



# Charitable Incorporated Organisations

Should your church become a CIO?



# Contents

- Page 3 - Should your Church become a CIO?
- Page 3 - Liability
- Page 4 - Property ownership
- Page 5 - Registered charity number
- Page 6 - Church name
- Page 6 - Long term benefits vs short term costs
- Page 6 - Key things to check before setting up a CIO
- Page 7 - Other incorporated structures
- Page 7 - Unfamiliarity with incorporated structures
- Page 8 - Which type of CIO is right for you?
- Page 9 - Next Steps
- Page 10 - Assistance from Edward Connor Solicitors
- Page 10 - Edward Connor Solicitors costs
- Page 12 - Appendix 1—The process for establishing a CIO
- Page 14 - Appendix 2—Matters to take into account

The information in this booklet reflects Edward Connor Solicitors' understanding as at 9th November 2017. It is produced for the purpose of knowledge sharing and does not constitute legal advice.



# Should your church become a CIO?

Charitable incorporated organisations (“CIOs”) provide a new legal structure for churches and other charities.

If your church currently operates through an unincorporated structure such as a charitable trust or as a charitable unincorporated association, you should consider switching to a CIO. This is because, as an incorporated structure, a CIO is regarded as a legal person in its own right. This gives a CIO two key advantages over unincorporated structures in the areas of liability and property ownership.

## Liability

The first advantage relates to liability of church officers and members for the actions of the church.

Charitable trusts and unincorporated associations are not regarded as a single legal entity and so they need legal persons to do things on their behalf such as entering into contracts with employees or building contractors. These are known as the “charity trustees.” In a church context it is normally the elders or the elders and deacons together who fulfil the role of charity trustees.

When church officers within unincorporated churches sign contracts on behalf of the church, it is the individuals signing the contracts who are personally liable to fulfil the obligations of those contracts. The other church officers (and possibly the church members if they have approved the officers’ decision) may also be held to be personally liable. If the church is unable to fulfil its contractual obligations from the assets held by the church, the personal assets of church officers (and church members) are at risk and it is unlikely that insurance will cover contractual obligations.

By contrast, when the church officers of a CIO sign a contract in the name of the church, neither the church officers nor the members are personally liable under the contract; it is the CIO alone that is liable and so only the assets of the CIO are at risk. In cases where a CIO has suffered losses because the charity trustees have breached their duty of care, the charity trustees may be required to reimburse the charity from their own personal assets for any losses suffered (as is the case with unincorporated structures). However, the charity trustees are only required to reimburse the CIO for losses it suffers; they are not required to pay the full amount of the debts owed to third parties by the CIO.

The benefit of limited liability for CIOs covers not only contractual obligations, but

also negligence liabilities, e.g. personal injury claims connected with events on church premises. Where a church is operating through an unincorporated structure all the charity trustees will be held personally liable for the actions of the church, and in some cases the whole church membership may also be personally liable.

This means that in the event of a claim for actions (or inaction) carried out by the church, a claimant can simply bring their claim against the most wealthy church leader or member if the collective assets of the church are insufficient to meet the claim. Church insurance policies are available, but these may not cover all liabilities. However, where a church is operating as a CIO, only the CIO itself can be sued for the actions of the CIO in most cases.

Individuals who act carelessly could still be sued, but their own actions would not make the other church officers or members personally liable, which contrasts with the situation for unincorporated structures.

## Property ownership

The second advantage concerns property ownership. As a legal person, a CIO can own and lease property in its own name.

A church does not have this ability if it operates through an unincorporated structure, but will need to use property holding trustees to hold property in their names on behalf of the church.

A church operating as a charitable trust or unincorporated association can use individual people as holding trustees, in which case a minimum of two holding trustees is required, or it can use a trust corporation as a sole holding trustee.

If the church uses individual holding trustees, the church will need to go through a conveyancing process every time those individuals need to be changed, e.g. when the original individuals leave the church or want to retire. Failure to do this can lead to situations where the church has holding trustees in other parts of the country who no longer have any contact with the church.

If the property is held by a trust corporation, the church will need to consult with the trust corporation whenever it wants to enter into a mortgage, grant a lease or sell the property. The requirement to consult with the trust corporation can cause delays because the trust corporation is not part of the church and will need to take time to familiarise itself with the matter.

None of these complexities arise if the church operates as a CIO. The property is

simply held in the name of the CIO. There is no need to go through a conveyancing process on the appointment and resignation of the charity trustees who run the CIO and there is no need to involve an external trust corporation.

## Registered charity number

Another key feature of CIOs is that they are all registered at the Charity Commission regardless of their annual income. Therefore every church operating as a CIO will have its own charity number.

Currently, some churches that do not operate as CIOs are unable to register with the Charity Commission and obtain their own charity number because of the Charities (Exception from Registration) Regulations 1996. These regulations prevent churches from registering with the Charity Commission if their annual income is less than £100,000. Churches in this position are known as “excepted charities”. Excepted charities are fully regulated by the Charity Commission but they are excepted from the requirement to register with the Charity Commission and the Commission does not allow voluntary registration.

Legally, excepted charities are entitled to all the benefits of charities that are registered at the Charity Commission. However, in practice, not having a registered charity number can sometimes cause problems, because people are unaware of excepted status. Although these problems can usually be overcome, they can still cause difficulties that would be avoided by the church having its own registered charity number.

In 2021 it is possible that excepted status for churches will disappear such that every church charity will have to register with the Charity Commission. However, currently, the only way for a church to have a registered number if its annual income is less than £100,000 is to operate as a CIO.

For churches that are already registered charities, you need to be aware that setting up a CIO will involve being given a new charity number. Therefore, once the CIO has been set up you will need to prepare amended stationery including issuing new Gift Aid forms.

# Church name

When an existing church is setting up a CIO it has the freedom to retain its existing name or to adopt a new name, provided that the proposed name is not the same as the name of another charity.

CIOs have to state their registered names in all the locations, communications and documents in which a registered company has to state its name. If the CIO does not have "CIO" or "Charitable Incorporated Organisation" in its name, it needs to mention that it is a CIO.

# Long term benefits vs short term costs

The long term advantages of limited liability and property ownership associated with CIOs need to be weighed against the short term costs and time required to set up a CIO.

There is no automatic process for a church currently operating as an unincorporated association or under a trust to convert to a CIO. Becoming a CIO involves setting up a new charity and then transferring all of the assets, liabilities and people from the existing charity to the new CIO.

The amount of work required to achieve this will vary greatly depending on the circumstances of your church, but a general overview of the steps required is set out in Appendix 1 on page 12.

A note of the costs of setting up a CIO using Edward Connor Solicitors is available on page 10. An established church seeking to become a CIO should be able to go through the whole process in between six to eighteen months. For church plants, a typical timescale would be three to eight months.

# Key things to check before setting up a CIO

Before deciding to set up a CIO there are a few key things that every church should check to make sure that the project is viable. Please see Appendix 2 on page 14 for a list of the matters that need to be taken into account.

# Other incorporated structures

Churches can operate under other incorporated charitable structures that would also give the advantages of limited liability and property ownership. The most obvious alternative is a company limited by guarantee ("CLG"). The main drawback of using a CLG rather than a CIO is that a CLG is regulated both by Companies House and the Charity Commission and the company has an obligation to make annual returns to both organisations. There are also additional legal requirements under company law, such as in relation to company membership.

If a church is currently operating under an unincorporated structure, a CIO is likely to be a better option for the church than a CLG. However, if a church is already operating as a CLG, we don't recommend switching to become a CIO unless you can identify significant annual savings in operating as a CIO.

There may be cost savings for CLGs with an annual income of less than £250,000. This is because a CIO with annual income below this amount can prepare accounts on the basis of the receipts and payments method whereas all companies must use the accruals method and churches may find that the costs of having an independent examination are cheaper if the accounts are prepared on the basis of receipts and payments rather than accruals. You should take advice from an accountant if this is something you are considering to make sure that the receipts and payments method is appropriate for your church.

## Unfamiliarity with incorporated structures

The language associated with CIOs may seem alien to many Christians who are more familiar with the unincorporated structures, but churches should not be put off by this.

For churches that are happy to operate as charities, there is no theological reason we are aware of why an unincorporated structure should be preferred to an incorporated structure such as a CIO. The traditional structures of trusts and unincorporated associations are simply reproduced when a church becomes a CIO but with the added benefits of limited liability and the capacity to hold property in the church's own name.

# Which type of CIO is right for you?

If you would like your church to operate as a CIO, you need to consider which type of CIO is right for you. In every CIO, whether a church or other type of charity, there are two sets of decision makers:

1. The members of the CIO (not to be confused with church members) – responsible for decisions such as amending the constitution and winding up of the CIO; and
2. The trustees of the CIO – responsible for the general control and management of the CIO.

The Charity Commission has created two different types of CIO which vary according to who the CIO members are:-

## Foundation CIOs

Under this type of CIO, the members of the CIO and the charity trustees are the same group of people, making the charity trustees the ones responsible for making all key decisions.

## Association CIOs

This type of CIO has a wider membership, with some CIO members who are not trustees.

Using these two forms, we have developed a number of different model CIO constitutions for churches operating as CIOs to fit different church governance structures.

In order to establish which model would be right for you, consider which of the following forms of governance (CG) you operate:

### **CG1**

With this form of church governance, the church members have formal voting rights that extend beyond the appointment and removal of church leaders/ trustees and approving changes to the constitution. The extent of matters on which church members can vote will vary from church to church.

*This is an Association CIO - the church members will be the members of the CIO.*



## CG2

Under this model of church governance, church members' formal voting rights are limited to the appointment and removal of church leaders and approving changes to the constitution. Church members may be consulted on other issues, but not as a formal vote.

*This is an Association CIO – the church members will be the members of the CIO .*

## CG3

Under this form of church governance, new leaders are appointed by the existing leaders. The congregation may be consulted in this process but their formal approval is not required. All decisions are made by the church leaders. Under this form of church governance there may not be any formal membership system at all.

*This is a Foundation CIO - the members of the CIO are the trustees and church membership is distinct from CIO membership.*

# Next Steps

Having decided which type of CIO you want to set up, one further question is whether to close down your current charity once everything has been transferred to the CIO or whether to retain it for legacy purposes - this does not apply to church plants because in these cases there is no existing charity.

There is currently a gap in the law so that, in some cases, legacies made to the original charity will fail if it does not still exist on the death of the donor, even if the merger of the original charity with the CIO has been registered with the Charity Commission.

Churches that receive significant funding through legacies would be well advised to retain their original charity in existence to receive legacies after the CIO has been established. However, most churches do not receive the significant funding through legacies. Therefore, in many cases, the best course of action will be to close down the existing charity and then make an announcement advising that people who have made legacies to the church should consult their advisor to ensure that the will has been drafted so that the legacy will go the CIO.

# Assistance from Edward Connor Solicitors

We can provide all of the following services:

1. Reviewing your current structure to check that you are able to set up a CIO;
2. Provision of template documentation specifically designed to work for churches;
3. Tailoring the template documents to suit the exact requirements of a specific church;
4. Registration of the CIO at the Charity Commission;
5. Transfer of land, staff and other assets from the current charity to the CIO;
6. An indemnity from the CIO in favour of the charity trustees of the old charity;
7. Listing the old charity on the Charity Commission's mergers list to increase the likelihood that legacies made to the old charity will go to the CIO.

## Edward Connor Solicitors costs

The figures set out below are intended as a broad indication of the likely costs involved in the various steps that may be required in establishing a CIO. These are a guide only, and the exact costs will depend on the particular circumstances of your church and its requirements. We will be able to provide more tailored fee estimates when we are instructed on a particular incorporation process. We review

### *Creating a new church:*

#### CIO Application Fee:

FIEC Church: £250 + VAT

Non-FIEC Church: £300 + VAT

#### Cost of setting up a CIO for an FIEC Church:

CG1 / CG2: £920 + VAT

CG3: £610 + VAT

#### Cost of setting up a CIO for a non-FIEC Church:

CG1 / CG2: £1,170 + VAT

CG3: £760 + VAT

### *Established church converting to a CIO:*

#### CIO Application Fee:

FIEC Church: £330 + VAT

Non-FIEC Church: £420 + VAT

#### Cost of setting up a CIO for an FIEC Church:

CG1 / CG2: £1,040 + VAT

CG3: £670 + VAT

#### Cost of setting up a CIO for a non-FIEC Church:

CG1 / CG2: £1,350 + VAT

CG3: £820 + VAT

*The following additional work may also be required.*

*All prices are estimates unless stated as 'Fixed Fee'.*

	<u>FIEC</u>	<u>Non-FIEC</u>
Vesting declaration or Transfer Agreement to deal with transfer of all assets from existing unincorporated charities to the CIO, including provision of an indemnity in favour of the former trustees of the unincorporated charities	£490 + VAT	£590 + VAT
Vesting declaration or Transfer Agreement to deal with transfer of properties (including freehold land and leasehold land) from existing unincorporated charities to the CIO, including provision of an indemnity in favour of the former trustees of the unincorporated charities and registration at the Land Registry	£500 + VAT freehold	£600 + VAT freehold
	£730 + VAT leasehold	£820 + VAT leasehold
First Registration of manse at the Land Registry	£400 + VAT	£500 + VAT
First Registration of other church buildings	£680 + VAT	£830 + VAT
Provision of Office Holder Pack and ensuring that the CIO governing documentation allows for the Pastor/ Elders to be employed on the basis of being Office Holders ( <b>Fixed fee</b> )	£220 + VAT	£280 + VAT
TUPE advice transfer of employees to new CIO, including template letters to staff and template correspondence between old and new charity ( <b>Fixed fee</b> ).	£220 + VAT	£280 + VAT

our fee rates from time to time, and these figures are therefore current as at 1 November 2017.

# Appendix 1

The points below are an overview of the steps that an established church will need to take to switch to operating as a CIO. The same steps also apply where a church plant is being set up from one sending church except that only some of the members, staff and assets will transfer. For church plants that are not being set up by one sending church, only points 4 and 5 are applicable.

1. The managing trustees of the current charity should meet to approve the spending of time and resources on the project of setting up a CIO and obtain members' consent, if required. Complete the appropriate application form and return this to Edward Connor Solicitors with the application fee. Edward Connor Solicitors will then send an engagement letter setting out exact costs for the whole process.
2. Edward Connor Solicitors will review your current legal structure (if you are an established church) to check that you are able to set up a CIO and that the benefits will outweigh the costs.
3. Prepare a list of all the key third parties that the current charity engages with and consider which of them needs to be told about the new CIO being set up including pension providers, contractors, banks, employees and the landlord of any premises used by the church, if the church does not hold the freehold. If the church occupies its current premises on the basis of a lease, it is likely that a licence to assign will be required from the landlord. The landlord's solicitors are likely to charge between £500 plus VAT and £1,250 plus VAT for dealing with the licence to assign. You should check the provisions of the lease at an early stage to see what it says regarding assignment and take advice from a solicitor about the appropriate stage to contact the landlord.
4. Edward Connor Solicitors will draft the governing documents for the CIO and send them to you to formally adopt.
5. Register the CIO with the Charity Commission. The CIO formally comes into existence at the point of registration.
6. Set a date for when everything will be transferred across from the existing charity/charities to the CIO and inform all of the relevant parties of that date, making all of the necessary practical arrangements.

7. Edward Connor Solicitors will apply to the Charity Commission (if required) for permission for the CIO to indemnify the former charity trustees so that if any claims are brought against the former trustees, the trustees will be reimbursed by the CIO.
8. Commission someone to prepare amended stationery and an amended version of the website referring to the new CIO.
9. Comply with the Transfer of Undertakings (Protection of Employment) Regulations for the transfer of employees to the new charity. In particular, you will need to go through a consultation process with the employees and the old charity will formally need to provide employee information to the new CIO. If your church operates a PAYE scheme it will need to be closed down and a new scheme applied for.
10. Transfer assets held by the current charity/charities to the new CIO. Practical arrangements will also need to be made in relation to bank accounts etc.
11. The CIO will need to use the new stationery and website prepared.
12. Once everything has been transferred, arrange for the old charity/charities formally to be dissolved (unless they are being kept open for legacy purposes) and register the transfer of assets on the Charity Commission's list of mergers to increase the likelihood that legacies made out to the former charity/charities will be considered as gifts to the CIO.

# Appendix 2

Matters to take into account when considering whether to set up a CIO

## Current Legal Structure

1. *Do your existing governing documents prevent you from setting up a CIO or place restrictions on the type of CIO that you are able to set up?*

This is only likely to be an issue if the church building is held under a property trust that is prescriptive about how the church meeting within the building has to organise itself, and even in those cases, a CIO can usually be set up in a manner that is consistent with the requirements.

2. *How many charities currently exist in connection with the church and who are the trustees?*

Many churches have two or three charities connected to the church, e.g. a property trust covering the church building, a charitable unincorporated association or a working funds trust for the congregation's working funds and a separate manse trust. It is important to identify this at the outset and to know who the trustees are for each charity. Will the CIO take over from all the charities connected to the church or just some of them? Do the trustees of each charity have to follow the wishes of the congregation / church leaders or do the trustees have their own decision-making powers and are they in agreement with the project?

If you are not familiar with your current governing documents, Edward Connor Solicitors can review them and report back to you on these matters. This review and report can usually be completed within three to four hours and is included in the cost of setting up a CIO for an established church.

## Pension arrangements

3. *Is the church part of a multi-employer pension scheme?*

Some churches are or have been part of a multi-employer pension scheme. A multi-employer pension scheme is one where a number of different employers contribute towards the same scheme that is administered by a trustee on behalf of all the employers. With this type of scheme, certain events (known as "cessation events") can trigger an obligation on the church to make a payment towards any

deficit within the scheme. One of the most common events is ceasing to have any more employees participating in the scheme. A change of legal structure may also be regarded as a cessation event. Therefore, if the church is or has been part of a multi-employer pension scheme, you need to take advice from a pensions lawyer as to how the CIO project will affect the church's liabilities under the scheme.

### *Mortgages / secured loans*

*4a) If the church has a mortgage, how much will the lender charge for transferring the loan agreement to the CIO?*

If the church has a mortgage, the consent of the lender will be required if you are intending to transfer the land that the mortgage relates to into the ownership of the CIO. Additionally, in some cases the consent of the lender will be required for setting up the CIO at all, and it may be necessary to enter into a new mortgage agreement. It is unlikely a lender would want to prevent the church from setting up a CIO, but the lender may well make a charge for granting its consent and you need to factor this in to your decision-making on whether the benefits of setting up a CIO will outweigh the costs.

*4b) Does the new CIO intend to obtain a mortgage?*

CIOs remain relatively new and it may take time explaining the status to other parties such as banks and funders, especially if a CIO needs to borrow funds at an early stage. This potential disadvantage can be pre-empted by starting discussions at an early stage of planning the CIO with potential lenders. Please contact us at the office if you would wish to discuss this further.

### **Leases**

*5. If the church has a lease, how much will the landlord charge for transferring the lease to the CIO?*

If your church owns its property by way of a lease, you need to check whether the consent of the freeholder is required to transfer the lease to the CIO. It is unlikely that the landlord could completely withhold consent, but the landlord may charge a significant sum for granting consent. You should find out what these costs would be before committing to setting up a CIO.

## Providing services on behalf of public bodies

6. *If the church carries out services for public bodies, what impact will setting up a CIO have on the contracts?*

Some churches carry out services on behalf of public bodies, e.g. running homeless shelters or forms of social care under a contract with the local authority. These services are often carried out under long-term contracts and when the contract comes to an end the church will need to compete against other potential services providers to continue providing the service. There are two key issues here for churches providing these services.

First, if the church becomes a CIO during the current term of a contract, will the public body agree to transfer the contract to the new CIO for the remainder of the term? You would need to liaise with the public body to address this matter.

Second, when the public body retenders the contract and the church submits a bid as a CIO, will the public body take into account experience gained by the church when it operated under a different legal structure or will the change in legal structure lead the local authority to see the church as a brand new entity with no previous experience? Government guidance issued in November 2012 and then revised in 2015 (PPN Action Note 04/15, paragraph 35) indicates that public bodies should take the previous experience into account, but they may not always follow that guidance. Therefore you should check with the public body whether such experience would be considered (referring to the Government guidance).



# Notes

# Notes

# Notes



39 The Point  
Market Harborough  
LE16 7QU

[info@edwardconnor.com](mailto:info@edwardconnor.com)

01858 411568

[www.edwardconnor.com](http://www.edwardconnor.com)

*Edward Connor Solicitors is a registered charity (charity number 1175305) and a company limited by guarantee registered in England and Wales (company number 10821224).*

*Its registered office is at 39 The Point, Market Harborough, Leicestershire LE16 7QU.*

*It is registered for VAT (number GB 277792346).*

*It is authorised and regulated by the Solicitors Regulation Authority (number 640691).*

Updated March 2018