

We have discussed the possibility of the Club looking to incorporate as either a company limited by guarantee or a mutual society. I have set out the Club's current position as an unincorporated association and also the advantages of companies limited by guarantee and mutual societies below, together with my suggestions on how the Club may look to proceed.

1. Current position

Currently, the Club is an unincorporated association. This means it is essentially a group of people working together for a non-business purpose (i.e. a not for profit organisation) which is governed by a set of rules. An unincorporated association is not a distinct legal entity.

As regards liability, the liability of a member of the Club will generally be limited to that person's annual subscription fee. However, in the event that a member:

- i. enters into contracts personally on behalf of the Club; or
- ii. if their own actions cause an accident or incident;

they could face unlimited personal liability on the basis set out below.

If a member enters into a contract supposedly on behalf of the Club but does not have the correct authority from the Club to do so, they could be personally liable for any obligations contained within the contract, or for any damages which could be claimed under it.

If the member is properly authorised to enter into a contract on behalf of the Club, then it would be persons who authorised them that would be potentially liable. For example, if the authority was given by a management committee then all members of that management committee could be liable.

Members of the Club could also be liable in the event of negligence. For example, if the Club were to put on an event and an incident occurred as a result of the Club negligently failing to protect competitors, then the members with the relevant responsibility for the event could be found personally liable.

Primarily in order to protect against liability, many sports clubs are now looking to incorporate as companies limited by guarantee. Incorporation as an industrial and provident society (otherwise referred to as a "mutual society") is less common, but effectively achieves the same end.

2. Companies limited by guarantee

A company limited by guarantee has members rather than shareholders. The members' personal liability is limited to a nominal figure (usually £1 each) which is set out in the company's articles of association. The articles of association also set out the rules by which the company is to run. In addition to members, the company

would also have directors appointed who would form a board to make the day to day decisions of the company.

Although members' liability would be limited to the figure set out in the articles of association, the appointed directors do still have the potential to be personally liable if they do not comply with their directors' duties and responsibilities. However, the risks of personal liability are significantly reduced following incorporation.

Companies limited by guarantee are very common, fairly cheap to incorporate and have relatively straightforward regulatory obligations which must be followed post incorporation. Essentially, these are just the filing of statutory accounts and an annual return with Companies House once a year.

3. Mutual society

The term "mutual society" covers a number of organisations, including building societies, friendly societies, credit unions and industrial and provident societies. Under current legislation, the only "mutual society" that would be appropriate for the incorporation of a sports club is an industrial and provident society.

Industrial and provident societies are very similar to companies limited by guarantee in that:

- i. they are non-profit making;
- ii. they are a separate legal entity; and
- iii. they can hold property in their own right.

An industrial and provident society would achieve the same goals as a company limited by guarantee and would restrict the liability of its members in the same way.

However, industrial and provident societies are significantly more expensive to incorporate and (following incorporation) are regulated by the Financial Services Authority. Whilst this level of regulation is not particularly onerous, the regulatory and filing requirements are slightly less common than those involved with a company limited by guarantee and may therefore involve more expense for the Club.

4. Conclusion

My suggestion for any sports club would be that there are definite benefits to incorporation – the key benefit being the reduction of exposure to personal liability of members. In terms of structure, I would suggest that the correct vehicle to adopt is a company limited by guarantee, on the basis it is versatile and inexpensive to set up.

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