



Report on the implications of changing to a CIO

As members of Bisley Pre-School you have been invited to an Extraordinary General Meeting on Tuesday 28th April 2015 to decide whether to dissolve and wind-up the current charitable unincorporated association and to transfer its operations, assets and undertakings to the new Charitable Incorporated Organisation (CIO). This report aims to provide you with information on 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.

Until this point, charities have had to incorporate as a charitable company limited by guarantee to offer protection to their trustees and members against this type of personal liability. This requires registration with both Companies House and the Charity Commission; and 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.

However, the introduction of the Charitable Incorporated Organisation (CIO) provides a new incorporated legal structure most suited to small-medium sized charities. The CIO structure offers similar protection from liability for its trustees and members as a charitable company limited by guarantee, but with the added advantage of being regulated only by the Charity Commission; removing the additional duties created by having to register with Companies House as well.

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, as it is fairly straightforward to set up and administer in comparison to a charitable company. 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. 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 have registered a new CIO (as agreed at the AGM on 23rd October 2013), which offers its trustees and members greater protection against these operational liabilities of the Charity. The CIO has been 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. 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 transfer 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.

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, has/will of course generate additional administration and costs for the Charity. Details of key considerations are listed below.

- *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). There is no cost incurred here as we get free legal advice as members of the Pre-School Learning Alliance.

- *Ofsted*

The CIO needed to register with Ofsted before it can take over the childcare provision from the existing Charity. The process is almost complete and a registration fee of £35 has been paid.

- *Parents*

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

Conclusion

The risk of personal liability is of major concern for individuals that 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 the its membership and encourage more individuals to volunteer as trustees. This outweighs the increased administration and minimal cost involved in changing the legal structure of the Charity, the majority of which will be temporary during the transition period.