

Active Leeds Sport Club Development

Governance for Sports Clubs 2020



Sports Clubs come in all shapes and sizes. They can be hundreds of years old, with hundreds of members or set up last summer by a few friends or like-minded people.

Naturally, those in charge of running the club often focus on things like getting more members, better coaches and improving or finding facilities. But what's often forgotten is the actual structure of the club – how it is legally set up?

Do you know how your club is set up in the eyes of the law? Is your club set up in a way that suits it best? Here are a few options available to sport clubs and the advantages and disadvantages.

*All potential funders will need to understand what type of governance you have, as well as what type of dissolution clause (winding up arrangements) you have in place.

Unincorporated Associations:

<https://www.gov.uk/unincorporated-associations>

If your club has not taken any steps towards setting up a company, or getting any special status, you are most probably one of these. Often called a private members' club, unincorporated associations are, simply put, a group of people bound together by the constitution (or rules) of the club.

This means that, to the law, the club is not a legal entity in its own right and so any contract the club enters into must be done so by a member of the club. This is normally a member, or members of the committee.

So what are the advantages of being an unincorporated association?

- Very little admin – no need to file annual returns and there is no outside scrutiny of the club's actions.
- Lots of flexibility – the constitution (rules) of the club can be whatever the club wants, and can be changed at any time by the members.
- Eligible to be a Community Amateur Sports Club (CASC) – more on this later.

But what are the disadvantages of being an unincorporated association?

- Ownership issues – the club wouldn't have a separate legal identity from its members. This means it can't own any assets like land or property. Instead its members do, and if those members leave the land has to be transferred back to someone else in the club.
- Members will be personally liable – because the members have to enter into contracts in their own name, and not as the club, if something goes wrong or the club breaches a contract, a claim can be made against that member. This risk is particularly apparent in personal injury claims. Members are also jointly and severally liable for claims. This means one member could be forced to pay all of the clubs debts if the other members can't pay.

Companies Limited By Guarantee

<https://www.gov.uk/limited-company-formation/setting-up>

By registering your club as a company limited by guarantee, your club gains a separate legal entity from its members. This means that the constitution (or rules) of the club become its articles of association and that the club can enter into contracts and hold land. Each member also guarantees to pay a small amount of money if the club becomes insolvent (often £1) but no shares are issued as the club is owned by its members. A club cannot distribute any profits it may make to members, but if any claims are made against the club, the members will only have to pay the amount of money they have guaranteed.

So what are the advantages of being a company limited by guarantee?

- Limited liability – because it's the club and not members who have entered into the clubs contracts, members are not personally liable for the full amount. Members only have to pay the amount that they guaranteed when setting the club up – provided they haven't broken company law.
- Eligible to be a Community Amateur Sports Club (CASC), again more on this later.

But what are the disadvantages of being a company limited by guarantee?

- There is more admin – now clubs have to file annual accounts, an annual return and directors' details at Companies House. Every time a director is appointed or removed that also has to be filed and fines are made for late filing. Because the club is now a company, directors (i.e. the committee members) have duties and responsibilities according to company law.

Companies Limited By Shares

<https://www.gov.uk/limited-company-formation/setting-up>

A club that becomes a company limited by shares is often favoured by semi-professional or professional clubs. And it is exactly the same as a company limited by guarantee except it's owned by shareholders.

So what are the advantages of being a company limited by shareholders?

- Shares can be bought and sold – depending on any restrictions that you may have put in your article of association; shares can be bought and sold. Investors can more easily invest in the club and dividends can be paid.

But what are the disadvantages of being a company limited by shareholders?

- Membership share issues – every time a member joins a share has to be issued and each time a member leaves their share must be transferred to someone else or redeemed. Shares cannot be advertised and sold publicly.
- Controlling the club – if anyone gains 50% of the shares then they can control the board of directors. If they have over 75% they can change the club's constitution.
- Not eligible to be a Community Amateur Sports Club (CASC) – more on this later.

Social Enterprise

<https://www.gov.uk/set-up-a-social-enterprise>

You must choose a business structure if you're starting a business that helps people or communities (a 'social enterprise'). If you want to set up a business that has social, charitable or community-based objectives, you can set up as a:

Community interest company (CIC)

If you're setting up a small organisation like a sports club or a voluntary group and don't plan to make a profit, you can form an 'unincorporated association' instead of starting a business.

A CIC is a special type of limited company which exists to benefit the community rather than private shareholders. To set up a CIC, you need to apply to Companies House, and:

include a 'community interest statement', explaining what your business plans to do create an 'asset lock' - a legal promise stating that the company's assets will only be used for its social objectives, and setting limits to the money it can pay to shareholders

Charitable Incorporated Organisation

The main advantage of a CIO is the limited liability afforded by an incorporated form, alongside the lower administrative burden associated with being regulated by the Charity Commission alone, and not by Companies House. (see details below)

Community Amateur Sports Club (CASC)

<https://www.gov.uk/register-a-community-amateur-sports-club/overview>

Since 2001 community-based amateur sports clubs have been able to take advantage of tax reliefs by registering as a CASC. A club is eligible to become a CASC if it is:

open to all of the community, amateur and non-profit making, given to a sport's governing body, another CASC or charity if it is wound up.

So what are the advantages of being a CASC?

- Gift Aid can be claimed on donations from individuals – which means the government adds 28.5p to every £1 donated. However, this can't be applied to membership fees.
- Eligible for Business Rate Relief – Local Authorities can give relief of at least 80% and some up to 100%.
- Tax exemptions – lots of tax exemptions and reliefs and CASCs also do not pay tax on interest earned in bank accounts.

So what are the disadvantages of being a CASC?

- Permanence – after registration with HMRC, CASC status can't be undone.

Open membership – Clubs have to allow anybody to be a member and have equal opportunity to use club facilities – unless the level of facilities means there is no more room for members or it can be proved members would be disruptive. Fee levels must also be low enough so everyone has the opportunity to join.

- Players must be amateur – expenses can be paid but nothing more.
- No social members – all paying members must be playing members.
- Extra administration if annual income is above £5000 – clubs must register with the Charity Commission and submit annual accounts as well as comply with charity law.

Charitable Incorporated Organisations (CIOs) What is a CIO?

<https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure>

Charitable Incorporated Organizations or CIOs are a relatively new legal structure available for groups that wish to be incorporated. It can be chosen instead of registering as a charity and then as a company as well.

CIOs have been designed to allow groups to register just once with the Charity Commission as an incorporated form of charity which is not a company. Therefore cutting out the need to register with and report to Companies House.

Reduced administrative burden is proposed as just one of the benefits of becoming a CIO. In addition to this, the CIO would have its own legal personality and so can enter into contracts in its own right rather than in the name of individual trustees. Trustees will also have limited liability.

CIO members still have key rights in law and under the Constitution and trustees are still responsible for managing the organisation (note that trustees for CIOs will only be trustees, they will not have the dual role of Company Director).

Pros

Need only register with Charity Commission

Need only comply with Charity Law

Limited liability for trustees and members

Legal personality - enabling it to conduct business in

Cons

Not as straightforward as running an unincorporated association or a charitable trust

Not as suitable for charities wanting to issue debentures

Does not come into existence until registered with the Charity Commission – therefore you cannot open a bank account etc. in its name until it is fully registered

Cannot be an exempt charity

its own name, rather than the name of the trustees

Suitable for small to medium sized organisations which employ staff and/or enter into contracts - simpler than establishing a charitable company

Charities can transfer the ownership of any trading subsidiary company to the CIO.

Flexibility, for example, CIO constitution can allow for decisions at meetings to be by consensus

Regime for electronic communications with members is also less rigid than the regime that applies to charitable companies' i.e you can email all members without receiving permission first.

Smaller CIOs can prepare receipts and payments accounts (under £250,000 annual income), while smaller charitable companies must prepare accounts on the accruals basis.

Submission of accounts and registers - for groups under £5,000 may involve a lot more work

May not be suitable for large/complex charities

CIO legislation makes no provision for the maintenance of a register of charges - may make more it difficult to borrow.

Members of a CIO will not have rights to receive accounts, call meetings, vote by proxy, demand a poll and remove a trustee unless the constitution expressly provides them.

CIO can only change its written constitution with a written members resolution unanimous vote rather than 75% as a company

Type	Legal Status	Required	Documentation for Legal
Unincorporated Associations			
Private members clubs with a committee – may have a set of rules and a constitution	None – the committee and/or members cannot enter into land transactions / contracts or hold assets on behalf of the club Trustees are required – at least 2 – to hold the land/assets or enter contracts on trust for the club.	Retired or deceased trustees must be replaced by the committee appointing new trustees. Club rules & constitution	Full names and addresses of the trustees Copy of the trust deed
Incorporated Associations			
Company Limited by Guarantee	Company is a legal entity and can contract / hold assets in its own name. Articles of Association must be checked to ensure company has capacity to enter into the transaction concerned (e.g. to buy, sell or lease land)	Articles of Association Director(s) Registration at Companies House	Articles of Association Company Name (in full) Company Registration Number Company's registered address Contact at company with correspondence address
Company Limited by Shares	As above	As above	As above
Community Interest Company	As above	As above	As above
Charitable Incorporated Organisation	CIO is a legal entity and can contract / hold assets in its own name.	As above although registration will be with Charities Commission rather than Companies House	As above although registration will be with Charities Commission rather than Companies House
Other			
Community Amateur Sports Club	May be incorporated or unincorporated – see above for information	If incorporated – see company information If unincorporated – see trustees information	If incorporated – see company information If unincorporated – see trustees information
Charities	May be incorporated or unincorporated – see above for information	Registration with the Charity Commission	Charity Registration Number Charity's registered address Contact at charity with correspondence address PLUS company information as above if incorporated