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independent
examiners

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FAO: Helen Morgan
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Dear Helen

CIO consultation

Please find below ACIE's response to the CIO consultation.

ACIE is an association of people who carry out Independent Examination (IE) in a variety of settings - as volunteers, as advisory workers in the voluntary sector, as accountants in practice or sole traders. There are currently 584 members of ACIE.

Because of the nature of IE, in the context of their membership of ACIE, our members specifically work with smaller charities, but many of them also work with or are treasurers or trustees across the full range of charities.

Specific response to ACIE from members about this consultation has been limited and varied, but I have reflected the majority view in respect of the accounting provisions, which is where we have greatest interest. Certainly, the hope and expectations was that CIOs would sit under the same accounting regime as other non-company charities in England and Wales and this was seen as one of the benefits of the CIO proposal.

With best wishes

yours sincerely

Fiona Gordon

Fiona Gordon
Director

List of consultation questions

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?

Agree 16.

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?

No, the same duty of care should apply to CIOs.

If so, are the minimum standards proposed in the General Regulations sufficient?

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?

Again, the same provisions should apply/be available to CIOs as to other charities.

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?

There is an issue of confidentiality here for certain charities in respect of both trustees and members for which there are mechanisms and permissions in place for existing charities which should be extended to CIOs, rather than importing a companies model.

Q5: Do you agree with the suggested approach to the publication of information about charges over property which CIOs own?

Agreed.

If not, what regime should apply to CIOs?

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?

Agreed.

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?

Agree with proposal.

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?

Agreed - there are usually specific provisions for such circumstances and these seem reasonable and simply need writing clearly into the model constitution (as per the draft versions).

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?

Nothing to suggest.

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

Nothing to suggest.

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?

Agree with the approach.

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?

If it is a permitted provision, should it not be there as an option in the model constitution - even if it has a note which states the Commission's position on the issue - or present the debate?

Q12: Do you think that a body without legal personality should be able to become a member of a CIO?

A personal comment: I am sure I have been the named representative of an unincorporated association which was a member of a company charity and that the company charity had clear procedures to allow this to happen (this particular company charity would not have had a board of trustees/directors if this had not been possible). In which case, it must be possible to devise similar provisions for a CIO and it would be desirable to be able to do so.

If so, how could the obligations of such a member be enforced?

In reality, these are no different from an individual's obligations - and no easier or more difficult to enforce - as long as everyone has been clear from the start about the status of the representative and this option is clearly written into the constitution.

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?

Agreed.

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?

Agreed.

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?

The consultation poses two further questions for consideration - public/business confidence in CIOs and dis/incentives for existing bodies to convert.

Taking the issue of dis/incentives first, if the body wishing to convert is an existing charitable company, then the only incentive, if Accruals are a requirement for CIOs, is single registration/regulation, which may be incentive enough. However, the

option for the smaller of these charitable companies, after conversion, to prepare R&P accounts, will be, for some, a further incentive.

For an unincorporated charity thinking of converting to a CIO, the incentives are single registration/regulation plus legal identity plus limited liability for its trustees. However, for those unincorporated charities currently preparing R&P accounts, the requirement for CIOs to prepare Accruals accounts would be a contrary disincentive.

In terms of the general public's confidence in smaller charities, this is more likely, in financial terms, to be about the general financial management of the charity rather than the exact accounting format it chooses to use. And, in reality, for smaller charities, public confidence is often based on more intangible aspects such as local knowledge and awareness - for example, for the very small, the issue is not usually large salaries or the percentage of income spent on fundraising.

In terms of business confidence, and also, for charities, the securing of charity-specific grants/funds, the accounting format can come into play, for example, where a key person is either unfamiliar with formal cash based accounting or prejudiced against it. In these circumstances, as for unincorporated charities at present, the funder, for example, has the right to require Accruals accounts and/or the charity has the right to prepare them. This may be more relevant to the larger of the charities eligible to opt into R&P accounting who may be heading towards the Accruals threshold in any case or who may be considering preparing Accruals as their accounts become more complex. The solution here, therefore, is not to apply a blanket requirement for Accruals accounts.

On balance, therefore, if CIOs are to be an option for smaller charities, CIOs should be allowed to prepare R&P accounts up to a certain threshold and it would make sense for that threshold to be the same as that for other non-company charities (currently income of £100,000; soon to be £250,000).

One further point in respect of confidence, there are problems with the quality of some charity R&P accounts but (a) the solution to that is not to ask the same charities to prepare Accruals accounts instead and (b) charity Accruals accounts are not always perfect either.

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?

The policy objective of accounting and reporting continuity is preferable to any alternative, but the requirement for an extra set of accounts for the 'conversion period' seems to be without precedent and unnecessary. Surely if 'continuity' is the aim, then the first set of reports and accounts after conversion simply have to (a) note the conversion, date, etc in the administrative information and (b) adhere to whichever reporting and accounting requirements are the stricter of the two regimes which apply to that year (with relevant explanatory notes if necessary).

Again, if the entity continues to be the same entity either side of conversion, eg, has the same charity registration number if it is a charitable company pre-conversion, what is the requirement for a SOAL at the point of conversion - it either is the same entity or it is not.

Whilst it seems sensible for the Charity Commission to withhold CIO status from a body which has failed to comply with its accounting and reporting requirements in previous years, applying that to the year in which the application is made will mean either that the body has to make some careful calculations about what will be a very limited window in which to apply in order not to fall foul of this provision, or it will be penalised for not filing early rather than for filing late, ie, it may still be within the 9 or 10 month filing window and taking its report and accounts correctly through all due processes - and still be penalised.

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?

It is not clear from the consultation document what degree of flexibility there is beyond the options drafted into the model constitutions. With the model governing documents for other forms of charity, the understanding has been that such flexibility is acceptable, but there is a 'tone of voice' in the consultation that suggests this may be less so in respect of CIOs? If this is the case, there seems to be no rationale for this other than managing the Commission's workload; if it is not the case, then this needs to be more explicit.

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?

Yes.

Two further comments

1 Submission of accounts and reports by all CIOs to the Charity Commission

The consultation refers to the requirement of all CIOs, irrespective of their size, to submit their annual report and accounts to the Charity Commission. This presumably is one of the extra duties which arises from the benefits of having incorporated status. However, it cuts across the requirements for other charities, where the threshold for submission of an annual report and accounts has just been raised from income of £10,000 to £25,000, in part, in order to ease the workload of the Charity Commission. Assuming that the Commission is not in a position to allocate extra resources in order to review all the CIO reports and accounts it receives, does this not make this provision tokenistic?

2 Single Trustee CIOs

Again, the consultation makes reference to the possibility of a CIO having a single trustee. This appears to be contrary to the concept of a charity as an entity and to present all sorts of practical complications, for example, when that individual is incapable, for whatever reasons, of carrying out the duties of the CIO.