

# Porlock Recreation Ground Management Committee Charity Number 304615

## Report following the Public Session of Porlock Recreation Ground Management Committee Meeting held on 15 June 2017

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## Summary

Information widely circulated in late May and early June 17 by Mike Lynch misrepresented recent decisions taken by the Management Committee and was sent without the committee's knowledge or agreement. Sadly there was no prior contact with the Committee to check accuracy of rumours or intent of decisions.

The Committee considers that, out of courtesy and in the interests of disseminating accurate information, Mike Lynch should have raised matters with Charity's Secretary who would have offered an accurate explanation. This would have been in the best interests of the community and the Recreation Ground.

The content and tone of the emails from Mike Lynch understandably caused many in the community to be concerned that changes were being made to remove community involvement from the Recreation Ground. This resulted in a vibrant public session at the Management Committee meeting on 15<sup>th</sup> June 17. We would like to thank all those who attended this session.

Trustees of the Charity have no intention of removing community involvement, hence this document seeks to clarify the status of the Charity and provide written responses to many of the points raised and answered verbally at the public session.

There are currently two charities in existence, the original charity (No. 304615) that has existed since 1971 and a new Charitable Incorporated Organisation (CIO) registered charity No. 1171610.

The CIO was set up during the period Mike Lynch chaired the charity (Mike resigned 22<sup>nd</sup> March 2017) and it has been registered as active by the Charity Commission since 14<sup>th</sup> February 2017. The CIO has not been used, has no assets and, whilst it exists as an active legal entity, it is effectively a "dormant" shell.

On 24<sup>th</sup> May 2017, trustees of charity no. 304615 voted to take steps to dissolve the new CIO and resolved to investigate a suitable future model for the charity; no decision has been made on what that should be. A first meeting of the CIO was also held on 15<sup>th</sup> June, a formal resolution to dissolve the CIO was passed at this meeting.

As a consequence of this decision there has been no change to the charity (No. 304615). The charity is still run and operated under the governing rules that have been in place since the 1970s.

Feedback from the public session included suggestions about improving communication about the current and future management of the Recreation Ground and its constitution. The committee has since made improvements to the availability of meeting minutes and will find ways to improve communication going forward.

On 2<sup>nd</sup> June Mike Lynch stated that he had formally made complaint about the Charity's Secretary to the Charity Commission. The rationale of the complaint being "breach of duty as a Charity Trustee". The Charity Commission have since confirmed a complaint was made but we have not seen the wording of it. We refute the complaint and its rationale, which was made without any attempt to clarify matters with the Charity. It would be helpful if the complaint was withdrawn so no more time is wasted on it by all concerned.

## The current and future intention of the trustees

It has, and always will be, the intention of the current trustees to ensure that any future changes to the structure or constitution of the Charity work to ensure:

1. The trustees' legal obligations are met
2. The long-term stability of the charity enabling it to meet its defined objectives
3. Protection of the land and other assets
4. Community involvement and representation

Furthermore, at the public session of the Committee Meeting held on 15<sup>th</sup> June, the Trustees assured the meeting that if future changes to the structure or constitution are made, there will not be less representation for the local community than exists now.

## Background and answers to questions

### Current community representation and involvement

We still operate as the original charity (No. 304615) and under the rules of its governing document. Under these rules community representation is afforded by trustees who are:

- Individuals nominated by the Parish Council, Tourist Association, Cricket, Football and Bowls clubs
- Elected at the AGM (up to six). Largely anyone can be nominated and anyone can vote.
- Co-opted trustees (up to three) appointed by other trustees during the year

In addition, the current trustees have chosen to openly involve the community with regard to ideas for use of the Susan Taylor legacy and they will, over the coming months, continue to encourage the involvement of people in the community to help with evaluation, decision-making and implementation of ideas.

### Why was the CIO set-up?

In October 2016 trustees agreed to investigate options for revising the current charity's structure with the joint aims of removing the current personal liability of trustees and modernising the current constitution.

The trustee liability issue had been a concern of existing trustees for some time and a barrier to taking on some individuals who had previously offered to be trustees. The current charity has a dated constitution featuring anomalies and ambiguity and lacking modern features.

Mike Lynch (Chairman of the charity 10 Oct 2017 from until his resignation on 22 Mar 2017) took on the task of this investigation, culminating in a recommendation to the charity trustees to move to a Charitable Incorporated Organisation (CIO) with a constitution largely based on the Charity Commission's base template for an Association CIO that has members with voting rights. Trustees agreed with this recommendation, the CIO was applied for and subsequently registered by the Charity Commission as charity number 1171610 on 14 Feb 2017.

Consequently two charities now exist, but the CIO is effectively a "dormant" shell.

## **CIO constitution options**

There are two basic “model” constitutions: the Foundation model which has only charity trustees and the Association model which has both charity trustees and members (voting rights only).

In both models, Trustees have legal responsibility and voting rights whereas under the Association model members have voting rights but no direct legal responsibility.

More recently we have been advised that it is also possible to have a tailor-made CIO constitution that could be very similar to the constitution of the existing charity, which has served the local community so well since 1971.

## **Why have you decided to dissolve the new CIO?**

Following Mike Lynch’s resignation from the charity (22 Mar 2017) concerns were raised by trustees and Parish Council members regarding the detail of the new CIO constitution and status of the land.

A concerted, and potentially small, interest group could easily take over the running of the Recreation Ground and not run it in the long term interests of all the local residents. As constituted, the charity could have found itself at repeated risk of vexatious takeovers and it would have been structured in a way that could make decision-making very difficult.

The events of the last few weeks have clearly illustrated the risks of having an Association Model CIO especially without setting appropriate membership limits, rules and protections.

Currently the Parish council is Custodian Trustee of the land and, additionally, should the charity cease to exist for some reason (for example, if all trustees resign), assets and control revert to the Parish Council. The CIO as constituted did not include similar roles for the Parish Council.

Under the constitution of the new CIO, as adopted, trustees could (partially) sell off or raise loans against the land held by the charity, neither of which we believe to be desirable.

Due to these factors, and the concerns raised by the Parish Council, the trustees considered that moving to the new CIO would pose unacceptable risks to Recreation Ground assets and would not be in the best long-term interests of the Charity.

## **Why not keep the CIO and change its constitution?**

We have taken legal advice on this. Theoretically it would be possible but we have been advised that it would not be advisable to take on members prior to making suitable changes. The CIO constitution obliges trustees to accept membership or provide a good reason for not doing so within 21 days. We plan to take time to consider and consult on the best form for the charity going forward which may be as it is now or may not be a CIO. In this context, 21 days is a short amount of time especially as we have other more pressing matters to deal with.

Dissolving the unused, unsuitable CIO therefore provides a rational reason for not accepting members and it is the sensible and straightforward action to take.

## **Why not keep the existing charity and insure trustee liability?**

This has not been ruled out as an option.

Regardless, the constitution of the existing charity is in need of modernisation and the Charity Commission considers CIOs to be the modern structure for charities. Consequently, we will need to consider both in more detail.

We plan to take additional legal advice and consult further on this.

## **Transfer of assets from charity No. 304615 to the new CIO No. 1171610**

Set-up of the CIO was a precursor to ultimately transferring the existing charity and all its assets and liabilities to the new CIO at which point, had we decided to go ahead, the old charity (No. 304615) would have been closed.

The Charity Commission requires that the transfer of assets to a new charity is supported by a resolution, fully minuted, of the existing charity agreeing to the transfer of assets to the new CIO; no such resolution has been passed by the existing Recreation Ground Charity Number 304615 and therefore the Charity Commissioners have not and cannot approve the transfer of assets to the new CIO. All assets remain with the original charity.

## **Applications for membership of the CIO**

One of Mike Lynch's communications encouraged people to apply to become a member of the CIO.

Clearly there is no point in taking on members of CIO that is a shell and is going to be dissolved, hence those applying for membership have been thanked for their interest but declined membership to this CIO. We are, however, keen to work with and involve the community and have therefore directed applicants to information on our website about volunteering and working with the Charity.

## **Status of the legacy funds**

To date the legacy funds (of which we have received about half) have been lodged in the Charity's current bank account, so all the existing safeguards that protect the funds are still fully in place.

The trustees have and are taking professional financial advice on short-term, low-risk investments that could provide an income stream. No long-term investment decisions will be taken until a thorough evaluation of all the suggestions received from local residents has been undertaken.

As detailed in the initial "request for ideas" letter that was sent to all residents, the committee plans to follow an evaluation process that includes further public consultation. This will happen before any significant spending decisions are made.

## Communication with the community

There was a feeling from the public meeting on June 15th that communication from the charity to the community could be better. This is fair comment and whilst we consider that we have been very open and inclusive about use of the legacy, we strive to take these comments on board and improve communications.

Particularly, questions were raised about the whereabouts of meeting minutes and future information about major structural or constitutional changes.

Subsequent to the public meeting we have:

- Checked that all approved minutes were available at the Visitors' Centre.
  - Traditionally this is where minutes have been lodged. They were there as expected and as usual are available on request.
- Provided minutes to the library
  - This is an additional source of access. Recent minutes are now in a folder on display and those from the last year are available on request.
- Made use of the St Dubricius Church noticeboard. Our thanks to Bill for offering use of this space.
- Provided information about the availability of minutes, date of next meeting, etc. on the noticeboard at the end of the toilet block facing the main entrance of the Rec.
- Checked that the minutes are available from the Contact Us page on our website
  - Some were missing; this has been corrected.
  - We will make this information easier to find on the website.

## Communication about constitutional or structural changes

Dissolving the CIO that was constituted does not change the current charity hence there seemed little need to communicate widely about this. On the contrary, we have avoided and decided against a change that the trustees and the Parish Council do not consider to be in the best interests of the Recreation Ground and the local community. We will however publicise any future changes that may have a significant effect on the structure or constitution of the charity.

## Formal complaint made to the Charity Commission by Mike Lynch

On 2<sup>nd</sup> June Mike Lynch stated that he had formally made complaint about the Charity's Secretary to the Charity Commission. The rationale of the complaint being "breach of duty as a Charity Trustee" on the following basis (paraphrased):

1. The Charity's Secretary failed to act in accordance with the CIO constitution when declining requests for CIO membership.
2. That the Secretary had acted alone as an "...individual trustee to take an arbitrary decision to block membership applications...".

We have since had confirmation from the Charity Commission that this formal complaint was made but have not seen the wording of it.

We consider that the basis for this complaint to the Charity Commission is unfounded for the following reasons:

a) It was and is perfectly acceptable to decline membership as the Trustees of the CIO plan to dissolve it. Clearly to accept membership or say otherwise would be disingenuous and not in the best interests of the CIO or potential member. Specifically Section 9(1)(b)(iii) of the CIO constitution states:

*(b) Admission procedure*

*The charity trustees:*

...

*(iii) may refuse an application for membership if they believe that it is in the best interests of the CIO for them to do so;*

...

b) The Secretary acted with the full support of the other Trustees, evidenced by a unanimous vote to take steps to dissolve the CIO at the meeting of Charity No. 304615 on 24<sup>th</sup> May and later formalised at a meeting of the CIO charity No. 1171610 Trustees on 15<sup>th</sup> June for which they were formally given 14 days notice.

Given the above, it is clear that there has not been a breach of duty, the Secretary acted within the rules of the constitution and with the support and agreement of other Trustees.

Sadly, there was no attempt by Mike Lynch to clarify the situation with the Charity prior to making his complaint to the Charity Commission. We consider that this approach was and is not in the best interests of the Recreation Ground, the charity or the wider community. It would be helpful if the complaint was withdrawn so no more time is wasted on it by all concerned.