

Transferring to a Charitable Incorporated Organisation (CIO)

The Cogwheel Trust experience

This case study looks at the Cogwheel Trust and their decision to become a CIO. It should be noted that a CIO is not for everyone. The Cogwheel trustees thought long and hard about why they might want to change. The case study gives some insight into the process as well as some key points that Cogwheel learnt; there are also links to a number of resources as well as other issues that need to be addressed.

Cogwheel www.cogwheel.org.uk provides counselling and psychotherapy support for people in Cambridgeshire. 1 in 4 people will suffer from mental well-being problems in the course of a year, the most common disorder being mixed anxiety and depression. Early counselling intervention is an effective solution and prevents more complex health and social needs from developing. Through counselling a person can talk about difficult thoughts, feelings, behaviour and situations. Counselling can enable positive changes to take place leading to a healthier, happier and more hopeful outlook.



Cogwheel

"Help when life slips out of gear"

What is a CIO?

A charitable incorporated organisation (CIO) is a new form of legal entity designed for non-profit organisations in the United Kingdom.

The main intended benefits of the new entity are that it has legal personality, the ability to conduct business in its own name, and limited liability so that its members and trustees will not have to contribute in the event of financial loss. These are already available to limited companies; charities can be formed as companies, but then they must be registered with both Companies House and the Charity Commission. In contrast, the CIO only needs to register with the Charity Commission. This is expected to reduce bureaucracy for the charity.

The CIO status became available to charities in England and Wales on 4 March 2013

Useful Resources

Keyfacts - Charitable Incorporated organisations by Gareth G Morgan, published by DSC, [more info here](#)

CIO factsheet [available from the DSC](#)

There is a lot more info on [Charity Commission website](#)

Contact [CCVS](#) for more help and advice on different governance options.

The Case study

Cogwheel was set up under a bare trust deed in 1988; this is quite an old fashioned type of structure and leaves the trustees exposed as there is no limited liability. In 2008 Cogwheel started to think about changing their structure **in order to protect the existing trustees and to make it easier to recruit new trustees in the future**. Historically this was achieved by registering the charity with both the Charity Commission and also as a limited liability company with Companies House. This form has a number of advantages and disadvantages and the CIO was developed by government to simplify the structure and reduce the administrative burden. The Cogwheel trustees decided to follow the CIO route. Unfortunately the process of enacting the necessary legislation meant that in England the CIO was only available as an option from early 2013 despite being a part of the 2011 Charities Act¹.

Cogwheel worked with an organisation called Pilotlight www.pilotlight.org.uk who match professionals from business with charities looking for help and advice. They were able to take advantage of legal assistance that was provided pro-bono which helped them in a number of key areas. The trustees estimate that this advice would have cost them in the region of £20,000 should they have had to pay commercial rates.

Cogwheel were also helped in that one of their trustees had experience in restructuring businesses and was able to use this expertise to help manage the process. The trustees delegated the day to day work of making the transfer to two of their members, this ensured that the process was more efficient but also reduced the time burden on the remaining trustees.

The legal issues

The Charity Commission have model constitutions available on their [website](#) for all forms of charitable organisations, they recommend that these are used as templates wherever possible as it aids with registration. Cogwheel used the [Foundation Model Constitution](#) for “a Charitable Incorporated Organisation whose only voting members are its charity trustees”

Cogwheel made minor changes to the constitution, and as well as this there are 'blanks' that need to be filled in about your charity. Whilst the trustees agreed the wording they appointed their solicitor as their representative to liaise with the Charity Commission.

For Cogwheel there was a need to update their charitable objectives as the law around what constitutes a charity had changed since the original registration had been made in 1988. This was an important issue for the trustees to agree and again they were helped with legal advice. A key thing to note here is that the Charity Commission will possibly do some investigation to ensure

Choose the right structure

There are two CIO structures and it is important that you choose the most appropriate for your organisation. If:

- the only members of the CIO will be the trustees, you should use the **foundation constitution**
- your CIO will have a wider membership, including voting members other than the trustees, you should choose the **association constitution**

¹ It should be noted that it is still not possible to transfer a limited liability charity to a CIO, this power is yet to be enacted. It is possible to transfer the assets of a limited liability charity to a CIO but they have to have different names. It is proposed that in future limited liability charities will be able to more simply transfer to a CIO.

what you say you do and what you actually do match up, this means that any literature and especially your website need to reflect your objectives.

For Cogwheel **the process of registration started in May 2013, they submitted all the paperwork to the commission in Oct 2013 but it was not until July 2014 that their registration was confirmed.** It is only at this stage that the process of transfer can start as it is one of the issues that a CIO can only start to operate once it has been registered and received its charity number. This is different to registering a company and as such if you have a pressing time deadline then the traditional route of dual Charity Commission and Companies House registration may be more appropriate. It is understood that if you are registering a new charity, the time taken is significantly shorter.

In Cogwheel's experience getting the legal bit right, and registration of the new CIO was about 25% of the work, it was after this that they had to wind the old trust up into the new CIO.

The practical issues

So what are the issues once the structure and governing document bit is out of the way? This is where the hard work begins, **at Cogwheel the trustees delegated the role of ensuring all that needed to happen happened to two of its members.** (One of whom was the Chair who also had expertise in business restructuring). It is important that all staff and volunteers are kept on board at all times and the trustees had a named representative that people could approach with any questions or fears. It is also important that the old organisation is wound up according to Charity Commission rules and according to any sections in the governing documents of the organisation.

Cogwheel had both staff and volunteers to settle in to the new structure as well as the other usual stakeholders including landlords, suppliers and importantly service users. The new organisation also needed its own set of policies and procedures and Cogwheel took this opportunity to update and amend some of their old ones to reflect the way things worked in practice. These all had to be agreed by the trustees.

The staffing issue was a significant piece of work as there was a mixture of employed and self-employed staff as well as volunteers. The trustees had involved everyone at an early stage so there was no surprise to staff that this change was happening. Considerable time was spent consulting staff and ensuring that proper notice periods were observed before all staff were TUPE'd² across to the new CIO. Staff maintained all their rights and length of service benefits and Cogwheel were able to take the opportunity update contracts in line with new guidelines and best practice. It was important that staff and volunteers were informed all throughout the process so that they felt supported and were able to ask questions to allay fears.

As well as ensuring that staff were looked after there were numerous other issues that needed to be addressed. The trustees had a very detailed checklist that detailed all the items that needed to be changed, the timescales and the persons responsible. This proved to be a really useful tool and they recommend that you use this idea to ensure that everyone knows who is doing what, when and that things do not get forgotten. This document was found to invaluable in ensuring that all the little details were identified and actioned.

² TUPE refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014". The TUPE rules apply to organisations of all sizes and protect employees' rights when the organisation or service they work for transfers to a new employer. [More information from the ACAS website.](#)

Sorting out the finances and accounts is a complex task. It is worth making sure that your auditor and finance person as well as the treasurer has a good grip on this and that all the correct accounts are submitted to the correct bodies. There will inevitably be a period where you will need to ensure that accounts for both the old and the new organisations are being run together, even as was the case for Cogwheel that for some of the period the accounts actually showed no activity. This covers the period from registration to the date of transfer of the operation. Linked to this were other issues including getting the bank accounts sorted, the ease of how this happens depends a great deal on the bank, but as a rule you will need to open a new account for the new organisation and then transfer any funds and standing orders etc. Most banks will not allow you to simply change the name on the account. This process can be time consuming and will likely involve all trustees signing relevant documents; you will also need to inform all suppliers of the new account details. Similarly you will need to change PAYE details, Gift Aid details, and Staff pension details to reflect the new arrangements.

Areas to think about

Two areas that may cause an issue, but that were not a problem for Cogwheel, could be any **endowments** an organisation has, or any **restricted funds**. It is important that proper legal advice is sort about these and that all funders are kept informed of what is happening throughout the process.

Other areas to think about are around insurance and landlords. With property make sure your landlord is on side as the change in organisation could act as an impromptu break clause so it is essential that you get any tenancies or licences confirmed in advance. You will also need to ensure all suppliers are informed and that changes to things like pensions, data protection registration and licencing agreements are taken care of.

The final issue to take care of is the transfer deed from the old organisation to the new. This will be influenced by the wording of your old constitution or governing documents. Help from a legal expert can prove invaluable here and Cogwheel felt the input they had was essential in ensuring all the correct minutes had been taken and that the de-registration of the old trust went smoothly. You need to have been seen to have thought the whole change through, and have documented all decisions taken by the trustees. Linked to this is the need to ensure that money is transferred correctly and the need for a good set of management accounts is essential.

Whilst the feeling from Cogwheel was that you could do the process yourself using the recommended book and other guidance notes, they found legal help invaluable in ensuring the process was as smooth as possible. This was on top of having experienced trustees. Cogwheel also found that delegating the process to a small number of their trustees was also of real benefit as it made the work more streamlined, and reduced the need for all trustees to be intimately involved with the minutia.

If you would like to find out more about converting to a CIO then please contact CCVS

Enquiries@cambridgecvs.org.uk

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