

# Should Area Meetings consider becoming Charitable Incorporated Organisations or Companies?

## Area Meetings in England and Wales

When Area Meetings adopted governing documents and those with an annual income of over £100,000 had to register as charities, consideration was given as to whether AMs should be unincorporated bodies as previously, or whether they should become Companies Limited by Guarantee (CLGs). Quaker Stewardship Committee (QSC) took the view that it would be appropriate, in most cases, for AMs to remain unincorporated bodies but three AMs decided to become CLGs.

With the introduction of Charitable Incorporated Organisations (CIOs), which have fewer disadvantages than CLGs but many of the same advantages, QSC has reviewed whether AMs should consider converting to CIOs.

A CIO is a new form of corporate body which has been introduced and is regulated only by the Charity Commission, unlike CLGs which are also regulated by Companies House and have to follow all the requirements of Company law.

Trustees will still be needed as at present but the governing document will be one setting up a CIO, rather than the one most AMs have, which follows the model approved by QSC and by BYM, (as well as by the Charity Commission); this can be used for unincorporated bodies only.

QSC has now agreed with the Charity Commission a model form of a governing document for a CIO for AMs to use. Comments on this are given below. The model form is available from Helen Griffith [heleng@quaker.org.uk](mailto:heleng@quaker.org.uk) 020 7663 1161.

AMs with an annual income under £100,000 have not yet had to register as charities; however they could become CIOs, whatever their income. Registration as a charity would be part of the process.

The Charity Commission website states that, at the moment, CLGs can not convert to CIOs. Unincorporated bodies can.

Further guidance on all these points can be found on the Charity Commission's website [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk), search for "charitable incorporated organisations" .

Before converting to a CIO, AMs should consider the following:-

## The advantages of becoming a CIO

### **a) Limited Liability**

There are a number of areas of risk that area meetings can be involved in, particularly relating to employment, property and the care of children or vulnerable adults. Not all can be covered by insurance. If a claim arises, the claim is made against the individual trustees of an unincorporated association. Normally, any claims can be paid out of the charity's assets, but trustees still find it an unsettling experience to be sued. Also, if the

charity cannot meet the claim in full, the trustees may have to pay from their own personal assets.

If a charity becomes a corporate body (including a CIO), it is that body alone which is sued, and the trustees' personal assets are safe. However, it must be remembered that the corporate body still has to meet any successful claim not covered by insurance, up to the full extent of its assets. This could involve the sale of meeting houses (if these are not held as permanent endowments). But it should also be remembered that trustees will remain personally liable if they act negligently, trade when insolvent (this is easier to do inadvertently than many think) or commit a breach of trust.

## **b) Corporate status**

A CIO has a legal status of its own so that assets such as property and investments can be registered in its sole name rather than in the name of trustees. (Most area meetings and other Quaker bodies at present use Friends Trusts Ltd for registration of their properties, thereby getting round the problem of having assets in trustees' own names. Some have investments in the name of Friends Trusts Ltd as well; others have investments in their stockbrokers' nominee names.)

## **c) Appointing trustees**

It may be easier to attract Friends to become trustees of a CIO because of limited liability.

The disadvantages of becoming a CIO include

### **a) The time and cost involved.**

Setting up a CIO including agreeing the governing document, will be quite time consuming for the trustees and the AM. The time taken in running a CIO is also likely to be more than that involved in running an unincorporated AM. Legal advice may well be needed initially and there could be ongoing extra costs.

### **b) Documentation**

The legislation setting up CIOs included 2 model forms of governing document, the intention being that one of these should be used, with very little or no change. However the Charity Commission invited QSC to agree with them a form of CIO constitution specifically for Quaker Meetings to exclude much in the standard documentation that is alien to the Quaker way of business including provisions for General Meetings (with notices to be sent to all members), voting and appointment of proxies to vote on behalf of members. After a process taking over three years, this has now been agreed, and the model form is on the Quaker website available from Helen Griffith [heleng@quaker.org.uk](mailto:heleng@quaker.org.uk) 020 7663 1161. However QSC does have some reservations about this form, and further details are given below.

### **c) Agreement by AM**

It will be important for the whole AM to be sure that this is the right way forward. Do members really feel that it is right to set up an incorporated body in this way to take

account of several legal advantages rather than rely on the sort of structure that has served Quakers well in the past?

#### **d) Transfer of assets and liabilities**

Conversion into a CIO means that the AM will be a different body with a different charity registration number. Thus assets, including properties and bank and building society accounts, will have to be transferred. (It is possible that some banks and building societies will allow existing accounts to be retained, but it is more likely that new accounts will be needed, including those for local meetings.)

Trustees will also have to check how the change affects existing contracts including employment contracts and such things as pension schemes and debts.

Eventually, the unincorporated body will have to be closed down, and (if registered) the Charity Commission informed so that its registration can be cancelled. The Charity Commission website gives guidance on this.

#### **e) Registration**

Those AMs whose income at present is under £100,000 a year, do not yet have to register as a charity with the Charity Commission. (Registration is likely to become necessary by 2021, and perhaps before.) However, if an unregistered AM decides to become a CIO, it would have to register immediately. (This may be seen by some as an advantage rather than a disadvantage.)

### **Some key issues**

#### **Liability**

A company may be sued for negligence or for other wrong-doing. It is the company that may become liable for legal costs and for any recompense that is levied against it (though individual directors could also be liable if personal fault were to be established). In theory, the complete assets of a company could be required to be used to settle a legal liability. Note, however, that charitable companies may hold permanent endowments on trust (and meeting houses frequently fall into this category) that are protected by law and cannot be used for the settlement of the company's debts.

In the case of an unincorporated body, it is the trustees who are sued. The trustees of any charity should always guard against the possibility of successful claims by acting prudently and by taking professional advice where necessary. It is extremely unusual for trustees to become personally liable to pay claims against a charitable trust provided they have acted prudently and honestly, but the possibility cannot be completely ignored - nor can one ignore the possibility that a claim may arise from some historical event.

Trustees are understandably anxious that they may act negligently from ignorance, or that they may become liable because some task that they had thought was being seen to was in fact forgotten. Trustees may take out **trustee liability insurance** which will offer them some protection. Such insurance is sometimes offered free as part of a packet of charity insurance, but the details of what is covered should be studied carefully. It may cover

relatively unusual risks such as breach of trust, but will never cover malpractice or fraud, or the cost of penalties incurred as a result of trustees' inaction, or liabilities to third parties.

It is always worrying for trustees to face any sort of legal action. Should an action be raised against the trustees of a Quaker meeting there are likely to be legal costs in defending the action and there is the possibility of a fine or other compensation becoming payable. Whether or not the meeting is incorporated, it would be possible for these costs to be met from the meeting's assets as long as the trustees have acted properly, before any call (in the case of an unincorporated body) is made on the personal assets of the trustees themselves. (Note that if a meeting fails to appoint trustees, the action is likely to be raised against its office bearers, acting on behalf of the meeting.) The liability of an incorporated body, by contrast, could extend as far as forfeiting all its available assets, but would then cease.

Appropriate insurance could pay the costs of a court case or an employment tribunal, thus protecting the assets of the meeting – such costs could be high, whether or not the trustees were found to be guilty of anything. In addition, having trustee indemnity insurance may offer reassurance to potential trustees and help them when considering whether to accept appointment. Our experience is that Friends do behave responsibly, so the key question for a meeting is the meeting's attitude to risk.

One duty of trustees is to assess the risks to which they feel that their particular meeting is exposed. They should weigh up the probability of each risk, taking into account the measures and policies that they have put in place to minimise it. Then, in consultation with their meeting, they should consider how much it is worth paying to mitigate the risks (including the possibility of changing the meeting's status).

It should be remembered that if a court case arises against a meeting, it may result from an individual who feels that he or she has been injured by the meeting. Meetings try to care for all individuals whether or not they are members of the worshipping community. For all organisations the establishment of appropriate policies, with trustees working to ensure that they are being followed conscientiously, provides the best safeguard against harming others, whether they are vulnerable individuals, employees or external people.

## Financial Services Compensation Scheme

Should a financial institution such as a bank cease to trade, the deposits of individuals who have invested in it are protected up to certain limits by this scheme (normally £85,000 for money in any one bank). It is run by the Financial Services Authority (or by equivalent schemes covering other countries in the EU). Previously, the investments of unincorporated bodies were not protected in this way if their net assets exceed £1.4 million. This obviously meant that most area meetings that owned meeting houses (even when these were held as permanent endowments) were excluded from the scheme. However, this restriction has now been removed, so unincorporated AMs are covered whatever the value of their assets. It is therefore no longer an advantage to become a CIO in order to come within the scheme.

There is still an asset limit for incorporated bodies but it is high, and AMs are likely to be

under the limit.

An important duty of trustees is to take appropriate action to protect the assets of their charity. The usual way of doing this is to spread the assets among a number of financial institutions rather than keeping all their savings in one place, to use mainstream (rather than fringe) banks, and to avoid any risky investments or accounts. Then, if one institution should fail, the majority of the meeting's assets will still be assured even if a small proportion is lost.

## The agreed model document

As mentioned above, QSC and the Charity Commission have agreed a standard model document to be used by AMs in England and Wales that wish to become CIOs. The process to agree this took over 3 years and involved some compromises. In particular QSC wished the model to follow that for unincorporated AMs approved by BYM and agreed by the Charity Commission. This provides that, in effect, what is in the model is subject to the provisions of Quaker Faith and Practice (QF&P). However the Charity Commission insisted that the starting point should be the legislation setting up CIOs and the model documents produced in accordance with that legislation.

While the Charity Commission was willing to change the model to exclude much of what is alien to Quakers, such as voting and proxies, and to include Quaker Business Method, it insisted that what was in the document itself, and not QF&P, should prevail in the event of any question arising on the meaning of the provisions. While what is in the agreed model document follows the present edition of QF&P, future changes in QF&P are not covered; if there were major changes resulting in a conflict between the AM's governing document and QF&P, it would be necessary for the AM to change the provisions of its governing document, and this would be subject to the Charity Commission's consent.

Among other provisions of the agreed model which are different from that for unincorporated AMs, are:-

- a) a quorum for a trustees meeting is half of the trustees for the time being
- b) one of the meetings of the AM each year must be designated an Annual General Meeting. This will normally be that at which the previous year's accounts and trustees report are presented.

It is assumed that the Charity Commission is unlikely to allow AMs much variation from the model form of governing document agreed with QSC.

## Companies Limited by Guarantee (CLGs)

Becoming a company limited by guarantee is an alternative to becoming a CIO for those AMs who wish to be an incorporated body. As mentioned above, before CIO status was available, three AMs in England and Wales became CLGs.

However, although becoming a CLG might give an AM more freedom as to what is in its governing document, the usual forms of such documents include much alien to Quaker business method, and no model form has been agreed by QSC. The governing document

(known for companies as the Memorandum and Articles of Association) would have to be agreed with the Charity Commission and Companies House. It is likely that legal advice would have to be obtained.

Also, any CLG is subject to company law, as are its directors (the trustees.) A company secretary would need to be appointed (this could be one of the directors.) Annual accounts and returns would have to be rendered to Companies House as well as to the Charity Commission; fines are often imposed by Companies House if accounts and returns are late.

## Area Meetings in Scotland

The law relating to CIOs does not apply to Scottish charities but Scottish Charitable Incorporated Organisations (SCIOs) are available in Scotland, monitored by the Office of the Scottish Charity Regulator (OSCR), and much of what is said in this paper, applies equally to SCIOs. No form of SCIO constitution specifically applicable to Quakers, has yet been agreed with OSCR. Consideration is being given as to whether it should.

Unlike the position with CIOs, it is understood that a SCIO can retain the same charity registered number as the unincorporated body it replaces, provided a certain procedure is followed.

Further guidance on SCIOs is available on OSCR's website. [www.oscr.org.uk/about-scottish-charities/scio](http://www.oscr.org.uk/about-scottish-charities/scio)

## Conclusions

As stated in its guidance, the Charity Commission consider that CIOs will not be appropriate for all charities and that, while running a CIO should be simpler than establishing a charitable company, it will not be as straightforward as running an unincorporated body. Its view is that CIOs may well be suitable for small or medium charities, particularly those who have employees or enter into contracts. They would still expect national charities to become CLGs.

QSC feels that becoming a CIO is something that might appeal to AMs, particularly the larger ones, but there are many points to consider and in particular how being a corporate body will affect the way an AM works and the relationship between its trustees, the body and the AM itself. Provided the AM is happy with the provisions of the agreed model document, becoming a CIO is likely to be more attractive than becoming a CLG.

BYM itself is not a corporate body, but there are several Quaker charities that are, such as the Friends House Hospitality company, Quaker Social Action and the Friends schools. Quaker organisations that have recently become CIOs include the Quakers and Business Group and Friends Southern Summer Events.

It is hoped that what is in the paper will be of help but members of QSC will be happy to discuss things further with AMs if they wish.