

PRACTICAL GUIDE

Do we need to register and why choose to be a CIO?

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CONTENTS

1.0	Introduction.....	4
2.0	Do we need to register as a charity with the Charity Commission?	4
2.1	“We don’t need to register as a church because our building is a registered place of worship”	4
2.2	“We do not have a Trust Deed (or other governing document) and are therefore not a charity”	4
2.3	“We do not have enough income to require us to register as a charity”	4
2.4	“We do not need to register with the Charity Commission because we already have a charity number from the Revenue and Customs”	4
2.5	“We do not want to register because we do not want to be subject to a secular organisation (i.e. the Charity Commission)”	5
2.6	“We think that being a charity with trustees is inconsistent with our church governance”	5
3.0	Why establish a charity as a charitable incorporated organisation (CIO)?.....	5
3.1	Limiting the liability of the trustees.....	6
3.2	Holding the property title.....	6
3.3	Modern form of charity.....	6
3.4	Other points to note concerning CIOs.....	6
4.0	Matters to consider with registration.....	7
4.1	Statement of beliefs.....	7
4.2	Charitable objectives.....	7
4.3	Safeguarding.....	7
4.4	Where will you operate?.....	7
4.5	Own or lease a building.....	8
4.6	Trustees.....	8
4.7	Raising funds.....	8
5.0	Help with registration	8

1.0 Introduction

There are two questions that we regularly are asked by churches. These are:

- Do we need to register as a charity with the Charity Commission?
- If so, would you recommend that we set up a charitable incorporated organisation (or CIO)?

2.0 Do we need to register as a charity with the Charity Commission?

In order to answer the first question, it is necessary to dispel some myths, including:

2.1 “We don’t need to register as a church because our building is a registered place of worship”

The registration of a church (congregation) has nothing to do with whether the building the church meets in is registered as a registered place of worship. There were some situations in the past where churches meeting in a registered place of worship did not need to register, but this does not apply today.

2.2 “We do not have a Trust Deed (or other governing document) and are therefore not a charity”

If a church is receiving tithes and offerings from members of the church and the members are expecting those funds to be used for charitable purposes (e.g. furthering the Christian faith, helping people in need and/or supporting missionary work), then the church is operating as a charity, even though it may not have a governing document to set out the objects of the charity and details of how the charity operates. The people that make the decisions in the church (usually the church leaders, such as the pastor, elders and deacons) are effectively the charity trustees. In addition, there are many property Trusts, which are normally Declarations of Trust set up to hold a church property, where there may be no funds going through the Trust. This means that it does not need to register with the Charity Commission, but is still a charity, as there are charitable objects set out within the Trust Deed.

2.3 “We do not have enough income to require us to register as a charity”

If a church is part of a recognised denomination (e.g. Methodist, Baptist Union or Grace Baptist Association) then it would only need to register if its annual income was over £100,000 per year. At some point the limit will be lowered from £100,000 to £5,000, but this has currently been postponed until March 2031. These charities are known as excepted charities. It would also include churches that are affiliated to the Fellowship for Independent Evangelical Churches. If a church is not an excepted charity and has an income of over £5,000 it is currently required to register. In order to do so it will need to have a governing document, such as a Trust Deed, Memorandum and Articles for a charitable company or a Constitution for a charitable unincorporated association or a charitable incorporated organisation (CIO).

2.4 “We do not need to register with the Charity Commission because we already have a charity number from the Revenue and Customs”

In the past HM Revenue and Customs have given a charity number to churches (usually with an X

in it) to allow them to claim Gift Aid on donations. They are unlikely to give a charity number to a church if the church does not have a suitable governing document and, if the church's annual income is over £5,000, without proof that it has registered with the Charity Commission. There will come a point where churches that are currently claiming Gift Aid and have an annual income over £5,000 will be asked to register in order to continue collecting Gift Aid. This is also affecting a church's ability to have a reduced rate of VAT on utility bills, as utility companies are asking for evidence that a church is a charity.

2.5 “We do not want to register because we do not want to be subject to a secular organisation (i.e. the Charity Commission)”

As stated above, if a church is operating as a charity, based on the expectations of those giving to the church and the way that the funds are handled, it will effectively be a charity and will therefore come under charity law. This could mean that even though the charity is not registered with the Charity Commission, the Commission could have some power to take action against the church if the church leaders were operating in a way that was contrary to charity law (e.g. using funds for inappropriate purposes). As a charity de facto, if the church has an annual income of more than £5,000, it has a statutory duty to register as a charity with the Charity Commission and failure to do so would mean that it was in breach of the law.

2.6 “We think that being a charity with trustees is inconsistent with our church governance”

There are different charity models that can be used to cover the different governance structures of a church. There is a Foundation Model for an elder-led church and an Association Model for a congregational based church. Choose carefully what is best for you.

Often the reason why this is considered to be a problem is where a church operates on a congregational model, where decisions are made by the church members' meeting rather than just the church leaders. It therefore seems wrong for trustees to be making decisions about the church. This may also be felt to be the case where trustees are not the same as the church leaders in an elder-led church. Firstly, it is important to recognise the different roles of the trustees from the spiritual leaders (church leaders or congregation). The latter are responsible for the spiritual direction of the church; whilst the former are responsible for the legal compliance and operation of the organisation. There will be overlap between the two but there can be a distinction in the roles/people and there should always be a healthy tension (but not conflict) between the two.

Secondly, if you have a congregational model of church governance the Association Model of CIO allows this to be built into the charity governance.

3.0 Why establish a charity as a charitable incorporated organisation (CIO)?

For the simplest form of charity where there is a very limited amount of income (e.g. under £25,000 a year), where there is no physical property and there are very few other major risks such as employing people or entering into major building projects, it might be suitable to have a governing document such as a Declaration of Trust or a simple Constitution as a charitable unincorporated association. This is because there is little risk for the trustees, who would be individually liable for the commitments of the charity. Where the charity's annual income is over £5,000 it would still need to register with the Charity Commission.

If the charity has a reasonable level of income or is likely to as it grows in the next few years, is likely to employ someone, owns a property and/or has major contracts that it will be committing to, it is normally recommended now for the charity to be a CIO. There are a number of reasons for this, including:

3.1 Limiting the liability of the trustees

As the CIO is a legal entity in its own right, it is the CIO that would be sued rather than the individual trustees and it would be the CIO that would be liable for contractual commitments. Other forms of charity, except charitable companies, would mean that the individual trustees would be liable for these matters. There are some things, such as health and safety matters, that may eventually come back to individual trustees if they made poor decisions.

3.2 Holding the property title

A CIO, as a legal entity, is able to hold the title to properties, which means that the title does not need to be registered again and again with the Land Registry every time a new trustee is appointed; thus saving the hassle and cost of doing so. It also makes it easier for a church taking a lease, as the CIO is the tenant, rather than the individual trustees and therefore the tenancy does not need to be reissued or assigned if the trustees change. It is also more likely to be acceptable to a landlord to have a CIO taking a lease than to have individual trustees. It also has the added comfort for trustees of the CIO that the liabilities/responsibilities of the tenant fall on the CIO rather than individual trustees.

3.3 Modern form of charity

The constitutions that are available for CIOs are designed specifically for charities and have the normal requirements for a modern charity (e.g. allowing for payment/employment of trustees). This makes the CIO more user friendly for churches.

3.4 Other points to note concerning CIOs

The following points should be noted in relation to CIOs:

- There is no minimum level of income required for a CIO to register, as the process forming the CIO happens at the same time as registration with the Charity Commission (this is an online process).
- Where you are converting an existing charity, such as a trust or a charitable unincorporated association, to a CIO you will almost certainly need to have the same objects for the CIO that you had for the previous charity, in order to be able to transfer the assets from one to the other. The temptation is to change the objects to “modernise” them or make them “more appropriate for the current church”, but this can cause problems when you are trying to close the existing charity and gift the assets (funds, furniture and buildings) to the new charity.
- The Charity Commission have Model CIOs that can be used by churches. This includes an association model for churches that operate on a congregational governance basis (i.e. the decisions are taken by the church members) and a foundation model, which works for elder-led churches or where trustees are given the power to make decisions. Church Growth Trust has a Foundation Model CIO for elder-led churches available on its website (www.churchgrowth.org.uk/model-cios/). It is important to choose the right model for you, as

some churches have set up one model and then realised that this is not compatible with their church governance. It is extremely difficult to alter one model to another.

- Even though there are models available, careful adaption of these to ensure that they suit a particular church's needs and are acceptable to the Charity Commission require a certain level of knowledge and expertise. Also, the registration is an online process and can be complicated, with various documents that need to be prepared beforehand. It is therefore recommended that help is sought with charity formation and registration. Church Growth Trust is happy to recommend a number of organisations that can help with this and these are shown below in section 5.

4.0 Matters to consider with registration

There are a number of important matters that you will need to consider when registering a charity. It is helpful for you to give some thought to these in advance to speed up the application and to ensure you do not fall into any of the "traps" in the application process. One of the matters that takes church a long time to decide is their objects. These are vital to get right, as they set the limitations of the work of the charity. As mentioned above they need to be the same or very similar to the objects of any existing charity that you are wanting to convert into a CIO. Otherwise, it is recommended that you keep your objects as simple and broad as possible (e.g. "To advance the [insert basis of faith] [faith] [religion] for the benefit of the public in accordance with [the statements of belief appearing in the schedule] [the following doctrines: ...]").

It is worth considering what questions you may be asked during the registration process and what information you may need to provide. This will include the following:

4.1 Statement of beliefs

These should be in line with doctrines and practices in any previous charity governing document and any basis of faith that may be contained in a charity that holds the property the church occupies. You will need to include a clear basis of faith. You may also want to add to your basis of faith a clear statement of your church's biblical view on marriage and gender, as these are likely to become increasingly contentious issues in respect of which it will be helpful if the church is legally bound by its basis of faith.

4.2 Charitable objectives

The Charity Commission will want you to state how you are going to achieve the charity's objects. They will also want you to show each year how you are doing in this respect; hence one reason why you should keep your objects simple.

4.3 Safeguarding

You will need to provide an up-to-date safeguarding policy for the church, whether you currently interact or serve children and vulnerable adults or not. Christian Safeguarding Services can help with this – www.thecss.co.uk.

4.4 Where will you operate?

Although in practice you may only serve your local area, it is better to keep the area that you operate wider (e.g. in the UK and the world), to ensure that you can use church funds to support a range of ministries and missions.

4.5 Own or lease a building

If you occupy a building for worship and other activities, you will need to show that you have a right to do so. This could be by providing a copy of the title to the property if this is owned by the church, or a lease, hiring agreement or the Trust Deed under which the property is held.

4.6 Trustees

You will need to have a minimum of three trustees and they must all be eligible to be a trustee. They will need to have signed a Declaration of Eligibility Form¹. Trustees should ideally not have any conflicts of interest with the charity (e.g. providing services or property for the charity or holding a position of political or public authority). If they do, these will need to be declared.

If now or in the future you want one or more trustees to be paid or to provide services and/or goods to the charity (e.g. an employed or self-employed pastor) then this needs to be carefully written into the constitution and must be declared.

4.7 Raising funds

You will need to consider how you will be raising funds for the church and how you will deal with any restricted funds (e.g. donations given for a building project).

5.0 Help with registration

As the online registration process is complicated, unless the church has available the necessary administrative expertise, it may be helpful to use organisations with experience of charity registration. A number of organisations are able to help you, including the following:

Stewardship

1 Lamb's Passage, London EC1Y 8AB

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enquiries@stewardship.org.uk

www.stewardship.org.uk/charity-formation

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¹ <https://www.gov.uk/government/publications/confirmation-of-charity-trustee-eligibility>

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