

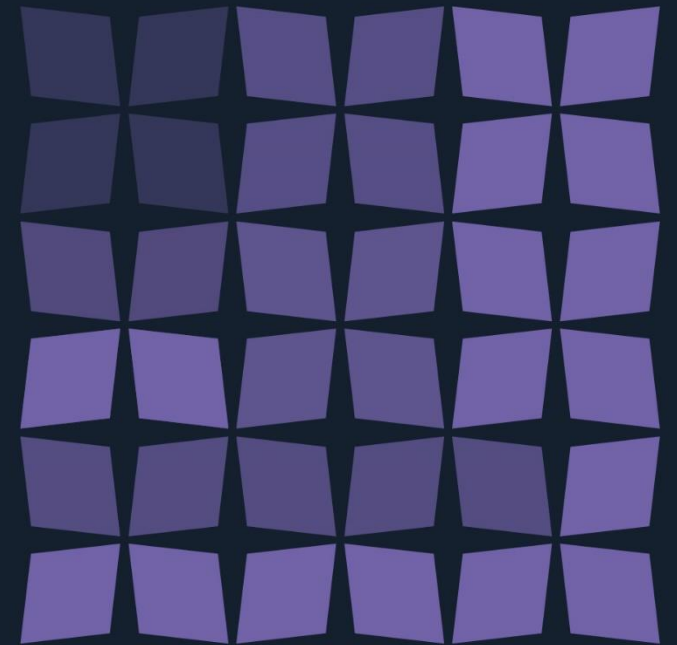


# Legal Essentials You Can't Miss

Charities, Leases, Hire Agreements & Incorporations

Clerks Seminar 20265, Buckinghamshire & Milton Keynes  
Association of Local Councils

Peter Spencer, Wellers Law Group



# Overview

## Context and Audience

The seminar targets parish clerks, councillors, and advisers involved in charity land and governance.

## Key Scenarios Covered

Topics include trustee resignation, charity incorporation as CIO, and lease/licence considerations.



# Trustees Stepping Down

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# Penge Parish Council



Parish Council  
Owns the Freehold Land



Village Hall on the land



Leased to Charitable Trusts where the  
individuals are Trustees of the  
Charitable Trust



# Lease and Trust Deed

Often the lease will contain the following provisions: -

- + Certain bodies e.g:-
  - ❑ Cub scouts, parochial church council
  - ❑ local women's institutes
  - ❑ judo club etc.

can nominate a representative to the Trustee board.

if the Trustees want to:-

- + surrender the lease,

or

- + decide what happens to the net assets of the charity upon dissolution,

they need to call a meeting of the local inhabitants and get the decision ratified by three-quarters of the inhabitants who attend the meeting.

- + The land is held as special trust property, meaning that the Village Hall may only be used as a Village Hall and may not be sold without undertaking the process at 2 above.



# Available Options

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# Two Main Routes When Trustees Cannot Continue

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## Option One: Parish Council as Trustee

Parish council can become sole corporate trustee, simplifying governance but raising conflict of interest concerns.

The issue with this approach is that the same party **cannot be both the landlord and the tenant of a lease.**

However, we do have a solution to this, which is to establish a separate corporate entity, a charitable incorporated organisation (CIO) and make the parish council the sole corporate Trustee of the CIO.

The CIO can enter into leases in its **own name** whereas a charitable Trust cannot (because they are not a corporate entity).





Penge Parish Council of [address] Lessor; and  
Penge Parish Council of [address] as sole  
corporate trustee of Penge Village Hall, Lessee.



Penge Parish Council of [address] Lessor; and  
Penge Village Hall CIO of [address], Lessee.



# Two Main Routes When Trustees Cannot Continue

## Option Two: Dissolve the Charity

The second way of dealing with the Trustees stepping down is simply to dissolve the charitable Trust.

This will involve surrendering the lease and having a meeting with the inhabitants to agree this.

The **issue** with this approach is that the assets of the charitable Trust will not **only** be the lease itself but there will also be other assets they may have, these can include:

- Money in the charity's bank account;
- Chairs, tables, equipment; and
- Even vehicles or any other items which are held pursuant to the charitable objects; and
- Employees.

The complicating feature of these remaining assets is that they cannot be transferred to the parish council in its **own right**,

The charitable Trust Deed will state that **they can only be used pursuant to the charitable objects, so should only be donated to** other charities with similar objects.



# Incorporation as a CIO

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# Step-by-Step CIO Incorporation Process

## Initial Consultations

Identify and engage historic user groups  
Undertake consultation process

## Call meeting of local inhabitants

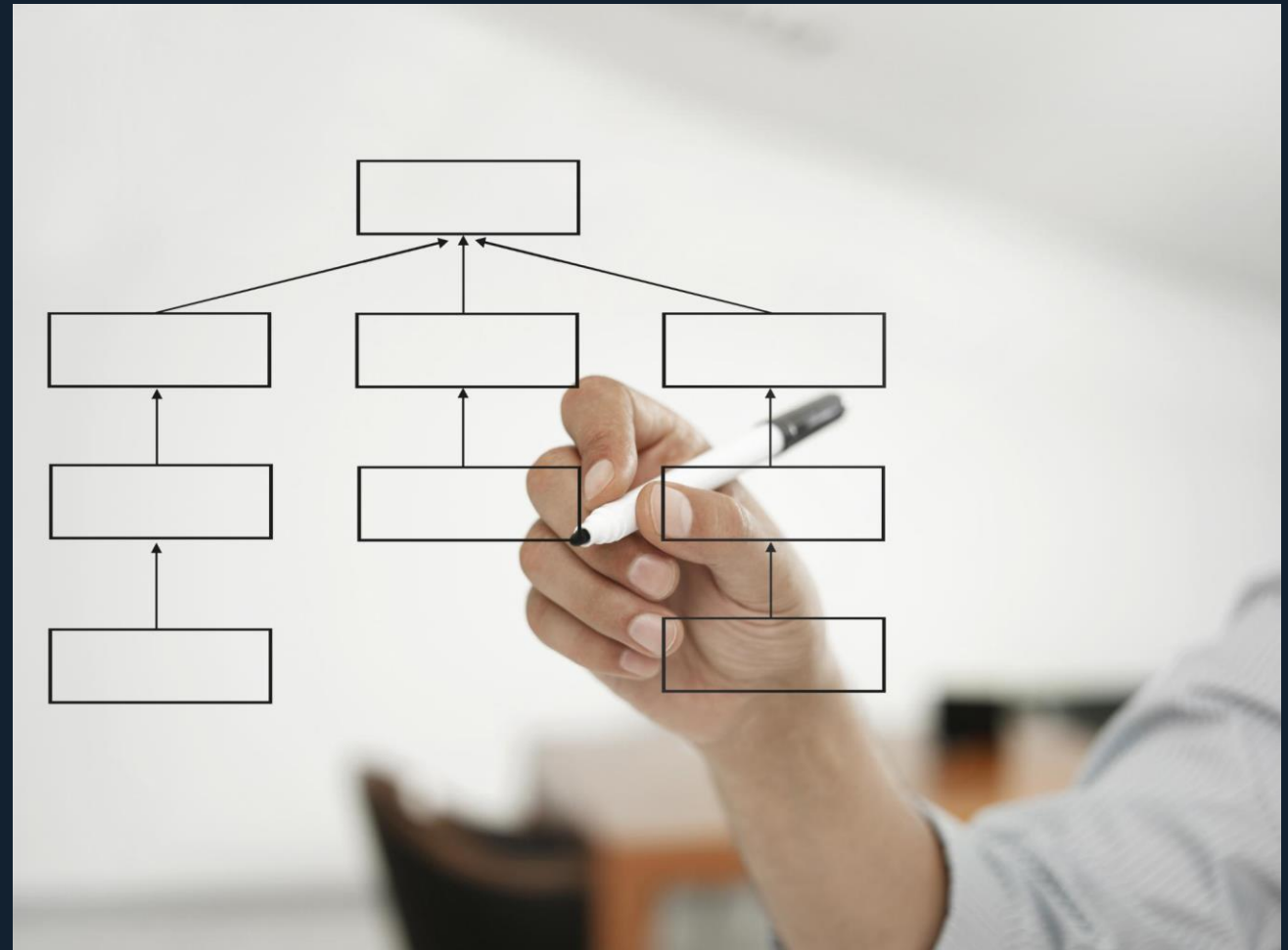
Ensure they are comfortable with structure change

## CIO Constitution

Include bye-laws for PC decision-making  
Include sub-committees  
Make reference to any PE – will need to apply for a Linking Order from Charity Commission

## Charity Commission Application

Need to prove public benefit (even though charity already exists!)



# Step-by-Step CIO Incorporation Process

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**Register with HMRC**

To benefit from gift aid

**Enter into Vesting Declaration / Deed of Transfer of Assets**

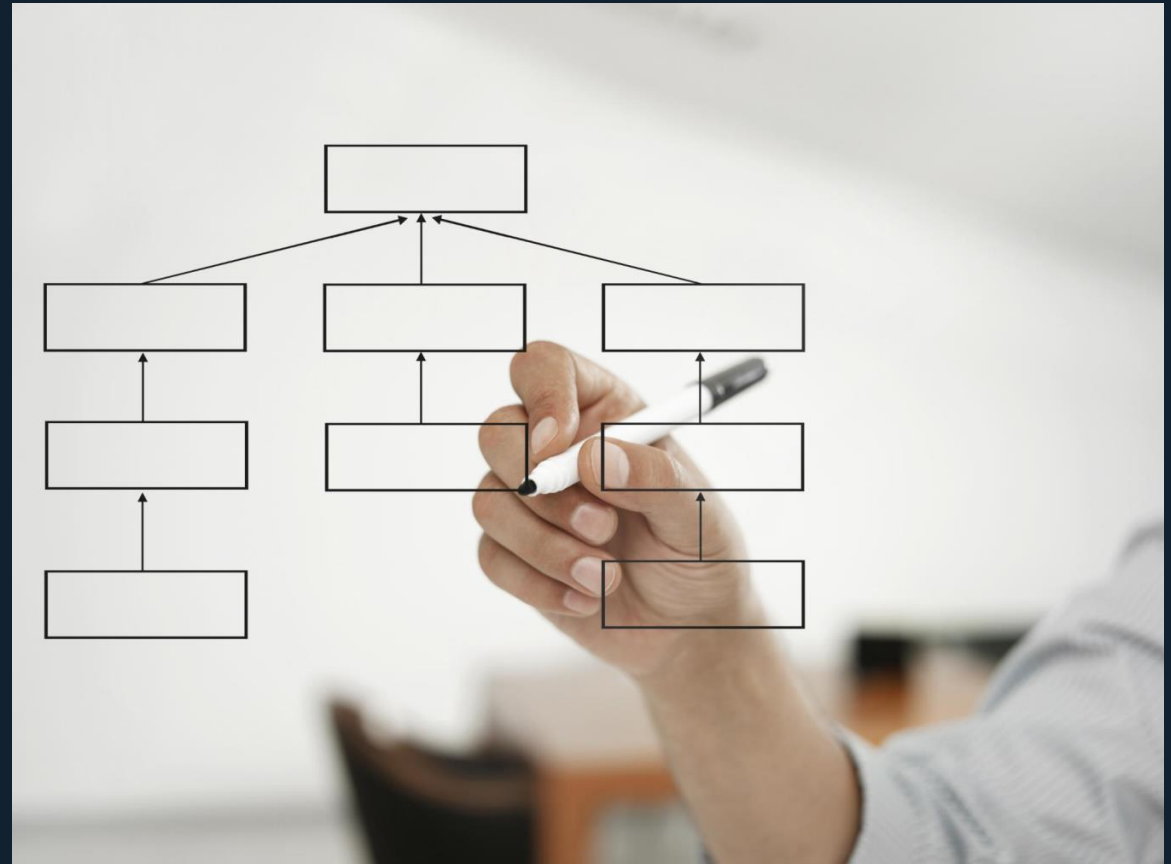
Then physically transfer the assets and employees under TUPE

**Prepare Final Set of Accounts**

Showing nil balance

**Application for Linking Order**

Which shuts down the old charity



# Lease or Licence?

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# Choosing Between a Lease and a Licence

## Legal and Funding Requirements

Grant funders often require minimum lease lengths, making licences unsuitable in certain cases.

## Business Rate Relief Considerations

Local authorities may require a lease to qualify for business rate relief,

## Security of Tenure and Possession

Courts focus on substance over form, assessing exclusive possession to determine lease status.

## Public Expectations and Transparency

Accurate representation of occupation rights is vital to avoid donor misrepresentation risks.



# Using Management Agreements Effectively

## Delegation of Responsibilities

Management agreements allocate roles between parish councils and charities, delegating key functions like health and safety and accounts preparation.

## Benefits of Management Agreements

This model fosters volunteer involvement without imposing trustee liability, enhancing community engagement and operational efficiency.

## Risks and Conflicts

Potential conflicts of interest arise when councils provide paid services to charities, requiring careful conflict management and transparency.

## Importance of Clear Drafting

Effective management agreements need clear drafting and governance safeguards to ensure transparency and defensibility.



# Conflicts of Interest

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# Identifying and Managing Conflicts

## Conflicts of Interest Overview

Conflicts arise when parish councils and charities have overlapping roles leading to potential governance challenges.

## Mitigation Strategies

Using independent sub-committees or peer reviews helps manage conflicts and maintain transparency.

## Importance of Documentation

Active management and documentation of conflicts support good governance and protect organizations from challenges.

