

# **Transfer of THGI's business to a new charitable community benefit society**

## **Background Information for Exeter Street Hall shareholders**

(This is an update to the newsletter that was emailed to shareholders in July.)

### **Summary**

In order to maintain our charitable status the Hall Management Committee have set up a new charitable community benefit society, called Exeter Street Community Hall Ltd (ESCH). The intention is that this society will take over the business of The Hall Get Involved Ltd (THGI), the society in which you have shares and which currently owns and runs the Hall.

This sounds like a massive change, but it's really not that big a deal. The new society will still run the Hall in the same way, for the benefit of the community. You will become shareholders of ESCH, with exactly the same number of shares, at the same value. You will have the same voting rights and continue to elect the society's directors.

Since the previous newsletter we have registered the new society with the Financial Conduct Authority, set up a new bank account and successfully applied to Her Majesty's Revenue and Customs (HMRC) for charitable status. Now you, the shareholders of THGI, will be asked (twice!) to approve a resolution to authorise the transfer to the new society. Details below.

### **Why is this necessary?**

It's down to a small but knotty problem with our current rules. THGI was incorporated in 2012 and was later that year granted charitable status by HMRC. This makes us more attractive to potential grant-givers and allows us to claim Gift Aid, business rate relief and benefits such as free access to the Council's Recycling Centre.

So, charitable status is important for the Hall. One of the conditions for it to be awarded was that our rules should contain an 'asset lock' that limits what kinds of individuals or organisations can buy our assets if we were ever to close down the society. (Assets are anything left over once shareholders and creditors have been compensated.) The intention behind this is to prevent asset-stripping and to stop any profitmaking from the demise of charities.

Our rules were amended in 2012, when we first applied for charitable status, to include an asset lock. However, the wording of that asset lock rule is now incompatible with HMRC requirements in 2019. When a charitable society is wound up HMRC now allows its assets to be sold only to other charities, but some types of organisation that are allowed to buy assets under our current rule (e.g. community interest companies) do not have charitable status, even though they may be non-profitmaking.

The obvious thing to do would be to change our asset lock rule. But, frustratingly, we're not allowed to do this. Our regulator the Financial Conduct Authority (FCA) has confirmed that in 2012 we were given a so-called statutory asset lock which is, in law, unalterable. The intention here was no doubt to stop unscrupulous directors from getting rid of the lock, but the way the law is worded means we're also not allowed to tighten it up to comply with HMRC requirements. The FCA also confirmed that the only way round the problem is to create a new society with rules that include the correct kind of asset lock, and then transfer the business of the existing society to the new one. So that's what we're doing.

For the avoidance of doubt we should stress that this is just a regulatory problem. We are very much a thriving organisation and have absolutely no intention of closing down or selling the Hall!

### **Where are we at the moment?**

Using the model rule set provided by Co-operatives UK we have registered Exeter Street Community Hall Ltd (ESCH) with the FCA as a charitable community benefit society, set up a bank account for it and been granted charitable status by HMRC. The founder members of this society are the people on the current Hall Management Committee and, for the time being at least, the present directors and officers of THGI have taken on the same roles in ESCH. The intention is to keep the new society as a small outfit that does virtually nothing until it takes over THGI's business. After the transfer you will become the ESCH shareholders and the Hall will carry on as before.

### **What happens next?**

Now – and very importantly – you, the THGI shareholders, will be asked to approve a resolution to transfer the business. In fact the law says that to make the transfer legal you have to do this twice. The first resolution needs approval by two-thirds of those present at a general meeting (this will be the Annual General Meeting on October 4<sup>th</sup>) and this decision must be confirmed by a second, identical resolution (this time needing just a simple majority) at another meeting to be held between 14 days and one month after the first one (we're aiming to hold this second meeting on Sunday October 20<sup>th</sup>, starting at 6:30pm – it should be a short one). It's a deliberately cumbersome and inconvenient process because the law very properly wants to ensure that approval is genuine.

### **When will the transfer happen?**

We can't say exactly. There's a legal transfer point but in practical terms the transfer will happen in stages during the autumn and winter. Once the second resolution is approved we need to inform the FCA of our "transfer of engagements" decision (to use the legal jargon) within a fortnight, and the FCA then registers the transfer. This registration, which is the legal transfer point, will take a few weeks to complete.

After that, a lot of practical work needs to be done (hirers and organisations notified, staff correctly transferred under TUPE regulations, new payroll set up, Land Registry informed, insurance and licences changed, etc.). Only when all these details have been taken care of (there is no fixed time limit) do we send the FCA a form certifying that the transfer is complete. The FCA then acknowledges this and, following that acknowledgement, the old society is dissolved. We're not sure

how long all this will take. We definitely want to complete the process well before the end of the financial year, but we can't give an exact date at present.

One issue that we have needed to address relates to the conditions under which we bought the Hall from St. Luke's Church in 2013. The Land Registry transfer document was then given an additional covenant which, like the asset lock, was designed to ensure that the Hall remained in the service of the community. At the time of writing we have in principle agreed with the church that ESCH will respect this covenant and in return the church will not invoke its pre-emption right (aka 'first refusal') to buy back the Hall when ownership is transferred from THGI to ESCH. This agreement should be set down in writing before the AGM; an update will be provided on the night.

#### **How will this affect shareholders?**

There should be no effect at all. You will have the same number, and the same value, of shares and the same voting rights. The conditions of your shareholding will stay the same. In particular we remain a non-profitmaking organisation: shareholders will, as before, not be paid any dividend as any operating surplus will be used for renovations and improvements to the building. The Hall will continue to be owned by almost a thousand people in the local community (together with a few local businesses and a small number of generous souls from further afield, usually friends or relatives of local shareholders).

#### **How can I find out more?**

If you have any questions, please email them to [secretary@exeterstreethall.org](mailto:secretary@exeterstreethall.org) and we'll do our best to answer them fully – before, at and after the AGM. You can also take a look at the new society's rules at <https://exeterstreethall.org/our-rules/> and, if you're so inclined, compare them with THGI's rules which are on the same page. As well as containing the new asset lock the ESCH rules have the advantage of being up-to-date, in terms of both the legislation they reference and the fact that they acknowledge that we now live in a digital age.

**Dave Fellows / Graham Thomas**

Chair / Secretary, The Hall Get Involved Ltd.

7<sup>th</sup> September 2019