Transferring to Charitable Incorporated Organisation (CIO) Status: The Experience of Luton and Leighton Quaker Area Meeting

Mervyn Dobbin Clerk to Trustees (2013-2018)

With contributions from Terry Oakley, Martin Sale and Bill Gardiner (Trustees)

CONTENTS

APPENDICES

Report Summary

This report describes the experience of Friends in Luton and Leighton Area Meeting with respect to the transfer of charitable status to that of Charitable Incorporated Organisation (CIO). The main body of the paper sets out the ways that Trustees and other Friends explored the issues around CIOs. The four appendices provide the documents that Trustees prepared to facilitate learning about CIOs within the Area Meeting and to move the project forward.

There were a number of stages to the project. Firstly, Friends explored and investigated the issues and concerns around the matter of CIOs. Secondly, Trustees developed a strategy to inform all Friends in the Area Meeting about CIOs and to obtain their views and concerns. The strategy involved engaging with Area Meeting in Session and with Local Meetings. Thirdly, when the decision to go ahead was made by Area Meeting in Session, Trustees engaged a solicitor, with experience of CIO applications to make the application to the Charity Commission on behalf of the Area Meeting. Each of these stages in the process was led by the Area Meeting Trustee group.

On 17 July 2017, the application was submitted online to the Charity Commission. The Registration Certificate for the new CIO charity was received by Trustees on 19 July 2017. The initial idea for a CIO at a Trustees meeting in early 2015 to confirmation of registration in 2017 was a period of two and a half years. Post registration follow -up took another two and half years. New arrangements had to be made with each of the Trustee and Local Meeting banks. Also, the processes involved in the preparation and submission of accounts were more complicated because two charities existed at the same time, the original charity and the new CIO charity.

When the CIO was registered on 19 July 2017 the intention was to transfer at the end of the financial year, all the assets (land, property and funds) of the unincorporated Charity to the CIO. This turned out to be a fairly complex procedure to achieve. In order for the Unincorporated Charity to be dissolved it was necessary for all accounts to have a zero balance as well as all land and property to be transferred to the CIO. All of these procedures were achieved by the end of 2019.

Achieving CIO status for Luton and Leighton Area Meeting was a learning exercise for all Friends involved in the process. This was especially the case for Trustees of the Area Meeting. The project lasted for a period of five years. However, as each Area Meeting is different and circumstances change, it may not take as long as five years to complete the whole process.

It is considered by Trustees that the transferring of the Area Meeting to the status of a CIO has been a worthwhile exercise and that the new status is beneficial for all concerned.

1.0   Introduction

The purpose of this report is to describe the experience of one Area Meeting in considering and making the transfer to the status of a Charitable Incorporated Organisation (CIO). It is hoped that the report will be helpful for trustee groups and Area Meeting Friends as they discern a way forward concerning possible CIO status for their Area Meeting. Achieving CIO status for Luton and Leighton Area Meeting has been a cooperative endeavour. Thanks is due to all of the Friends involved: trustees, as well as Friends in Local Meetings and in Area Meeting in Session.

2.0   Exploration

At a Trustees' meeting on 10th February 2015, Luton and Leighton Area Meeting Trustees were first alerted to the possibility of making a transfer to the status of a CIO. One Trustee with a legal background had prepared a short report on the advice issued at that time by Quaker Stewardship Committee (QSC)[1]. QSC also provided a Constitution template as agreed between BYM and the Charity Commission [2]. At that meeting, the Trustee recommended to the Trustee Group that we should become a CIO. He pointed out that one of the main advantages was that the CIO structure removed personal liability should there be a claim by individuals/companies against the Area Meeting/Local Meetings. At the Trustee meeting in June 2015 further consideration was given to the possibility of transfer to CIO status. It was agreed that two Trustees would bring back a report on CIOs to our next meeting and at the same time, contact Quaker Stewardship Committee for their advice.

3.0   Strategy

For the August 2015 meeting The Clerk circulated to Trustees in advance of the meeting a briefing paper on the main issues in connection with CIOs (see Appendix 1). We considered these to be: (i) removing the personal liability from Trustees and Friends in the Area Meeting should there for example be a large financial claim against the Area Meeting/Local Meeting (ii) The necessity to hold an Annual General Meeting (iii) Possibly reconciling any changes in the future to Quaker Faith and Practice with the wording in the new CIO constitution. Removing personal liability was the most important issue for Trustees and the main reason for applying to become a CIO. It should be noted that this protection applies only to Members of the Area Meeting.

At our October 2015 meeting two Friends reported on their attendance in September at a Trustees' conference in Friends House. CIOs were considered briefly at this conference. The two trustees came away with the impression that very few Area Meetings were seriously considering the matter of CIOs. Also, there was a feeling that no positive advice/direction was being given on the matter by QSC or BYM Trustees.

At our meeting in December a Trustee reported on his contact with the Clerk to Trustees of another Area Meeting concerning CIOs. The Area Meeting had made progress and had

---

[1] Should Area Meetings consider becoming Charitable Incorporated Organisations or Companies? (Nov 2014)
[2] Constitution of a Charitable Incorporated Organisation, with Members other than its Trustees
Adapted for Application to X Area Meeting of the Religious Society of Friends (Quakers)

already submitted a CIO application to the Charity Commission. This gave Luton and Leighton Trustees some encouragement to progress their own engagement with the matter of CIOs. Therefore, prior to the meeting of Trustees in February 2016 a draft report on CIOs was circulated to Trustees and to Area Meeting Clerks. A request was made to the Clerks to include the Report on the Area Meeting in Session agenda in March 2016 (see Appendix 2).The Report recommended that Area Meeting should transfer its status to that of a CIO and that consultation should be carried out with Local Meetings to obtain their views on the matter. Trustees then circulated a paper to Clerks of Local Meetings, setting out the issues surrounding CIOs and requesting their comments to be sent to the Area Meeting Clerk (see Appendix 3).

Trustees also consulted with other Area Meetings during this time. Trustees then prepared a report on their wider investigations and feedback from Local Meetings. A comprehensive report on their findings was presented to Area Meeting in September 2016 (see Appendix 4). It was agreed at that Area Meeting to transfer the charitable status of the Area Meeting to that of a CIO.

4.0   Constitution Template BYM and the Application to the Charity Commission

During this time Trustees paid much attention to the new constitution template which had been agreed between BYM and the Charity Commission. We wondered if any amendments could be made to that text as a Trustee queried section 18 which referred to 'the decision made by the majority of trustees at a quorate meeting'. We made enquiries at Friends House about possibly making amendments to the agreed template. The Friend who carried out negotiations with the Charity Commission concerning the CIO constitution template confirmed that the text could not be altered in anyway (apart from 'personalising' for an individual Area Meeting). Trustees agreed to take the constitution text to Area Meeting and to obtain Area Meeting's approval to submit an application for CIO status to the Charity Commission.

Area Meeting in Session agreed to the new constitution and agreed that Trustees should make an application to the Charity Commission to be registered as a CIO.

Trustees appointed a solicitor to prepare the application to the Charity Commission[3]. The solicitor had experience in making such applications and had been recommended by the Clerk of Trustees of another Area Meeting. There then followed a period in which there was regular communication between the Clerk of Trustees and the solicitor in preparing the application. The Clerk provided the solicitor with much of the information which was needed for the application. This included for example the details of each Trustee such as name, date- of- birth and address.

On 17 July 2017 the CIO application was submitted to the Charity Commission. On 19 July 2017 the Clerk to Trustees received the CIO registration certificate from the Charity Commission, with the new Charity number.

---

[3] It is not essential to use a solicitor for the application. As Clerk at that time I was involved in a number of projects and busy with Trustee matters, other than the CIO. I decided therefore that it would be best to have the services of a professional with experience of making such applications to the Charity Commission.

5.0 Post Registration Arrangements: Banks and Finance

The registration as a CIO resulted in a flurry of activity for the Trustees and for Friends in Local Meetings. One area of follow-up from the new CIO status was dealing with our banks and finances.

Our banks together with other organisations such as building societies were advised about the new CIO status and given all the necessary information such as the new charity number. These procedures applied to Area Meeting Trustees and to Local Meeting Treasurers. It was found that policies of banks and other savings institutions could be quite different. Some institutions simply amended their records to show the new charity number designated by the Charity Commission while others required the opening of new accounts using the details of the new CIO. This meant that for a period of time bank and savings accounts were operating under the name of the CIO and the original unincorporated charity, running side -by- side. The existence of the newly created CIO did not mean that the unincorporated charity was automatically closed. This closure required a separate procedure which was best left until the whole transfer process was completed. Given this situation, there were implications on the preparation and submission of the annual accounts as these had to cover both charities. Advice was obtained from the Area Meeting accountant about the management of these arrangements.

With the opening of new accounts in the name of the CIO, it was important to keep the old accounts open until all those who regularly paid money into the accounts were advised of the situation and all direct debits and standing orders were transferred.

6.0 Post Registration Arrangements Transfer of Assets

When the CIO was registered on 19 July 2017 the intention was to transfer at the end of the financial year, all the assets (land, property and funds) of the unincorporated Charity to the CIO. There was however, one undecided element and that was the place of The Friends Trusts Limited, (FTL) which was the Custodial Trustee.

Both charities continued to exist side- by- side. Trustee Meetings and Area Meeting in session included both Charity numbers in their letterheads. Annual Reports and Accounts for 2018 had to be produced for both Charities. This was complicated by the fact that funds had been transferred at different times during the year by Local Meetings. The advice of Accountants and Auditors was obtained. The CIO accounts were for the period 19.7.19 to 31.12.18. The Unincorporated Charity year was 1.1.18 to 31.12.18. It was agreed that a point during the financial year would be set as the date when those funds that had been transferred would be reckoned to be with the CIO. The Annual Report to Area Meeting in Session was identical for both Charities except for a few words.

When the issue of the transfer of assets was addressed again in early 2019, it became clear that it was a complex matter and there was no definitive advice from Quaker Stewardship Committee. QSC had been in communication with the Charity Commission about this kind of issue for some time. The Trustees agreed to transfer the assets via a General Vesting

Declaration drafted by their solicitor. The Clerk to Trustees had already enquired of the Charity Commission how to transfer the assets and eventually received a response which informed him that this could be done by a Section 105 Order, which the Charity Commission drafted. Advice was sought from Friends Trusts Limited and Quaker Stewardship Committee about whether the assets should be held by the CIO or to ask FTL to become a holding company for the assets. This latter option was settled upon, mainly because this provided additional assurance for the Trustees in making decisions about the disposal of assets. The 105 Order was sealed on 5th December 2019.

In order for the Unincorporated Charity to be dissolved it is necessary that all accounts have a zero balance as well as all land and property to be transferred to the CIO. Funds held by most Local Meetings and those of AM were transferred to new accounts registered with the CIO Charity by the end of the financial year 2019. However, one Local Meeting had difficulty with setting up new signatories for their bank account and could not transfer their funds. When this has been achieved the Unincorporated Charity will be dissolved.

7.0   Summary and Conclusions

It should be borne in mind that the whole process of achieving CIO status and completing all the necessary follow-up financial/legal arrangements, ran from early 2015 until the end of 2019, with CIO registration being confirmed in July 2017. Therefore, it must be assumed by any Area Meeting contemplating achieving CIO status, that the whole process is likely to take a period of years. Although, circumstances vary in each Area Meeting and the lengths of time taken will also vary.   Also, arrangements with the Charity Commission may be different. For Luton and Leighton there were identifiable phases for the project: (i) a period of discernment for Trustees, Friends in Area Meeting in Session and Friends in Local Meetings (ii) making the application to the Charity Commission (iii) dealing with the legal and financial follow-up arrangements, involving AM Trustees and Local Meeting Friends.

The determination to achieve CIO status was a learning experience for all involved: AM Trustees, AM Clerks, Local Meeting Clerks and all Friends who participated in any sessions to do with the matter. It feels that it has been worthwhile for all concerned, to make the change to a CIO.

APPENDIX 1: PAPER TO TRUSTEES ABOUT INITIAL IDEAS ON CIOS

Charitable Incorporated Organisations (CIOs): The Key Issues for Luton and Leighton Area Meeting

Introduction

Advice on CIOs has been provided by Quaker Stewardship Committee but no recommendation has been given that Area Meetings should move to this new structure. A Constitution template for Area Meetings that wish to transfer to the CIO structure has been agreed with the Charity Commission. Two Friends organisations have become CIOs: Friends Southern Summer Events and Friends House (London) Hospitality Ltd.

CIOs: Key Issues

Issue One: Safety Net

Under current arrangements in the Area Meeting, all members are personally liable should there be a claim for a large financial payment, against the Area Meeting. Trustees and Friends in responsible positions such as convenors of committees would in particular feel the emotional and financial impact of such a claim.

The CIO structure removes personal responsibility from individuals: Clause 8 of the Constitution: *'If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities'.*

Issue Two: Annual General Meeting

The Area Meeting does not hold an AGM.

The CIO structure requires the holding of a meeting described as an AGM:

Clause 10: *'At least one meeting shall take place each year which will be designated an Annual General Meeting at which the trustees will normally present the previous year's annual report and accounts'.*

Issue Three: Changes to Quaker Faith and Practice

If changes are made to Quaker Faith and Practice, the Area Meeting needs to check that any changes are not contrary to the requirements of the CIO Constitution.

APPENDIX 2: PAPER ON THE CIO PROPOSAL TO AREA MEETING IN SESSION

Should Luton and Leighton Area Meeting become a Charitable Incorporated Organisation (CIO)?: A Summary Report by Area Meeting Trustees

1.00   Introduction

In November 2015, Area Meeting agreed a number of priorities for 2016, including the following:

'Consider the establishment of a new Charitable Incorporated Organisation (CIO) structure for the Area Meeting'

Area Meeting Trustees have considered the matter of Charitable Incorporated Organisations (CIOs) at three meetings. Minute 59.15 agreed at the Trustee meeting on 8 December was as follows:

'Since the discussion at our last meeting on this matter, Bill G has been in touch with the Clerk West Kent Area Meeting. The matter has been considered by West Kent Area Meeting in session and the required documentation has now been submitted to the Charity Commission in order for their Area Meeting to become a CIO. Bill G has been able to update us on the West Kent situation tonight.

We agree that it is now time to take this matter to an Area Meeting Business Meeting in order that the matter can be considered by Friends. We further agree the Clerk and Bill G should prepare a report for Area Meeting, which they will circulate to Trustees prior to our meeting in February 2016'.

The purposes of this report are: (i) to present Area Meeting Friends with the background to the Trustee discussions about CIOs (ii) to clarify the meaning of CIOs and (iii) to set out the issues involved for Luton and Leighton Area Meeting, should the AM wish to become a CIO.

2.00   Current Charitable Arrangement: Governing Document

Currently, the Luton and Leighton Area Meeting Charity is governed by the Governing Document which was adopted on 10 December 2006 by minute 108.06.12 of Luton and Leighton Monthly Meeting. The document provides guidance on the governance of the Area Meeting and sets out the Object of the Charity as follows:

'The object of L&L Area Meeting is the furtherance of the general religious and charitable purposes of the Religious Society of Friends (Quakers) in Britain in the area of L&L Area Meeting and beyond.'

The Luton and Leighton Area Meeting charity is, in law, an unincorporated membership association.

3.00   The CIO Charitable Arrangement: Different from a Company

A CIO is an "Incorporated Organisation", and as such its members are considered in law to act as one body, not as individuals. This complete removal of personal responsibility is NOT

the same as the Limited Liability of individual shareholder members of a Company, whose liability is limited to the "face value" of the share (usually £1). Furthermore, Ltd Companies are governed by the relevant Company Act, unlike a CIO which is governed currently by the Charities Act 2011. Also, unlike this Friends CIO (using discernment by Quaker Business method and Nominations procedure), Ltd Company decisions are taken by majority vote (even including the Chairman's "casting vote") and management appointments are made by Shareholder votes at a General Meeting. It should be noted that Friends Trust Ltd. is a company limited by guarantee of its members (CLG). This structure was until 2011, the only method by which Trustees could limit their liability (to £1). However, Friends Trusts Ltd, unlike a CIO is required to report annually both to Companies House and to the Charity Commission.

4.00   The Quaker CIO Constitution Template (Governing Document)

In November 2014, Quaker Stewardship Committee, as a result of negotiations with the Charity Commission, agreed a new Constitution (Governing Document) template for Area Meetings that wish to transfer to the CIO structure. This new constitution is based on the standard CIO especially tailored to the ways in which Friends carry out their business and to the form of governance which applies throughout BYM. *Appendix One* illustrates the CIO constitution with the detail inserted as applicable to Luton and Leighton Area Meeting. The guidance for the Area Meeting in this new document is very similar to that which is set out in the current Governing Document. Two Friends organisations have become CIOs: Friends Southern Summer Events and the Quakers & Business group. Also, West Kent Area Meeting made an application for CIO status to the Charity Commission in December 2015.

5.00   CIOs: The Key Issues

Issue One: Personal Liability and the Safety Net

Under current arrangements in the Area Meeting (in law, an unincorporated membership association), all members are personally liable, should there be a claim against the Area Meeting for a large financial payment, that exceeds AM Reserves. Trustees and Friends in responsible positions of trust, such as clerks, treasurers and convenors of committees would in particular feel the emotional and financial impact of such a claim.

The CIO structure removes personal responsibility from individuals: Clause 8 of the Constitution: *'If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities'.* Therefore, within the CIO umbrella, Members of Area Meeting automatically have this protection. This situation does not apply in law to Attenders. However, if transfer is made to a CIO, the Area Meeting would continue the protection for all, Members and Attenders, as it is under the current charity arrangement. All Members and Attenders are covered under the Area Meeting Insurance Policy.

Thus, this CIO structure provides that all AM members, not only AM Trustees, have zero liability (i.e. not even a token £1). Such an arrangement, where there is no threat to a Friend's personal assets in the event of a claim, is considered to be a major advantage of the CIO structure.

Issue Two: Annual General Meeting

Luton and Leighton Area Meeting does not hold an AGM.

The CIO structure requires the holding of a meeting described as an AGM:

Clause 10: *'At least one meeting shall take place each year which will be designated an Annual General Meeting at which the trustees will normally present the previous year's annual report and accounts'.*

Trustees present the annual Area Meeting Report to Area Meeting in November of each year. This annual report is subsequently sent to the Charity Commission. Therefore, this particular Area Meeting could be considered as the 'Annual General Meeting' within any new CIO structure. It should be noted that there is no extra requirement to report to Companies House.

Issue Three: Changes to Quaker Faith and Practice

If changes are made to Quaker Faith and Practice, the Area Meeting needs to check that changes are not contrary to UK law, currently the Charities Act 2011 which sets out the CIO structure.

5.00   Summary and Conclusions

The new Constitution as agreed by QSC with the Charity Commission provides Area Meeting Friends with the opportunity to transfer current charitable status to a different structure, the Charitable Incorporated Organisation. QSC has provided the new Constitution template as agreed with the Charity Commission, so that Area Meetings might consider and pursue the CIO option for the Charity. The most significant advantage of the CIO structure is the removal of personal liability should a substantial claim be made against Friends at Area Meeting or Local Meeting level.

6.00   Recommendations

Area Meeting Trustees recommend to Area Meeting that:

1. The Area Meeting should agree in principle to transfer its charitable structure to that of a Charitable Incorporated Organisation (CIO)
2. If Recommendation 1. is agreed by Area Meeting, Trustees should consult with Local Meetings on the detailed proposals for a CIO.
3. When the consultation process is completed, the matter is brought back to Area Meeting for further consideration.

APPENDIX 3: PAPER ON CONSULTATION WITH LOCAL MEETINGS

Should Luton and Leighton Area Meeting become a Charitable Incorporated Organisation (CIO)?: One Page Summary of Trustees' Report for Consultation with Local Meetings as Agreed by Area Meeting Minute 16.03.08

Introduction

A new kind of structure for charitable bodies is available called a Charitable Incorporated Organisation (CIO). The full Trustee report to Area Meeting explores whether Luton and Leighton Area Meeting should adopt the new structure.

CIO Constitution Agreed with the Charity Commission

Currently, the Luton and Leighton Area Meeting Charity is governed by the Governing Document (Constitution) which provides guidance on the governance of the Area Meeting. In November 2014, Quaker Stewardship Committee issued a new draft Constitution (Governing Document) template for Area Meetings for use by those Area Meetings that wish to transfer to the CIO structure. This new constitution is based on the standard CIO especially tailored to the ways in which Friends carry out their business and to the form of governance which applies throughout BYM.

CIOs: Key Issues

- Under current arrangements in the Area Meeting (in law, an unincorporated membership association), all members are personally liable should there be a claim against the Area Meeting for a large financial payment, that exceeds AM Reserves. The CIO structure removes personal liability from individuals. Such an arrangement, where there is no claim against a Friend's personal assets is considered to be a significant advantage of the CIO structure.
- The CIO structure requires the holding of a meeting described as an AGM. The Area Meeting in November, when Trustees present the Area Meeting Annual Report, could be considered for CIO purposes as the AGM.
- If changes are made to Quaker Faith and Practice, the Area Meeting needs to check that changes are not contrary to UK law, currently the Charities Act 2011 which sets out the CIO structure.

Recommendation

4. Trustees are asked to consult with Local Meetings on the detailed proposals for a CIO (Area Meeting Minute 16.03.08)

CIOSummaryOnePageAmended16March2016

APPENDIX 4: PAPER TO AREA MEETING IN SESSION – REPORT ON CONSULTATIONS AND RECOMMENDATION FOR TRANSFER TO CIO STATUS

Transfer of the Luton and Leighton Area Meeting Charity to a Charitable Incorporated Organisation (CIO): Report on Consultations Local Meetings and Others

(September 2016)

Introduction

At the Area Meeting in March 2016 it was agreed that Trustees should consult with Local Meetings on the proposal to transfer the status of Luton and Leighton's Area Meeting to that of a new kind of Charity: a Charitable Incorporated Organisation (Minute 16.03.08 refers). This report to Area Meeting summarises the responses received from Local Meetings and also responses from Friends in a number of BYM Area Meetings and in two Quaker organisations.

Responses from Luton and Leighton Local Meetings

Each Local Meeting has included the CIO topic in one of their business meetings and sent a minute to the Clerk of Trustees. In their minutes, Meetings generally express their support for transfer to a CIO. The Harpenden minute expresses some uncertainty about whether the Area Meeting should take such a step. The Luton minute expresses concern about the administrative task in making an application.

Responses from BYM Area Meetings and Quaker Organisations

The Area Meeting Clerk contacted the Clerks of Area Meetings within the Clerks Cluster about their involvement with the CIO issue. West Kent Area Meeting became a CIO in 2015. Of the thirteen AMs that responded, most had not discussed the CIO matter. The Clerk of Trustees contacted two Quaker organisations that had transferred or established their status as CIOs. Friends Southern Summer Events and Quakers and Business report that there are no problems in making the application and there have been no ongoing issues or problems as a CIO.

Summary and Conclusions

As requested by Area Meeting, Trustees have consulted with AM's Local Meetings and also sought comments on CIOs from a number of other Area Meetings and Quaker Organisations that have become CIOs. Luton and Leighton Local Meetings support the proposal to transfer to a CIO, but with slight reservations from two meetings. Quaker Organisations, which are CIOs are very satisfied with the arrangement. A number of AMs who responded to our request for comment have not considered the matter of CIOs and some have rejected it, for reasons not associated with the substance of the CIO arrangements. At their meeting on 30 August, Area Meeting Trustees considered the feedback from Local Meetings and other Area Meetings and Quaker organisations.

Recommendation

Area Meeting Trustees recommend that Luton and Leighton Area Meeting should transfer its charitable status to that of a Charitable Incorporated Organisation and that Trustees should now make an application to the Charity Commission for this purpose.