Charitable incorporated organisation (CIO): governance

Two-tier governance structure

All CIOs must have one or more:

- Charity trustees (*section 206(2)(b), Charities Act 2011* (ChA 2011)).
- Members (*section 205(2)(c), ChA 2011*).

However:

- A **charity trustee can (but is not required to) be a member**.
- A **member can (but is not required to) be a charity trustee**.
- The charity trustees and the members can be the same people.

(*Section 206(6), ChA 2011*.)

Two types of model CIO

A CIO is required to have a constitution that is in the form of one of the model constitutions specified in regulations made by the *Charity Commission* (Commission), or as near to that form as the circumstances admit (*section 206(5), ChA 2011*).

The Commission has published two model constitutions (model CIO constitutions) providing alternative governance structures:

- Foundation CIO
- Association CIO

Foundation CIO

A Foundation CIO has no separate voting members from its charity trustees. This type of governance structure, where all members are charity trustees and vice versa, is sometimes known as an “oligarchy”.

The Foundation CIO provides a suitable governance structure for a charity that is to be run entirely by its charity trustees, with no provision for a separate voting membership to provide a layer of internal scrutiny and accountability.

A Foundation CIO should be easier to administer than an Association CIO.

Association CIO

An Association CIO has a voting membership wider than its charity trustees.

The Association CIO provides a suitable governance structure for a charity that wishes to have a separate voting membership with certain rights and powers to participate in the governance of the charity (such as appointing some, or all, of the charity trustees and amending the constitution). The membership provides a layer of internal scrutiny and accountability. In this model, members usually vote trustees in, at the AGM.

Charity trustees of a CIO

Function and duties of charity trustees

The charity trustees’ function is to manage the affairs of the CIO and they may, for that purpose, exercise all the powers of the CIO (*section 216(2), ChA 2011*)

They must:

- Exercise the CIO's powers and perform their function in the way that they decide, in good faith, is most likely to further the purposes of the CIO.
- Exercise such skill and care as is reasonable in the circumstances, having regard to:
    - any special knowledge or experience that they have, or purport to have; and
    - if they are acting as a charity trustee in the course of a business or profession, any special knowledge or experience that it is reasonable to expect a person acting in the course of that kind of business or profession to have.

This duty mirrors the duty of care for trustees set out in *section 1* of the *Trustee Act 2000* (TA 2000)

Who can be a charity trustee of a CIO?

An individual or a corporate body can be a charity trustee of a CIO.

To be eligible to be appointed as a charity trustee of a CIO, an individual must be over 16 years old.

Checks should be made to ensure that all individuals who are, or wish to be, charity trustees of a CIO are not disqualified. All existing and prospective charity trustees should be asked to sign an eligibility declaration (see *Charity Commission: Trustee declaration form*).

The constitution of a CIO may set out additional qualifications to restrict who is eligible to be appointed as a charity trustee. For example, it may require charity trustees to have knowledge of the local area in which the CIO works, or of issues relevant to the CIO's beneficiaries.

Number of charity trustees

A CIO must have at least one charity trustee (either an individual or a corporate body), but there is no upper limit (*section 206(2)(b), ChA 2011*).

As a matter of good practice, the Commission recommends that a CIO (or any charity) has **at least three charity** trustees, to help avoid deadlock when making decisions. It also suggests that enough charity trustees are appointed to enable them to carry out their duties effectively, but not so many that it becomes impractical to make decisions (an **upper limit of 12 is suggested** in the model CIO constitutions).

Conflicts of interest

A charity trustee of a CIO must not benefit personally from any arrangement or transaction entered into by the CIO unless, before the arrangement or transaction is entered into, they disclose to all the charity trustees any (direct or indirect) material interest they have in the arrangement or transaction or any party to it (*section 222, ChA 2011*).

Also, unless it cannot reasonably be regarded as likely to give rise to a conflict of interest, a charity trustee of a CIO who would benefit personally (whether directly or indirectly) from a transaction or arrangement which the CIO proposes to enter into must not:

- Take part in any decision made by either the charity trustees or the members about whether or not to enter into that transaction or arrangement.
- Be counted in the quorum for that meeting.

Third-party benefits

A charity trustee of a CIO must not accept a benefit from a third party for either:

- Being a charity trustee.

- Doing (or not doing) something as a charity trustee

Liability of charity trustees of a CIO

Because it is a corporate body with limited liability, a CIO is responsible for the debts, obligations, and other liabilities it incurs in carrying out its activities, and not its charity trustees personally. If a CIO's assets are insufficient to meet its liabilities, it will be insolvent. (The *Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (SI 2012/3013)* (Insolvency and Dissolution Regulations) apply, with appropriate modifications, the *Insolvency Act 1986* (IA 1986) to CIOs. This means that the existing insolvency and dissolution procedures that apply to registered companies apply to CIOs.)

However, like the position of directors of a *charitable company*, the charity trustees of a CIO may be personally liable under criminal and civil law in certain limited circumstances, including:

- If they receive unauthorised payments or other benefits from the CIO (see *Benefits and payments to charity trustees*). They may be required by the Commission, the court or their fellow charity trustees to repay such benefits (or the value of them) to the CIO.
- If they have acted otherwise in breach of trust or breach of duty and loss has been caused to the CIO as a result.

In practice, it is unlikely that charity trustees of a CIO who have acted in good faith will be held personally liable for such breaches. The Commission has power (as has the court) to relieve a charity trustee from personal liability for a breach of trust or breach of duty if they have acted honestly and reasonably and ought fairly to be excused (*section 191, ChA 2011*). No such leniency should be expected where loss is caused to a CIO by a charity trustee's deliberate or reckless breach.

Members of a CIO

Role of the members

The role of the members of a CIO depends on the type of governance structure adopted by the CIO.

In a **Foundation CIO, the only members are the charity trustees**. The members do not, therefore, provide a separate layer of scrutiny. However, it is important to appreciate that the charity trustees wear two "hats" and certain powers can only be exercised by them acting as members. In practice, the charity trustees of a Foundation CIO are likely to make decisions in their capacity as members by passing written resolutions, rather than by calling formal members' meetings.

In an **Association CIO, the membership includes individuals who are not charity trustees**. The role of the members is to provide a layer of scrutiny of the governance of the CIO and to exercise those powers that are specifically reserved to them. It is important to appreciate that the charity trustees of a CIO are responsible for the day-to-day management and administration of it, and may exercise its powers, and not its members.

Who can be a member of a CIO?

Any individual or corporate body can be a member of a CIO.

Decisions that only CIO's members can make

Each of the following decisions can only be made by a CIO's members (and not by its charity trustees) passing a resolution (by either a 75% majority in general meeting or a unanimous written resolution) in accordance with rules set out in the relevant legislation:

- Amending the CIO's constitution
- Applying to the Commission to amalgamate the CIO with any number of other CIOs
- Transferring the CIO's undertaking to another CIO
- Applying to the Commission for the CIO to be dissolved (*regulation 6*, *Insolvency and Dissolution Regulations*).

A CIO's members also have rights set out in the CIO Regulations to:

- Inspect minutes of members' meetings and records of their decisions without charge.
- Request a copy of these records on payment of any reasonable fee charged by the charity trustees.
- Apply to the court for rectification of the CIO's register of members.

Liability of a CIO's members

A CIO's constitution may (but does not have to) provide that its members are liable to contribute to the assets of the CIO if it is wound up and (if they are) the amount that they are liable up to (*section 206(1)(d), ChA 2011*).

Capacity of a CIO

As a corporate body with separate legal personality from its charity trustees and members, a CIO enters into contracts and other arrangements, and holds property, in its own name.

Use and application of property

As with all charities, a CIO's property must be used and applied in:

- Furtherance of its purposes (which must be exclusively charitable, see *Practice note, What is a charity?: Legal requirements for charitable status*). A CIO's purposes must be set out in its objects clause.
- Accordance with its constitution.

Provisions in model CIO constitutions

Objects clause

The charitable purposes of a CIO are to be set out in clause 3 of the model CIO constitutions (also known as its "objects clause").

Application of income and property

Clause 5 of the model CIO constitutions provide that the CIO's income and property must:

- Be applied solely towards the promotion of its objects.
- Not be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any of its members (also known as a "non-distribution" clause).

There are also provisions which deal with benefits to be paid to a trustee / a connected person (such as a family member or connected business), and how any proposed benefits / contracts for services are to be voted upon and managed.