# British Rowing Guide to Structures for Rowing Clubs

# Legal Structures, CASCs and Charitable Status

# Version 3a, 19 August 2019

**This guidance is aimed at giving clubs and associations a guide on the options available. However, each situation is unique and you are strongly urged to seek the appropriate legal and accountancy advice from relevant professionals. An independent firm to the club should be used to ensure that if advice is inappropriate or incorrect, then the club benefits from the firm's Professional Indemnity cover.**

**Other clubs in your region are also a good source of information in terms of experience and issues. Also early discussions with the Infrastructure team at British Rowing may also provide assistance.**

**CASCs are Community Amateur Sports Clubs, a status that was introduced in the 2002 Finance Act to provide tax incentives to Amateur Sports Clubs along with Charitable Status. However, please be aware that regulations periodically change and can impact on the ability of a club to qualify. Current HMRC guidelines on CASC cab be found as follows:-**

**https://www.gov.uk/register-a-community-amateur-sports-club**

## Discussion Document re future structure of club

*Background*

As society gets more litigious and a noticeable increase in cases in the "no-win, no fee" arena, the issue of liability arising from water safety and other activities of a rowing club should necessitate a review of corporate structure. In addition, a grievance or disciplinary procedure for an unincorporated association, which many rowing clubs are, could have a significant impact on its future as well as potentially give rise to liability issues for club officials.

*Unincorporated Associations*

Many clubs are currently unincorporated associations. The members have come together and agreed to establish the club with its own rules and procedures, which are set down in a Constitution.

It is the easiest and simplest form of club structure whereby a group of individuals are bound together by the constitution or the rules of the club. The club is not a legal person in its own right and therefore any contract entered into by the club must be done on its behalf by an individual or individuals on behalf of the club. For legal purposes, the club is regarded as a voluntary coming together of its members – literally an association of members.

The club is usually run by a committee elected annually at an annual general meeting; it will be a member or members of the committee who will enter into contracts on behalf of the club.

<u>Advantages</u>

- The unincorporated association does not have many of the legal requirements of a limited company. It is suitable and appropriate for many small local clubs without significant buildings, equipment or financial assets.
- It can be suitable where its activities/services are for their own members (rather than the general public or non-members).
- Not subject to outside scrutiny e.g. Companies House, Charities Commission
- Subject to any prevailing legislation, the club can be whatever it chooses (subject to not impinging on any rules necessary to maintain CASC status) and the rules or constitution can easily be changed by the members.
- CASC Compatible

<u>Disadvantages</u>

- Because the club does not exist as a separate entity, members of the committee will have to enter into contracts in their own names. This gives rise to many issues.
- If the club breached a contract or agreement entered into by a member of the club on its behalf, then the club member who signed would be personally liable
- If there were an uninsured accident or an employee, officer or member of the club performs an act for which the club is held liable then possibly all of the committee or even all of the members would be liable and have to meet any claim after all the assets of the club had been realised. Also, liability claims may also not be pursued against all members but against those with perceived greatest wealth/assets.
- It is not suitable for clubs that are engaged in high-risk sports where accidents are far more likely to happen and potentially costly if negligence could be proved.
- Members are jointly and severally liable for any liabilities meaning one member could be liable for all the club's debts if other members cannot or will not pay
- As the club does not have a separate legal identity from its members, members of the committee will have to hold land or investments in the club in their own names. If the individual leaves the club, all land or investments would need to be transferred to someone else, which if there is any capital gain could be subject to tax.

*Other structures available to the Club*

All of the following remove the issues highlighted above, establishing the club as a separate legal identity and minimises liability claims against members of the committee as well as members of the club.

1. Company Limited by Guarantee
2. Company Limited by Shares
3. Community Interest Company
4. Charitable Incorporated Organisation
5. Industrial and Provident Society (also known as a Mutual Society

Each option is discussed below:-

**Company Limited by Guarantee**
This type of company is owned by its members, but unlike an unincorporated society, has a separate legal identity.

Each member guarantees to pay a small amount if the club becomes insolvent which is incorporated in the memorandum and articles of association e.g. £1 but usually no more than £5. The structure is very flexible and common for clubs where membership is frequently changing. The club's constitution will be set out in the articles of association of the company. The company will be run by directors (i.e committee members) elected by the members although terms of office may need to be extended beyond a year to avoid considerable administration time. The board of directors will be responsible for running the rowing club as before, unless a decision is taken to retain the management committee and the board of directors, effectively replaces the trustees or individuals who held assets for an unincorporated society.

Clubs considering this route are urged to consider very carefully the roles of a board and a management committee to decide which best applies to their requirements.

A company limited by guarantee has no shares and will not pay any dividends to its members. As the company has a separate legal identity, it can enter into contracts, other financial commitments and hold assets in its own name, rather than that of individual members.

<u>Advantages</u>

- As a limited company, it has a separate legal identity. If it were to become insolvent, its members will not be liable for the company's debts other than the amount which each member has guaranteed to pay - £1 per member. If there was an uninsured accident or a claim made against the club, which the assets of the club could not cover and the club was liable, the members and directors will not normally have to pay or be personally liable. (The only caveat is that under Company Law if it is proven that the directors have not acted in the best interest of the company, then personal liability might arise).

- Any land or other assets can be held in the name of the club rather than that of an individual. Ownership will not then need to be transferred unless the asset is sold or transferred.

- As a company, accounts and governance structure will be recorded at Companies House providing transparency for the club to outsiders.

- No individual should have control of the club unless the articles of association allows this.

- CASC compatible

<u>Disadvantages</u>

- A company has to file annual accounts (profit and loss and basic balance sheet as prepared at present), an annual return and directors' details at Companies House. If clubs have previously not had a depreciation policy for boats and equipment, this will need to be considered. Also, a form will have to be lodged each time a director is appointed or removed – hence the need for possible longer terms on committee to reduce paperwork. The Secretary will have an increased workload at the time the annual return is due. Corporation tax may arise and an annual return to HMRC is required.

- There are also accounting issues which have to be considered, including maintenance of a fixed asset register (your equipment). The club will also need to consider a suitable depreciation policy for this equipment – this can have benefits as depreciation will affect the profit and loss account, and any taxation charge.

- Legal penalties (usually fines) may be applied for non-compliance with legislation governing the administration of companies.

- The directors of the company will have duties and responsibilities under Company Law such as the promotion of the success of the company (i.e rowing), to act in the best interests of the company and to comply with the articles of association (the club constitution).

- The structure may deter investment in the club by investors that may require control of the club under the terms of any proposed investment.

- If a club is actively fund raising, a number of charitable donors do not make grants or awards to clubs registered in this manner as they are not charities. If you are reliant on raising charitable donations to support, your activities the views of these stakeholders should be sought at the earliest opportunity

**Company Limited by Shares**

As above, the company will have a separate legal entity and able to undertake the duties as above for a company limited by guarantee.

However, the major difference is that the company is owned by shareholders who will elect the directors. It could be possible for members not to be shareholders. This type of structure is not common for clubs such as rowing clubs which operate a membership scheme as each member joining will have to acquire a share in the company. Each time a member leaves (or does not renew annual membership) then the share will need to be transferred to somebody else or redeemed.

Advantages

- Separate legal identity is established. If the company becomes insolvent, shareholders will not be liable for the company's debts or liabilities other than to the extent that they have not fully paid the company for the shares they hold.

- Shares can be bought and sold, subject to any restrictions in the articles of association. If the club were seeking investors who required control, then this structure would meet their requirements.

Disadvantages

- As the company is limited by shares, shares would have to be issued and redeemed each time a new member joins the club. In addition, the club would need to decide how many shares to issue which might need to rise as membership increases – this will require resolutions at annual meetings. Alternatively, the number of shares issued might be limited. This would reduce activity on the share register but may also limit those members who run the club as new members may not be able to acquire shares until redeemed by a current shareholder. Only those members holding shares could elect the committee/board of directors.

- The articles of association would need to be tightly written to ensure that no member could hold a controlling interest in the company as they would control the board of directors.

Ownership of shares greater than 75% would give total control to the shareholder or group of shareholders.

In summary, limited company structures should be considered if one or more of the following apply to your club:-

- High value assets are owned in the form of buildings, facilities or financial reserves. Advice should also be sought as capital gains tax may be applicable in certain instances.
- The club is engaged in selling or providing significant volumes of goods and services to non-members such as training courses, taster sessions, company days or where the assets are let out for financial reward.
- If the club organises major events such as regattas, heads, dinners etc where there is potential risk of significant financial loss. It may be appropriate to consider establishing the event as a limited company owned by the club or as a subsidiary of the limited company.
- CASC compatibility doubtful.

**Community Interest Company**

A special type of company which reports and is governed by a separate regulator – CIC Regulator.

It has a separate legal entity and, as with a company limited by guarantee, members and officers are protected from liabilities. Only companies – share or guarantee – can apply for Community Interest status; as an unincorporated body, this option is not available at present to clubs structured as an unincorporated association.

CICs are incorporated in the same way as companies that are limited by shares or by guarantee but must demonstrate that they are acting for the benefit of the community – most rowing clubs should meet this criteria. Constitutions of CICs must comply with certain rules which restrict the way that assets can be used – called an asset lock. Limited information is available but a possible issue that it might restrict is the ability to buy and sell boats, for instance.

There are no special tax advantages.

Advantages

- It provides a limited company structure for a social enterprise with assets protected. If the company were wound up, and having discharged any outstanding debts or liabilities, its assets would be transferred to a charity or a similar CIC.

Disadvantages

- In addition to the reporting and governance requirements of a company limited by guarantee and limited by shares, a CIC will have to produce an Annual Community Benefit Report available to the public.

- Further, there are additional reporting requirements to the CIC Regulator as well as cost

- The CIC is still not very common and may not be as familiar to banks and possible funders.

**Charitable Incorporated Organisation**

This is a new legal form of charity.

A CIO is:-

- Is an incorporated form of charity which is not a company
- Only has to register with the Charities Commission but not Companies House
- Can only be created once registered with the Charities Commission
- Can enter into contracts in its own right and its trustees will normally have limited or no liability for the debts or obligations of the CIO

The CIO is administered and governed by regulations and ordinances of the Charities Commission.

Advantages

- A flexible structure can be adopted in terms of governance with reporting only to the Charities Commission providing a form of incorporation as well as the tax benefits of a charity. Liability is reduced for the trustees and the charity has a legal personality of its own, enabling it to conduct business in its own name rather than the name of trustees.

Disadvantages

- New and unfamiliar to banks, funders and yet to be tested in practice

- Administered by the Charities Commission – which can be very bureaucratic and form driven. Financial and administration records are subject to inspection. Asset disposals and dealing with assets requires the approval of the Charities Commission – again experience is not good on this area. Also, the redevelopment of Bath Rugby Club has been mired in bureaucracy of the Charities Commission for a number of years.

- CIO Articles do not allow Debentures or using Assets and security for loans, which could impede the growing number of clubs that are taking loans to partly replace dwindling grant aid in the current financial climate.

- Not CASC compatible, as a club needs to choose from being Non-CASC, CASC Status or Charitable Status. n.b. Conversion from CASC to Charitable Status is complex and must be overseen by HMRC. Qualified legal and financial advice must be sought.

- Cost and expense.

**Industrial & Provident Society**

An IPS is registered with the Financial Conduct Authority (FCA) and can be a co-operative run for the benefit of its members or a community benefit society which is run for the benefit of the wider community.

Once approved by the FCA, a company can convert into an IPS or a new IPS could be set up

It provides the rowing club with a separate legal identity, which if it were to become insolvent then members will not be liable for the debts or obligations of the co-operative.

Advantages

- Separate legal entity with no liability for members

- Any assets realised from the winding up of an IPS would be applied for the benefit of the community

Disadvantages

- Governed by the Financial Conduct Authority.

- Costs of registration are potentially £1k in addition to any legal or accountancy costs of setting up an IFS. Annual fee and reporting are required.

- Only those clubs which can demonstrate a valid reason to be an IFS instead of a company will be permitted to register by the FCA.

*File Ref: BR/rowing/Corp Governance/Guide to Structures v3a, SJR & AVM 19.08.2019*