



Report on the implications of changing to a CIO

As members of Buckles and Bows Pre School Nursery you have been invited to an Emergency General Meeting on [date] to consider and decide on the proposal to change the legal structure of the charity from an unincorporated association to a Charitable Incorporated Organisation (CIO). This report aims to provide you with information on the reasons behind the proposal and what this change will mean in practice for the charity, so that you have all the details you need on the day to make a decision as to whether you feel it is in the best interests to proceed with the proposal.

Background

Our charity is involved in activities that are similar to those of an ordinary business; including employing staff, renting premises and entering into contracts with suppliers. These activities mean that as trustees and members of the charity, we are responsible not only for furthering the aims of the charity and looking after its assets, but are also exposed to all of the liabilities and responsibilities concerned with running any ordinary commercial business.

The Charitable Incorporated Organisation (CIO) is an incorporated legal structure most suited to small and medium sized charities, and offers protection to its trustees and members against this type of personal liability. A charitable company limited by guarantee offers similar protection, however, with this structure there is a requirement to register with both Companies House and the Charity Commission. The increased legal requirements, administration and costs involved in dual regulation can be a heavy burden on the trustees, particularly for fairly small charities such as ours.

Reasons for the proposal

The Charitable Incorporated Organisation was established for one fundamental purpose: to provide a structure that offers the members and the trustees of charities greater protection against the liabilities associated with the activities of the charity that they support. This is an advantage that we feel is vital to the success of our charity, which depends on the contribution made by these volunteers.

Currently our charity has the structure of an unincorporated association. This is one of the most common structures for a charity of our size. One main drawback of this structure, however, is that it exists in law as a collection of individuals (the members and the trustees). It does not have its own separate identity, which means



that any contracts or liabilities that the charity enters into have to be made on behalf of the charity by individuals. Other people must also be appointed to hold property for the charity.

For this reason, our trustees and in certain cases, our members, may be held personally liable if the charity does not have the resources to meet a liability. Although we currently take a number of precautionary measures to try to reduce this risk (including establishing an appropriate level of reserves and obtaining suitable insurance cover), it remains a major deterrent to those interested in getting involved with our work as members or trustees, without whom our charity cannot continue.

In comparison, a CIO is a corporate body that has its own legal identity, which is separate from that of its trustees and members, meaning it can directly:

- enter into contracts;
- employ staff;
- incur debts;
- own property; and
- sue and be sued.

For this reason, the trustees propose to register a new CIO, which offers its trustees and members greater protection against these operational liabilities of the charity. The CIO will be established with the same purpose as the existing charity of advancing the education and development of children and young people through the provision of high quality childcare. Once the CIO is established, the trustees propose to dissolve and wind-up the current charitable unincorporated association and to transfer its operations, assets and undertakings to the new CIO. Although this change will impact on the structure and administration of the charity, the intention is that the activities and childcare offered will continue as they are currently.



Potential implications of the proposal

As with any change, there will be implications for our charity if we decide to proceed with the proposal to change to a CIO.

Implications arising from the CIO structure

- One key feature of the CIO is that it only exists if it is recorded on the Register of Charities held by the Charity Commission. Therefore, if it is ever removed from the Register of Charities, our CIO will cease to exist.

There are some additional record-keeping requirements for CIOs. We would be required to keep up-to-date statutory registers of our members and trustees. The trustees must also keep a register that records any charges against the property or assets of the CIO. (NB: *Buckles and Bows* does already have this information for our own benefit – it just means it would be a requirement rather than a self-imposed administrative task.)

Implications associated with the process

The process of registering the new CIO, and dissolving and transferring the arrangements and assets of our existing charity to the new CIO, will generate additional administration and costs for the charity. Details of key considerations are listed below and a full financial projection of the costs involved is provided with this report.

- *Employees*

Converting our structure to a CIO will involve consulting with and transferring the employees of the charity to the new CIO in line with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

- *Ofsted*

The CIO will need to register with Ofsted before it can take over the childcare provision from the existing charity. The process can take up to 25 weeks to complete and there is a registration fee of £220.00.

- *Childcare terms and conditions*

The change in legal status of the charity will not affect the childcare provided. Previous terms and conditions will continue to apply.



Other third parties that we will need to liaise with regarding the proposed change to our structure to determine any implications on our current arrangements or costs involved, we may need to seek legal advice in order to develop a full understanding of the implications;

- *HM Revenue & Customs (HMRC)*
- *Funding providers*
- *Bank or building society*
- *Landlord/licensee/owner of the property being rented/occupied (“the Landlord”)*
- *Pension provider*
- *Suppliers e.g. gas, electricity, food and stationery suppliers, as well as companies through which you lease equipment]*

Conclusion

The risk of personal liability is of major concern for individuals who wish to support the charity as members and trustees. The trustees consider that removing this key obstacle by adopting the CIO structure, which offers the reassurance of greater protection from personal liability, will be of significant long-term advantage; providing a securer future for the charity by helping to strengthen its membership and encourage more individuals to volunteer as trustees. This outweighs the increased administration and cost involved in changing the legal structure of the charity, the majority of which will cease after the transition period.

This report was discussed and agreed for distribution to the members at a meeting of the pre-school committee held on.....Tuesday 30th October 2018.....

Signed on behalf of the pre-school

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Position within setting.....Chairperson.....