply the funds that they held for that non-charitable organisation with all of the consequences, eg income tax may become due on its income, that might follow.

If such an organisation became a CIO there is the very great risk that its original purpose would be defeated. It could be prevented from applying the funds which had been provided by the benefactors for the very purpose for which they had been provided. In this particular case, presently there would be many religious organisations which would still qualify as charities to which the trustees could apply their funds, but as we have seen the law on public benefit is unstable and has not been tested in all cases. There is no certainty that what is today understood to be religious activities that provide public benefit will still be understood to provide public benefit tomorrow.

14. Pressures which may change the understanding of public benefit

Even today there is talk of fundamental and religious extremism which gives rise to activities that clearly do not provide public benefit. The law is a blunt instrument, and it does not take much when parliamentary time is limited for law which is intended to deal with the harmful aspects of extremism to include within it provisions that harm the beneficial aspects of extremism. There are also other pressures within society for organisations to conform to a particular moral ethic, just as in authoritarian or totalitarian systems there are pressures to conform to a particular political view. These pressures place those who hold a different moral ethic at risk. These pressures also change the perception of what public benefit is, and are likely to influence the understanding of what public benefit means in relation to religious activity.

15. Consequences of such changes

Any change in understanding of public benefit in relation to religious activity should not however require a change in the religious activity of an organisation that has been established for that purpose. The organisation should, unless its activity is overtly harmful and immoral, be allowed to continue to operate in accordance with its objects as a non-charitable organisation. The organisation does not change, but its standing in society changes.

16. The hidden danger for a religious organisation

It is this that makes the CIO such a dangerous vehicle for a religious organisation. The CIO can only engage in charitable activities. A religious organisation may become a CIO today because its activities are considered by reason of precedent to be charitable. Tomorrow the law of public benefit may be tested in relation to the activities such as that organisation undertakes and it be discovered that our understanding was incorrect. The precedent was wrong. That organisation's activities were not charitable and have never been charitable, but it is too late to undo the past; the new understanding applies only from tomorrow. But for that organisation it is too late. It is a CIO, and must now conduct religious activities that comply with the new understanding of the law. It was never established for those new activities. It had been established for a different set of activities which are no longer considered to be charitable. It is known that the original benefactors were agnostic to the charitable status of those activities, and did

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

not provide the endowment for a charitable purpose but for a specific religious purpose. The CIO cannot comply. The objects of the organisation have been defeated.

It is this aspect of a CIO which makes it so dangerous for churches, that is the body of people, the organisation, not the building which that organisation or body uses. Similar considerations apply to the congregations that meet in synagogues and mosques, but I am not speaking to their specific affairs or manner of organising and conducting themselves. I can make no comments at all in respect of the congregations of temples of Hindu or Buddhist leaning. Different consideration apply to the building, which I submit, do not require that it be on anything other than a simple trust for the use, not the ownership, of a religious organisation (narrowly defined of course). Churches are religious organisations first and foremost. They are not established as charitable organisations, though most of them are recognised as charities. I understand that a few congregations because of their peculiar structure are not presently recognised as charitable. That they are recognised as charities is an accident of our present understanding of the law of public benefit.

If they become CIO these churches are first and foremost charities which conduct religious activities. In today's world the understanding of what constitutes public benefit permits churches to do what they have done for two thousand years. In tomorrow's world there is no guarantee that those activities will be recognised as providing public benefit. The CIO will not be permitted to continue to engage in those activities. If it does there is the very real possibility that the Commissioners will dismiss the trustees and replace them with trustees who will be compliant with the public benefit requirement.

17. An element of State control

I had almost suggested earlier that the CIO represents State control of a particular type of charity, but thought it better to leave that suggestion for a later point in our discussion. It is no problem for organisations that engage in other types of activity such as the relief of poverty, or the advancement of amateur sport, for these activities are firstly charitable. But for religious organisations, as CIO they are at the mercy of the current understanding of public benefit. Whether the Commissioners step in to change the trustees or not, the possibility that they can if the religious organisation continues to engage in non-charitable activities, place the CIO under the control of the Commissioners who are an arm of the State.

18. How to respond

Religious organisations, whether they are protestant evangelical, Roman Catholic, Jewish or Islamic should not become CIO. There are other forms of incorporation, eg a company limited by guarantee, which provide financial protection to the trustees. I grant that the other approaches do not simplify your routine administration, but they do simplify what happens when what you do ceases to be recognised as charitable. As long as what you do is recognised as charitable, you will be supervised by the Charity Commission. That supervision is good for you and for the communities that you serve. If the law changes and what you have always done ceases to be charity, as a CIO you have to change what you do, but as say a company limited by guarantee you do not have to change what you do, but rather the Charity Commission, after giving you fair warning must remove your registration as a charity and cease to supervise you. The lack of registration as a charity changes your status in society. It may mean that you lose certain exemptions from taxes, but it is the taxing authorities which make those decisions not the Charity Commission.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

19. Summary

In summary then, religious organisations are charities only because the law recognises that the activities undertaken by them are charitable. It is not the other way round. Religious organisations do not undertake religious activities because those activities are charitable. The recently introduced Charitable Incorporated Organisation (CIO) turns this on its head. It is a charity first. It can only do charitable things however broadly its objects may have been written. A religious CIO can only undertake religious activities that are charitable.

A day may come when such religious activities, and those of many other eg evangelical groups (using evangelical in the broad sense of seeking converts to a cause) may not be seen as satisfying the public benefit test. Evangelism causes conflict. Religious moral views also are often contrary to the views of the secular society. Those differences cause conflict. In the Christian tradition we know that the apostle Paul knew that well enough. If religious organisations continue to do those things that are no longer understood to satisfy the public benefit test, then they are free to continue to do them, but they lose their status as charities, and the Charity Commission ceases to have authority to regulate them (unless they continue to do other things which would satisfy the public benefit test, but then only in regard to those matters). A CIO does not have this option. It is a charity, and it cannot conduct activities that are not understood to be charitable. It never ceases to be supervised by the Charity Commission, who can step in to take control if it continues to do 'bad' things.

20. Contrary opinions

You will hear advice which is contrary to what I have written here in many quarters. Indeed there are some, who promote CIO as if they are exactly what this charity sector needs. I suggest that those who speak in this way have either not understood the risk or have underestimated the magnitude of it.

21. Conclusion

Churches, and some other groups, are religious organisations. CIO are charities which may undertake approved religious activity. Religious organisations should not become Charitable Incorporated Organisations.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

22. Further reading:

The following documents which are referred to either in the article above or the comments below are included here in case they should cease to be available or their form and content be changed to reflect changes in the law after the date of publication of this article. There is no intention to infringe copyright by the copies available here, nor is there any commercial benefit in doing so. The use of the documents is for academic and educational purposes only :

gov.uk	Practice guide 14A charitable incorporated organisations
gov.uk	Public benefit an overview
gov.uk	Managing faith charities as trustees
gov.uk	Excepted charities
fiec.org.uk	Should Your Church Become a CIO
walkermorris.co.uk	Charitable Incorporated Organisation – is it the right structure for you
stewardship.org.uk	Charitable Incorporated Organisations for church charities

Whilst I have included a copy of these documents in the appendices, as the Stewardship document is behind a registration wall it is not included. Should it cease to be available from the Stewardship website, in the first instance please ask Stewardship for a copy, but otherwise I may be able to make my copy available for inspection.

[Email for further information](#)

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Appendices

5 thoughts on “Charitable Incorporated Organisations” with replies by the writer

1. There are many helpful pages of advice or merely information on the internet for those who wish to know more about CIO, but all of those which I have inspected do not address the public benefit issue which I bring to your attention in the foregoing article.

The following paragraphs link to, and comment on, some of those pages.

2. **Charity Commission** see page 15 for the original document
3. **Fellowship of Independent Churches** see page 28 for the original document
4. **Walker Morris, Solicitors** see page 32 for the original document
5. **Stewardship** see page 36 for the original document

- 2 **Charity Commission** see page 15

<https://www.gov.uk/government/publications/faith-based-charities/managing-faith-charities-as-trustees>

The article addresses the question whether faith organisations should register with the Charity Commissioners and commences with the following statement:

Places of worship such as churches, gurdwaras, mandirs, mosques, synagogues, temples and viharas are normally charities.

This is because they normally have ‘exclusively charitable purposes’. This means that everything they do is for the public benefit and fits within the legal descriptions of charitable purposes in England and Wales. These include:

- *advancement of religion*
- *prevention or relief of poverty*
- *advancement of education*

It firmly places certain faith organisations correctly in the category of charity on the basis of the existence of public benefit. It fails however to mention what public benefit is and that it is a fluid legal concept that can change over time. There is a presumption, as in so many of the other pages, that tomorrow’s law shall be today’s law.

- 3 **Fellowship of Independent Churches** see page 28

<https://fiec.org.uk/resources/should-your-church-become-a-cio>

There is an important note at the foot of this page which should not be overlooked: *This information has been provided by solicitors working for Edward Connor Solicitors. It is designed for the purpose of knowledge sharing only and does not constitute legal advice.*

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

The article addresses the question *Should your church become a CIO?* a much more specific question than that addressed by the Government page. Rather than an answer to that question it reads more like the answer to the two supplementary questions placed as a sub-heading to the article:

What are the advantages of your church becoming a Charitable Incorporated Organisation (CIO)? And how would you go about making the change?

It answers those questions very well. I would not want to take issue with any of the reply to either of those two questions, but it completely fails to answer the questions *Should your church become a CIO?*

There is no presentation of any reasons for not becoming a CIO; there is no counter-argument; there is no discussion, we are left with the impression, as I suggested in the main article, that the CIO is exactly what you need.

The requirement to demonstrate public benefit is not even mentioned here, as if it is irrelevant in any of the considerations. The lack of its mentioned precludes any discussion of the impact of changes in the understanding of public benefit and how that may affect us as churches.

4 Walker Morris, Solicitors see page 32

<https://www.walkermorris.co.uk/charitable-incorporated-organisation-is-it-the-right-structure-for-you/>

The article address the question: *Charitable Incorporated Organisation – is it the right structure for you?*

It is a broad question, and the reply given is much fairer than the replies given by the FIEC and Charity Commission. Before answering the question, Walker Morris provide a very brief picture of the options before describing the CIO. It is a good, comprehensive, though not exhaustive, description. Only after this do they begin to provide you with some of the tools you need to answer the question for your charity. A list of advantages and a list of disadvantages are provided. There is no discussion of public benefit and what that might mean for some charities, but they are rightly not addressing that issue.

Under disadvantages however there are two helpful statements:

The structure is not suitable for all types of charity

CIOs only come into being when registered at the Charity Commission. If registration is lost then the charity will fold (unlike companies limited by guarantee which may lose their charitable status but can continue as a company registered with Companies House)

Both of these should be red flags for any one who has the slightest understanding of public benefit, how it is changing and may change in the future in our society, for behind both of them lies that concept. An example is provided of a type of charity for which registration may not be suitable, excepted charities. In the main these are religious charities. There are a variety of reasons why a CIO may not be suitable for them, not all of which involve public benefit, and the others reasons may be more in the forefront of the mind of the writer of the article.

The second warning however is much more powerful. It turns on the loss of registration (as a charity). On what grounds would an organisation lose its registration as a charity? On the very simple ground that its objects cease to be charitable, or it begins to conduct activities that are not charitable. This change may come about in either one or both of two ways. The first is that the organisation changed its objects so that

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

they were no longer charitable objects, but as a CIO is a charity, and must be a charity, it cannot change its objects in that way so that reason is not in view when considering a CIO.

The second reason is the one that must be under consideration, which is that the understanding of what constitutes public benefit changes in such a way that the objects and activities of the organisation cease to be charitable. The organisation does not change. It is the environment in which it exists that changes. The law changes.

Underlying what Walker Morris say in this warning is an understanding of public benefit. The article we are addressing is too short to handle the issue of public benefit. If it tried to do so it would make the article far too complex for the average reader. In any event this issue is really only relevant for one part of the charity sector and that part of it which should be far more aware of what public benefit really means than other parts.

Finally, the reference to 'fold' can be many things, but here it is cease to exist, so that its assets must be distributed in accordance with its constitution, which if a CIO means to another charity. Note that is to another charity, not to another religious organisation, though the charity in receipt of the assets may also be a religious organisation, which somehow has managed to retain its charitable status even though the law has changed.

This is one of the better articles this writer has seen.

5 Stewardship see page 36

<https://www.stewardship.org.uk/resource/charitable-incorporated-organisations-church-charities>

This is an article which addresses *Charitable Incorporated Organisations for church charities*

The document is behind a registration wall which you must cross should you wish to refer to it..

The summary provided on the webpage looks to be quite promising.

To form a charity, there were initially four common legal structures employed; a Trust set out in a Trust Deed, an Unincorporated Association with a Constitution, a Company limited by guarantee with Articles of Association and an Industrial and Provident Society which has a set of Rules.

A fifth structure has now been made available, known as a Charitable Incorporated Organisation (CIO). Since 2 January 2013, it has been possible for the Charity Commission to register CIOs.

This briefing paper looks at CIOs in England and Wales (CIOs in Scotland have been under separate legislation since April 2011).

- *Topics covered:*
- *What is a CIO?*
- *The advantages of a CIO*
- *The disadvantages of CIOs*
- *The timetable for the registration of a CIO*
- *How to register a CIO Conversion of an existing non-company charity to a CIO*
- *Conversion of a charitable company to a CIO*

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

- *Conversion of an Industrial and Provident Society to a CIO*
- *Registers of charity trustees and of members*
- *Dissolution of a CIO*
- *Transferring a CIOs undertaking to another CIO*

The document is good. It addresses the points listed on the web page very well. However, as with the other documents, it falls short in addressing what is meant by public benefit, showing no recognition of the fluidity of that concept.

The section concerning disadvantages is one of the two least helpful sections. The three identified disadvantages are described a minor, an assessment with which the writer agrees. He is not convinced however that one of the three is a disadvantage, but rather an inconvenience. The fourth is not a disadvantage at all, but the recognition that a different structure has the advantage described.

The most significant disadvantage, that a religious organisation is not, or need not remain, necessarily a charity whereas a CIO must always be and must remain, a charity is not mentioned.

The further disadvantage which relates to the dissolution of a religious body, and permits a charitable religious body to distribute its assets to another religious body, which may not be recognised as charitable but nevertheless shares similar objects to the dissolving charitable body, is not identified.

The section concerning dissolution rightly recognises that on dissolution the assets of a CIO must be distributed to a charity. It does not mention the automatic dissolution of the CIO, and the potential problem which could arise on dissolution, by reason of the objects of CIO ceasing to be charitable by operation of a change in law.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Charity Commission



CHARITY COMMISSION
FOR ENGLAND AND WALES

Guidance

Managing faith charities as trustees

Updated 28 July 2021

Applies to England and Wales

Contents

1.	Check if you should register your faith organisation with the Charity Commission	16
2.	Legal structures of charities	17
3.	Trustees of faith charities	18
4.	Appointing faith charity trustees	19
5.	Religious or spiritual leaders as trustees	19
6.	Conflicts of interest	20
7.	Paying trustees who are also charity employees	20
8.	Paying trustees for services	20
9.	Reporting serious incidents	21
10.	Safeguarding	21
11.	Managing charity finances	22
12.	Annual returns and accounts	25
13.	Inviting external speakers	25
14.	Some other legal requirements common to faith charities	26



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [National Archive: Licence V3](#) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [gov.uk Publications Faith based charities Managing faith charities as trustees](#).

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

1. Check if you should register your faith organisation with the Charity Commission

Places of worship such as churches, gurdwaras, mandirs, mosques, synagogues, temples and viharas are normally charities.

This is because they normally have 'exclusively charitable purposes'. This means that everything they do is for the public benefit and fits within the legal descriptions of charitable purposes in England and Wales. These include:

- advancement of religion
- prevention or relief of poverty
- advancement of education

Other religious organisations will also be charities if their purposes are 'exclusively charitable'. These include organisations like religious supplementary schools, religious choirs and missionary organisations.

You must register your organisation as a charity if it has charitable purposes for the public benefit and (both of the following):

- it's based in England or Wales
- it has income over £5,000 (from all sources)

This does not currently apply to some churches: find out about churches that are [excepted from registration](#).

If you want to set up a charitable incorporated organisation (CIO), you will need to apply to register whatever its income. Skip to 'Legal structures of charities'.

[How to register a charity](#)

Benefits of registering

There can be financial and other benefits of registering your charity including:

- Gift Aid and other tax advantages, like on income tax and stamp duty
- business rates relief
- better access to grant funding
- improved public trust and confidence in your organisation, including from having a registered charity number and information being shown on the public register

Gift Aid and Gift Aid small donations scheme

Gift Aid is run by HMRC. It means that you can claim back up to 25p every time an individual donates £1 to your charity. You'll need to meet certain conditions, including getting a Gift Aid declaration from the donor.

[Rules for claiming Gift Aid as a charity](#)

[Gift Aid small donations scheme](#) may mean you can claim a top up payment on cash or contactless donations of £30 or less without a Gift Aid declaration, providing the rules of the scheme are met.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

If you hold a Gift Aid declaration for the donor, you must claim Gift Aid and not use the Gift Aid Small Donations Scheme.

2. Legal structures of charities

It is important that trustees know both:

- their charity's legal structure
- if the charity is 'incorporated' or 'unincorporated'

You may have specific legal duties that go with your structure. For example, charitable incorporated organisations (CIOs) are required to comply with CIO regulations and charitable companies are required to comply with company law.

If you are not sure which legal structure you have, look at your governing document. The type of governing document you have will depend on your legal structure.

There are 4 main types of structure.

Trust: has a Trust Deed as a governing document and is unincorporated.

Unincorporated association: has a Constitution as a governing document and is unincorporated.

Charitable incorporated organisation (CIO): has a CIO Constitution as a governing document and is incorporated.

Charitable company: has a Memorandum and Articles of Association as a governing document and is incorporated.

Important guidance Read our 5-minute guide '[Charity purposes and rules](#)'. It tells you about governing documents and how to use and update them.

Unincorporated charities

Many faith charities are unincorporated.

If your charity is unincorporated, it means:

- you have less protection from personal liability than trustees of incorporated charities
- the charity cannot enter into contracts or employ people - the trustees need to do this personally
- the charity cannot hold the legal title to land

Converting to an incorporated charity

[Find out how to change your charity structure](#), if you want to convert an unincorporated charity to incorporated.

Holding trustees for land

Unincorporated charities cannot hold property in their own name. It must be held for the charity by trustees.

If the charity trustees do not want to hold legal title for any land or other property themselves, they can appoint either:

- holding trustees (other individuals)

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

- a custodian trustee (a company or other corporate body that has power to hold property for the charity)
- a nominee

The governing document may explain how to do this.

Sometimes holding trustees are called 'property trustees' in the charity's governing document.

The name of the holding trustees will be shown at HM Land Registry or on title deeds as the persons holding the legal title to land on trust for the charity.

If the charity has holding trustees, you must update the Land Registry whenever the holding trustees change, for example, due to retirement or death.

The role of a holding trustee

Holding trustees are not charity trustees. They cannot make decisions about the management of the charity or its property. They must follow the lawful directions of the charity trustees.

It's very important that holding trustees understand their role and its limits. Failure to do so can prevent the charity trustees from being able to run their charity properly. This can cause or prolong disputes.

Vesting property in the Official Custodian for Charities

Trustees of unincorporated charities may wish to consider 'vesting' the property in the [Official Custodian for Charities' 'land holding' service](#).

The benefits of this include:

- no need to update the Land Registry whenever the charity trustees or holding trustees change
- no possibility that holding trustees could attempt to act independently of the charity trustees

3. Trustees of faith charities

All charities are managed and controlled by trustees.

Who the trustees are

Your charity's governing document says who the trustees are. You should be clear about who is and is not a trustee.

In some cases, the trustees may be called something different. For example:

- committee members
- directors

Some governing documents will say that some posts in the charity - like the minister of religion - are automatically trustees.

If there is a dispute over who the validly appointed trustees are, it is your responsibility as trustees to try to resolve it. The Commission can only get involved in exceptional circumstances.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

[Disagreements and disputes in charities](#)

Legal duties of trustees

All trustees have legal duties. For example, your trustees must:

- comply with your charity's governing document and the law
- manage your resources responsibly

Where risks are higher, trustees need to take greater steps to comply with these duties.

Important guidance Read '[Charity trustee: what's involved](#)'. It tells you the main legal duties for charity trustees. Please also read our [5-minute guides](#) which include videos covering a range of topics related to meeting your legal requirements.

4. Appointing faith charity trustees

A faith charity's governing document may have requirements around who the trustees can be.

For example, that they:

- agree with a statement of faith
- are members of the faith organisation itself

Charities should appoint trustees who have the skills and experience to run the charity well and who will represent the charity's beneficiaries.

As long as you follow your governing document, you are free to recruit trustees from as wide a pool as necessary to get the right people.

Always consider advertising the position. This is particularly important where you need to recruit a trustee with specific skills, like digital, fundraising, legal or accountancy.

Always [check that any prospective trustees are not disqualified](#).

[How to recruit and appoint trustees](#)

What to do when new trustees join the charity

All new trustees who have registered their email address will receive a [welcome pack from the Commission](#) which focuses on the main duties of the role.

It is important that new trustees receive all the necessary information and have a proper induction process from the charity itself. This will usually include setting out the behaviours and standards that are expected of them as trustees.

[The Charity Governance Code](#), which we support, recommends that trustees of all charities adopt and follow a suitable code of conduct.

5. Religious or spiritual leaders as trustees

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

A religious leader (such as a Granthi, Imam, Priest or Rabbi) can be a trustee of a charity, unless this is not allowed by the charity's governing document.

In some cases, the governing document will require that a religious leader is also a trustee.

Religious leader trustees should have the same level of involvement, participation and responsibility in decision making as all other trustees. This is unless the charity's governing document says something different.

Religious leader trustees can provide guidance on spiritual matters. But decisions about the charity must be made by all trustees acting together.

6. Conflicts of interest

Trustees must make decisions based on what's best for their charity. They must not allow their personal interests, or the interests of people or organisations connected to them, to influence decisions.

Important guidance Read our 5-minute guide '[Managing conflicts of interest in a charity](#)'. It tells you how to identify and deal with conflicts of interest.

7. Paying trustees who are also charity employees

Trustees are normally unpaid volunteers. However, [trustees can receive payments from the charity in some circumstances](#), like travel and other costs when attending meetings.

In some cases, trustees are also employees of the charity. This may be as a spiritual leader or another role, like providing administrative support.

If this trustee receives a payment for their role as an employee, this must be explicitly allowed by either the charity's governing document or the Charity Commission.

This also applies to someone connected to a trustee, like their spouse or a relative.

[Employing a trustee or connected person](#)

8. Paying trustees for services

If a trustee or connected person who is not an employee wants to provide services to the charity, you may be able to do this.

There may be a specific power in your governing document or you could use the 'statutory power' in section 185 of the Charities Act 2011.

[Find out about when and how trustees can be paid for services](#). You must take the guidance linked to here into account before using the 'statutory power'.

Example: paying a trustee or a person connected to a trustee to do building or renovation work in a place of worship

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Places of worship and other faith charities which have premises often wish to enlarge or renovate those premises. Some faith charities build new premises (including places of worship) from the ground up.

In some cases, faith charities wish to use a business owned or partially owned by a trustee (or someone who is connected to the trustee like a spouse or other family member) to do the work.

This is normally because that business offers a lower price than the market rate for the same building work they could get elsewhere.

The other trustees should consider their governing document to find out if it explicitly authorises such a payment. Most governing documents would not.

As long as the governing document does not prohibit the payment, the trustees can use the power in the Charities Act 2011 ('the statutory power'), provided they take account of our guidance, and meet the necessary conditions at section 4.3 of our guidance. These include making sure that both the:

- level for the payment is reasonable
- trustee concerned is not involved in any decision making about the payment

9. Reporting serious incidents

[Trustees must report serious incidents](#) which have taken place in their charity to the Charity Commission.

Serious incidents include loss and theft of your charity's property, and harm to people who come into contact with your charity.

10. Safeguarding

Safeguarding should be a governance priority. This means that trustees should:

- assess the risks associated with your activities
- ensure your policies and procedures properly respond to those risks to protect your staff, volunteers, beneficiaries and other people who come into contact with your charity
- take expert or professional advice where you need it - you may be able to get this from a larger faith group or umbrella body if you are part of one

[If your charity works with children or adults at risk](#), there are more things trustees should do. These include:

- appointing a safeguarding lead
- making sure your staff and volunteers receive regular training

Important guidance All trustees should read our guidance on [safeguarding and protecting people for charity trustees](#). We also have our 5-minute guide on [Safeguarding](#). It tells you about your responsibilities to keep everyone who comes into contact with your charity safe from harm.

Safeguarding risks for faith charities

Some factors common to faith charities may increase safeguarding risks.

For example, places of worship:

- are often 'open door' and anybody can participate in their services

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

- often work with children or adults at risk
- may have people in positions of 'religious authority', which others may find more difficult to challenge
- may generate relationships which continue outside of the place of worship
- may view trusting people or helping people to rehabilitate as a part of religious expression

Organisations that can give safeguarding advice

A number of external bodies provide safeguarding advice to faith organisations, including:

- [The National Society for the Prevention of Cruelty to Children](#) (NSPCC)
- [Thirtyone:eight](#) is a Christian charity which provides safeguarding support to all faith groups

Handling and reporting incidents and concerns of abuse

Trustees must act quickly, ensuring you stop or minimise further harm or damage.

[What to do if you have an incident or allegation of abuse](#) in your charity.

[The Office for Civil Society's safeguarding tool](#) sets out the steps you should take in response to a safeguarding allegation or concern about a person in the charity. This includes employees, volunteers or any other person working with the charity.

This includes guidance on:

- which official bodies you should report allegations of abuse to
- when to report
- further things you need to do

Get checks on trustees, staff and volunteers

You must make sure that trustees, staff and volunteers are suitable and legally able to act in their positions.

[Checks you may need to make on trustees, staff and volunteers](#)

Disclosure and Barring Service (DBS) – criminal records checks

The level of DBS check you can get for staff, volunteers and trustee roles depends on the activities those roles undertake with children or vulnerable adults.

All roles are entitled to get at least a basic check.

Roles in faith centres will often be eligible for a higher level of check, like an enhanced check, or an enhanced with barred list check.

If a role is eligible to get a higher level of check, make sure the person in that role gets that check.

[DBS checks for faith centres](#). This includes checks you should do when recruiting staff and volunteers from overseas.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

11. Managing charity finances

Trustees need to put in place proper internal financial controls. This is to ensure that the charity's money and property are handled properly and only used for approved purposes.

All organisations are susceptible to fraud, theft or other loss if they do not have proper controls in place.

Important features of internal financial controls

The trustees and senior management should lead by example in setting out and following clear internal financial controls.

Trustees should regularly review (at least once a year) the effectiveness of the charity's internal financial controls.

No one person should be responsible for any single transaction, from authorisation to completion and review. Where this is not possible, trustees should put in place additional steps to mitigate the risk.

Important guidance Read our 5-minute guide '[Managing charity finances](#)'. It tells you how to make sure that your charity's money is safe, properly used and accounted for.

Cash collections

Places of worship often collect large sums in cash.

Cash collected in this way should be handled carefully, including:

- counted together by at least 2 unrelated people, who record the amount received
- paid fully into a bank account as soon as possible
- held securely, for example in a safe or locked box, until the cash can be paid into a bank

If you need to hold cash on your premises overnight, make sure your buildings insurance includes cover for theft.

You must follow any requirements in your insurance policy.

If your charity collects cash for another organisation as part of an appeal they are running, do not 'hand over' the cash.

Pay the cash into the bank first and then pay the money across. This will give you a clearer audit trail.

[Sending money internationally: skip to more information](#)

Checking bank statements ('reconciling')

Make sure that bank statements are checked at least once a month to ensure that you recognise all spending and all income is recorded.

Get more than 1 person to do this. This will help make sure you are alerted to any fraudulent payment.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Electronic bank payments

If your faith charity uses electronic banking to make payments, you need to make the same level of checks as if you were using non-electronic banking.

We strongly recommend you use a system which needs at least 2 authorised persons to approve an electronic transfer of funds. This is known as 'a dual authorisation system'. A number of banks provide this service.

[Our guidance on electronic banking](#)

If your banking system only requires 1 person to authorise payments, you should be able to explain why this is in the best interests of your charity. You should also be able to explain additional controls you have put in place to protect your funds.

All computers which are used for online banking service should be kept up to date with the current version of their operating system, anti-virus, spyware and firewall software installed.

Protecting against fraud

All charities need to be aware of - and act on - the risk of fraud.

This includes both:

- internal fraud by trustees, staff and volunteers
- external fraud, including via fake emails set up by hoaxers (known as 'phishing' scams), and other online fraud

[Protecting your charity from fraud](#)

This includes links to videos on preventing fraud, and templates you can use to protect your charity from fraud.

Sending money internationally

Many faith charities, including places of worship, send money internationally. For example, to help build places of worship or help a local community with things like classrooms or water systems.

Checks to make when sending money to projects or organisations

Make sure that the project you are funding is in furtherance of your charitable purposes (as set out in your governing document). This includes checking there are no restrictions on where you can spend money or where you can operate or carry out activities.

Carry out proper checks on the organisation that you are sending money to. This helps to ensure that they are trustworthy and are able to do the work. This is known as 'due diligence'.

The steps trustees must take will depend on the specific circumstances and level of risk involved in the international work.

Sending money in a safe and secure way

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Always send money in a safe and secure way, including:

- using the formal banking system wherever possible
- not sending large sums using untested methods
- checking quickly that the money you have sent has been received

Check the funds have been properly spent

Get evidence that the partner has spent the money on the purpose for which it was intended. It is good practice to display evidence of the work that you have funded so that your beneficiaries can see it. For example, on a noticeboard for places of worship.

[How to manage risks when working internationally](#)

[Holding, moving and receiving funds safely](#) (PDF, 903KB, 30 pages)

12. Annual returns and accounts

Sending financial information to the Charity Commission

Every year registered charities need to provide financial information to the Charity Commission. This is known as an 'annual return'.

What you need to provide depends on the level of income and what type of charity you are.

[Annual return: find out what you need to provide](#)

You must submit the required information within 10 months of the end of your charity's financial year.

Keeping and preparing accounts

[Charity accounts: what you need to know](#)

Accounts and report templates

We have also produced templates to help prepare accounts. These include templates for trustee annual reports and independent examiner reports:

- [receipts and payments accounts](#)
- [accruals accounts](#)

13. Inviting external speakers

Many faith-based charities invite external speakers to speak on both religious and non-religious topics, either on the charity's premises, or at an event the charity is running or participating in.

This can be a very effective way to further the charity's purposes and, in most cases, will be low risk.

Controversial speakers

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Sometimes, faith charities wish to invite speakers who have controversial views or to speak on a controversial topic.

This increases some risks, including:

- harm to those coming into contact with the charity, for example as a result of the speech itself or from public order offences, like as part of a protest
- bad publicity about the charity and reputational damage
- the charity being used as a platform for unlawful or extremist speech

This does not mean that trustees cannot invite people with controversial views to speak. What matters is that the trustees can discharge their legal duties under charity law.

This can be a sensitive area. Trustees should consider it carefully.

Important guidance [Guidance on charity events and speakers](#). Faith charity trustees who invite speakers into their charity or run speaker events should read this guidance.

14. Some other legal requirements common to faith charities

Employing people

If you employ people, you must be aware of and comply with employment law, including:

- paying people the right amount, such as maternity pay and sick pay
- providing a workplace pension if you are required to by law
- not unlawfully discriminating against people

[Employing people: more information](#)

Health and safety

If your faith charity is an employer, you also have obligations under health and safety law, including to assess risks and put in place and review effective protective and preventive measures.

[Health and safety: more information](#)

Visas for workers from outside the UK

If you employ somebody to work for you from outside of the UK, you'll usually need to apply for a sponsor licence. You get the licence from UK Visas and Immigration (part of the Home Office).

The type of sponsor licence you need depends on whether you want to employ migrant workers on a long-term basis (including [Ministers of Religion](#)) or a short-term basis (including [religious workers](#)).

Once you have been granted a sponsor licence, the Home Office will determine the number of migrants you can sponsor. If you do get a licence you will need to continue to meet sponsor duties for the duration of your licence.

To sponsor someone, you need certificates of sponsorship that the Home Office issue to you. A certificate of sponsorship is required before a migrant can apply for a visa.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

[UK visa sponsorship for employers: more information](#)

Data protection and UK General Data Protection Regulation (UK GDPR)

Faith charities need to be aware of their obligations under UK GDPR.

The Information Commissioner's Office (ICO) provides guidance on complying with UK GDPR, including:

- [data protection advice for small organisations](#)
- [FAQs for charities](#)

The ICO also currently provides a dedicated [telephone advice service for small organisations, including charities](#).

All content is available under the [Open Government Licence v3.0](#), except where otherwise stated

© [Crown copyright](#)

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Fellowship of Independent Churches

Should Your Church Become a CIO?

What are the advantages of your church becoming a Charitable Incorporated Organisation (CIO)? And how would you go about making the change?

[Edward Connor Solicitors](#)

21 Feb 2019

Theme: *Practical Advice*

Many Christian charities (whether churches or other organisations) operate as either a Charitable Trust or a Charitable Unincorporated Association (CUA).

Historically, the only realistic alternative to these structures (other than incorporating the body of trustees, which is relatively uncommon) was for a charity to incorporate as a Company Limited by Guarantee, but this brought with it the burden of dual regulation by the Charity Commission and Companies House, which many charities wished to avoid.

Since January 2013, a new structure has been available to charities – the Charitable Incorporated Organisation (CIO). Like companies, CIOs are incorporated, but, unlike companies, they are only required to register with the Charity Commission. They have certain advantages over trusts and CUAs, and charities should consider if moving to a CIO structure would be a better alternative than staying as they are.

Benefits of a CIO versus Trusts and CUAs

A CIO is an incorporated body and, therefore, has a legal personality of its own. This means it can enter into contracts in its own name, allowing it to employ staff, for example, rather than requiring trustees to do this in their individual capacity on behalf of the charity. The larger a charity becomes, the more likely it is to need to contract with third parties or employ staff, and a CIO may, in those circumstances, be a better alternative to remaining as an unincorporated association.

The fact that neither a charitable trust nor a CUA has a legal personality has two further important implications:

a) Property Ownership

A charitable trust and a CUA cannot own property. Instead, property must be held either by a minimum of two individuals or by a trust corporation (often referred to as Holding Trustees).

If the property is held by individuals, the charity will need to go through a conveyancing process (transferring the property to new trustees) every time those individuals change, for example when a trustee retires.

If the property is held by a trust corporation, the charity will need to consult with the trust corporation whenever it wants to enter into a mortgage, grant a lease or sell the property. This can cause delays.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

However, using a trust corporation can be a better alternative to individual trustees as some trust corporations have expert advisors who can provide advice and assistance with any property transactions.

Given that a CIO is an incorporated body with its own legal personality, it can own property in its own name – avoiding the need either for a Holding Trustee or to transfer the property each time the trustees change.

b) Liability

The trustees of a charitable trust or CUA (and in some cases the members of the CUA) are personally liable for the obligations of the charity. If the charity's funds and assets are insufficient to meet its obligations, a claim could be brought against some or all of the trustees (and in some cases the members), and they would be required to make up the shortfall from their own personal assets if the claim succeeded. While trustee indemnity insurance is available, it is unlikely to cover all liabilities.

As trustees (and, where relevant, members) are jointly and severally liable for the charity's obligations, a claim could be brought against only one of the charity's trustees or members if the person making the claim thought a particular trustee or member had sufficient assets to meet the liability.

In contrast, as a CIO has its own legal personality, if it incurs a liability, only the assets held by the charity are at risk. The liability of trustees and members is limited, and members would only be liable to contribute to the assets of a CIO if it is wound up to the degree specified in the CIO's constitution (either up to a specified amount or with no liability at all).

Association or Foundation CIO?

If an unincorporated charity decides to convert to a CIO structure, its trustees must decide whether the Association or Foundation structure is most appropriate.

A Foundation CIO is one in which the only members of the charity are the charity trustees and vice versa. An Association CIO has a separate voting membership to the trustee body (although trustees can still be members and vice versa).

Which CIO structure is most appropriate will depend on the current membership structure of the unincorporated charity and what rights the charity wishes to give to its members. This is best explained using churches as an example:

a) Association Model

Some churches are structured so that the church membership and the charity membership are essentially one and the same thing. Therefore, when a person becomes a member of the church they also become a member of the charity. This means that a person cannot become a member of the church without accepting the legal responsibilities and potential liabilities that go with being a member of the charity.

ECS provides two alternative model constitutions for the Association model depending on the extent of voting rights provided to members:

CG1 – the members have formal voting rights that extend beyond the appointment and removal of the church leadership and approving changes to the constitution.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

CG2 – members' formal voting rights are limited to the appointment and removal of the church leadership and approving changes to the constitution. Members may be consulted on other issues, but may not formally vote.

b) Foundation Model

Churches may be structured so that the members of the church are not members of the charity in a formal, legal sense and will not, therefore, have rights to vote on any matters affecting the church unless the trustees choose to consult them. Such consultation rights may be set out in a church handbook or rules, but will not be formally enshrined in the church's constitution.

This model is most suitable for churches that do not have a formal membership structure, or for church plants where the key individuals involved consist of the initial trustees and the church does not yet have a well-established congregation.

ECS provides a model constitution for this Foundation model (**CG3**).

Process for converting to a CIO

There is no automatic process for a charity currently operating as a Charitable Trust or CUA to convert to a CIO. In order to become a CIO, the charity must set up a new charity (the CIO) and then transfer all of the staff, assets, liabilities and members (as appropriate) from the existing charity to the new charity.

While, in theory, this is relatively straightforward, a charity's existing trusts may contain certain restrictions which can make the process more complicated. The advantages associated with CIOs set out above will, therefore, need to be weighed against the potential time and cost required to set up the new CIO.

Should you keep a shell charity?

When an unincorporated charity decides to move to a CIO structure, it will usually close down the existing charity following the transfer of its assets etc to the CIO. However, there is currently a gap in the law relating to legacies, which means that, in some cases, gifts made to a charity will fail if the structure used by the charity when the Will was drafted is no longer in existence on the date when the donor dies.

In most cases, the risk of a legacy failing is best dealt with by the charity making an announcement explaining that people who have left legacies to the unincorporated charity should consult their advisor to ensure that the Will has been drafted so that the gift will now go to the CIO. However, there may be occasions where some charities (especially those likely to receive significant funding through legacies) may choose to retain the existing charity as a shell once all of the assets have been transferred to the new CIO. This ensures that the charity can still receive the gift under the Will.

What should you do now?

If you think that your charity may benefit from converting to a CIO, please have a look at ECS's booklet [Charitable Incorporated Organisations](#) for more information. This can be found on our website.

If you would like more specific advice on what converting to a CIO would mean for your charity, please contact ECS at: [\[email protected\]](#) or by telephoning 01858 411 568.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

This information has been provided by solicitors working for Edward Connor Solicitors. It is designed for the purpose of knowledge sharing only and does not constitute legal advice.

[Edward Connor Solicitors](#)

Edward Connor Solicitors is uniquely a Christian charity as well as a law firm. We share your aim of advancing Christ's kingdom and we want to use our legal expertise to help your ministry to flourish.

[Charitable Incorporated Organisations](#) (CIOs) have become a very popular governance structure for independent churches.

Charity Information

The Fellowship of Independent Evangelical Churches is a Charitable Incorporated Organisation registered in England and Wales with charity number 1168037 and in Scotland with charity number SC047080.

All content unless otherwise stated copyright © FIEC. All rights reserved.

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Walker Morris, Solicitors



Charitable Incorporated Organisation – is it the right structure for you?

Charitable Incorporated Organisations (CIOs) are a new form of structure for charities that are just becoming available. This article covers the Charitable Incorporated Organisation structure generally, the types of Charitable Incorporated Organisation available, how to establish a Charitable Incorporated Organisation, an overview of the Charity Commission's model governing documents for Charitable Incorporated Organisations and the advantages and disadvantages of adopting the structure.

The need for a Charitable Incorporated Organisation structure

Regulations giving effect to the Charitable Incorporated Organisation were approved on 3 December and come into force on 3 January. [The Charity Commission](#) is now accepting applications for registration of 'brand new' Charitable Incorporated Organisations with incomes of over £5,000, with registrations for other income thresholds staggered over the next two years, to meet expected demand.

Currently there are a range of different legal structures available for charities. These can generally be classed as incorporated or unincorporated structures. Incorporated structures include:

- companies limited by shares
- companies limited by guarantee
- community interest companies
- limited liability partnerships
- industrial and provident societies (bona fide co-operative)
- industrial and provident societies (community benefit)
- community land trusts.

Unincorporated structures that can be used by charities include unincorporated associations, partnerships and trusts. The CIO is a new legal form for a charity crafted in response to requests from charities for a new structure which could provide some of the benefits of being a company but without some of the burdens.

Types of Charitable Incorporated Organisation available

There are two different types of CIO available. There are model constitutions for each.

Foundation Charitable Incorporated Organisations

Under this type of CIO, the voting members and charity trustees are one and the same (known as 'closed' membership). This model is ideal if the CIO is to be run by a small group of individuals (the charity trustees) who are to be responsible for making the key decisions.

Association Charitable Incorporated Organisations

This type of CIO has a wider membership than the Foundation CIO, including members who are not trustees (known as 'open' membership).

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

In accordance with the Charities Act 2011, the CIO constitution must be in English if the principal office is to be in England, or in English or Welsh if the principal office is in Wales. The CIO constitution must also be in a form specified by Charity Commission regulations or as near as circumstances admit.

We recommend that the Charity Commission model constitutions for both types of CIO are used and that applicants try not to deviate from these too much in order to avoid the Charity Commission rejecting the application for registration.

How to establish a Charitable Incorporated Organisation

The process required to establish a CIO will depend upon whether:

- a new charity is being formed from scratch
- an existing unincorporated charity is being incorporated into a CIO
- an existing incorporated charity is being converted into a CIO.

We will go through each of these different methods in turn below.

Establishing a CIO from scratch

Where a new charity is being started from scratch, the process is as follows:

- Prepare the constitution – using the Charity Commission model constitutions as closely as possible
- Apply to the Charity Commission for registration as a body corporate and a charity using the appropriate on line application / incorporation form and submit any ancillary documents required to assist the Charity Commission in the consideration of your application
- Upon receipt the Charity Commission will check that:
 - the proposed name is available and is not too misleading, similar to other names in existence and is not offensive
 - the CIO has exclusively charitable objects
 - the constitution covers all necessary points (i.e. covers the minimum points / issues the regulations state that it must)
- If satisfied that all of the above have been met, the Charity Commission will register the new CIO and it will come into being as both a body corporate and a charity upon registration.

Incorporation of an existing unincorporated association into a CIO

Where an unincorporated association already exists but it needs to be incorporated into a CIO there is no process set out in the legislation. The process will be as follows:

- Form a new CIO as detailed above (establishing a CIO from scratch)
- Transfer all assets, undertakings, non-endowed property and liabilities of the original charity to the newly established CIO
- A vesting declaration under section 310 of the Charities Act 2011 will be required for the transfer of property
- In relation to the transfer of assets, and contracts the original charity will need to consider how it wishes to deal with these – e.g. by assignment / novation / asset transfer agreement. This may depend on what the charity's constitution says
- Also consider how to deal with the transfer of staff and pensions – if TUPE applies then a consultation will need to take place
- Dissolve the trust or unincorporated association in accordance with the provisions contained within its governing document

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

- Apply to the Charity Commission to have the unincorporated charity removed from the register of charities
- You will also need to:
 - notify HMRC to obtain a new VAT registration number
 - enrol the new organisation for gift aid
 - notify the organisation's bank, creditors, funders and other stakeholders in relation to the change in structure.

Conversions of companies / industrial and provident societies to CIO status

The final regulations relating to the conversion of incorporated charities to CIOs is still awaited and charitable companies are not likely to be able to convert to CIOs until 2014. Industrial and provident societies can also not convert to CIOs yet, as they are currently exempt charities and as such are not able to become a CIO. However, there are provisions in the Charities Act 2011 that set out how the process will work once legislation has been passed to remove their exempt status (again likely to be 2014).

Once the necessary regulations have been passed, the process to convert a charitable company or an IPS to a CIO will be as follows:

- prepare a new constitution
- pass a resolution to approve the conversion and adopt the new constitution
- apply to the Charity Commission for registration
- the Charity Commission will notify and consult with the register of companies / Financial Services Authority (FSA), check
- the organisation's charitable status along with the organisation's proposed constitution and name
- if conversion is approved then the Charity Commission will grant a provisional registration and notify Companies House / FSA
- Companies House / FSA will cancel registration of the original charity and upon such cancellation the charity will cease to be a company / industrial and provident society and become a CIO
- the CIO will not be a new corporate body and so its existing business relationships will not be affected.

Is a CIO right for you?

To decide whether the CIO structure is the right structure for you, you should consider the following points:

Advantages

- There will be no dual regulation. CIOs will only need to be registered with the Charity Commission, will come into being once registered with the Charity Commission, will be regulated by the Charity Commission and subject to charity law
- Trustees of CIOs will benefit from limited liability. This means that their liability in relation to the organisation is limited to the amount they have invested in the CIO / have guaranteed upon the winding up of the organisation. As the CIO is a separate legal entity it will enter into contracts, hold property and employ staff itself. Consequently, it is the organisation rather than the trustees that will be liable for any liabilities arising from such arrangements
- There is no minimum registration threshold that will apply in relation to the registration of such organisations at the Charity Commission (unlike the current rules for registration of charities which must have a minimum of £5k income before they can apply)
- Every CIO will have a registered charity number. This assists an organisation with fundraising / donations and providing the public with confidence that the charity is appropriately regulated

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

- The structure is specifically designed for charities
- No fines will apply for administrative errors
- CIOs with income of £250,000 or over can produce simpler receipt and payment accounts to the Charity Commission.

Disadvantages

- Trustees will have management responsibility and be liable for breaches of trust and for fraudulent / wrongful trading
- The structure is not suitable for all types of charity – e.g. exempt charities cannot convert to CIO status
- In practice CIOs may be subject to many of the same regulations as companies
- The structure is new, untried and untested which may throw up some teething problems for the first few CIOs established.
- The structure is unfamiliar to all, in particular lenders, funders and donors
- The legislation is not all in one place, making it more difficult to make sure the structure is set up and run in accordance with the law
- CIOs only come into being when registered at the Charity Commission. If registration is lost then the charity will fold (unlike companies limited by guarantee which may lose their charitable status but can continue as a company registered with Companies House)
- Delay in getting started – the time it takes to obtain registration is approximately a minimum of 40 working days
- CIOs are required to register / file returns irrespective of size
- The structure does not benefit from a register of charges and thereof cannot offer security for borrowing. Floating charges can be offered and in practice can secure charges but there will be no register of this. The Charity Commission does not have the resources to establish a register. This will inevitably create concerns / issues for lenders.

Decided whether a CIO is for you?

After reading this article you may hopefully have a clearer idea as to whether the new charity structure is for you; or the information may have sparked further questions you require answers to. The CIO is a structure which is now available for new charities with annual income over £5,000 and will become available to companies wishing to convert to CIOs from 2014. Legal advice is key in terms of advice regarding the establishment / conversion to a CIO, the drafting of necessary legal documentation and completion of the application for registration to the Charity Commission. If you would like to establish / convert to a CIO or require further advice on this then please do not hesitate to contact one of our charity team.

Useful link: [Charity Commission guidance on CIOs.](#)

Head Office
Walker Morris LLP
33 Wellington Street
Leeds
LS1 4DL
DX 12051 Leeds 24
T: +44 (0)113 283 2500
E-mail: [hello](#)
E-mail: [press](#)

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Stewardship

Charitable Incorporated Organisations for church charities

*Download - For instant access to this resource please complete the form Close popup
[you must access the original page to activate this button]*

To form a charity, there were initially four common legal structures employed;

- a Trust set out in a Trust Deed,
- an Unincorporated Association with a Constitution,
- a Company limited by guarantee with Articles of Association and
- an Industrial and Provident Society which has a set of Rules.

A fifth structure has now been made available, known as a Charitable Incorporated Organisation (CIO).

Since 2 January 2013, it has been possible for the Charity Commission to register CIOs.

This briefing paper looks at CIOs in England and Wales (CIOs in Scotland have been under separate legislation since April 2011).

Topics covered:

- What is a CIO?
- The advantages of a CIO
- The disadvantages of CIOs
- The timetable for the registration of a CIO
- How to register a CIO
- Conversion of an existing non-company charity to a CIO
- Conversion of a charitable company to a CIO
- Conversion of an Industrial and Provident Society to a CIO
- Registers of charity trustees and of members
- Dissolution of a CIO
- Transferring a CIOs undertaking to another CIO

Content reproduced with permission from Stewardship. www.stewardship.org.uk

Charitable Incorporated Organisations

A critique from the perspective of religious organisations through the lense of public benefit

Postscript - very important

Should you, dear reader find any errors or omissions in this document, please advise the writer without delay, as neither you nor I would want any one to be misled in anyway by anything that may have been said in, suggested or implied by, or may even be inferred from, anything in this document.

E&OE