



## **CLUB STRUCTURES 2015**

A GUIDE TO CLUB STRUCTURES FOR SEMI-  
PROFESSIONAL AND AMATEUR SPORTS CLUBS

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## INTRODUCTION

In promoting the success of a sports club, attention will inevitably be drawn towards improving the club's player base and coaching staff, managing its financial and administrative affairs and securing proper premises and facilities. This is rightly so, but often overlooked is the way in which the club is set up legally and the impact that this may have on the financial and legal position of the club, and the personal risk which committee members and trustees take on. This can be of critical importance, particularly if there are financial difficulties or a claim brought against the club (for example for player or spectator injury).

This guide looks at the different legal structures available to sports clubs, ranging from members' associations to corporate bodies, and considers the advantages and disadvantages of each. If you are involved in running a club, it is prudent to consider whether your club is set up correctly. This guide aims to help you with this. The Appendix to this guide sets out an overview of the process of adopting a new structure for your club.

*“often overlooked is the way in which the club is set up legally & the impact that this may have on the financial and legal position of the club”*





## COMMON FORMS OF ORGANISATION

### Unincorporated Associations

Many amateur sports clubs are unincorporated associations, sometimes called private members' clubs. If your club has not taken any steps towards setting up a company or obtaining other special status, it is likely that your club is currently an unincorporated association. Unincorporated associations are a group of individuals who are bound together by the constitution or rules of the club. This means that the club is not a legal person in its own right and so any contract of the club must be entered into by someone on behalf of the club. Normally a club has a committee to run the club and it will be a member or members of the committee which will enter into contracts and hold land on behalf of the club.

#### Advantages

**Flexibility** - Within the constraints of the law, the rules or constitution of an unincorporated association can be whatever the members choose and can usually be easily changed by the members.

**Little administration** – Unlike companies and charities, there is no requirement to file annual

returns or details of those running the club and there is no outside scrutiny to their actions.

#### Disadvantages

**Risk of Liability** - The members of the governing committee have to enter into contracts in their own names. This means that the members of the committee could be personally liable if the club breaches a contract or if a claim is made against the club. This risk is particularly apparent in terms of personal injury claims. Members are jointly and severally liable for any liabilities meaning one member could be liable for all of the club's debts if other members cannot pay.

**Ownership** - An unincorporated association does not have a separate legal identity from its members and so cannot hold assets, e.g. land, in its own name. Instead, the members of the governing committee have to hold any land or investments of the club in their own name. If the named individual leaves the club, all of the land or investments in their name needs to be transferred to someone else.

## Companies Limited by Guarantee

A company limited by guarantee is a company owned by its members but, unlike an unincorporated association, has a separate legal identity. Its operation will not be all that dissimilar to that of a members' club, but in a corporate structure with certain advantages attached to that. For clubs that do not operate on a profit making basis for its members, this is often the best structure to adopt.

Each member guarantees to pay a small amount if the club becomes insolvent e.g. £1, rather than holding shares like a normal limited company with shares. It cannot therefore distribute profits to members, but their liability is limited to the amount of their guarantee (e.g. £1). The club will have a constitution, set out in the articles of association of the new company, directors and committees (if required), much like a members' club. As the company has a separate legal identity, it can enter into contracts and hold land in its own name.



### Advantages

**Limited Liability** - As a company has a separate legal identity, if it becomes insolvent or a claim is brought against it, the members will not be liable other than up to the amount which each member has guaranteed to pay, typically £1 (unless they have broken company law).

### Disadvantages

**Administration** - A company has to file annual accounts, an annual return and directors' details at Companies House and has to file a form there every time a director is appointed or removed. There are fines for late filing. The directors of a company have duties and responsibilities in company law such as the 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.

**Not-for-profit** - Companies limited by guarantee are only suitable for clubs that do not operate on a profit making basis where no sharing of profit is contemplated. This means that members will not have a right to a share of the profits by way of a dividend.

***“Unincorporated associations - a group of individuals who are bound together by the constitution or rules of the club”***



## Companies Limited by Shares

A company limited by shares is the same as a company limited by guarantee except that it is owned by the shareholders. Typically, it is suitable for larger clubs that operate to make a profit for their owners, as it is possible to pay dividends to shareholders.

### Advantages

**Limited Liability** – the same as a company limited by guarantee (see above).

**Shares** - shares in the company can be bought and sold, subject to any restrictions in the articles of association. Dividends can also be paid to shareholders where the company is operated with a view to profit. This makes it easy for investors to invest in the club.

### Disadvantages

**Membership** - Companies limited by shares are not normally used for sports clubs because each time a member joins a share has to be issued to them and each time a member leaves their share has to be transferred to somebody else or redeemed. It is, however, possible to have a limited group of shareholders and then a category of 'members' who pay subscriptions but are not shareholders. Shares cannot be advertised and sold publicly.

**Control** - If anyone holds over 50% of the shares then they can control the board of directors, and if they hold 75% of the shares then they are able to change its constitution and therefore be in complete control of the company.

## OTHER FORMS OF ORGANISATION

### Community Interest Company

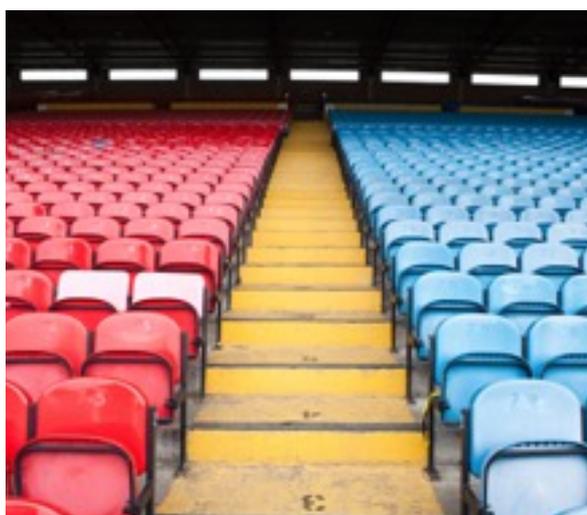
A Community Interest Company is incorporated in the same way as a limited company but applies for Community Interest status (see [gov.uk](http://gov.uk) for a detailed [step-by-step guide](#)).

For the club to be granted this it must demonstrate that it is acting for the benefit of the community. Once granted Community Interest status, the constitution of the company will be changed to restrict the way in which the assets of the company may be used (i.e. only for the specified community – a so-called “asset lock”). It is this asset lock that is the chief reassurance to stakeholders, but it is fair to say that they have not been widely adopted by sports clubs. Amongst football clubs, we are only aware of Stenhousemuir FC in Scotland as having chosen this structure. They have no special tax advantages, and for this reason, it is usually simpler just to use a company limited by guarantee which can also achieve asset protection.

***“Once granted Community Interest status, the constitution of the company will be changed to restrict the way in which the assets of the company may be used”***

### Cooperative or Community Benefit Society (formerly known as Industrial and Provident Society)

Historically, Industrial and Provident Societies have fulfilled a similar purpose to Community Interest Companies. These are now known as a Cooperative and Community Benefit Societies after new legislation in 2014. They also operate as a corporate body run as a cooperative or for the benefit of the community. It is important to note that the benefit must be to the community at large, not just members of the club, which means this structure may not be suitable. Their use is increasingly rare (although both the RFU and FC United of Manchester use this structure) and would not usually be recommended except in particular circumstances.





**“Charitable Incorporated Organisations only need to register with the Charity Commission and not at Companies House”**

## Charitable Incorporated Organisations

[Charitable Incorporated Organisations](#) (“CIOs”) are a new form of charitable company which became available to organisations based in England or Wales for new charitable activity from January 2013. CIOs must have one or more charity trustees and one or more members. However, the charity trustees and the members can be the same people. CIOs only need to register with the Charity Commission and not at Companies House, reducing the administrative burden on those running it but trustees will be faced with the requirements of complying with the requirements of the Charity Commission, as well as company law. As soon as an organisation is registered with the Commission, its details are entered in the register of charities.

### Advantages

**Limited Liability** – the same as a company limited by guarantee.

**Flexibility** - CIOs are able to adopt a very flexible corporate structure.

**Little administration** – CIOs are simple and cheap to set up. The Commission has provided two forms of model constitution for the governing document, which must be as near to that form as circumstances permit. Additionally, there are no charges in respect of registration and filing of documents.

**Less onerous reporting and accounting requirements** – An annual return must be filed with the Commission; however, the accounting regime is less onerous than that applicable to companies. CIOs only report to and file accounts and other documents with the Commission.

### Disadvantages

**Charities seeking to raise funds** – The Commission does not provide a searchable register of charges over the property of CIOs, meaning that such structures may be less attractive to larger charities or clubs that seek to raise funds either through issuing debentures (a debt instrument not secured against a physical asset or collateral) or against the security of their property.

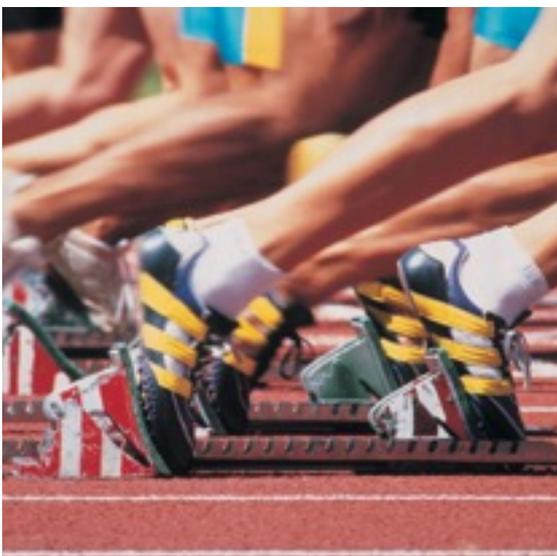
The benefits and downsides of charitable status generally are considered further below.

## Community Amateur Sports Club Status (CASC)

However a club is constituted, since April 2002 community based amateur sports clubs have been able to take advantage of valuable tax reliefs by registering as a CASC with HM Revenue & Customs. Further information can be found [HERE](#), including how to register as a CASC.

Unincorporated associations and companies can become a CASC. To qualify as a CASC, a club must, as its main purpose, provide facilities for and promote participation in one or more eligible sports. A club will be eligible if/when it meets the following criteria:

- Open to all of the community;
- Affordable membership fees and costs of participation (at the time of writing a hard limit on membership fees of no more than £1,612 a year and, if membership fees and participation costs are more than £520 a year, the club must make satisfactory provision to those that can't afford to pay more than this amount);
- Must provide facilities for eligible sports and encourage people to take part;
- The club is amateur. Payments can be made of up to £10,000 to all players (but no more) in a year;



- At least 50% of its members must participate in sport at the club. Participation can include playing, officiating, coaching, providing services (e.g. first aid, groundskeeping, driving) or being an officer or committee member. It seeks to cap pure social members;
- Those having the general control and management of the club are 'fit and proper' persons. This will be determined by HMRC based on whether a person is likely to ensure that the club is run properly as a CASC based on his personal history – to this end, past tax fraud, other fraudulent behaviour, tax avoidance or bars from acting as a company director will be persuasive, but not conclusive;
- Its income received from both trading with anyone who is not a full voting member and from property does not exceed £100,000 in any year; and
- If the club is wound up, its property will be distributed to a sports governing body, another CASC or a charity. The members would need to ensure that this occurred on winding up and could decide on the relevant recipient, although this would commonly be agreed (or at least the process for agreeing would be) in the club's constitution.

If your club is entirely amateur, it is well worth considering whether you may qualify for CASC status.

***“community based amateur sports clubs have been able to take advantage of valuable tax reliefs by registering as a ‘Community Amateur Sports Club’”***



### **Advantages**

**Business Rate Relief** – From Local Authorities of at least 80%, with some Local Authorities giving 100% relief.

**Gift Aid** - Can be claimed on donations from individuals to the club (but not on membership fees). Even if your club doesn't own its own facility, it can still benefit from Gift Aid. Gift Aid means the Government adds 25p to every £1 received as a donation to a charity or CASC.

**Other tax exemptions/reliefs** - CASCs are exempt from various taxes including taxes on the club's fundraising or trading turnover (such as receipts from a bar or sales of branded clothing) if they are under £50,000. Also, no tax is payable on income of up to £30,000 a year from renting out property. They do not pay tax on interest earned in bank accounts and no inheritance tax is payable on legacies left to a CASC.

### **Disadvantages**

**Registration with HMRC** - Normally this involves changing the club's constitution. Once it has become a CASC, a club cannot undo the process.

**Compliance with CASC Rules** - The club must continue to comply with CASC rules and eligibility criteria. This compliance will need to be under continuous review, particularly as the club progresses or grows, and a serious transgression of CASC status could lead to an investigation by HMRC into claimed tax relief.

**Open Membership** - The club must allow anybody to become a member, unless they would be a disruptive influence or the level of facilities means that the club cannot physically accept any more members.

**Amateur Players** - The clubs must be amateur therefore players cannot be paid significant amounts (only £10,000 collectively to all players per year), although they can receive their expenses.

**Income Thresholds** – The income thresholds for eligibility may mean that CASCs are not suitable for larger clubs.

## CHARITABLE STATUS

Unincorporated associations and companies limited by guarantee can be charities. A club can only be charitable if its constitution is such that it promotes amateur sports and/or other healthy amateur recreations (i.e. one of the charitable purposes set out under the Charities Act 2011), for example, by providing facilities, or promotes education or community participation by reference to sport. In all cases the club must exist for the public benefit.

### Advantages

**Greater tax advantages than CASCs** - Full exemption from tax on profits from membership fees, bank interest and investment income. Gift aid can be claimed on donations from companies as well as donations from individuals. Local authority business rate relief is the same as for CASCs, and there is similarly no inheritance tax payable on legacies left to charities.

**Fundraising** - People are more willing to fundraise for a charity, and charities are allowed to run certain types of lottery and other fundraising activities that are banned or licensed for non-charities.

### Disadvantages

**Permanence** - Once a club has become a charity, it cannot stop being a charity.

**Paying Members** - All members of the club must be playing members, it cannot have "social members". Players must be amateur and may not be paid. Charitable grants – for



example, to purchase equipment for an athlete – may however be possible.

**Open Membership** - Although there can be competition to get into, for example, the first team, everybody must have an equal opportunity to use the club's facilities. The level of fees must be low enough so that everyone has the opportunity to join the club.

**Administration** - must register with the Charity Commission ([www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)) if its annual income is over £5,000. This means that it must submit annual accounts and an annual return to the Commission and also comply with charity law which can be onerous particularly for smaller clubs.

## WHAT IS THE BEST STRUCTURE FOR MY CLUB?

Which structure suits will be dependent on the exact circumstances of your club. This will be a matter for clubs to decide on with professional advice on a case-by-case basis, but in general terms:

- **Small clubs** may not want to incur the expense of changing their status. However, they should consider registering as a CASC if they own land or may receive donations from members so as to benefit from the tax reliefs available to a CASC (see above).
- **Clubs** (even relatively small ones) may wish to pay the one-off cost of changing from an unincorporated association to a company limited by guarantee because of the advantages listed above, especially acquiring legal identity and protecting members from possible liabilities. They should also consider registering the company as a CASC if they own land or may receive donations from members, and consider the benefits of becoming a charity.
- **Any club** which receives substantial donations from companies (donations do not include sponsorship payments) should consider the benefits of becoming a charity, for example, taking advantage of the Gift Aid scheme.

## NEXT STEPS

For more detailed information or specific advice regarding incorporation please contact:

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Charles Russell Speechlys LLP  
[Email: Jon.Walters@crsblaw.com](mailto:Jon.Walters@crsblaw.com)  
Tel: 020 7203 5319

Charles Russell Speechlys has prepared a pack of documents to incorporate a club, which have been designed specifically for amateur clubs. Please contact Jon Walters for further details.

NOTE:

This Guide is believed to reflect the law and practice in the area as it applied at July 2015. It is not intended to be a statement of law. It has been written in general terms and therefore cannot be relied upon to cover specific situations; application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. LawInSport and Charles Russell Speechlys LLP accept no duty of care or liability for any loss occasioned, whether caused by negligence or otherwise, to any person acting or refraining from actions as a result of any material in this publication.

## Appendix – Incorporation Process Overview

