



London Voluntary Service Council

response to

The Charitable Incorporated Organisation (CIO)
**Consultation on the new corporate form for
charities**

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INTRODUCTION

1. London Voluntary Service Council

London Voluntary Service Council (LVSC) brings London's voluntary and community sector (VCS) organisations together to learn and share best practice and to create a co-ordinated voice to influence policy makers. We provide up-to-date information on management and funding, advice and support for voluntary and community groups, practical publications and short courses for those working in the sector. LVSC also hosts and services networks including Third Sector Alliance, Voluntary Sector Forum, Second Tier Advisors Network (STAN) and the 2nd Tier Information Workers Network (CASCADE) (www.lvsc.org.uk)

2. The Support and Advice Team

The Support and Advice Team consists of Victor Momodu (Advise & Resources Officer - Organisational Development) and Karin Podschun (Organisational Development Advisor - Projects) and forms part of the Organisation Support Service (OSS) of LVSC. The team provides organisational development advice, information and support to voluntary and community groups and organisations across London. This includes expert advice on setting up, governance, project development, fundraising and other areas of an organisation's operations.

The response therefore is greatly informed by our work with London's voluntary sector and the broad range of organisational development issues that we advise on, with a significant number being around governance and legal structures.

RESPONSE TO CONSULTATION

Q1: Should the minimum age for appointment as a charity trustee of a CIO be set at 16? If not, what age should it be and why?

We believe that the minimum age should accord with the current requirements of the Charity Commission for a charitable trust or unincorporated organisation and should therefore be 18.

However, we feel that the right balance between wanting to encourage young people and the proper administration of charity can be struck by a) allowing trustees with a minimum age of 16 as

long as they are not 1) a sole trustee and 2) the majority of the trustees are still 18 and over.

Q2: Should those setting up CIOs be able to disapply the general duty of care which would apply under the 1993 Act to the charity trustees of CIOs, subject to a minimum alternative duty? If so, are the minimum standards proposed in the General Regulations sufficient?

We feel the regulations should specify a clear duty of care for trustees to ensure a uniform approach and minimum standards for all CIOs and along the same lines as the statutory standard of care expected of company directors, which cannot generally be reduced. Allowing a minimum alternative duty would send a wrong and conflicting message and the starting point should be the general duty of care, which follows the wording of the Trustee Act 2000. Those setting up CIOs should therefore not be able to disapply the general duty of care.

Q3: Should a charity trustee of a CIO automatically be prohibited from participating in any decision from which he or she may benefit personally, unless either authorised to do so by the Charity Commission, or where a conflict of interest is extremely unlikely?

We agree that a CIO trustee should be prohibited from receiving personal benefits and welcome a register to disclose all personal benefits/interests before any decisions from a proposed transaction or arrangement is made.

We are concerned about the practicality of monitoring a CIO having a sole trustee.

Q4: Do you agree that the Regulations should (as set out in section 4.5) follow the Companies Act 2006 on the maintenance by the CIO of a register of members and charity trustees?

We agree that it is important to keep information about members and trustees.

However, we don't agree to submit information about the normal place of residence (service address should be sufficient), nationality and business occupation, as this information seems unnecessary and because a failure to comply will be a criminal offence. It is also off-putting because it will discourage people from participating.

We are also concerned about the notification of the location of the register and any changes to its location, as many CIO's may not have a business address and staff.

Q5: Do you agree with the suggested approach to the publication of information about charges over property which CIOs own? If not, what regime should apply to CIOs?

No comment - most organisations we deal with don't own properties

Q6: Do you agree that the Regulations should follow the public information obligations about debentures in the Companies Act 2006, as outlined in section 4.7?

No comments - most organisations we deal with do not issue debentures

Q7: Are the proposals (outlined in section 4.8) to make public information about CIOs available on request acceptable? If not, in what ways would they not meet your needs?

We agree with the proposal that the Commission will make information available to the public on request with no charge. We feel this will also encourage transparency.

Q8: Do you agree with our proposal to extend the special procedural requirements to cover any decision which might lead to the dissolution of a CIO, and to generally require members of a CIO to be given 14 days' notice of such decisions?

We support the proposal to extend the special procedural requirement and to give a 14 days' notice period to members for any decision that might lead to the dissolution of a CIO.

We also welcome the option of a decision by written resolution rather than at a meeting. Companies Act 2006 allows members to agree written ordinary and special resolutions provided that certain requirements are met and we believe that the same should apply to CIOs and these resolutions do not have to be agreed unanimously.

Q9a: Should the special procedural requirements apply to any other decisions which might be made in the course of the administration of a CIO? If so, when should they apply?

It should be applied in the case when two or more trustees are forced to step down.

Q9b: Should there be any additional special procedural requirements? If so, what should they be?

No comment

Q10: Do you agree with the approach outlined in section 4.10 regarding members' rights, or should there be a greater guarantee of members' rights for CIOs, along the lines of those in company law or otherwise?

We believe that it is important for members of a CIO to have administrative rights relating to the calling of general meetings, to the demanding of a poll and to voting by proxy and these should be enshrined in a CIO's constitution. The alternative approach raises the prospect of reducing the need, value, and involvement of members to the extent of being regarded as irrelevant. Even though they have no financial stake in it they have an interest in the organisation and should be allowed to ensure that the mission of the organisation is protected and pursued.

Q11: Do you think that the approach outlined in section 4.11 with regard to the ability of members to remove a charity trustee of a CIO is right?

There is a tradition of membership electing and in rare cases removing a charity trustee and we feel this should apply to a CIO. This element strengthens the involvement of members and emphasises their central role as well as providing a balance on governance issues. Even though such action should be a last resort it is important also for the sake of accountability.

Q12: Do you think that a body without legal personality should be able to become a member of a CIO? If so, how could the obligations of such a member be enforced?

We support the position that a body without legal personality should be able to become a member of a CIO. A significant number of incorporated organisations already have membership consisting of un-incorporated organisations. For an un-incorporated organisation it is crucial to become a member of networks and umbrella organisations in order to keep abreast of sector developments, access funding, strengthen their capacity and ability to deliver on their aims and objectives, and it would be unhelpful to remove this option.

Obligations can be enforced through the representative of the member organisation, and in most cases using the office of the CE/Director or senior officer of the member organisation as a representative.

Q13: Do you agree that a CIO should have the option to add restrictions to the power to amend its constitution contained in the 1993 Act?

We welcome the option to add restrictions to the power to amend the constitution that could allow more flexibility but at the same time prevent irresponsible actions that may have dire consequences for the organisation.

Q14: Do you agree that the disqualification provisions in the Company Directors Disqualification Act and the 'prohibited names' provisions in the Insolvency Act should apply to people who have administered insolvent CIOs?

We agree with the proposal to apply the disqualification provisions and the prohibited names provision should apply to people who have administered insolvent CIOs.

Q15: Do you think all CIOs should have to produce accruals accounts, or do you think it should depend on their level of income, the same as for non-company charities?

We believe that it is good practice to implement accrual accounts as it guarantees a higher degree of accountability and allows a fair and true audit. However, if organisations are just setting up or are small this additional administration is a burden for them.

Therefore we suggest the accounting framework should depend on their level of income and the general threshold for producing accrual accounts should be for income of £100,000 and above.

Q16: Do you agree with the policy objective of accounting and reporting continuity for companies converting into CIOs? If so, do you consider the approach we are proposing is reasonable, or would you suggest an alternative approach? In particular, is the proposal to require a financial statement of the CIO's assets and liabilities on conversion sufficient?

We agree with the policy objective of accounting and reporting continuity for companies converting into CIOs. We are of the view that the proposal to require a financial statement of the CIO's assets and liabilities on conversion is not sufficient and that it

should be more detailed to ensure integrity and accountability of the entire process.

Q17: Do you think that the model constitutions are workable and provide good governance arrangements and sufficient flexibility for CIOs? If not, what improvements are needed?

In general we welcome the model constitutions, as they are especially useful for smaller organisations that do not have the expertise and resources to develop their own constitution. We also welcome a degree of flexibility to allow an organisation to adapt the constitution to their individual circumstances.

However there should be provision made for removing trustees – when that issue does arise - and how this should be implemented. We feel this is a very important issue and it would help to avoid the sometimes-acrimonious environment that could result if not properly dealt with, as it could also drag on and have damaging long-term effects on the organisation.

Q18: Do you consider it useful for the charity trustees of a CIO to have a number of default delegation powers by including them in the draft General Regulations?

We believe it is useful to have a number of default delegation powers included but it is important to allow organisations to amend them to meet their specific needs.

End.