



The Lymington Community Association
Registered Charity 301880

7th August 2019

QUESTIONS AND ANSWERS ON CHARITABLE INCORPORATED ORGANISATIONS (CIOS)

The trustees of the Lymington Community Association are proposing to change the status of the Association from an unincorporated charity to a CIO (Charitable Incorporated Organisation). The following Q and As will hopefully answer your questions about the reasons for this proposal and the processes involved.

1. What is a CIO?

A CIO is a Charitable Incorporated Organisation.

CIOS were introduced in 2013. CIOS are a form of company but can only be formed for a charitable purpose. They are incorporated and regulated solely by the Charity Commission and not by Companies House. They allow charities to enter into contracts as corporate entities with limited liability for members and trustees.

2. Why is the LCA being advised to change to a CIO?

At present the LCA is unincorporated so when trustees sign contracts they are personally liable. If the LCA was unable to fulfil its contractual obligations from its assets, the personal assets of the trustees would be at risk. The limited liability of a CIO will also cover negligence liabilities such as personal injury claims.

Although the LCA has an insurance policy this cannot be relied upon to protect the trustees.

If the LCA becomes a CIO, the trustees will sign contracts in the name of the CIO and will not be personally liable. The CIO will be liable and only the assets of the LCA will be at risk.

If the trustees breach their duty of care they may be required to reimburse the charity from their own personal assets for any losses suffered. This will not change. Any trustee who acts deliberately or recklessly in breach of his or her duty or who fails to exercise reasonable care and skill would remain liable to the charity but their actions could not result in a loss for which the other trustees could be liable. At present, as the LCA is unincorporated, all trustees would be liable.

3. Will the LCA still be a registered charity?

Yes, but the CIO will have a new charity number.

4. Are there any disadvantages to becoming a CIO?

No. Although the CIO will have a new charity number, the existing LCA charity will remain registered for a period of time so that the financial records are easily available and legacies to the LCA can be received.

The Charity Commission does not operate a register of mortgages whereas a mortgage created by a company must be registered with Companies House. In the early days of CIOS, it was suggested that banks might be less willing to lend to a CIO because their security could not be recorded on a public register but our solicitor has not experienced this issue.

5. Does the new Constitution change the way the LCA operates?

No. The new Constitution will give the members the same rights to vote upon issues and elect trustees as for the existing unincorporated charity. We will however take the opportunity to update some of the administrative provisions such as communicating by email or through notices posted on LCA's website.

6. How does the new Constitution affect members?

There is no change in the status, rights and benefits of members.

7. Has the draft Constitution for the CIO been amended since May 2019?

Yes. Following comments from Members, section 11.2.2 (Number of Members who can call a SGM) and 19.3.1 (The Board quorum) have been corrected to align with the current Constitution. Section 11.3.2 has been cancelled as inapplicable for a large membership organisation such as the LCA.

8. How will employees of the LCA be affected?

Staff will be transferred to the CIO under the Transfer of Undertakings (Protection of Employment) Regulations, also known as TUPE. These preserve employees' terms and conditions. More information on the TUPE Regulations can be found at

<http://www.acas.org.uk/index.aspx?articleid=1655>

9. Wouldn't a charitable company limited by guarantee achieve the same thing?

Yes, but it is not possible to transfer permanently endowed property to a company limited by guarantee; the Lymington Community Centre is permanent endowment. Also a company limited by guarantee is regulated by both the Charity Commission and Companies House so accounts and annual returns must be submitted to both.

10. Isn't this exercise expensive and time-consuming?

In order to become a CIO the trustees have to prepare a new constitution and obtain legal advice, which has been done. Whilst this process involves costs and a significant time commitment from the trustees, it will provide the LCA with an up to date constitution and a structure fit for the 21st Century.

11. Will the members have a vote on the change to a CIO and the new Constitution?

Yes. The proposed change will be put to the membership at a Special General Meeting called with at least 21 days' notice.

12. Will the members be able to review the proposed new Constitution before the meeting?

Yes. The new Constitution will be available on the LCA website.

13. What will happen if members vote against the change to CIO?

Most of the trustees have indicated that they would be unwilling to continue as trustees because they do not want to be personally liable. CIOs are increasingly used by charities and failure to change will make it even more difficult to attract new trustees.

14. Which solicitors are advising the trustees on the change to CIO?

Lester Aldridge, Bournemouth

15. Where can I learn more about CIOs and different charitable structures?

The Charity Commission guidance can be found at

<https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure>

16. Who can I ask if I have another question?

Please email chair@lymingtoncommunity.com
