

A Proposal for a change to the LRA's structure

Currently the LRA is an unincorporated association run in accordance with its written constitution. This structure gives rise to a number of disadvantages compared with other structures available.

1-because it is unincorporated it is not a legal entity and as a result it cannot enter into contracts. One or more of the members must do this on the LRAs behalf.

2-because its constitution does not indemnify its executive against actions that may be brought against them if any third party were to sue an executive he/she would have to defend himself/herself and meet any costs and penalties that may result.

3-because unincorporated bodies cant have limited liability, were the LRA to be wound up in debt or sued, once its own resources had been extinguished all members (both executive and general) would be at risk of being pursued by the claimant. As the LRA has very little in the way of capital reserves members would be at risk straight away.

The LRA has reduced this risk by taking out Public Liability insurance (PL), but the sum insured for (£1m) is not great by public liability standards and thus far the LRA has not taken out Directors and Officers insurance (D&O), which protects the executive against actions brought against them for matters such as libel etc.

In an increasingly litigious world, where any legal procedures are extremely expensive and where solicitors are prepared to work on a "no win-no fee" basis it is suggested that the current structure leaves the LRA itself, the members and particularly the executive exposed to unnecessary risk (it should be noted that even if a claimant has a very weak or no case at all it can cost a great deal to defend an action). The fact that there has not been an issue thus far does not mean there wont be in the future.

All these disadvantages can be removed if the LRA were to adopt a limited liability incorporated structure. The incorporation means that the LRA is a legal entity and can enter into contracts itself. The corporations constitution would provide that the executive are indemnified by the LRA for all but reckless or illegal statements/actions and since the LRA has no cash, that is why D&O insurance is necessary. The limited liability would mean that the members only financial exposure would be nominal (anything from £0-10)

There appear to be two options for conversion. One is to a Charitable Incorporated Organisation (CIO) and one is to a Company Limited by Guarantee (CLG). While each has advantages and disadvantages, the method of setting up and running each is very similar. In both cases one takes a set of model articles off the regulators web-site and modifies them to suit the specifics of the relevant organisation. Those are then submitted with a registration application to the relevant authority (Charity commission for a CIO and Companies House for a CLG) Applications for a CIO are free while applications for a CLG cost £40. Once registration is confirmed the assets/membership/etc are transferred to the new vehicle and the old one is wound up.

Once established the operation of the incorporated entity is not much more complex than that of the present one. Executive management meetings/AGMs/EGMs/accounting/records/etc are all in accordance with the articles. Both CIOs and CLGs require that the regulatory body is informed of organisational changes as they occur, and that a simple operational and accounting return is made at the companys year end. The cost of these is kept deliberately low, being free for a CIO and £13 for a CLG. In addition a tax return may be required for a CLG but the LRAs income is so low that it is likely to be exempt.

The pros/cons of the two options are as follows-

-there is no doubt the LRA could register as a CLG, but as charities are regulated more strictly there is a small chance we may not be accepted as a CIO.

-it appears that registration as a CIO takes longer than as a CLG (maybe 3-4 months instead of 1-2 months)

-the model articles for a CIO appear to be a little more complex than for a CLG.

-a CIO is probably regulated more strictly than a CLG

-a CIOs set up and running costs are less than a CLGs (£0 and £0 versus £40 and £13)

-being incorporated as a CLG may confer some more credibility on the LRA but more so as a CIO.

-as a CIO it may be possible to reclaim the subscribers tax (say 20% on £2.50) However Bookham RA recently decided that the time and effort to achieve this is probably not worth the return.

It is proposed that at the next executive meeting on 7/12/15 the Executive decide whether they are in favour of recommending conversion to either a CIO or a CLG to the membership. If they are then more work can be done on which route to go and that choice can then be approved at a subsequent meeting. Thereafter an EGM would be convened to seek member approval to the fully worked up proposal. Assuming this is forthcoming the application could then be lodged and the conversion process put in train.