

THE LIABILITY OF CHARITY TRUSTEES – THE CHARITABLE INCORPORATED ORGANISATION.

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Trustees Liability and Managing Risks

Charity trustees have always been concerned about having personal liability for the activities of the charity they are trustees of. Managing this risk is an important part of being a trustee. The general rule is that if a charity acts within its constitution and the law, the risk to the trustees is minimal. Charities can take out insurance for legitimate risks faced by their charity and this should be sufficient for most charities.

Where charities are more complex or are faced with a high risk assessment, one way for Trustees to limit their liability has been to register the charity under the Companies Act and register as a company. This does attract additional compliance requirements in that the charity has to file returns under both the Charity and Companies Acts. However, charities that are village halls cannot register as a company because a company cannot directly own property which is classed as 'permanent endowment' which is what most village halls are.

A review of company law around ten years ago concluded that there needed to be new solutions to this issue and the Charities Act 2006 proposed a new status for Charities to be known as the Charitable Incorporated Organisation (CIO). The CIO is intended to achieve a limit on the liability of trustees in the same way as registering under the Companies Act but without the obligations of having to register and comply with two Acts.

The regulations for CIO are not yet through Parliament but it has been agreed with the Charity Commission that Community Action – Northumberland (CA-N), will be one of the first organisations to adopt the new status and is doing so as a 'guinea pig'. What CA-N is putting in place, in consultation with the Charity Commission, is an organisational model whereby a CIO will be created which will subsequently become the sole trustee of the existing (and continuing) unincorporated body. This same model could usefully apply to village hall charities throughout the country: hence the Commission's particular interest in this 'project'.

It is perhaps early days to give a full report on the procedures for conversion to CIO but the following points are worth noting:

- Committee members have limited liability.
- Need to pass a resolution at the AGM
- The Charity can use the same name.
- The AGM needs to appoint the Trustees of the CIO.
- A model constitution is being developed (but very long)
- The AGM will need to adopt the model constitution.
- There appears to be little room for discretion at the moment
- There are minimal costs involved in conversion.

David commented that the CIO status may be suitable for some charities depending upon their exposure to risk.

David also suggested that those charities that are currently considering limiting the liability of their trustees by registering under the Companies Act may well benefit by holding on for a while to see if the status of CIO becomes more widely available.