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## 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?



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**Edward Connor Solicitors** (<https://fiec.org.uk/people/edward-connor-solicitors>) · 21 Feb 2019

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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. 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.

**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 (<https://www.edwardconnor.com/product/charitable-incorporated-organisations-cio/>).


If you would like more specific advice on what converting to a CIO would mean for your charity, please contact ECS at: [info@edwardconnor.com](mailto:info@edwardconnor.com) or by telephoning 01858 411 568.

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**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.

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