

Incorporation of the Charity Law Association

Information for members and outline of draft transfer agreement

Proposed resolution for consideration by members on 25th November 2019 in relation to the indemnity in the transfer agreement

Incorporation – what is the proposal?

It is proposed that the CLA, which is currently unincorporated, should incorporate. To this effect, a non-charitable company limited by guarantee is being incorporated to receive the assets and activities of the CLA. It is proposed that the transfer of assets will take place on 31 December 2019 and that we will operate from the new company from 1 January 2019.

Key provisions of the new company

The new company's articles aim to replicate the provisions of the current constitution as far as possible and:

- the objects are unchanged;
- members of the current unincorporated association will become members of the new company (subject to agreeing to a £1 guarantee)*; and
- the appointments of the executive committee will be made by the members at an A.G.M., as they are currently (with, as at present, a power to co-opt directors until the following A.G.M.).

(*note that the first members and directors of the company on incorporation are the executive committee, but from 1 January 2020 the wider CLA membership will be appointed (on paying the usual subscription)).

Proposed transfer agreement

Subject to the members approving the resolutions below, the executive committee will enter into a transfer agreement transferring all assets, activities and liabilities to the new company. It is proposed that the following indemnity will be contained in the transfer agreement:

"3. Indemnity

- 3.1 *In consideration of the transfer, assignment and/or delivery agreed to be made, the Company undertakes with the Executive Committee to indemnify the Executive Committee and each of them jointly and severally against all costs, claims, demands,*

actions and proceedings (including, without limitation, each loss, liability and cost incurred as a result of defending or settling a claim alleging such a liability) relating to the Assets and the Activities and in respect of all liabilities and commitments arising in connection with the Activities or the Assets.

3.2 *The Company shall as from the Effective Date:*

3.2.1 *pay all moneys, fees, taxes, expenses and outgoings accruing after the Effective Date or to be incurred after the Effective Date in respect of the Assets and Activities; and*

3.2.2 *pay, satisfy, perform, observe, discharge and otherwise satisfy all the Liabilities.*

3.3 *The indemnity and obligations in clause 3.1 and 3.2 shall not extend to any liability:*

3.3.1 *arising from any act or omission by an indemnified member of the Executive Committee in respect of which the indemnified member of the Executive Committee:*

(a) *knew the act or omission was a breach of trust or breach of duty;*

(b) *committed the act or omission in reckless disregard of whether it was a breach of trust or breach of duty; or*

(c) *committed a criminal act; or*

3.3.2 *in respect of which an indemnified member of the Executive Committee has given any personal guarantee which has not been disclosed to the Company before the date of this Agreement.*

3.4 *The total amount payable by the Company under the indemnity given pursuant to this clause 3 shall be limited in aggregate to the value of the Assets.*

3.5 *In considering any claim by one or more indemnified member(s) of the Executive Committee under the indemnity given in this clause 3, the Company shall act reasonably and shall give due consideration to whether the act or omission in question was committed honestly and reasonably and whether a court would in all the circumstances be likely to relieve the relevant member(s) of the Executive Committee from liability on any claim for relief made by the relevant member(s) of the Executive Committee."*

The relevant definitions are as follows:

"Activities" *all of the activities of the Association in accordance with the Constitution as at the Effective Date;*

s" *property, assets and rights owned by or due (whether now payable or not) to the Executive Committee in relation to the Activities as at the Effective Date;*

liabilities" *ts owed by and liabilities of the Executive Committee both actual and contingent as at the Effective Date in connection with the Assets and the Activities;*

At the meeting on 25th November, we will therefore ask the members to pass the resolution set out below.

Timing

Whilst we are not at this stage dissolving the unincorporated association, we are mindful that this detailed notice of the business of the meeting will not have been circulated 21 days before the meeting. If any member has any objection to the vote being taken at the November meeting, please let us know as soon as possible (and in any event before Friday 22 November), and we will look at putting the transfer resolution back to the next meeting.

The resolution to dissolve the unincorporated association will be passed in the new year, post transfer.

If any member would like to see the proposed articles, please email admin@charitylawassociation.org.uk.

Proposed resolution

"To authorise the Executive Committee to transfer the assets, activities and liabilities to the new company in accordance with the provisions set out above, including the indemnity."