

It is prudent for clubs to periodically review their legal form in order to ensure that they are operating the most appropriate structure for the nature of their operations.

Considering the various options available can be time consuming and confusing, this Guidance Note therefore aims to provide a brief introduction to the range of legal forms and legal status available to clubs. Having embarked on a potential re-structure, clubs are advised to take independent legal advice, particularly if they wish to gain from specific financial advantages and/or have substantial assets that they wish to protect and/or concerns over potential liabilities.

### **The following are types of legal form available to clubs:**

- Unincorporated Association
- Company limited by guarantee
- Company limited by shares
- Community interest company (limited by guarantee or by shares)
- Charitable incorporated organisation
- Trust
- Partnership
- Limited Liability Partnership
- Industrial and Provident Society

We will outline the five main legal forms adopted by clubs. We will then look at the legal status of registering as a CASC or a charity.

### **LEGAL FORMS:**

#### **Unincorporated Associations:**

Many sports clubs are unincorporated associations, known usually as private members clubs. Such clubs will commonly adopt a Constitution and Rules which bind the members together and govern their operation. The members usually appoint a management committee and flag officers to take on the day to day running and administration of the club.

#### **Considerations:**

- Unincorporated associations are not regulated by a specific statute (e.g. as companies are under the Companies Act 2006 – see below) and as such there is no codified system which regulates their operations; instead they must comply with the common law. This provides clubs with a certain amount of flexibility and less

regulation compared to an incorporated company, for example, there is no legal duty on the club to file annual returns or to have the accounts audited as there are with incorporated companies.

- In law an unincorporated association does not have its own separate legal entity i.e. it is not recognised in law as being a legal person in its own right which means the club itself is not capable of owning property or being party to a contract. It is therefore standard practice to appoint trustees, who are usually required by the club rules to comply with committee instructions, to hold club property (e.g. freehold or leasehold land and buildings and boats) on behalf of club members. If individual trustees leave the club, die or decide that they no longer wish to act as trustee, the club must appoint other trustee(s).

At present approximately 79% of affiliated clubs are unincorporated associations<sup>1</sup>.

## **LIABILITY:**

Clubs are rightly concerned over the potential for trustees, flag officers, committee members and members to be held personally liable for the acts or omissions of the club.

### **Trustee Liability:**

In certain circumstances trustees may face the risk of personal liability and because of this some clubs do occasionally have difficulty finding trustees who are willing to assume the function. Directors' and Officers' liability insurance cover is available and provides protection to trustees and officers etc. against a range of exposures (further information is available from Gallagher who can be found in the contacts section of this Guidance).

Since club trustees do carry personal responsibility it is essential that leases and other agreements include a provision acknowledging that the trustees are acting on behalf of the club and that in no case will their personal liability exceed the amount by which they can be indemnified out of club funds. This provision, coupled with a club rule indemnifying the trustees out of club funds should serve to protect the personal interests of the trustees.

### **Committee Members' Liability:**

Committee members may face potential liabilities to the extent that they caused, authorised, or knowingly failed to prevent an occurrence resulting in a legal claim, whether by way of a breach of a contract that they had entered into on behalf of the club or a breach of a duty of care.

In relation to contractual liability, simple rules to the effect that:

- the committee may only enter into contracts where authorised by the members, and

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<sup>1</sup> RYA Vital Signs Survey 2016.

- the committee members, acting as authorised, are entitled to an indemnity from club members (usually up to a year's subscription or the value of the club's assets)

should cover individual committee members against personal financial loss where they have acted within their contractual authority. Committee members' exposure to such liability is also insurable under a Directors' and Officers' Insurance policy (see below).

In relation to liability arising from a breach of a duty of care, committee members do not normally owe club members a duty of care purely by virtue of being committee members. However, neither are committee members granted immunity from liability where a duty of care might otherwise arise (e.g. a committee member who accepts responsibility for maintaining the club's safety boat may be under a duty to ensure that the boat is reasonably safe for members to use). The committee's primary protection in this regard is public liability insurance and committee members should therefore ensure that their personal liability is covered by the club's own insurance policy.

If liabilities are incurred that are not adequately covered by the club's insurance policy and/or the indemnity there is the potential that the trustees, management committee, club officers could find themselves liable to meet these costs personally.

### **Members' Liability:**

Another concern in members' clubs is that the individual members may each be personally liable for the full debts of the club, and for any legal liability for damages that the club may incur.

In relation to claims for breach of contract or recovery of a debt by a third party, unincorporated members' clubs are not partnerships and, as such, individual members are generally not liable for contractual obligations or debts incurred by the club unless those obligations or debts were incurred with their express or implied consent.

As regards claims for breach of a duty of care, members of an unincorporated members' club do not owe other members a duty of care simply by virtue of being fellow members of the club, although neither are members granted immunity from liability to other members where a duty of care might otherwise arise (e.g. between competitors in a race).

The members of an unincorporated members' club might, however, collectively owe a duty of care towards non-member visitors to the club, for example in connection with the physical condition of the premises.

In addition, although the members of an unincorporated club would not normally be held liable for the negligent actions of individual club members, the club members might collectively be held vicariously liable (i.e. without any personal fault on their part) for the

negligent actions of individual members to whom they have delegated responsibility for managing the club's activities, for example the committee.

If an injured party wishes to take action against the members of an unincorporated club collectively, the rules of court require him to take a representative action (i.e. against a few named individuals as "representatives" for the other members) rather than naming all of the club members in the claim.

If the club is adequately insured any liability that may arise is likely to be covered by the insurance policy. Some insurance policies (such as the clubs policy promoted by the RYA) extend cover to include individual members as well as the club as a whole.

### **Incorporated Companies:**

Of the 1500 or so clubs and associations affiliated to the RYA, it is estimated that some 21%<sup>2</sup> are incorporated.

### **Company limited by Guarantee:**

A company may be limited by guarantee or by shares. For clubs that operate on a not for profit basis, incorporation as a company limited by guarantee will often be the most suitable form of incorporation. Each member guarantees to pay an amount if the club becomes insolvent e.g. £1, this has the effect of limiting members liability to this amount. A company limited by guarantee cannot distribute profits to its members. A company will adopt Articles of Association (the equivalent of an unincorporated association's constitution /rules) and will have directors and possibly committees that are responsible for the running of the club.

The conduct and administration of a company's affairs is governed by the Companies Act 2006 and therefore clubs must operate within the boundaries of this legislation. This has its pros, namely there is a legal document that governs club operations and its cons, namely that the legislation is prescriptive and clubs have little leeway within it.

### **Considerations:**

- The law recognises an incorporated company as a separate legal entity and as such an incorporated company does not need to have its property held by separate trustees instead the company itself can hold property in its own name.
- As we have just seen, as a company has its own legal identity, if it becomes insolvent or a claim is brought against it, the members will not be liable other than for the amount each member has guaranteed to pay. However, it must be noted that if the company has broken company law its directors and/or members may well be held personally liable.

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<sup>2</sup> RYA Vital Signs Survey 2016.

- An incorporated company must comply with the Companies Act 2006 and file annual accounts, annual returns and the appointment or retirement of directors at Companies House. Changes to the Articles of Association must also be filed at Companies House.
- Directors have duties and responsibilities under company law e.g. a duty to promote the success of the company, to act in the best interests of the company and to comply with its Articles of Association, breach of which may render them liable to civil and/or criminal action.

### **Company limited by Shares:**

A company limited by shares is similar to a company limited by guarantee and is regulated under the Companies Act 2006. Such structure is however typically suited to larger clubs that operate on a profit for their owners as such companies are owned by the shareholders to which dividends may be payable.

### **Considerations:**

- Shares in the company can be bought and sold which means that it is possible to attract investors.
- Every time a member joins, the company must issue a share to him and each time a member leaves their share has to be transferred to another member or redeemed. If anyone holds over 75% of the shares then they can effectively control the company.

### **DIRECTORS' LIABILITY:**

The directors of a limited company are not exposed to the same financial risk as the officers, trustees, committee members of an unincorporated association. If they are shareholders their financial liability for losses or liabilities incurred by the company is restricted to the nominal value of their shareholding. However, incorporation will not offer directors protection (whether or not they hold shares) if they go beyond the limits of the authority given to them by the company's Articles of Association or act recklessly, fraudulently or negligently, in breach of a statutory obligation or of their general duties to the company. Directors may therefore be liable from claims arising in the following circumstances:

- liability for the club's debts if the club is operating while insolvent;
- liability for entering into unauthorised contracts (unless the contract is subsequently ratified by the members in a general meeting);
- liability to the club for their own breach of trust or duty to act in good faith for the benefit of the club and not for personal gain;
- liability where they direct or authorise an act or omission which results in death or physical injury or damage;
- liability for fines or penalties for their own, or the club's, criminal acts or breaches of statutory duty.

## **Community Interest Company:**

A CIC incorporates in the same way as a limited company (and thus may be limited by guarantee or by shares) once incorporated it applies for a Community Interest status. The main purpose of adopting such structure is that the company has incorporated status but the assets are locked which prevents a takeover by a majority shareholder. There are no special tax advantages for this type of company.

## **Charitable Incorporated Organisations:**

CIOs are a new form of charitable company, introduced under the Charities Act 2006. Prior to the introduction of CIOs, charities which opted for a corporate structure had to set up as a charity and as a company limited by guarantee which means that they are subject to dual regulation i.e. by the Charity Commission and by Companies House. CIOs are regulated by the Charity Commission only thus reducing the administrative burden on those running them. More information on CIOs can be obtained from the [Charity Commission website](#).

## **LEGAL STATUS:**

### **Community Amateur Sports Club and Charities:**

Whatever legal form a club adopts, e.g. incorporated or unincorporated, it may also elect to take on Community Amateur Sports Club ('CASC') or charitable status. The driver for registration as either as CASC or a charity tends to be financial, for example both CASCs and charities are entitled to 80% mandatory rate relief, to claim Gift Aid on donations and other tax exemptions/reliefs, however, charities benefit from greater tax advantages than CASCs.

Registration as a CASC is regulated by HMRC Charities Unit whereas registration as a charity is with the Charity Commission but is only possible if the charity has an annual income of over £5,000. If it's annual income is £5,000 or under it may still be a charity but it will not be able to register with the Charity Commission. It will still be able to take advantage of the tax exemptions provided it meets with HMRC's requirements.

For more information on CASCs and charities please see

<https://www.rya.org.uk/the-club-zone/Pages/legal-structure-of-your-club.aspx#8>

## **Tax**

Incorporation of a club may have tax consequences, depending on the club's assets and financial situation, and a club should therefore seek specialist taxation advice on this issue.

## **Insurance**

It should be the case, where a club is well organised, that all the potential liabilities of the members, committee and trustees that can be insured against, are insured against. The terms of the standard RYA Yacht Club Insurance Policy will provide cover against all the normal insurable risks associated with managing a club, so that those involved in the administration of the club should not be unnecessarily exposed.

Directors and Officers liability insurance is available to unincorporated and incorporated clubs, to provide security for flag officers, committee members (for unincorporated clubs) and directors (for incorporated clubs).

## **Companies House**

Companies House is an Executive Agency of the Department for Business, Innovation and Skills ('BIS'). All limited companies in England, Wales, Northern Ireland and Scotland are registered at Companies House. The Core functions of Companies House are to:

- Incorporate and dissolve limited companies;
- Examine and store company information delivered under the Companies Act and related legislation; and
- Make this information available to the public.

All the forms you require to set up and then run a limited company can be obtained from the Companies House website or click on the following link:  
<http://www.companieshouse.gov.uk/infoAndGuide/companyRegistration.shtml>

## **CONTACTS:**

### **RYA Club Insurance Scheme:**

Gallagher Insurance Brokers  
Admiral House  
Waterfront East  
Brierley Hill  
West Midlands  
DY5 1ZG

Tel: 01384 822222

Email: [ben\\_bennett@ajg.com](mailto:ben_bennett@ajg.com)

Website: <https://www.ajg.com/uk>

**Companies House:**

Main Office  
Companies House  
Crown Way  
Maindy  
Cardiff  
CF143UZ

Tel: 0870 33 33 636, Minicom - 02920 381245

Email: [enquiries@companies-house.gov.uk](mailto:enquiries@companies-house.gov.uk)

Website: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

**Charity Commission Direct:**

PO Box 1227  
Liverpool  
L69 3UG

Tel: 0845 300 0218

Website: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

**HMRC Charities (CASC)**

St Johns House  
Merton Road  
Bootle  
Merseyside  
L69 9BB

Tel: 0845 302 0203

Website [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

For more information kindly contact the RYA Legal Team on 023 8060 4223 or [legal@rya.org.uk](mailto:legal@rya.org.uk)

**RYA Responsibility Statement:**

The RYA Legal Team provides generic legal advice for RYA members, affiliated clubs, class associations and Recognised Training Centres. The information contained in this Guidance represents the RYA's interpretation of the law as at the date of this edition. The RYA takes all reasonable care to ensure that the information contained in this Guidance is accurate and that any opinions, interpretations and guidance expressed have been carefully considered in the context in which they are expressed. However, before taking any action based on the contents of this Guidance, readers are advised to confirm the up to date position and to take appropriate professional advice specific to their individual circumstances.