

SUMMARY REPORT ON CHARITY STATUS

CURRENT STRUCTURE

The structure of Alcoholics Anonymous within Ireland is comprised between two separate organisations:

The fellowship of AA being an unincorporated body comprising groups, areas, provincial intergroups and the General Service Conference (the Fellowship).

The General Service Board of Alcoholics Anonymous of Ireland, being a company limited by guarantee without a share capital and also a charity registered with the Charities Regulator in the Republic of Ireland (GSBAA).

Why are we a Charity?

Members often question why we are a registered charity. Do we really need to be? Do we have a choice in that? Surely we aren't a charity when we only collect contributions from members. We don't fundraise or collect money from the general public.

There are 3 main reasons why we are a registered charity;

- A. We are legally obliged to be.
- B. In order to hold Tradition 7 collections, we need to be a charity
- C. For taxation reasons.

Why are we a Company?

Some people may think that Alcoholics Anonymous in Ireland recently became a company because of changes in legislation which may have required us to be. This is not the case. The General Service Board of Alcoholics Anonymous have been a limited company, or a company limited by guarantee, since 1978.

Registered Charities do not have to be companies. In fact, they have 3 options open to them. They can be;

- A. A Charitable Trust
- B. A Corporate Body
- C. An Unincorporated Association

Having given each of these options due consideration, the only suitable entity for Alcoholics Anonymous in Ireland to be is a corporate body (Company Limited by Guarantee)

A more in-depth explanation of this is given in the full report.

Why are the members of Conference also members of the Company?

In 2017, the Charities Regulator (CRA) began to implement changes to how charities were run in Ireland, in compliance with the Charities Act 2009. The CRA insisted that the membership of the Company be substantially increased and that the Board be answerable to them. In essence, the CRA was looking for greater transparency in how finances were handled. A number of meetings were held between the CRA, the Board and the members of Conference. A number of suggestions were put forward on how to increase the membership of the Company. It was agreed that the members of Conference could become members of the Company.

If we wished to change our current structure what challenges would we face?

- Risk of reputational damage – coming out of a charity. This may not be legal.
- Would an unincorporated Conference still not (subject to its Charter) meet the definition of a charity under the laws of Ireland?
- Administrative, legal and accountancy costs associated with setting up any new structure.
- Governance – protection of having Board Secretary who has had training.
- Management of donations from the Fellowship
- Operational impact upon GSBAA Service delivery
- Risk of personal liability to the individuals.
- Challenges around recruiting suitably qualified and motivated company Trustees prepared to accept the risks who can operate with good governance.
- Loss of openness and transparency in having accounts filed at CRO.
- Difficulties with taking out contracts or employing staff.

FULL REPORT ON CHARITY STATUS

CURRENT STRUCTURE

The structure of Alcoholics Anonymous within Ireland is comprised between two separate organisations:

The fellowship of AA being an unincorporated body comprising groups, areas, provincial intergroups and the General Service Conference (the Fellowship).

The General Service Board of Alcoholics Anonymous of Ireland, being a company limited by guarantee without a share capital (Registered Company Number 64287) and also a charity registered with the Charities Regulator in the Republic of Ireland (Charity Number CHY 6014 – RCN 20010010) (GSBAA).

1. Why are we a Charity?

Members often question why we are a registered charity. Do we really need to be? Do we have a choice in that? Surely we aren't a charity when we only collect contributions from members. We don't fundraise or collect money from the general public.

There are 3 main reasons why we are a registered charity;

D. We are legally obliged to be.

E. In order to hold Tradition 7 collections, we need to be a charity.

F. For taxation reasons.

A. We are legally obliged to be

The Charities Act 2009 clearly defines what a charity is and isn't. It sets out 6 registration requirements for charities

- (i) Operates in the Republic of Ireland
- (ii) Exists for a charitable purpose(s)
- (iii) Promotes this charitable purpose only
- (iv) Carries out all activities to further this charitable purpose(s)
- (v) Exists to benefit the public or a section of the public in Ireland, or elsewhere, through its charitable purpose(s)
- (vi) Is not an excluded body

It is clearly evident that we fulfil most of these criteria without going into any detailed explanations. Any organisation which promotes health (in any form) is deemed to have a charitable purpose.

Point (vi) refers to excluded bodies. Examples of these would be political parties and most amateur sports organisations. Alcoholics Anonymous does not fall into the category of "excluded body".

Therefore, having satisfied all 6 criteria for a charity as defined under legislation, we do not have any choice other than to register as a charity with the Charities Regulatory Authority.

It is worth noting that the ability, or need, to fundraise or collect monies is not a criterium for having to register as a charity. Even if we didn't hold Tradition 7 collections, and somehow managed to run the Fellowship without incurring any costs, we would still be legally obliged to register as a charity as we meet all of the criteria laid out in legislation.

(The above information is sourced from "What is a Charity?", issued by the Charities Regulator)

B. In order to hold Tradition 7 collections

"The Street and House to House Collections Act 1962" is the main legislation dealing with fundraising. Once money is put into a collection at an AA meeting, it is deemed under legislation to be "public money". Under the terms of the above Act, it provides that anyone wishing to hold a cash collection must apply to the local Garda Chief Superintendent to do so (for each individual collection). The Charities Regulator has waived this requirement for Alcoholics Anonymous, as they are entitled to do under the Charities Act 2009. The Regulator did this following a meeting in late 2017 between the Regulator and the members of Conference. If we were not a registered Charity, we would not have this waiver. What this means in reality is that if we were not a registered charity, each group across the country would need to apply for an individual permit for each individual meeting in order that they could hold a Tradition 7 collection at that particular meeting. This would entail having to make tens of thousands of individual applications every year to local Chief Superintendents across the country. Each application usually takes about 6 weeks. And there is no guarantee that each application would be granted.

C. For taxation reasons

At present, we do not pay any income tax or Corporation tax on monies we receive through Tradition 7 collections, simply because we are a registered charity. That situation would change if we ever ceased to be a Charity.

2. Why are we a Company?

Some people may think that Alcoholics Anonymous in Ireland recently became a company because of changes in legislation which may have required us to be. This is not the case. The General Service Board of Alcoholics Anonymous have been a limited company, or a company limited by guarantee, since 1978.

Registered Charities do not have to be companies. In fact, they have 3 options open to them. They can be;

- a. A Charitable Trust
- b. A Corporate Body
- c. An Unincorporated Association

The following is an excerpt from "Relate", a publication issued by the Citizens Information Bureau (May 2018), which explains the advantages and disadvantages of the 3 different entities;

Charitable trusts

A charitable trust is established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in the advancement of that purpose, except for moneys expended in the management of the trust. The advantages of a charitable trust include:

- It is well-adapted to the management of assets held for charitable purposes, either as a grant-making trust or as a trust supporting a charitable service constituted in another form*
 - The efficient management of substantial assets and the distribution of cash grants and where the administration of the trust will be undertaken by a small body of experienced trustees*
 - Relative speed, simplicity and lack of cost involved*
- The disadvantages of a trust include:*
- They can be quite cumbersome and undemocratic in that, once the trustees are appointed, they are difficult to remove and therefore the group or charitable association only has indirect control over its own property*
 - It is not a suitable form for a charity which is a member organisation, or for one likely to engage in providing services, or to employ substantial numbers of staff*
 - Trustees have no limited liability and can be sued in their personal capacity for breach of trust and can be held personally liable for third-party debts*
 - There are far greater restrictions placed on the trustees of a trust than on directors of a company*

- *The alteration or change of trustees is complex. The trustees have no power to alter or amend the trust deed unless the trust deed specifically gives authority*

Bodies corporate

Charities are often established as companies. These are usually companies limited by guarantee and governed by a constitution (formerly known as a memorandum and articles of association). Companies are subject to company law and are required to meet various rules in relation to keeping accounts and records. Company law is enforced by the Companies Registration Office (CRO) and the Office of the Director of Corporate Enforcement. It may be appropriate to establish a company where some or all of the following apply:

- *An unincorporated association has grown in size and level of organisational activity*
- *An organisation will be quite large*
- *It will employ staff*
- *It will deliver charitable services under contractual agreements*
- *It will regularly enter into contracts*
- *It will be an owner of freehold or leasehold land or other property*

Unincorporated associations

Some smaller charitable organisations may be established as unincorporated associations governed by a constitution or set of rules. These organisations are like clubs, consisting of people bound together by mutual agreement, who meet on a regular basis to pursue a common interest. An unincorporated association is not a separate legal entity from its members, nor does it have limited liability or a legal personality of its own. This means that it cannot enter into contracts or own property. The constitution is binding among members of the organisation, but it has no legal effect in regard to non-members. Therefore, anything done by the organisation is done by all the members of the organisation, who are responsible for all the activities of the organisation. Individual members are personally liable for any debts or obligations

Whichever model is chosen, Alcoholics Anonymous would still have many compulsory obligations, such as needing a Board of Trustees, having to file accounts, etc.

The Charities Regulator has defined 2 different types of charity.

- (i) A Complex Charity
- (ii) A Non Complex Charity.

Due to a number of reasons, including our annual turnover, number of members, the fact that we employ staff, Alcoholics Anonymous has been categorised as a Complex Charity by the Charities Regulator. This means that we are considered to be a relatively large Charity and are subject to more stringent rules and reporting requirements than a Non Complex Charity would be.

A. Charitable Trust

As you can see from above, this would not be a suitable model for Alcoholics Anonymous.

When a Trustee's term of office has expired, he/she could just decide themselves that they are staying on and it would be very difficult to remove them.

It is not suitable for a Complex Charity to be a Charitable Trust.

It is not suitable for a Charity providing services, which we do.

There is no limited liability for Trustees, making the Trustees personally liable.

B. Bodies Corporate

This is the model that we currently use, and have used successfully since 1978.

Any new Complex Charity registering with the Charities Regulator has to register as a Corporate body (Charities Act 2009)

We can enter into contracts as a Corporate body.

We can have employees as a corporate body

There is limited liability for Trustees.

We can lease property as a company, which we do (General Service Office)

We are subject to Company Law.

As a company, GSBAA has the power to construct, equip, manage, hold, lease property and to employ staff under its constitution.

One of the services GSBAA currently provides is the operation of the General Service Office in Dublin.

C. Unincorporated Association

Unsuitable for a Complex Charity

The Board of Trustees could not be an employer. An individual Trustee would need to be registered as the employer

Lack of ability to enter contracts (including leases)

Individual members and Trustees are personally liable

(The above information has been sourced from the Citizen's Information Bureau)

3. Why are the members of Conference also the members of the Company?

In 2017, the Charities Regulator (CRA) began to implement changes to how charities were run in Ireland, in compliance with the Charities Act 2009. The CRA were not entirely happy that the General Service Board were not answerable to the Fellowship. The Board could more or less do as they pleased, if they wanted to. The CRA insisted that the membership of the Company be substantially increased and that the Board be answerable to them. In essence, the CRA was looking for greater transparency in how finances were handled. A number of meetings were held between the CRA, the Board and the members of Conference. A number of suggestions were put forward on how to increase the membership of the Company. It was suggested to the CRA by GSBAA that the members of Conference could become members of the Company. The CRA agreed to this proposal and in late 2017, a representative of the CRA met with members of Conference to explain why this was necessary.

If we wished to change this, we would need to seek approval from the CRA to implement such a change.

4. General Service Board of Alcoholics Anonymous

It is important to note that the Directors of GSBAA are both company Directors and charity Trustees, with such roles attracting specific legal and fiduciary obligations under both company and charity law. The legal and fiduciary responsibilities of the Directors of GSBAA shall take precedence over any other duties or obligations of the Fellowship.

Further consideration of the current structure is required to identify any risks from a liability and governance perspective, which would need covered in any alternative options proposed.

GSBAA

The Memorandum of Association of GSBAA sets out that the main object of the company is:

to help alcoholics on the island of Ireland achieve and maintain sobriety and, with a view thereto, to act as custodian of the Twelve Steps and the Twelve Traditions of Alcoholics Anonymous ("AA") as set out in the Service Handbook for Ireland prepared by the Alcoholics Anonymous General Service Conference ("Conference") as amended and adopted from time to time by decisions of Conference.

Thus, a link between the two organisations is established within GSBAA's main charitable objective. There are further links between the two organisations as set out in GSBAA's constitution, such as:

□ the subsidiary object to publish, distribute and sell books, materials, film and so forth to the Fellowship (4(1) Memorandum of Association);

- the power to raise money within the Fellowship (5.4 Memorandum of Association);
- the fact that the membership of GSBAA shall be those persons who are members of the Conference (Article 5 of the Articles of Association). The GSBAA members (being the members of the Conference) can exercise rights and vote at the AGM of GSBAA and on major decisions of the Company such as changing the Articles of Association; and
- the Directors (and charity Trustees) of GSBAA shall also be the same as the Trustees of the Conference with the number of Directors/charity Trustees of GSBAA being at all times equal to the number of Trustees of the Conference (Articles 36-37 of the Articles of Association).

GSBAA is a company and as a result is a legal entity in its own right separate to the Trustees, which provides protection to its Trustees for any debts arising or liabilities on the part of the company, which shall be limited to €1. However, the Conference is not incorporated and so when said individuals are acting in their capacity as Trustees of the Conference, they do not have the benefit of limited liability and are exposed to a greater degree of personal liability and risk. As such, eschewing obligations on the part of GSBAA may not have the intended effect as it will expose the Trustees of the Conference to greater risk personally, being the same group of individuals. It is anticipated that the Company was incorporated to take advantage of the benefits of limited liability;

The links between GSBAA and the Conference and the wider Fellowship shall be of relevance when considering the alternative options in respect of structure from a governance perspective, particularly given that the Directors and charity Trustees of GSBAA are obliged to fulfil the company's object and purpose.

The Conference Handbook further describes services that GSBAA provides to the Fellowship, including:

- publication of the Road Back Magazine, the AA News Sheet and other literature, being in line with GSBAA's subsidiary object described above;
- management of the funds of the Fellowship that are not retained at Group, Area or Provincial Intergroup level for their own use;
- operation of the General Service Office; and
- management of the AA website (together the GSBAA Services).

Again, the GSBAA Services shall be of relevance when considering any alternative arrangements in respect of structure from a governance perspective, particularly given the services GSBAA is supposed to provide to the Fellowship.

5. Any New Structure – Challenges

If the Fellowship wished to change from its current structure, it could face the following challenges;

- Risk of reputational damage – coming out of a charity.
- Would an unincorporated Conference still not (subject to its Charter) meet the definition of a charity under the laws of Ireland?
- Administrative, legal and accountancy costs associated with setting up any new structure.
- Governance – protection of having Board Secretary who has had training
- Management of donations from the Fellowship
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