

Introduction

This paper introduces the relatively new form of charity – the Charitable Incorporated Organisation – which HBA recommends that all new hospital radio stations adopt, and all existing members that are currently unincorporated consider adopting at their earliest convenience.

Applicability

This guidance is applicable only to HBA members based in England and Wales. It is hoped that similar guidance will be produced at a later date for those members based in Scotland and Northern Ireland.

What is a CIO?

A CIO is a modern form of incorporated charity, which brings most of the advantages of being a Company Limited by Guarantee, without the need to register with Companies House or deal with company law.

You can read more about CIOs on the [GOV.UK website](http://gov.uk).

Advantages of being a CIO

As corporate bodies, the law considers CIOs to be persons in the same way as individuals. This gives CIOs the legal capacity to do many things in their own name that a person can do, such as entering into commercial contracts and taking out leases. A CIO can also hold an Ofcom licence in its own name. In addition, generally the Trustees of CIOs aren't personally liable in case of financial or contractual difficulties – they have “limited liability” similar to company directors.

In contrast, in the case of “unincorporated” charities:

- the Trustees are personally liable if things go wrong;
- it won't be able to enter into contracts or control some investments in its own name; and
- two or more “holding trustees” will have to “hold” any land in trust for the charity.

Another advantage for smaller HBA members that are currently not registered charities is that CIOs must be registered with the Charity Commission, irrespective of their actual or projected income, as they do not legally exist until they are registered. Forming, or converting to, a CIO is, therefore, a way of side-stepping the £5,000 annual income threshold that the Charity Commission requires for registration of unincorporated charities.

Disadvantages of converting to a CIO

The disadvantages are due to the fact that the CIO is legally a different organisation from the existing unincorporated charity:

- it will have a new charity number;
- it will need its own bank accounts;
- it will be necessary to register the CIO as a charity with HMRC for Gift Aid etc.; and
- all organisations with whom the station does business will need to be informed.

HBA - supporting Hospital Broadcasting in the UK

For more information see www.hbauk.com, e-mail info@hbauk.com, or call 0870 321 6019.

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These are all primarily one-off pieces of additional administration, and should not cause HBA members ongoing additional work. The reporting and accounting regime is basically the same as for an unincorporated charity, with the need for Annual Returns and Trustees' Annual Reports and Accounts.

How does an existing hospital radio station convert to a CIO?

Converting an existing unincorporated charity into a CIO actually involves applying to register the CIO as a new charity, getting it up-and-running, then formally closing the unincorporated charity and merging it with the CIO.

Some things to note:

- prior to applying to [register the CIO](#) as a new charity you need:
 - a PDF of a signed copy of its constitution – see below; and
 - a PDF of a completed and signed [Trustee Declaration Form](#);
- you apply to [register via an online service](#), which asks many questions (see below), but the partially-completed application can be saved and returned-to at any time;
- it takes up to 8 weeks for the Charity Commission to register the CIO, and the new charity doesn't formally exist until the Commission does so;
- if you wish the application to register the CIO to go through as smoothly and quickly as possible to stray as little as possible from the HBA's model constitution, and base your answers to questions on the application form on our model answers – see below;
- once the CIO is registered, you can run both charities in parallel for a period of time whilst you sort out new bank accounts and deal with all the rest of the adminstrivia;
- when the CIO is in a position to take over the operations of the unincorporated charity, the latter needs to be dissolved in accordance with its constitution, and its assets and operations transferred to the CIO (this will usually involve calling a General Meeting and getting the members to agree to a resolution);
- once the transfer of operations is complete:
 - a final set of accounts for the unincorporated charity need to be prepared showing a nil balance in all bank accounts, and no assets;
 - the dissolution of the unincorporated charity must be notified to the Charity Commission using its [online service](#);
 - the take-over should also be [added to the register of charity mergers](#). Registering the merger is usually optional, but is a legally-sound way to make sure any legacy or donation left to the original unincorporated charity will go to the new CIO;
- the first financial year of the CIO can be up to 18 months long, so you can choose its financial year end to best suit your circumstances.

The Charity Commission's guidance on the process for converting an unincorporated charity to a CIO is outlined [here](#).

HBA Model CIO Constitution

HBA has a model constitution for members based in England and Wales, and constituted as a Charitable Incorporated Organisation (CIO). It is based on the Charity Commission's model constitution for Association CIOs, but includes:

- suggested selections where the Charity Commission provides options;
- some suggested text from the appendix to the Charity Commission model;

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- some additional text relating to Appointed Trustees, taken from the Charity Commission model for Foundation CIOs;
- the HBA model charitable objects; and
- some suggested modifications to fine-tune the model for use by HBA members.

How to use this model constitution

The model is available as an editable Microsoft Word (.docx) document, with all the changes from the standard Charity Commission generic model CIO constitution highlighted.

Review the document and all the changes in detail. When you are happy, accept all the change-tracked changes. This will leave a clean version of the document, but with the source of each section of wording still evident.

Placeholders for text to be inserted, or alternative versions/optional text are enclosed in square brackets ([...]) – carefully search through and amend as necessary.

The following optional text in clause 3:

[Nothing in this constitution shall authorise an application of the property of the CIO for the purposes which are not charitable in accordance with] [section 7 of the Charities and Trustee Investment (Scotland) Act 2005] [and] [section 2 of the Charities Act (Northern Ireland) 2008].

is only applicable if your charity has cross-border operations, and thus needs to abide by the (slightly different) legal definitions of charity in the different countries of the UK. It should be possible for almost every HBA member based in England or Wales to delete all of this text. If your charity does operate across one or more of the jurisdictional borders, you need to select the correct combination of text to cover your situation.

When you are entirely happy with the document, select all the text and convert the colour to black. Print the document and get the initial trustees, as listed in Clause 12, to both sign the printed copy and complete a [Trustee Declaration Form](#). Produce PDF versions of both these documents, as you will need to upload them as part of the online registration process.

The online registration process

You apply to register the CIO via an [online service](#). The application is a multi-page form containing many questions. You can save the partially-completed application and returned to it at any time.

Some pointers to completing the form:

- You are registering a CIO.
- If the existing unincorporated charity is already registered with the Commission, when asked for the “type” of CIO, select “incorporating”, otherwise select “new CIO”.
- The organisation’s governing document is an Association-style constitution (one where there are members who elect the Trustees). If you are using the HBA model, it does not contain any provisions for “entrenchment”, and you are using a Charity Commission model (because our model is based on the Commission’s model).
- Under classification of charity, select:
 - “the advancement of health or saving of lives” for WHAT your charity sets out to do;
 - “the general public/mankind” for WHO your charity helps; and
 - “provides services” for HOW your charity operates (some stations, particularly those adopting the public health promotion-focused charitable object, might also select “provides advocacy/advice/information”).

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- Assuming you are taking the opportunity to update your charitable objects to use the HBA model objects (which is strongly advised), you will select the “changing charitable objects” option, and be asked to provide new objects, and to justify the change. Assuming that you are adopting both HBA model objects, explain that:

“Object 1 updates [the unincorporated charity]’s existing object, using wording from the model object agreed between the Commission and the Hospital Broadcasting Association. Object 2 is 2nd HBA model object clause, allowing us to promote health and wellbeing to general population as well as entertaining those in hospital.”

- Questions about the purpose of the new charity and how it will deliver public benefit:
- In response to the question asking what the organisation does to achieve its purpose, include as the first line:

“This application has been overseen by the Hospital Broadcasting Association.”

This tells the Commission that you are following this guidance. A model version of the rest of the answer to this question is:

“The first charitable object is a continuation of [existing charity]’s existing charitable object, using the model wording (agreed with the Commission) from the Hospital Broadcasting Association. This object will be delivered as we have done for the last [insert number] years - by providing a hospital radio service to patients at the [insert details of hospital]. Our volunteers visit patients, collect music requests, and broadcast these requests, along with other music, speech and entertainment programmes via the hospital’s bedside entertainment system.

“The second object is an instantiation of the Hospital Broadcasting Association’s second model charitable object (again, agreed with the Commission) and will enable [new CIO] to respond to the modern circumstances of the NHS, with patients spending less time in hospital, and where the promotion of health and wellbeing - and thus prevention of ill-health, and the need to attend hospital - is becoming much more important. It is our intent, subject to developing a viable business plan and access to suitable funding, to start providing a [community / internet-based] radio service aimed at improving the health and wellbeing of the local community, along the lines of the Hospital Broadcasting Association guidance that it provides alongside its model health promotion charitable object.”

- A model answer to the question about how the above purpose is beneficial is:

“The benefit of [new CIO] providing a ward visiting and hospital radio service to patients at [hospital] (object 1) is the improved mental health state of patients who find themselves unexpectedly confined to a hospital environment. Having a chat with our volunteers, and listening to our service helps to distract from patients’ current circumstances and to meet their psychological and social needs (see for example, “The psychological and social needs of patients”, BMA, Jan 2011). There is a growing evidence base that shows listening to music (and especially favourite music) reduces the perceived level of pain (see, for example, research from Glasgow Caledonian University and from McGill University, Montreal).

“Extending [new CIO]’s service to provide a health promotion/education-focused service to the local population will contribute to improving the general level of health and wellbeing in the local community. This will enable people to live an independent, active, fulfilling life for longer. In addition, it will contribute to reducing the workload and thus the cost of local health service provision. In developing such a service, it is our intent to follow the HBA guidance on providing public benefit through such a service - see attached.”

- Answer the question about who can benefit with:

“All residents living in [stipulated area]”.

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- Answer “no” to the question about whether the beneficiaries are defined by reference to a protected characteristic.
- Questions about the operations of the organisation and how they will deliver public benefit:
 - A model answer to the question about resource allocation is as follows:
“Our services are available equally to all. For the current hospital radio service, access is, in practice, only available to patients at [hospital]. It is intended to offer the public health promotion radio service to all within the local area.”
 - The question about project work is not applicable, and so should be answered “n/a”.
 - A model answer to the question asking both about a grant-making policy and a strategy/business plan is:

“grant-making policy - n/a.”

“Strategy / business plan: For the existing hospital radio service, this is business-as-usual for us. A copy of the latest Trustees' Annual Report and Accounts for [existing charity] is attached and contains more details. For the public health promotion service, the strategy/business plan is in the early stages of development at the time of application.”

If you are intending of applying for a community radio licence, you might add:

“An application for a community radio licence needs to be from an incorporated organisation, so one of the reasons that we are applying to incorporate at this time is to ensure that we are in a position to apply to Ofcom if we are able to devise a robust business plan for such a service.”

- For the question about membership of the CIO, a model answer is:
“No, membership is not a requirement to benefit. Membership is used as a means of allowing stakeholders (e.g. volunteers) to have a say in how the organisation is managed (e.g. by electing trustees).”
- A model answer to the question about services and facilities provided to the public is:
“Yes. We provide a ward visiting and hospital radio service to patients at [hospital]. The radio service is available via the hospital's bedside entertainment system. We intend to adapt to the modern circumstances of the NHS by providing a radio service promoting the living of a healthy, active lifestyle to the local population. It is intended that this will be freely available to all.”
- Your answer to the question about premises will depend upon your circumstances, but might be along the lines of:
“[existing charity] currently operates from accommodation provided free-of-charge by [NHS organisation] under an informal arrangement, as has been the case with predecessor NHS organisations for [insert number] years. [new CIO] will take over the accommodation currently used by [existing charity] under the same arrangements.”

If you expect that you may be required to enter into a formal leasing or licensing agreement on your accommodation in the near future, or have already been asked to do so, you might wish to add something along the lines of:

“We are in the process of arranging a formal [lease / licence] on our accommodation within the hospital [for a peppercorn rent]. This will be in the name of [new CIO] (assuming this application is successful). One of the reasons for converting to a CIO is so that this [lease / licence] can be signed in the name of the CIO, rather than us having to appoint holding trustees.”

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- You are asked about risks of detriment or harm. A model answer is:

“Yes, there is potential detriment/harm to vulnerable patients within the hospital from our ward visitors.”

“[existing charity] has a safeguarding policy, and this will be re-implemented within the CIO prior to the transfer of operations. As part of this policy, and in line with NHS guidance and legislation, we follow the NHS pre-employment check procedure for all volunteers; this includes DBS checks for all volunteers with access to patients as part of their regular activities.”

- And finally in this section, you are asked about personal benefits. A model answer is:

“Volunteers are provided with the training necessary to fulfil their roles within the charity. This will typically include, for example, radio presentation and production training, but may also include fundraising, communications skills, management and governance. This inevitably provides some incidental personal benefit, for example to those interested in a career in the media.

“Due to the small size of the charity, the vast majority of this training is provided in-house, although we do pay for attendance at a small number of cheap (typically £10 - £20) training courses run by, for example, the Hospital Broadcasting Association, the Foundation for Social Improvement, and the Small Charities Coalition. All expenditure is pre-approved by the Trustees, and approval granted only if it would further the charitable objects.

“We regularly enter both the organisation and individual volunteers into the National Hospital Radio Awards, run annually by the Hospital Broadcasting Association. We do this as winning, or even being shortlisted, significantly raises the public profile of the charity. There is clearly some personal kudos to be gained as part of this (particularly if the award is for an individual volunteer, rather than for the organisation) but the trustees feel that the personal benefit is a necessary, incidental, benefit to that gained by the charity - and any such personal benefit often results in more motivated volunteers.”

- Questions on finance and funding:

- A model answer to the question about existing funding streams is:

“[existing charity] raises its funds through a combination of donations, fundraising events/activities, grants from local councils and [insert others as appropriate]”

- Unless you are planning to fund the new organisation differently, the answer to the question regarding future funding should be along the lines of:

“We intend to continue to raise funds as previously to sustain the hospital radio service. We believe that we may also be able to sustain an online health promotion radio service without significant changes to the level or methods of fundraising.”

If you are considering applying for a community radio licence to deliver a health promotion-focused service, you might add something like:

“If we are successful in applying for a community radio licence from Ofcom, we would intend to significantly increase the effort applied to grant applications from statutory bodies and charitable foundations. The full business case and business model for this service is in the early stages of development.”

- In most cases, you will be able to answer “no” to the questions about donations for tax planning purposes, substantial donations and loan financing.
- You cannot apply for a bank account for a CIO until it has been registered. You can, therefore, ignore the questions about this.

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- You should answer “yes” to the question about personal benefit (as you have identified some in an earlier answer). The required explanations might be similar to the following:

“Who gains and how?”

“All volunteers potentially personally benefit from the necessary training that is provided (e.g. in radio presentation and production).”

“How will the award of the benefit contribute to the organisation achieving its purpose(s)?”

“Training is necessary to allow our volunteers to provide our service. Only training that is relevant and necessary to the delivery of our charitable service is provided.”

“How will the other trustees manage the conflict of interest that arises from the personal benefit?”

“All expenditure is pre-approved by the trustees. Policies preclude the approval of payment to yourself or to a close family member.”

Before you submit the application, make sure you save it and get a printer-friendly version for review – this will generate a PDF showing the answers to all your questions. It is much easier to review than the on-screen form.

Finally, remember to attach the following supporting documentation to your application prior to submission:

- a copy of the CIO’s constitution signed by all founding trustees;
- a completed and signed Trustee Declaration Form;
- a copy of most-recent Trustee’s Annual Report and Accounts of the unincorporated charity (or business plan for the new charity) to evidence the sustainability of the new CIO; and
- a copy of the HBA guidance on public health promotion broadcasting (if the CIO’s constitution includes the health promotion charitable object).