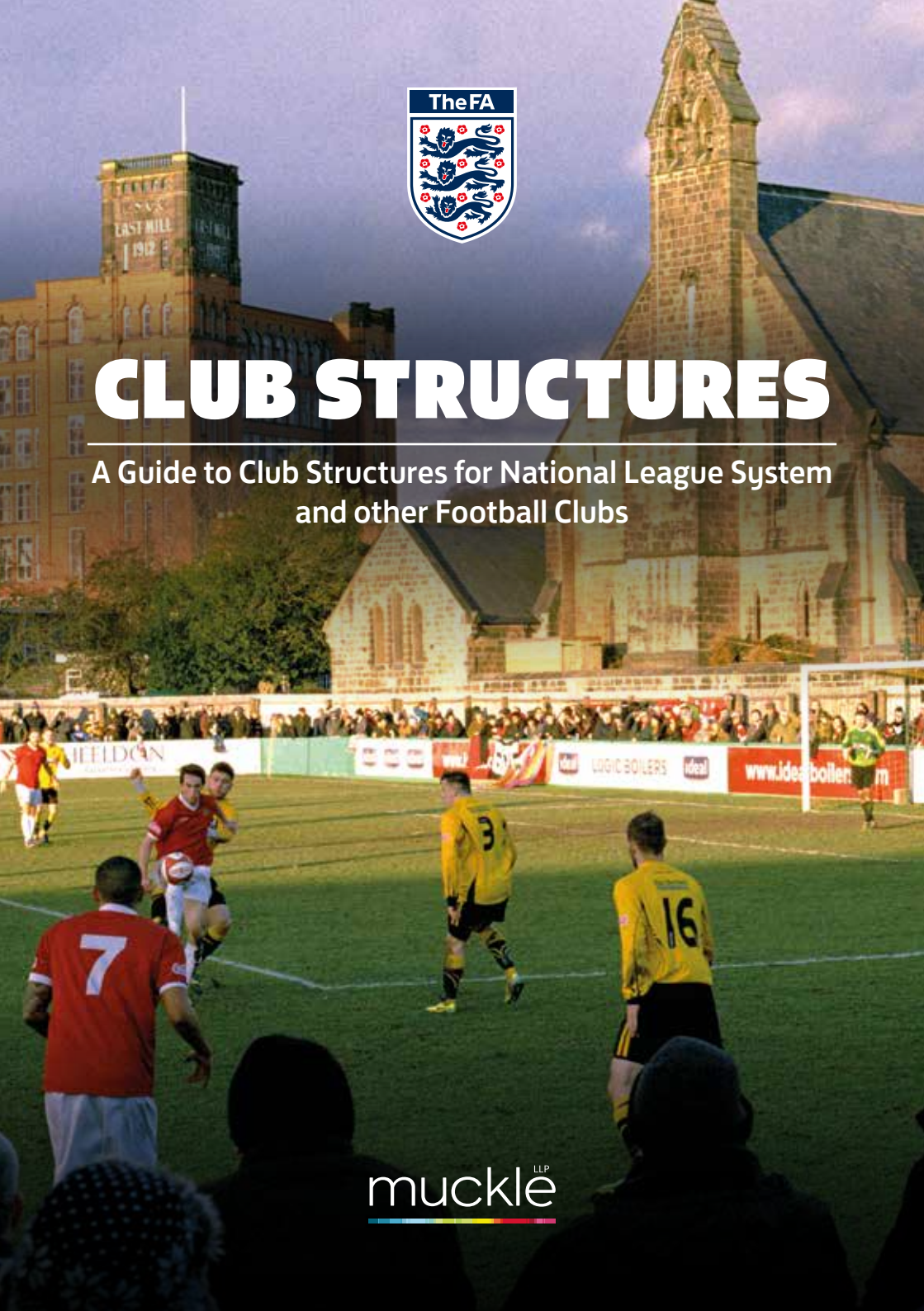

CLUB STRUCTURES

A Guide to Club Structures for National League System and other Football Clubs

muckle LLP

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This Guide has been prepared in order to illustrate and comment in general terms only on the law and practice relating to club structures as at April 2015. However, please note that the subject matter covered is in no way exhaustive and the material does not stand on its own nor is it intended to be relied upon as a substitute for obtaining specific legal advice. Each club's individual circumstances will differ. The information contained in this publication is given in good faith but any liability of The Football Association Limited or its professional advisers (including their respective members or employees) to you or any third party which may arise out of the reliance by you or any other party of the contents of this publication is hereby excluded to the fullest extent permitted by law. The Football Association Limited and its professional advisers 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. We would strongly recommend that you consult professional advisers on specific issues before acting or refraining from action on any of the contents of this publication.

1. INTRODUCTION

Each club is different. At The FA, we recognise that, but we also see the tangible benefits that can be gained by clubs from our sharing of knowledge and best practice across the football sector. This Guide therefore addresses the different types of legal structure and tax status which a club can adopt.

The FA operates a free legal Helpline for the benefit of over 7,500 Charter Standard Clubs and 350 Leagues; all National League System clubs and leagues, and clubs in the women's football pyramid; so if there is any issue on which you need further assistance after reading this Guide, specialist help is available free of charge by calling **0191 211 7799** or by sending an email to: **CSLegalHelp@TheFA.com**

This Guide has been prepared in response to requests by clubs using the Helpline for basic guidance in relation to the governance and operation of their club. What types of legal structure can a club adopt? What difference does a club's tax status make? Could I be held personally liable if I accept a position on the Management Committee?

These are all common questions which we believe merit straightforward answers in plain English. This Guide weighs up some of the commonly recognised advantages and disadvantages of each type of structure which a club could adopt. It also sets out in broad terms what a club should do 'step by step' if it wishes to set itself up as, or convert into, a limited company (a process known as 'incorporation').

The FA does not have any set rules or requirements which specify that a club must be one legal form or another, except it cannot be a sole trader. It is a matter for each club to determine the most appropriate legal form which is best for the club based on its own circumstances. We strongly recommend that a club seeks independent legal and tax advice in relation to both the legal structure and tax status which it should adopt, as well as the necessary steps to be taken.

Before making any changes to its legal structure, the club should also give prior notice to The FA, (and the league and County FA in which its membership resides), in relation to the application of football's rules.

The FA works with law firm, Muckle LLP, in delivering the free Helpline and has sought their input in preparing this Guide. Muckle LLP's sports team has advised clubs from grassroots to the top of the professional game on these issues, including over two thirds of the 92 professional clubs in the football league. If you are considering the incorporation of your club, Muckle LLP has prepared a suite of template documents necessary to set up the company and acquire the assets of the existing club which you can access via the Helpline for a fixed price.

Further information on legal structure and tax status is available for clubs free at http://www.muckle-llp.com/what-we-do/sports/county-fa-and-chartered-standard-clubs/

Alternatively, if you think you may need more bespoke advice on the options available to your club, please contact:

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2. CLUB STRUCTURES

It is up to each club which structure it chooses to adopt. The FA does not prescribe or specify a required format, other than it cannot be a sole trader.

It is also important to distinguish your club's legal structure (i.e. what legal entity it is and how it is constituted) from its tax status (i.e. how it is recognised by HMRC for tax purposes, the most common forms of special tax status for clubs being either Community Amateur Sports Club (CASC) or registered charity).

Football clubs can take one of several different legal structures, the most common of which are:

1. unincorporated association;
2. private company limited by guarantee;
3. private company limited by shares;
4. community interest company (CIC) (which can either be limited by guarantee or shares);
5. registered society (which can either be a Co-operative or a Community Benefit Society).

2.1 Unincorporated Associations

2.1.1 Introduction

This is the most common type of structure for an amateur club, largely because it is the easiest, cheapest and most informal way of forming a club. This type of club is often referred to as a 'private members' club'. It is, in essence, a club for members run by the members with little or no outside control, other than of course compliance with applicable football regulations.

Unincorporated associations are a group of individuals who are bound together by the constitution or rules of the club. As such, the club is not a separate legal person in its own right, which means it cannot act in its own name to:

(i) hold property (either land or other assets); or

(ii) employ staff; or

(iii) enter into contracts.

In practice, this therefore means that any contract which the club wishes to enter into must be signed by a authorised person(s) on behalf of the club. Normally a club has a management or governing committee to oversee the running of the club so, in practice, it will be a member or members of that committee which will enter into contracts and hold land on behalf of the club.

2.1.2 Advantages

- **Few Legal Requirements** – An unincorporated association is a private members' club and therefore it is not bound by many of the formal legal requirements that apply to limited companies (such as the filing of accounts and annual returns by way of public record).
- **Privacy and flexibility** – An unincorporated association is not subject to outside scrutiny (unless it has CASC or charity status), other than as may be required by law and applicable football regulations.
- **Member Control** – Within the constraints of the law, the rules or constitution of an unincorporated association can be whatever the members choose, and can usually be changed easily by the members (see 2.1.4 and Appendix 4 for The FA's standard form of constitution).
- **Participation in Proceeds** – Assets are held jointly by the members for the members, however FA Rule I 2(c) prevents a distribution to members (see Appendix 3) and the Dissolution in the suggested FA Club Rules per unincorperated organisations (see Appendix 4) states any surplus profits shall be transferred to another club, a Competition, the Parent Country Association or The FA for use by them related to community sports.

2.1.3 Disadvantages

- **Personal Liability** – An unincorporated association is not a separate legal entity, so the committee members have to enter into contracts in their own names. This means that the members of the committee could be held to be personally liable on an unlimited basis if, for example, the club breaches a contract or if a claim is made against the club and the club has insufficient assets to meet the claim. Similarly, depending on the circumstances, if there is an uninsured accident or an employee, officer or player 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 could have to pay personally.
- **Joint and Several Liability** – 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. It is essential that, where possible, insurance is purchased to cover all of the club's activities.
- **No Separate Legal Identity** – An unincorporated association does not have a separate legal identity from its members and so the members of the governing committee have to enter into contracts and/or hold any land or investments of the club in their own names on behalf of the club. This means that if the named individual(s) leave the club, all of the land or investments in their name(s), needs to be transferred to someone else.

2.1.4 Updating your club constitution

If a club wishes to remain as an unincorporated association, the committee may wish to update its constitution.

As a minimum, the club's constitution should cover the following areas:

- Name of the club;
- The objects and purposes of the club;
- The identity of the members and detail on the process of becoming a member, the classification of members (e.g. full, associate, junior etc), how membership comes to an end including disciplinary procedures for suspension or expulsion, payment of subscriptions and consequences of non-payment;
- Election of the management committee, including any special roles (e.g. president, chair, treasurer etc.), the role of the management committee and rules dealing with how and when it meets, the power of members of the management committee to bind all of the members of the association, how members of the management committee can be removed;
- Any other committee(s) that the club has;
- Rules about management of the club's bank account and other finances and rules about payment of expenses incurred on behalf of the club (if relevant);
- Rules about the procedure for the club when buying goods or services from members;
- How the rules can be amended;
- What happens to the property of the club if it is dissolved.

A set of Standard Club Rules suitable for use by an unincorporated association is included at Appendix 4 and these are also available in The FA Handbook and from www.TheFA.com. The use of the Standard Club Rules is not compulsory, it is up to each club to adopt a form of constitution which is appropriate for its governance and operation.

2.2 Companies Limited by Guarantee

2.2.1 Introduction

The type of company you choose to adopt for your club will depend on the purposes for which it is formed. If the club is to be formed primarily for participation purposes, with no view to the members seeking to profit personally from the operation of the club, a company limited by guarantee is the most common form of incorporated legal structure.

Companies are regulated primarily by the Companies Act 2006. Private companies limited by guarantee are the most common type of company used by voluntary or not-for-profit groups.

The directors of a company limited by guarantee are responsible for making the management decisions for the day-to-day operation of the company. The company's members act as a control on the directors and are given certain rights and responsibilities at law.

A company limited by guarantee is a company owned by its members but, unlike an unincorporated association, it has a separate legal identity. This means it is recognised in law as being separate and distinct from its members, so the company can enter into contracts and hold land and assets in its own name.

Each member guarantees to pay a small amount if the club becomes insolvent (e.g. typically £1 or £10). The structure is very flexible and common among not-for-profit organisations.

In an incorporated club, the governing document will be the articles of association of the company (as opposed to a constitution for an unincorporated association) and the directors will form the board (as opposed to the management or governing committee for an unincorporated association). Often the members elect the directors, who will be re-elected in accordance with the company's articles. The directors are responsible for running the club. No individual should have control of the incorporated club unless the circumstances are exceptional and the articles allow this expressly.

A company limited by guarantee has no shares and will not pay any dividends to its members. As such, it is not suitable for clubs seeking to turnover a profit for its members (as opposed to making a profit for the club to reinvest in itself).

A company limited by guarantee's property is often subject to an 'asset lock' which restricts how the remaining assets may be applied on the incorporated club winding up - members typically cannot benefit personally from any transfer (see Appendix 3).

Further information can be found at www.companieshouse.gov.uk

2.2.2 Advantages

- **Separate Legal Identity** – Incorporation protects the club's board from liability in respect of the club's transactions and activities which result in a claim being made against the incorporated club – it is the incorporated club itself which will, in most cases bear the responsibility (unless the directors have acted wrongfully or fraudulently). A claim is unlikely to be made against the directors or members personally unless the specific circumstances are exceptional, but directors should not assume blanket immunity.
- **Limited Liability** – Since an incorporated club has a separate legal identity and the members' liability is limited, if it becomes insolvent then the members will not be liable for the company's debts other than the nominal amount which each member has guaranteed to pay, typically £1 or £10. This means that, for example, if there is an uninsured accident and the club is liable in such circumstances, but unable to pay, the members and the directors will not normally have to pay unless they have broken company law (including, for example, not having acted in the best interests of the company).
- In most cases, if a claim is ever brought against the incorporated club, it is likely that it would be made against the incorporated club itself.
- **Legal Capacity** – The incorporated club will own and hold its property (land, investments and other assets) in its own name – board directors and members do not have to hold property on behalf of an incorporated club.
- **Public Perception** – As a limited company it will be required to file accounts and details of the directors publicly at Companies House. Certain company information is available to the public (although clubs can request on incorporation that directors' personal residential addresses are not disclosed publicly) giving the incorporated club transparency to outsiders.
- **Funding** – As a result, borrowing and applying for grant funding may be easier. Companies can grant charges over their assets which means a loan or grant may be made to the incorporated club and secured without hindering the use of the club's assets in the meantime.

2.2.3 Disadvantages

- **Increased Statutory Regulation** – A company has to file annual accounts (there are automatic fines for late filing), an annual return and directors' details at Companies House. A company has to file a form every time a director is appointed, is removed or their personal details change. All companies are required to maintain a set of statutory books which include a register of members' details, a register of directors, a register of secretaries (if any), a register of charges over the Company's assets and a register of board minutes.
- **Lack of privacy** – A company limited by guarantee is subject to legal requirements for maintaining records and filing information with the Registrar of Companies at Companies House. The registered office and details of the directors (including their name and date of birth) will also be publicly accessible.
- **Directors' Duties** – 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 (i.e. the company's governing document).

  Further information on Directors duties can be found at www.TheFA.com/football-rules-governance/more/financial-regulation
- **Asset Lock** – Since it does not have a share capital, members are not entitled to any dividend nor can they benefit from a distribution of club assets on winding up. This may deter investment into the club by investors who may require control in return for any cash injection.
- **Restriction on transfer of membership** – A member of a company limited by guarantee cannot transfer his or her membership to a third party. A member can either resign as a member by giving the directors prior written notice or the directors of the company can resolve to terminate a member's membership.
- **Funding** – Although funders will be familiar with the company structure, some social enterprise or quasi-government funders may be less comfortable with funding an "ordinary" commercial company limited by guarantee than they would an incorporated charity or community interest company. This may not be an issue if the company's articles of association contain express restrictions in respect of the transfer of assets, distributions to members and the remuneration of its directors. In addition, there is no mechanism for people to invest in the Company in the same way as a company limited by shares or an industrial and provident society.

3. OTHER INCORPORATED CLUB STRUCTURES

While in practice, an unincorporated association is the most common legal structure for an unincorporated club, and a company limited by guarantee is the most common for an incorporated club, there are other options. Which you choose will depend on what you are trying to achieve.

3.1 Companies Limited by Shares

This is an alternative option for a club wishing to be an incorporated organisation which does not wish to operate on a 'not for profit' basis.

Most English professional clubs are structured this way since this structure is preferred for an organisation which trades with a view to profit. Companies limited by shares are capable of distributing both profits and, on dissolution, assets to shareholders. In a company limited by shares, the shareholders are the members. Legal membership is obtained by either subscribing for shares from the incorporated club or by buying shares from an existing shareholder, typically based on the value of the club at the time of acquisition.

The legal structure is similar to a company limited by guarantee except that the company is owned by shareholders who elect the directors.

Like the legal members of a company limited by guarantee, shareholders also typically have a right to vote.

However, unlike the legal members of a company limited by guarantee, shareholders also typically have the following additional rights if the articles allow:

(i) right to receive a dividend (if declared, out of the club's distributable profits);

(ii) however the right to participate in a distribution of the club's assets on winding up is not possible due to FA Rule I 2(c) (see Appendix 3).

Companies limited by shares are not normally chosen as the legal structure for clubs which operate membership schemes because each time a member joins the club a share has to be issued to them and, similarly, each time a member leaves the club their share either has to be transferred to somebody else or redeemed.

A company limited by shares may be suitable for a club which has or wishes to attract owners or investors who wish to invest in the club as a potentially profit-making operation as they can benefit from payment of dividends and an increase in the value of their shares (which can be sold, subject to the incorporated club's governing document, the articles of association).

3.1.1 Advantages

- **Separate Legal Identity** – As a company it has a separate legal identity, so if it becomes insolvent, then the members (i.e. the shareholders) will not be liable for the company's debts other than to the extent that they have not fully paid the company for the shares that they hold.
- **Transfer of Shares** – Shares in the company can be bought and sold, subject to any restrictions in the articles of association.
- **Remuneration of Directors** – Directors can be paid for holding office if the articles allow.

3.1.2 Disadvantages

- **Public Offer Restrictions** – In addition to the disadvantages shown in 2.1.3 on page 7, an incorporated club adopting this legal structure is a private company limited by shares. This means that its shares cannot be advertised and sold publicly.
- **Issue and Transfer of Shares** – Shares have to be issued each time a new member joins and transferred or redeemed each time a member leaves or dies.
- **Control** – If anyone, either individually or by collaboration with other shareholders:
  - holds **over 50%** of the issued shares, then they can control the appointment and removal of the board of directors, and
  - holds **75% or more** of the issued shares then they are, amongst other things, able to change its articles of association.

3.2 Community Interest Company

Community interest companies (CICs) are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by the company satisfying a "community interest test" (which ensures that the CIC is established for community purposes) and making its property subject to an "asset lock" (which means that any assets held by the CIC may only be applied for the benefit of the community, even on winding up).

The CIC model was created in 2005 and CICs are regulated by the CIC Regulator.

A CIC has a separate legal identity and the members are protected from liabilities. Only limited companies can apply for CIC registration (i.e. it is not available to unincorporated associations).

A CIC can be any of:

(i) a private company limited by shares; or

(ii) a private company limited by guarantee; or

(iii) a public limited company

although only companies limited by shares or guarantee are appropriate for grassroots clubs.

A CIC is suitable for a club which wishes to operate as a 'social enterprise'. It can either be formed as a company limited by guarantee or as a company limited by shares.

A CIC is incorporated in the same way as a normal company by submitting the appropriate application to the CIC Regulator at Companies House, but as part of the incorporation process, it must be able to demonstrate that its activities will be carried on for the benefit of the community. Many amateur football clubs would be able to meet this test.

Unlike CASCs and charities, CICs have no special tax advantages.

Further information can be found at www.cicregulator.gov.uk

3.2.1 Advantages

- **Limited liability** – In the same way as companies and other corporate entities, members of CICs have limited personal liability.
- **Registration** – It is relatively easy to register a new organisation as a CIC. A CIC has a memorandum and articles of association which are in a similar format to that of an ordinary company. A form CIC36 is also required which sets out how the CIC will benefit the community. This will reflect the CIC's objects in its articles of association. The incorporation documents are filed with Companies House together with a fee of £35. An annual community interest report must be filed to ensure that the CIC continues to meet the community interest test.
- **Community Interest Test** – To be registered as a CIC, the CIC Regulator must be satisfied that it will benefit the community. The test is whether a reasonable person would regard the purposes of the CIC as being in the community's or wider public's benefit. It is for the organisation to define what the community is which it is set up to benefit. Community can therefore be defined geographically, by socio-economic group, by age or by need etc.
- **Timing** – The CIC Regulator aims to process registration applications typically within 5 working days of receipt. In practice, a CIC is usually registered within two weeks of submitting the relevant documentation to Companies House.
- **Modern** – The CIC model was created to promote the operation of social enterprises as commercial businesses. The aim of the CIC is to provide a modern legal vehicle whereby the CIC can operate commercially without the restrictions which charitable organisations are bound by. It is less regulated than, by comparison, a club with charity status so this may offer greater flexibility in terms of its activities.
- **Asset lock** – A CIC's assets must be subject to an "asset lock". This ensures that the assets are used for the benefit of the community and that any asset transfer is restricted to another asset-locked body, such as a charity or another CIC. The articles would also need to meet requirements of FA Rule I 2(c) on winding up (see Appendix 3).
- **Dividend cap** – A CIC which is limited by shares can issue dividends to its shareholders but this is subject to a cap which is currently set at 20% of the paid up value of a share. The total dividend to shareholders is limited to 35% of the CIC's profits that are available for distribution.
- **Payment of Directors** – A CIC has a board of directors who are subject to the statutory and common law duties of company directors. Directors of a CIC can receive payment in return for the services they provide if it is considered reasonable and the articles allow. Payments to directors are overseen by the CIC Regulator who will raise enquiries if any payments to directors appear unreasonable. However, the CIC Regulator has stated previously the importance of CIC's being able to attract and reward the best possible people and therefore will only become involved in issues relating to payments to directors in exceptional circumstances.
- **Funding** – The CIC model is designed to appeal to funding bodies and facilitate the financing of CICs by way of loans and (in the case of companies limited by shares) share capital. The CIC Regulator has indicated that the CIC model is particularly relevant for local authorities. Certain grant funders may consider CIC registration to be beneficial in considering applications for project funding.

3.2.2 Disadvantages

- **Taxation** – CICs do not receive any preferential tax treatment and do not receive the same benefits as charitable organisations.
- **Lack of privacy** – A CIC must file annual accounts and an annual community interest report with the CIC Regulator. The report must set out how the CIC has benefited the community in the previous year and how it has involved stakeholders in its activities.
- **Conversion** – Once registered as a CIC the assets that the CIC holds are deemed to be for the benefit of the community and so it is difficult for a CIC to de-register as such. A CIC can be converted into a charity.
- **Increased administration** – Once registered, the annual community interest report is in addition to the annual return and other necessary filings required from all companies. A CIC must also maintain a set of statutory books.
- **Increased regulation** – As well as Companies House, a CIC is also regulated by the CIC Regulator and is subject to the CIC Regulations.
- **Public perception** – CICs are still relatively new and members of the public are generally still not as familiar with this legal structure compared to say guarantee companies. On this basis, proceeding with this structure should be considered if any public facing fundraising is required.
- **Complexity** – For clubs simply wishing to operate on a 'not for profit' basis, a company limited by guarantee may be the more straightforward and cheaper option to administer since a standard guarantee company is a legal structure which will be more familiar to banks, local authorities, accountants etc.

3.3 Co-operative or Community Benefit Society (formerly known as Industrial and Provident Society)

A registered Society is a body corporate which is regulated by and registered with the Financial Conduct Authority (FCA). It can carry on an industry, business or trade for the benefit of the community. These were known previously as 'industrial and provident societies' prior to the Co-operative and Community Benefit Societies Act 2014 coming into force. Existing societies do not have to change their rules but the FCA recommends that references to past legislation are made when they next make a rule change.

Since 1 August 2014, it has not been possible to register an 'industrial and provident society'. A society must now be either:

(i) a co-operative society, formed for the benefit of its members only; or

(ii) a community benefit society, a business conducted for the benefit of the community at large.

In most cases, a community club adopting this legal structure would be set up as a community benefit society.

Further information can be found at www.FCA.gov.uk

3.3.1 Advantages of a Society generally

- **Corporate body status** – As with the other incorporated structures, a Society will continue to exist even if its membership changes. A Society can sue, be sued and own property and assets in its own name, without the need for trustees. All legal liabilities taken on by the Society are its liabilities (not the liabilities of its members).
- **Limited liability** – A member's personal liability is limited to the amount unpaid on their shares. The last word of a Society's name must be "limited" unless its objects are considered wholly charitable.
- **Unlimited share capital** – Unless a Society's rules state otherwise, there is no limit on the number of shares which can be issued to its members.
- **Democratic in nature** – Members of a Society normally have one vote each irrespective of the value of their personal investment in the Society. Members may therefore feel they can contribute equally to the business.
- **Public involvement** – A Society can offer membership directly to the public without having to follow restrictive financial services and markets rules, such as those which govern companies. This means that funds can be raised more easily to invest in new projects.
- **Change of structure** – A Society can convert into a company or a community interest company.
- **Charitable Status** – Although relatively rare, if a registered Society is a charity, it is not required to be registered with the Charity Commission under the Charities Act 2011 but only a Community Benefit Society can be a charity (a Co-operative cannot).
- **Varied membership** – A Society must have at least 3 members (or 2 if made up of other registered societies). Members can be individuals over 16 years of age, other societies or bodies corporate.

3.3.2 Advantages of a Society which is a Community Benefit Society

- **Purpose** – Like a CIC or charity, it has a specific objective of benefitting the community.
- **Statutory Asset lock** – The Society's assets may be protected expressly in the Rules so that if the Society is ever wound up, the assets will be applied only for the benefit of the community (not the individual members).
- **Reinvestment of Surplus** – A Community Benefit Society's rules must not allow either profits or the Society's assets to be distributed to the members. Profits must generally be used to further the objects of the society by being ploughed back into the club. By comparison, only a Co-operative Society's members can share in its profits in line with the Society's Rules.

3.3.3 Disadvantages of a Society generally

- **Registration restrictions** – To register a Society you must submit a detailed application form which is supported by two printed and signed copies of the Society's proposed rules. The form requires you to complete a table indicating the rule numbers in the Society's rules which deal with the matters set out in the table.
- **Timing** – It takes longer to register a Society with the FCA (usually a few weeks) than it does to register a company (typically a matter of a few days).
- **"Benefit to the community" test** – In order to register a Society as a business conducted for the benefit of the community you must be able to show that there are special reasons why the Society should not be incorporated as a company instead. The intended use of this structure to reflect a commitment to conduct the business of the society for the benefit of the community may be accepted as a special reason. There is no legal definition of "special reason" as such and each case will be judged by the FCA on its merits. If there is no demonstrable special reason then the FCA will not permit the registration of the Society.
- **Costs** – The registration fee charged by the FCA ranges from £40 to £950 depending on whether model rules are adopted by the Society and the number of modifications which are made to the model rules. In addition, a Society must pay an annual fee to the FCA to continue its registration.
- **Lack of privacy** – A Society must submit to the FCA an annual return together with a set of accounts (which are both subject to public scrutiny). Copies of special resolutions and notices such as to change its name or registered office must also be filed with the FCA.
- **Ownership** – The ownership of a society through share capital is a different form of ownership from the ownership of a company by its shareholders. Shares in Societies differ from shares in companies (including CICs) in that they remain at nominal value so do not give the holder a share in the underlying value of the Society. As a result, holders of shares do not generally have any expectation of a share in a capital surplus on a solvent winding up. There is also either no right or a limited right for holders of shares to receive any return on their shares. This follows from a co-operative society's commitment to a defined set of 'Co-operative Principles' and a community benefit society's commitment to community benefit that any return must not amount to a motivation in itself to acquire shares.
- **Types of Shares** – There are different types of shares which can be issued by a Society:

  (i) withdrawable shares;

  (ii) transferable shares;

  (iii) investor shares.

If a member with withdrawable shares wishes to terminate his membership the Society must repay the member the capital he has invested (plus any interest he has earned). A Society should therefore keep some assets in liquid form to enable it to repay its members if this situation arises. This can be seen as a disadvantage if the intention is to invest members' monies in property. Members with transferable shares cannot transfer their shares to a third party for profit.

- **Limit on investment by members** – No member of a society may have or claim any interest exceeding £100,000 in withdrawable shares. The same £100,000 statutory limit applies to investor shares. Under recent legislative changes there is no limit in relation to shares which are not withdrawable.
- **Committee requirement** – Every Society must have a committee and a secretary. Members of the committee must be persons aged 18 years or over.
- **Rules** – A Society must be run strictly in accordance with its registered rules. The rules are a binding contract between the Society and its members. The rules must contain provisions for certain matters and are therefore not as flexible as a company's articles of association. There is no statutory procedure of amending the rules of a Society. The general principle is that rules can only be amended if the amendment can be reasonably considered to be in the contemplation of the members at the time the Society was set up and is in good faith and not inconsistent with the nature of the Society. Unless the rules state otherwise, a resolution of the members is not required. The amendment must be registered with the FCA to be valid.
- **Restrictions on profit** – Societies are regarded as social enterprises rather than as businesses which are run for profit. A Community Benefit Society cannot distribute profits between its members but depending on the Society's rules, where it does issue more than nominal share capital or where members make loans to the society, it may be able to pay members a reasonable fixed rate of interest. By comparison, only a Co-operative Society's members can share in its profits in line with the Society's Rules.
- **Reputation** – Although new legislation was enacted in 2014 to modernise Societies, they are traditionally associated with members' clubs and associations rather than modern corporate legal structures, such as CICs. Since they are regulated by the FCA, less information is available publicly so they are harder to search against than, by comparison, a more familiar corporate structure such as a company.
- **Complexity** – For most clubs, a company limited by guarantee may be more straightforward, cheaper to administer and more familiar to banks, local authorities, accountants etc

3.4 Charitable Incorporated Organisations

We deal with charities more generally in section 4.2 but, as the name suggests, the Charitable Incorporated Organisation (CIO) is a relatively new corporate legal structure available only to those clubs wishing to operate as a registered charity. Prior to their introduction in 2013, charities which wished to adopt a corporate structure had no option other than to set up as a company limited by guarantee under company law. This meant that they were then subject to dual regulation by each of Companies House and the Charity Commission. The CIO therefore presents a welcome alternative option for clubs seeking to incorporate with charitable status.

The CIO is designed principally for small- or medium-sized charities, particularly those which were previously constituted as unincorporated associations, which now wish to have the benefit of a separate legal personality and limited liability. This means that it is the CIO itself (rather than the management committee) which holds the assets, enters into contracts and employs staff; and the liability of members of the CIO to third parties is limited to a nominal amount (e.g. £1) in accordance with the CIO's constitution.

Since a CIO is not a company, it is not subject to company law and is not regulated by Companies House. Instead it is regulated by the Charity Commission and (for tax purposes) HM Revenue & Customs.

There are two types of CIO which a club can adopt:

(i.) the 'Foundation' model, where control vests in the trustees only; or

(ii.) the 'Association' model, where control is split between the trustees on the board and the CIO's members. This is more suitable for a club which operates a 'one member: one vote' structure.

Further information can be found at www.charity-commission.gov.uk

3.4.1 Advantages

- **Tax Benefits** – The CIO will have all the advantages of incorporation mentioned above, as well as all the tax benefits of being a charity set out in section 4.2 below.
- **Single Regulator** – Charitable Incorporated Organisations will be able to adopt a very flexible corporate structure but just report to one principal regulatory body, the Charity Commission.
- **Income Tests** – Unlike new charitable companies, new CIOs do not have to demonstrate satisfaction of the minimum annual income threshold test of £5,000 to register with the Charity Commission.

3.4.2 Disadvantages

The principal disadvantages of a CIO, as against a charitable company limited by guarantee, are:

- **Timing** – The CIO will not exist legally until it is registered by the Charity Commission;
- **De-registration** – It will cease to exist if it is de-registered as a charity (whereas a company exists as soon as it is incorporated by Companies House and may continue to exist even if de-registered by the Charity Commission);
- **Lack of Public Information** – Whereas Companies House maintains a register of charges (i.e. loans secured against company assets) for companies, the Charity Commission does not maintain a register of charges for CIOs, which means that CIOs may have more difficulty borrowing from banks and other lenders;
- **Comparative Familiarity** – As a relatively new form of charitable vehicle, banks, funders and other third parties may be unfamiliar, and therefore more wary of engaging, with CIOs. This may mean increased time and costs for a club, and some risk, at least in the early stages;
- **Limited scope of activities** – Charitable status does of course mean a significant restriction in permitted activities as well as an asset lock (see section 4) so this should be weighed up against the benefits of charitable status before proceeding.

4. SPECIAL TAX STATUS

Amateur sports clubs can operate with no special tax status or, if established on a 'not-for-profit' basis, they generally have the option of registering either as a:

(i) charity with the Charity Commission; or

(ii) community amateur sports club (CASC) with HM Revenue & Customs.

Adopting a special tax status can bring with it significant tax benefits, which are considered in general terms below.

If the club cannot and does not distribute any profit it makes and any profit is used only to carry on or improve services provided by the club, it is also likely to be what is known as an 'eligible body' for VAT purposes. Similarly, this can bring some advantages but strict conditions apply. In each case, you should take tax advice to make sure you understand the implications before changing your club's tax status.

4.1 Community Amateur Sports Club Status (CASC)

Historically the law did not regard the promotion of amateur sport in itself as being wholly charitable (although this has changed and it is now a recognised charitable object under Charities Act 2011). For this reason legislation was passed in 2002 establishing CASC status and conferring some, but not all, of the tax advantages from which charities can benefit.

Further information can be found at www.cascinfo.co.uk including how to register as a CASC.

4.1.1 Can my club register as a CASC?

Unincorporated associations, companies limited by guarantee and community benefit societies can become a CASC.

To register as a CASC, a club must have a formal written governing document and satisfy the following conditions:

- The main purpose of the Club is the provision of facilities for, and the promotion of participation (whether by playing, coaching or refereeing) in, one or more sports (rather than say being a club consisting mainly of "social members").
- The sport(s) in question is an "eligible sport" (association football qualifies but not all sports do, so please check if your club carries on more than one sport).
- Membership and facilities are open to the whole community.
- The club must be organised on an amateur basis.
- The facilities are provided in an eligible location.
- The club is managed by fit and proper persons.
- The club meets certain income conditions (see 4.1.4).
- If the club is wound up, its property will be distributed to another club that is a CASC or a charity or The FA for use by them in community football.

The FA has CASC compliant suggested club rules that clubs can adopt.

4.1.2 Advantages

- **Rate Relief** – Local Authority business rate relief of at least 80% mandatory plus up to an additional 20% discretionary is available to a CASC in relation to property occupied by the club.
- **Tax Effective Giving** – Gift Aid can be claimed by the club from HMRC on donations received from UK tax giving individuals to the club (but not on membership fees). This means the Government adds 25p to every £1 received from a UK tax payer as a donation to a charity or CASC (conditions apply). Donor declarations are required and records must be kept for 6 years. Higher rate tax relief is also available to the donor. In addition, donations from UK companies are also eligible under the Gift Aid Scheme but the process is slightly different. The amount of the company's donation is deductible from its profits before tax – so, in practice, the club receives the full amount of the gross donation from the company. The club does not therefore have to reclaim Gift Aid from HMRC on corporate donations (only on individual donations).
- **Gift Aid Small Donations Scheme** – This allows Gift Aid to be claimed on cash donations up to £5,000 without the donors having to make a tax declaration – which means that the club can recover up to an additional £1,250 from HMRC on small donations such as bucket collections. From April 2016, the small donation limit will increase to £8,000, which in turn increases the amount of Gift Aid up to £2,000 per year;
- **Tax Exemptions** – 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, see 4.4 below). They do not pay tax on interest earned in bank accounts and no inheritance tax is payable on legacies left to a CASC.
- **Payment of Players** – Clubs can pay players subject to a maximum aggregate limit of £10,000 a year per club across all players with effect from 1 April 2015 (see 4.1.4, conditions apply) plus expenses. Clubs wishing to progress through the National League System and ultimately pay players need to carefully consider their long term plans and whether registering as a CASC will inhibit their long term development.

4.1.3 Disadvantages

- **HMRC Regulation** – A CASC must register with HMRC. Normally this involves changing the club's constitution. The club must then continue to comply with CASC rules as to, amongst other things, the criteria set out in paragraph 4.1.1 and the Regulations set out in 4.1.4. 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 to All** – 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. If the club has two or more classes of member then the club must allow anybody to become the class of member which enjoys the main voting rights.
- **De-registration Restrictions** – A CASC is not ordinarily able to voluntarily deregister as a CASC (unless it does so under the period of grace ending 31 March 2016 following implementation of the CASC Regulations 2015). However, HMRC may deregister a CASC if it becomes clear that the club no longer satisfies the qualifying conditions. If a club ceases to be registered as a CASC (or to hold its assets for qualifying purposes), it automatically becomes subject to a capital gains tax (CGT) charge on a deemed disposal and reacquisition of its assets equal to the market value at the time. Depending on the circumstances, this can have a significant detrimental financial effect and in some cases, may well result in insolvency.
- **No VAT Benefits on Purchases** – Unlike a charity, normal VAT rules apply to supplies made to CASCs and do not enjoy any VAT reliefs. Specific reliefs may be available (subject to conditions) in relation to certain supplies made by a CASC:

  (i) Supplies of sporting and physical education services are VAT exempt if an "eligible body".

  (ii) Income from qualifying fundraising events is VAT exempt if the club qualifies.

- **Complexity** – When the CASC scheme was established in 2002, one of its strengths was its simplicity and 'light touch' regulation by HMRC. The legislation governing CASC status has become increasingly complex and is arguably now more complex than the equivalent rules on charitable status.

4.1.4 CASC Regulations 2015

The CASC (Community Amateur Sports Club) rules changed with effect from 1 April 2015.

Existing CASCs have a 12 month period of grace ending 31 March 2016 to see if they can still comply and to decide whether or not they wish to remain in the CASC scheme.

Existing CASCs can leave the CASC scheme during the year of grace if they wish, and they will not suffer a Capital Gains Tax (CGT) exit charge if their only reason for leaving is because they do not wish to comply with the changes in the new CASC scheme and they were fully compliant with the rules before 1 April 2015.

In brief, the main changes are:

- **Membership Fees** – Membership fees for any member are subject to a limit of £1,612 per year (£31 a week) even if discounted rates are offered to others. If the costs associated with being a member are greater than £520 per year (£10 a week), the CASC must make allowance for people on low incomes to be able to become members and participate fully for £520 or less.
- **Social Membership** – At least 50% of members must be participating members (either by playing or helping with organisation) of the CASC. This remains from the previous rules. A participating member must participate at least 12 times in a 12 month period (although seasonal sports can opt for a shorter season exemption).
- **Payment of Players** – Clubs will now be able to pay players subject to a maximum aggregate limit of £10,000 a year per club across all players. Clubs will also be able to pay reasonable travel and subsistence expenses to players where they are participating in away games and club tours (conditions apply).

- **Trading Income** – While there is no limit on the amount of income CASCs may generate from members, there will be a new limit of £100,000 on income they can generate from trading with non-members. Clubs generating higher levels of income will need to consider setting up a trading subsidiary.
- **Corporate Gift Aid** – Gift Aid for corporate donations was introduced with effect from April 2014 so the trading subsidiary can generate additional income for the CASC by passing its profits up to the CASC tax efficiently as a corporate Gift Aid donation.
- **Fundraising Income** – The exemption threshold from tax for annual trading income increases from £30,000 to £50,000.
- **Rental Income** – The annual rental income exemption threshold increases from £20,000 to £30,000.

4.2 Charitable Status

4.2.1 Can my club become a charity?

Unincorporated associations, companies limited by guarantee and community benefit societies can be charities. A Charitable Incorporated Organisation must be a charity.

A club will normally have to amend its constitution before it becomes a charity, as it must have objects which are wholly and exclusively charitable in law. It will only be charitable if it promotes amateur football (and/or other healthy amateur recreations) e.g. by providing facilities, or promoting education or community participation by reference to sport. In all cases, the club must exist for the public benefit.

4.2.2 Advantages

- **Public Perception** – Charitable status is more widely understood by the public, grant-making bodies and professional advisers. People may be more willing to fundraise for a registered charity.
- **Tax Benefits** – Charities have more tax advantages than CASCs. These include:
  - full exemption from tax on profits that they may make from their membership fees, bank interest or investment income
  - gifts are free from income tax, inheritance tax (IHT) and capital gains tax (CGT)
  - like CASCs, Gift aid can apply to donations from both UK taxpaying individuals and companies (see 4.1.2 for details)
  - relief from stamp duty land tax on the acquisition of land and buildings; and
  - potential VAT reliefs under certain circumstances, including a possible VAT zero rating on the construction costs of a community centre, indoor playing facilities or improving disability access, subject to certain strict criteria being met (professional advice required).
- **Rate relief** – Charities may claim a mandatory 80% non-domestic business rate relief on charity property occupied by wholly or mainly in furtherance of their wholly and exclusively charitable objects, with a further 20% relief available on a discretionary basis by application to the local authority. If discretionary relief is awarded, this has the effect that the charity pays no rates whatsoever.
- **Fundraising** – Charities are allowed to run certain types of 'society' lottery and other fundraising activities that are banned or licensed for non-charities. The lottery income is entirely exempt from tax.
- **Potential accessibility to grant funding** – Certain grant-making bodies may only fund either registered or exempt charities, whereas others may include CICs and CASCs in their eligibility criteria. Registration may therefore allow you to access funding which it would otherwise not be possible to apply for, particularly if you have larger development projects in mind long term.
- **Commercial opportunities with corporate partners** – Corporate partners can choose to support a charitable club either by:
  - making a corporate Gift Aid donation, which is fully deductible from taxable profits of the donor company and in respect of which, the recipient charity can make only a 'mere acknowledgement of support' to the effect that the charity is "Kindly supported by [Donor co]"; or
  - entering in to a sponsorship arrangement, which in some circumstances may be match-funded by a grant-making body.

4.2.3 Disadvantages

- **Registration** – Once a club has become a charity, it cannot stop being a charity. On winding up, it would have to transfer its assets to another charity or otherwise apply them for charitable purposes only.
- **Membership** – All members of the club must be playing members. It cannot have "social members". Membership must be open to all. Although the club can have 'representative' teams (where 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.
- **Payment of Players** – Players must be amateur and may not be paid for playing. However, they can receive reimbursement of expenses for travel to away matches and payment can be made for coaching.
- **Commercial Trading** – A trading company which is wholly owned by the charitable club (known as a 'subsidiary') should be set up to run any bar that the club has, but this is not difficult to do. Any profits from the bar can be paid by the subsidiary legitimately and tax efficiently under Gift Aid to the charity to avoid payment of corporation tax (tax on trading profits) by the subsidiary.
- **Compliance** – A charity must register with the Charity Commission if its annual income is over £5,000. This means that it must submit annual accounts and an annual return to the Commission. It must also comply with charity law, although there is a lot of guidance on the Commission's website www.charitycommission.gov.uk to help clubs to comply with these requirements.

5. SUMMARY

5.1 What is the best legal structure for my club?

It is a matter for each club to determine the most suitable legal form based on its circumstances. Clubs should consult with their professional advisors in this respect and seek independent legal advice.

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 4.1.2 for details).

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, especially acquiring legal identity and protecting members from possible liabilities.

5.2 Should my club adopt a special tax status?

Clubs may wish to consider registering as a CASC or charity if they:

(i.) own land (to take advantage of mandatory 80% rate relief reduction); or

(ii.) receive voluntary donations from individual members, supporters and corporate donors.

However, please note:

(i.) Club membership fees are not eligible for Gift Aid (only voluntary donations by UK taxpayers are);

(ii.) corporate donations do not include sponsorship payments (where payment is made in return for the club advertising the sponsor).

6. INCORPORATION STEP BY STEP

If you decide that you would like to adopt a new corporate structure for your club, this section of the Guide sets out the procedure for doing so. In all cases, this procedure will be dependent on:

(i) the new legal structure which you have chosen; and

(ii) the current structure and tax status of the club, including its assets and liabilities.

This is something that you should discuss with your club's professional advisors. However, the guidance in this section provides a generic overview of the steps that will need to be taken to set up a company. Since the most common incorporated legal structure which is adopted by grassroots clubs is a company limited by guarantee, an overview of the process is set out below and summarised in Appendix 1.

6.1 Notification

A club's right to play football is through its holding of the relevant football memberships. It is therefore important that the club liaises with the FA, its league and the County FA at an early stage to ensure that its membership of these organisations is properly transferred to the new company and that any regulatory requirements are met. For example, the governing document of the company may need to include certain FA-specific provisions which:

- require it to obtain the FA's consent to any proposed alteration to its governing document;
- require it or its members or directors/trustees to comply with the rules and regulations of The FA;
- to disqualify a director/trustee if he or she is suspended or disqualified by The FA;
- safeguard the application of residual funds in the event that the company/CIO is wound up.

An example of this is included in Appendix 2, Rule 2.9 of the Standardised Rules that apply to clubs playing at Steps 1 to 6 of the National League System.

6.2 Internal Clearance

You will need to obtain any internal approvals required by the club's current governing document (constitution and/or rules) prior to establishing a new entity. This will differ from club to club and will need to be determined on a case by basis, but it is likely to include holding a general meeting of the club's members.

6.3 Steering Group

The club may wish to form a Steering Group that is tasked by its Committee to manage the process of incorporating the club.

6.4 Formation of a new legal entity

Having obtained required internal approvals, the first legal step will be to set up the new legal entity which the club is adopting. The process varies depending on your choice of legal structure and whether your club will have any special tax status.

Support and guidance is available free of charge by calling the FA helpline **0191 211 7799** or by sending an email to: **CSLegalHelp@TheFA.com** The FA's legal partner, Muckle LLP, will then be able to advise on and provide a variety of services to your club at fixed costs, depending on what is suitable for the size and nature of the club.

Alternatively the club may choose to undertake the incorporation itself or use its own solicitors or a company formation agent in establishing the company.

Limited Company

To set up a new company, the founding directors will need to complete and submit the following to Companies House:

- Form IN01 (Application for Registration)
- Memorandum of Association
- Articles of Association
- Registration fee payable to Companies House.

It is important that the company's articles contain the regulations required by The FA (see 6.1). It will then be necessary to submit the signed form IN01 together with a signed memorandum of association, articles of association and your payment.

The memorandum and articles of association are considered further under section 6.5. Full details on completion of the Form IN01 is beyond the scope of this Guide: however, it requires the completion of information about the proposed company name, the type of company, the registered office, directors and secretary, statement of capital and (only if the company is limited by shares) or (only if the company is limited by guarantee),a statement of guarantee, then a statement of compliance.

The company will only come into existence when the Registrar of Companies issues a certificate of incorporation. The standard service takes around 7 days (fee of £40); an express 'same day' service for registration on the day of receipt by Companies House is available (fee of £100); or the application can be made electronically (£15 standard service, £30 for 24 hours). All payments should be made to Companies House.

If the company will have charitable status, once it has been established by Companies House, it can then be registered with the Charity Commission using its online application form.

Alternative Structures

By way of comparison, the following steps would need to be taken in relation to the alternative structures:

Community Interest Company

To set up a CIC, the club will need to pass a test demonstrating that its activities are for the benefit of the community or a section of the community. It will therefore be necessary to apply to the Regulator of Community Interest Companies at Companies House to obtain this approval using a Form CIC36 together with the other documents outlined above. While the Regulator considers the application, the incorporation of the company will be held up and cannot therefore be effected on a 'same day' basis.

Community Benefit Society

To set up a Society, you must submit a detailed application form which is supported by two printed and signed copies of the Society's proposed rules. The form requires you to complete a table indicating the rule numbers in the Society's rules which deal with the matters set out in the table. Although a company can be registered on a 'same day' basis or within a matter of days, it takes longer to register a Society with the FCA (usually between three to four weeks). The cost of registering a Society which the FCA charges range from £40 to £950 depending on whether model rules are adopted by the Society and the number of modifications which are made to the model rules. In addition, a Society must pay an annual periodic fee to the FCA to continue its registration.

Charitable Incorporated Organisation

To set up a CIO (as opposed to a company), it is only necessary to prepare and sign a constitution (using the Charity Commission model template) then apply to register a new CIO with the Charity Commission using its online application form. The CIO will come into existence only once it is registered by the Charity Commission. No fee is payable.

In either case, the new corporate entity will likely then want to register with HM Revenue & Customs for charity tax purposes.

Where charitable or Community Amateur Sport Club (CASC) status is chosen, the timeframe will be somewhat longer as there are certain registrations or approvals that need to be obtained before proceeding.

6.5 New Constitution

Memorandum and Articles of Association for a Company

The new company will need to adopt a new governing document, replacing its constitution. These will comprise legal documents in the form of a memorandum and articles of association establishing the company and setting out rules governing its administration and operation.

The memorandum is a short document setting out the subscribers to the company and its share capital (if any).

The articles of association are more detailed and regulate the share capital (if any) of the company, the board and shareholder/member powers. The articles are essentially the Club's new 'rule book' and ultimate governing document, although additional rules and/or bye laws may be adopted in addition to the articles to address more practical issues (e.g. admission, classification, rights and privileges of members in relation to club facilities etc).

Different approaches can be taken towards the choice of articles of association, although all must contain the provisions of The FA Rules I 2(b) and (c) on directors acting in compliance with The FA's Rules and regulations and regarding the distribution of assets on winding up the company (see Appendix 3).

Template articles of association may be obtained for a fixed cost by calling the FA helpline **0191 211 7799** or by sending an email to **CSLegalHelp@TheFA.com**. These can be adopted with minor amendment as required to suit particular circumstances. These would then need to be supplemented by separate bye-laws of the club setting out in detail the decision-making process (see further below). Alternatively, the articles of association can be tailored specifically for your club to ease the transition from an unincorporated to a corporate legal structure but this would be reflected in the drafting costs.

Bye-laws

While the articles of association set out the high level rules and regulations for administration of the club, the adoption of separate bye-laws is recommended in order to establish in more detail such matters as:

(i) The number of and qualifications required for directors;

(ii) Operation of the bank account(s);

(iii) Terms of reference for committees and sub-committees;

(iv) Powers and terms of reference of the board;

(v) Arrangements for Members' meetings;

(vi) Voting and proxy procedures;

(vii) Membership categories and subscriptions;

(viii) Reporting processes.

The club may already have a constitution or rules dealing with these matters. If that is the case and these remain sufficient, these can simply be adopted by the new entity as its bye-laws.

6.6 Special Tax Status

Community Amateur Sports Club

If your club wishes to become a community amateur sports club then its new constitution must meet certain requirements, including compliance with the CASC Regulations 2015. These are set out above in section 4.1.1. It is possible to send a draft new constitution to HM Revenue and Customs for their opinion about whether the draft is compliant.

Charity

If your club wishes to become a charity then its governing document will have to be drafted to comply with certain legal requirements, so that it will be acceptable for registration with the Charity Commission. It must be set up for wholly and exclusively charitable purposes, and there must be certain limits on payments made to its directors and members.

The Charity Commission does not normally give an opinion on draft governing documents, and so it is advisable to use the Charity Commission's precedent articles of association from its website (www.charity-commission.gov.uk) and/or to seek legal advice.

7. MANAGEMENT

On incorporation, you will need to consider who will sit on your new board or committee and determine the general governance structure for your club.

A limited company must have at least one director who is a 'natural person' (i.e. an individual, not a company itself serving as a director of another company), although typically it is recommended having at least two directors to form a board of directors. If the club is also registered as a charity then it will normally have to have at least three directors (who will, in practice, serve as the charity's trustees). The company may also have a secretary, although this is no longer strictly required by law. Again, however, we would recommend nominating a secretary.

You are free to determine how you wish your club to be managed. The simplest approach is to leave all decisions to the board of directors to determine on a majority vote basis, but you should consider what should happen if there is a 'deadlock' (i.e. a 50/50 split of votes in favour and against). In such circumstances, the chair would only be entitled to a second or casting vote if the articles allowed this expressly.

It may be practicable and/or desirable to delegate certain powers to management committees, or other sub-committees, or to allow members to participate in certain decision-making processes in general meetings.

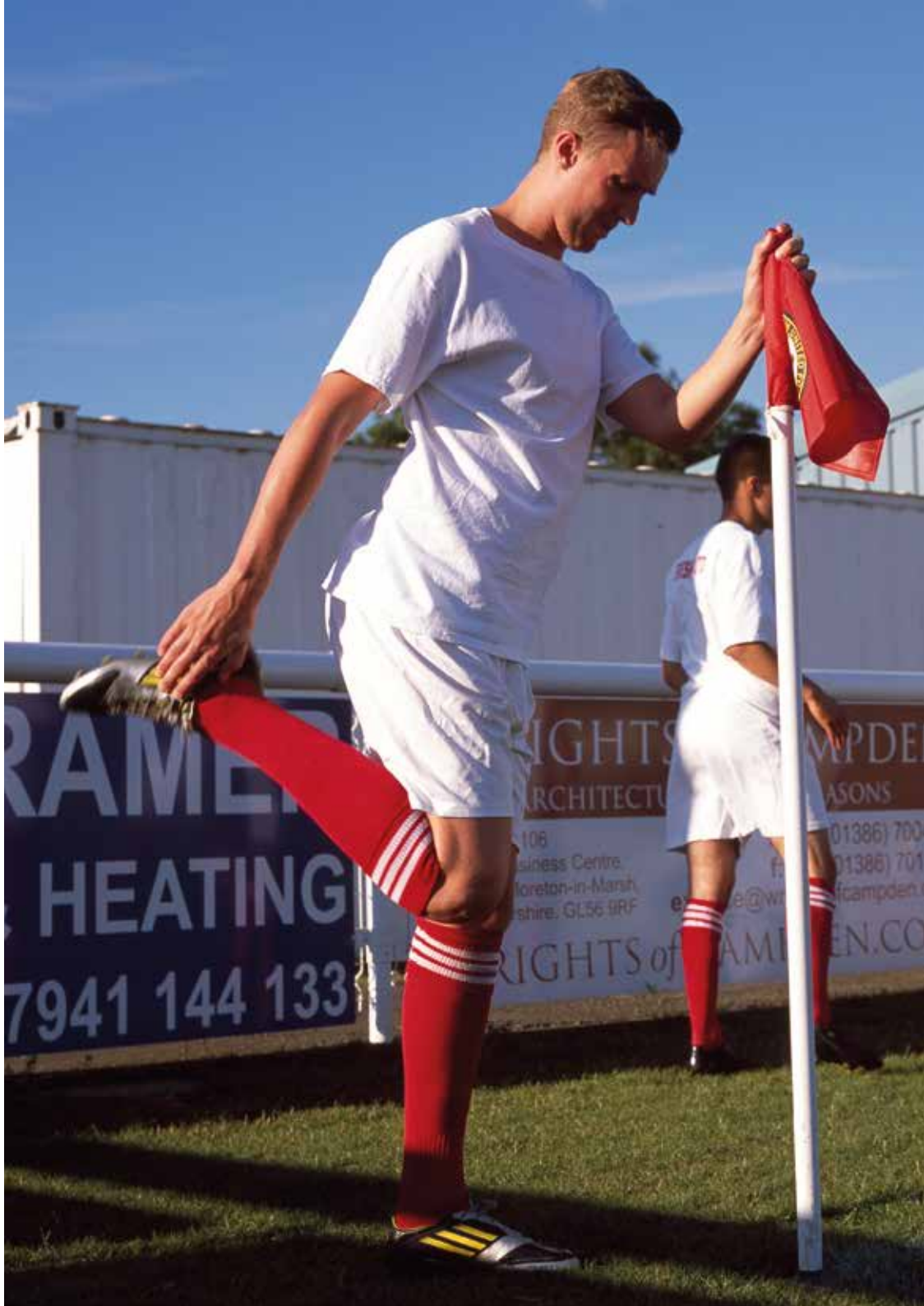
Whatever decision is taken, this should be reflected in the club's bye-laws.

8. GENERAL MEETINGS AND NOTIFICATION OF DECISION TO STAKEHOLDERS

It is likely that your club holds general meetings of its members on an annual basis or more frequently. There is no longer a legal obligation for companies to have annual general meetings, but you should consider during the incorporation process whether there should be, what powers those general meetings should have, and who should be entitled to attend. This will be reflected in the club's articles of association and bye-laws.

FA Rule I1(c)(iii) requires a club to have its annual accounts laid before the members of the club at a general meeting.

Having taken the decision to establish a new entity, it is advisable to call a general meeting and notify any key stakeholders in the club as to the decision and to outline key differences going forward.



9. TRANSFER OF ASSETS AND LIABILITIES

Once the new legal entity has been formed, it will be critical to ensure that all assets (and those liabilities which the new entity is willing to take on) of its predecessor are transferred to the new entity – i.e. anything which was owned or owed by the club must be transferred into the name of the new entity on a certain date or dates.

It is essential that clubs obtain legal advice before attempting to transfer their assets and liabilities.

If the Club's constitution does not expressly provide for its reconstitution as a corporate body or the transfer of its assets to a corporate successor, it would likely be necessary for the members to formally approve this at an annual general meeting or extraordinary general meeting. This is because such a fundamental constitutional decision is generally deemed to be outside the implied powers conferred on a club's management committee. The Club may well wish to do this in any event. Depending on the terms of the Club's constitution or the members' resolution, the management committee would then generally be authorised to enter into the transfer agreement.

There is a wide range of assets and liabilities which will need to be addressed, including:

(i) Staff and employees;

(ii) Equipment and machinery;

(iii) Premises;

(iv) Contracts, e.g. supplier contracts, insurance etc;

(v) Investments;

(vi) Bank overdraft facilities, loans, mortgages;

(vii) Book debts;

(viii) Intellectual property in the club, e.g. its name and logo;

(ix) FA registration, league registration and County FA membership.

It will, therefore, be necessary to assess and put together a list of the club's assets and liabilities.

Once compiled, these will need to be transferred to the new entity by means of an asset transfer agreement. The board of directors would usually be authorised to do this under a power specifically inserted into the articles of the company.

The transfer itself is a relatively straightforward process if the club just owns cash and tangible assets. However, if the club also needs to transfer (i) contracts/grants or loan arrangements, (ii) employees and/or (iii) land to the new company, the transfer is legally more complex.

For example, contracts/grants or loans will often include a restriction on assignment which requires the consent of the other party or the lender.

If there are employees, it will be necessary to comply with the Transfer of Undertaking (Protection of Employees) Regulations 2006 (TUPE Regulations) and pensions legislation before transfer since the club is obliged to inform and consult with affected employees prior to restructuring. Non-compliance can be costly if an employee makes a claim against the club and/or the new company. Professional advice is required.

If the club owns any freehold land, it will likely need to transfer the freehold; or if it owns any leasehold land, it may be necessary to obtain the landlord's consent to the transfer. It may also be necessary to register the transfer of land at HM Land Registry.

As mentioned above, it is important the club liaises with The FA, its league and the County FA at an early stage to ensure that the club's membership of these organisations is properly transferred to the new company and that any regulatory consents or other requirements are met. This is essential because it is only through membership of these bodies that the club has the right to play in the leagues that it does. The club will want the new company to receive the benefit of these playing rights.

For accounting convenience transfers normally take effect at the end of the year, quarter or month. In the run-up to the transfer date the company will also need to open up a new bank account, register with the Information Commissioner for data protection purposes, amend/purchase insurance policies and notify suppliers, utility providers etc that the club's business is transferring to the new company.

It may be necessary to 'novate' some of the club's existing contracts with the supplier (i.e. for the new company to step in to the club's contract with the same supplier on the same terms. The legal effect is that the club's existing contract is extinguished and replaced by a new one with the Company). This is often required as part of an ongoing contractual arrangement if the club's management committee wish to be discharged from future liabilities under the current contracts and to ensure that the company takes these on (as well as potentially any past liabilities).

The club should also consider future costs. For example, there is a small administration fee for filing a company's annual return each year with Companies House. The company will also need to prepare and file annual accounts and so may incur additional professional fees each year.

Please also note that the transfer of land and any shares by the club may potentially give rise to a tax liability.

We would strongly advise the Club to take independent tax and VAT advice before taking any steps to incorporate.

Asset Transfer Agreement

The agreement will also cover such issues as when and what announcements can be made, whether there are any conditions to be fulfilled before the transaction can be completed, or any consents to be obtained.

A key condition to be included within the agreement is that written football authority (FA, League and County FA) consent has been obtained prior to the transaction being able to complete.

Because of the issue of conflicts of interest, it would be useful if the Club's management committee and the new company's board of directors/trustees were not identical. This would allow the non-conflicted individuals to act and decide without having a conflict of interests.

10. TAXATION CLEARANCES

If a club wishes to register as a Community Amateur Sports Club, it will need to apply to HMRC, which runs the following helpline number: **08453 020203**. The application form is available from its website, **www.hmrc.gov.uk/charities**, and will need to be accompanied with a copy of the club's constitution.

If a club amends its constitution to become a charity, then it will normally need to register with the Charity Commission to obtain a charity registration number. **www.hmrc.gov.uk/charities**

If a club has an annual income of under £5,000 then it will not be able to register with the Charity Commission. It will need to register instead with HMRC Charities using the website address and telephone number above.

APPENDIX 1

Steps to incorporation (Company Limited by Guarantee)

Step 1 Is incorporation right for your club?	Review existing legal structure and determine whether incorporation is appropriate under the circumstances, taking independent legal and tax advice before proceeding. The FA Legal Helpline is available free of charge on **0191 211 7799** or by sending an email to: **CSLegalHelp@TheFA.com**
Step 2 Obtain Prior Regulatory Clearance	Consult with relevant football authorities (FA, County FA and League(s) in relation to the proposed incorporation.
Step 3 Internal Notification: Is Committee and/or member approval required?	Consider the existing club's governing document (constitution and/or rules) to confirm the requirements and voting process for approving the incorporation.
Step 4 External Notification (FA, County FA and League(s))	Confirm decision to proceed and notify relevant governing bodies.
Step 5 Incorporate new legal entity	• Form IN01 • Memorandum of Association • Articles of Association • Registration fee of £40 (or £100 for 'same day' service)
Step 6 Rules and Bye Laws	Adopt bye-laws for new legal entity
Step 7 Complete the Transfer	Transfer the assets and liabilities of the existing club to a new entity after obtaining football authority approval.
Step 8 Taxation clearance	Register with HMRC for corporation tax purposes following change of legal entity. Consider VAT registration depending on nature of supplies and tax advice where required.
Step 9 Internal and External Notification of new legal structure	To members, suppliers, contractors etc.

APPENDIX 2

Extract from the Standardised Rules for use by all competitions at Steps 1 to 6 inclusive of the National League System.

RULE 2.9

Transfer of Membership –
Transfer as a Going Concern

2.9.1 In the event that any club which resolves to transfer its membership of the Competition from one legal entity to a different legal entity, other than in the circumstances shown at 2.9.2, the Board will use the following minimum criteria in deciding whether to approve that transfer:

(a) The shareholders or members of the Club have voted to agree to the transfer of the Club's membership to the new entity.

(b) All Football Creditors in the Club must be paid in full or transferred in full (with each creditor's consent) to the new entity, and evidenced as such.

(c) All other creditors in the Club must be paid in full or Secured or transferred in full (with each creditor's consent) to the new entity and evidenced as such.

(d) The proposed new entity has provided financial forecasts to The FA and the Competition showing its ability to fund the Club for the next twelve (12) months or to the end of the Playing Season following transfer (whichever is the longer) and that evidence of funding sources has been provided.

(e) The FA must have given approval for the transfer to take place.

APPENDIX 3

FA RULE I 2(b)(c) PROVISIONS RELATING TO CLUBS

2 (b) General Provisions

A Club shall include the following provisions in its Articles of Association (where a corporate body) or Club rules (where an unincorporated association):

(i.) "The members and the directors of the Company shall so exercise their rights, powers and duties and shall where appropriate use their best endeavours to ensure that others conduct themselves so that the business and affairs of the Company are carried out in accordance with the Rules and regulations of The Football Association Limited for the time being in force.

(ii.) No proposed alteration to the provisions set out herein shall be effective unless the proposed alteration has been approved in writing by The Football Association Limited 14 days or more before the day on which the alteration is proposed to take place.

(iii.) The office of (a/an Director/Officer or Official)* shall be vacated if such person is subject to a decision of The Football Association Limited that such person be suspended from holding office or from taking part in any football activity relating to the administration or management of a football club."

2 (c) Club Companies – Winding Up Provisions

A Club which is incorporated under the Act shall have the following provisions in its Articles of Association: "On the winding-up of the Company the surplus assets shall be applied, first, in repaying the Members the amount paid on their shares respectively. If such assets are insufficient to repay the said amount in full, they shall be applied rateably, so that the loss shall fall upon the Members in proportion to the amount called up on their shares respectively. No Member shall be entitled to have any call upon other Members for the purpose of adjusting the Members' rights; but where any call has been made and has been paid by some of the Members such call be enforced against the remaining Members for the purpose of adjusting the rights of the Members between themselves. If the surplus assets shall be more than sufficient to pay to the Members the whole amount paid upon their shares, the balance shall be given by the Members of the Club, at or before the time of dissolution as they shall direct, to The Football Association Benevolent Fund, or to some Club or Institute in the [here insert the name of the appropriate city or county] having objects similar to those set out in the Memorandum of Association or to any local charity, or charitable or benevolent institution situate within the said [here insert the name of the appropriate city or county]. In default of any such decision or apportionment by the Members of the Club, the same to be decided upon and apportioned by a Judge of the High Court of Justice having jurisdiction in such winding-up or dissolution and as he shall determine. Alternatively such balance may be disposed of in such other manner as the Members of the Club may, with the written consent of The Football Association Limited, determine."

Where a Club is registered as a Community Interest Company under the Act or as a registered society under the Cooperative and Community Benefit Societies Act 2014, it shall include all of the above provisions in its Articles of Association or rules. Should these provisions not be acceptable to the relevant Regulator, any proposed variation from the above provisions must receive prior written approval from The Association. The Association will consider any such variations on a case by case basis.

Note

Rule I 2(b) and (c) has been drafted for use by companies limited by shares. Any variations from Rule I 2(b) and (c) for clubs that wish to adopt a different structure such as a company limited by guarantee or to register as a CIC or a Society will be considered on a case by case basis. Clubs should contact the Financial Regulation Dept at The FA for further direction on clubgovernance@TheFA.com

APPENDIX 4

Suggested FA Club Rules for Unincorporated Associations

1. Name

The Club shall be called ..... (the "Club").

2. Objects

The objects of the Club shall be to provide facilities, promote the game of Association Football, to arrange matches and social activities for its members, and community participation in the same.

3. Status of Rules

These Rules (the "Club Rules") form a binding agreement between each member of the Club.

4. Rules and Regulations

(a) The members of the Club shall so exercise their rights, powers and duties and shall, where appropriate, use their best endeavours to ensure that others conduct themselves so that the business and affairs of the Club are carried out in accordance with the Rules and Regulation of The Football Association Limited ("The FA"), County Football Association to which the Club is affiliated ("Parent County Association") and Competitions in which the Club participates, for the time being in force.

(b) No alteration to the Club Rules shall be effective without written approval by the Parent County Association. The FA and the Parent County Association reserve the right to approve any proposed changes to the Club Rules.

(c) The Club will also abide by The FA's Safeguarding Children Policies and Procedures, Codes of Conduct and the Equal Opportunities and Anti-Discrimination Policy as shall be in place from time to time.

5. Club Membership

(a) The members of the Club from time to time shall be those persons listed in the register of members (the "Membership Register") which shall be maintained by the Club Secretary.

(b) Any person who wishes to be a member must apply on the Membership Application Form and deliver it to the Club. Election to membership shall be at the discretion of the Club Committee and granted in accordance with the anti-discrimination and equality policies which are in place from time to time. An appeal against refusal may be made to the Club Committee in accordance with the Complaints Procedure in place from time to time. Membership shall become effective upon an applicant's name being entered in the Membership Register.

(c) In the event of a member's resignation or expulsion, his or her name shall be removed from the Membership Register. (d) The FA and Parent County Association shall be given access to the Membership Register on demand.

6. Annual Membership Fee

(a) An annual fee payable by each member shall be determined from time to time by the Club Committee and set at a level that will not pose a significant obstacle to community participation. Any fee shall be payable on a successful application for membership and annually by each member. Fees shall not be repayable.

(b) The Club Committee shall have the authority to levy further subscriptions from the members as are reasonably necessary to fulfil the objects of the Club.

7. Resignation and Expulsion

(a) A member shall cease to be a member of the Club if, and from the date on which, he/she gives notice to the Club Committee of his / her resignation. A member whose annual membership fee or further subscription is more than two (2) months in arrears shall be deemed to have resigned.

(b) The Club Committee shall have the power to expel a member when, in its opinion, it would not be in the interests of the club for them to remain a member. An appeal against such a decision may be made to the Club Committee in accordance with the Complaints Procedure in force from time to time.

(c) A member who resigns or is expelled shall not be entitled to claim any, or any share of, any, of the income and assets of the Club (the "Club Property").

8. Club Committee

(a) The Club Committee shall consist of the following Club Officers: Chairperson, Vice Chairperson, Treasurer, Secretary, Minutes Secretary and up to five (5) other members, all elected at an Annual General Meeting ("AGM").

(b) Each Club Officer and Club Committee Member shall hold office from the date of appointment until the next AGM unless otherwise resolved at an Extraordinary General Meeting ("EGM"). One person may hold no more than two (2) positions of Club Officer at any time. The Club Committee shall be responsible for the management of all the affairs of the Club. Decisions of the Club Committee shall be made by a simple majority of those attending the Club Committee meeting. The Chairperson of the Club Committee meeting shall have a casting vote in the event of a tie. Meetings of the Club Committee shall be chaired by the .....,or in their absence the ..... . The quorum for the transaction of the business of the Club Committee shall be three (3).

(c) Decisions of the Club Committee shall be entered into the Minute Book of the Club to be maintained by the Club Secretary.

(d) Any member of the Club Committee may call a meeting of the Club Committee by giving not less than seven days' notice to all members of the Club Committee. The Club Committee shall hold not less than four (4) meetings per year.

(e) An outgoing member of the Club Committee may be re-elected. Any vacancy on the Club Committee which arises between AGMs shall be filled by a member proposed by one (1) and seconded by another one (1) of the remaining Club Committee members and approved by simple majority of the remaining Club Committee members.

(f) Save as provided for in the Rules and Regulations of The FA, the Parent County Association and any applicable Competition, the Club Committee shall have the power to decide all questions and disputes arising in respect of any issue concerning the Club Rules.

(g) The position of a Club Officer shall be vacated if such a person is subject to a decision of The FA that such person be suspended from holding office or from taking part in any football activity relating to the administration or management of a football club.

9. Annual and Extraordinary General Meetings

(a) An AGM shall be held in each year to:

(i) receive a report of the activities of the Club over the previous year;

(ii) receive a report of the Club's finances over the previous year;

(iii) elect members of the Club Committee; and

(iv) consider any other business.

(b) Nominations for election of members as Club Officers or as members of the Club Committee shall be made in writing by the proposer and seconder, both of whom must be existing members of the Club, to the Club Secretary not less than 21 days before the AGM. Notice of any resolution to be proposed at the AGM shall be given in writing to the Club Secretary not less than 21 days before the Meeting.

(c) An EGM may be called at any time by the Club Committee and shall be called within 21 days of the receipt by the Club Secretary of a requisition in writing, signed by not less than five members, stating the purposes for which the Meeting is required and the resolutions proposed. Business at an EGM may be any business that may be transacted at an AGM.

(d) The Secretary shall send to each member at their last known address written notice of the date of a General Meeting (whether an AGM or an EGM) together with the resolutions to be proposed at least 14 days before the meeting.

(e) The quorum for a General Meeting shall be

(i) The Chairperson, or in their absence a member selected by the Club Committee, shall take the chair. Each member present shall have one vote and resolutions shall be passed by a simple majority. In the event of an equality of votes, the Chairperson of the Meeting shall have a casting vote.

(ii) The Club Secretary, or in their absence a member of the Club Committee, shall enter the Minutes of General Meetings into the Minute Book of the Club.

10. Club Teams

At its first meeting following each AGM , the Club Committee shall appoint a Club member to be responsible for each of the Club's football teams. The appointed members shall be responsible for managing the affairs of the team. The appointed members shall present to the Club Committee at its last meeting prior to an AGM a written report of the activities of the team.

11. Club Finances

(a) A bank account shall be opened and maintained in the name of the Club (the "Club Account"). Designated account signatories shall be the Club Chairperson, the Club Secretary and the Club Treasurer. No sum shall be drawn from the Club Account except by cheque signed by two of the three designated signatories. All monies payable to the Club shall be received by the Treasurer and deposited in the Club Account.

(b) The Club Property shall be applied only in furtherance of the objects of the Club. The distribution of profits or proceedings arising from the sale of Club Property to members is prohibited.

(c) The Club Committee shall have the power to authorise the payment of remuneration and expenses to any member of the Club (although a Club shall not remunerate a member for playing) and to any other person or persons for services rendered to the Club.

(d) The Club may provide sporting and related social facilities, sporting equipment, coaching, courses, insurance cover, medical treatment, away match expenses, post-match refreshments and other ordinary benefits of Community Amateur Sports Clubs as provided for in the Finance Act 2002.

(e) The Club may also in connection with the sports purposes of the Club:

(i) sell and supply food, drink and related sports clothing and equipment;

(ii) employ members (although not for playing) and remunerate them for providing goods and services, on fair terms set by the Club Committee without the person concerned being present;

(iii) pay for reasonable hospitality for visiting teams and guests; and

(iv) indemnify the Club Committee and members acting properly in the course of the running of the Club against any liability incurred in the proper running of the Club (but only to the extent of its assets).

(f) The Club shall keep accounting records for recording the fact and nature of all payments and receipts so as to disclose, with reasonable accuracy, at any time, the financial position, including the assets and liabilities of the Club. The Club must retain its accounting records for a minimum of six (6) years.

(g) The Club shall prepare an annual "Financial Statement" in such format as shall be available from The FA from time to time. The Financial Statement shall be verified by an independent, appropriately qualified accountant and shall be approved by members at a General Meeting. A copy of any Financial Statement shall, on demand, be forwarded to The FA.

(h) The Club Property, other than the Club Account, shall be vested in not less than two (2) and not more than four (4) custodians, one of whom shall be the Treasurer (the "Custodians"), who shall deal with the Club Property as directed by decisions of the Club Committee, and entry in the Minute Book shall be conclusive evidence of such a decision.

(i) The Custodians shall be appointed by the Club in a General Meeting and shall hold office until death or resignation unless removed by a resolution passed at a General Meeting.

(j) On their removal or resignation, a Custodian shall execute a Conveyance in such form as is published by The FA from time to time to a newly elected Custodian or the existing Custodians as directed by the Club Committee. The Club shall, on request, make a copy of any Conveyance available to The FA. On the death of a Custodian, any Club Property vested in them shall vest automatically in the surviving Custodians. If there is only one surviving Custodian, an EGM shall be convened as soon as possible to appoint another Custodian.

(k) The Custodians shall be entitled to an indemnity out of the Club Property for all expenses and other liabilities reasonably incurred by them in carrying out their duties.

12. Dissolution

A resolution to dissolve the Club shall only be proposed at a General Meeting and shall be carried by the majority of at least three-quarters of the members present.

The dissolution shall take effect from the date of the resolution and the members of the Club Committee shall be responsible for the winding up of the assets and liabilities of the Club.

Any surplus assets remaining after the discharge of the debts and liabilities of the Club shall be transferred to another Club, a Competition, the Parent County Association or The FA for use by them related to community sports.

APPENDIX 5

Case study 1:

Incorporation of Montagu and North Fenham Football Club

Montagu and North Fenham Boys Club has operated in the Fenham ward of Newcastle upon Tyne for over 60 years. The Club runs representative teams from under 6s to under 18s, including 5 girls' teams. Football coaching is available to children from aged 3 upwards. It is part of the fabric of grassroots football in the city and counts Michael Chopra, Kevin Richardson and Newcastle United assistant manager, John Carver, among its former players.

The Club started as an unincorporated association club and was reformed as a charitable trust in 1962, adopting a trust deed as its governing document, with objects providing for the welfare of children and young people in the Slatyford area of Newcastle and other city wards. The Club occupies and operates from a single site base in Slatyford which comprises an indoor 5aside pitch and common room. The property is owned by the Local Authority and leased to the National Association of Clubs for Young People (NACYP). NACYP acts as the custodian trustee of the property (holding the legal title) and the club became the managing trustee (assuming all responsibilities for occupying and managing the property) approximately 40 years ago.

Since the legal structure of the Club was that of a charitable trust, it did not have a separate "legal personality" which means the Club could not hold property or employ staff or enter in to contracts in its own name. All of these essential parts of running a grassroots club had to be done by and in the names of the board of trustees, acting on behalf of the Club and its members. This can cause problems as trustees come and go (by retirement, resignation, death or otherwise) which means interests in property in particular have to be assigned to the continuing members of the board in such circumstances.

In terms of liability, the Club's unincorporated status also meant that the board members of the Club would be jointly and severally liable for any liabilities of the Club which it was not possible to satisfy from the Club's assets. The Club also wished to develop new facilities since its existing Clubhouse had become dilapidated and in need of substantial repair. This would require the Club to engage builders and enter in to contracts, which are ultimately arrangements which carry elements of risk.

It was therefore concluded that the charitable trust was no longer an appropriate legal structure through which the Club should carry on its operations for the benefit of the local community.

The Club considered the available options and concluded that a charitable company limited by guarantee would be the best legal structure for the Club to adopt in order to safeguard its future operating activities, allow it to contract in its own name and limit the liability of the legal members of the Club.

The new governing document of the Club would be the new company's articles of association. The Club would be renamed as "Montagu & North Fenham Football Club," as it had in practice become known locally. The trustees would perform a dual role in the new company, as both company directors and legal members. This allows the trustees to effect decisions at both board and member level, as appropriate, whenever they meet. Certain key decisions under English company law are reserved to the members for approval (e.g. changing the articles of association, changing the name, winding up etc) and therefore it is common in charitable companies for the trustees to be able to be engaged to perform this dual role.

In terms of the wider club membership, the articles provided expressly for the board to adopt rules and bye laws from time to time addressing the admission, classification and benefits of subscribing members from time to time. This allows the members to remain engaged in the Club and be able to make representations to the board, including the nomination of trustees.

The new company applied for and was awarded charitable status by the Charity Commission in 2012. The assets and undertaking of the original charitable trust were then transferred to the new company which started its operations the following season.

Any proposed change to the Club's legal structure requires County FA consent so it's important to factor this in to your conversion timeline and apply in good time.

As a charitable company, the Club is now in a position to be able to contract, employ staff and hold property in its own name. It has retained its charitable status (albeit with a new registered charity number), all that has changed is the legal structure through which the Club carries on its sporting activities which are so vital to the local community.

Chair of Trustees, Neil Rowan, said: "Incorporating the Club has been a massive step for us and will allow us to develop it in so many ways, including by application for grant funding for the construction of new facilities. As a board, we were quite surprised to discover the personal liability implications of remaining unincorporated, particularly in view of our future plans to develop new facilities, so establishing the Club as a charitable company was the logical way forward for us. With professional support via The FA, the process is not as complicated or long as you may think. It's certainly worth doing to ensure the Club is in the best possible place to improve the playing experience of local kids, as well as protect the board members who give up their time to run the Club free of charge."

For more information on this case study please contact Football Secretary at Montagu and North Fenham Football Club on 0191 275 0676.

APPENDIX 6

Case study 2:

Charitable Status of Leatherhead Youth Football Club

Leatherhead Youth FC was established as an unincorporated association club 20 years ago. It operates from a single site in Leatherhead, Surrey which is leased to the Club by the Local Authority. Facilities include a pavilion with cafe and bar, onsite car parking and 8 grass football pitches, including 11 a side, 9 a side, 7 a side and 5 a side. The club also has a grass training area roughly the size of an 11 side football pitch.

The Club was keen to re-evaluate both its legal structure and tax status as it prepared to embark on a project to raise funds for the construction of new facilities. As an unincorporated association, the Club had no separate legal personality (which meant it could not contract, hold property or employ staff in its own name) and, if the Club ever suffered any liabilities which it could not satisfy out of its own assets, the Management Committee would be jointly and severally liable on an unlimited basis, which means their personal assets could be at risk.

The Club has also undertaken significant fundraising initiatives which have resulted in personal donations and other finance from generous benefactors; but without any special tax status, any such donations would not qualify for Gift Aid or tax relief. It was therefore decided that the best option would be for the Club to change its tax status to a charity and its legal structure to a company limited by guarantee.

The benefits of charitable status include:

- Tax exemption for fundraising income;
- Non-domestic business mandatory rate relief on all property used to carry out the Club's objectives. Mandatory relief entitles the Club to an 80% reduction while discretionary relief of an additional 20% may be awarded by the Local Authority on a merits basis;
- Increased accessibility to and eligibility for grant funding from a range of grant organisations;
- Opportunities to generate income from support from commercial partners, including by either:
  - commercial sponsorship; or
  - corporate Gift Aid donation under the donor company's CSR (corporate social responsibility) policy; and
- Gift Aid for individual donations (which allows the Club to reclaim an extra 25p for every £1 donation, therefore the £1 is actually worth £1.25).

Changing the legal structure to a company would allow the Club to:

(i) operate in its own name as a separate legal entity, distinct from the Management Committee members; and

(ii) limit the liability of the Club's members.

Any proposed change to the Club's legal structure requires County FA consent so it's important to factor this in to your conversion timeline and apply in good time.

The Club also wishes to further develop its facilities by undertaking refurbishment works on the clubhouse and building a new outdoor floodlit artificial turf pitch. Both arrangements involve contractual commitments and therefore a corporate vehicle was appropriate to limit liability.

The Club engages in what is known as "non-primary purpose" trading (i.e. commercial in nature which is not intended to further the objects of the charitable Club). These activities include bar sales, catering supplies made to non-members and the public and retail (buying goods in for the purpose of resale with a view to profit). It was therefore necessary to establish a wholly-owned trading subsidiary company in order to:

- ensure the Club separates its charitable activities from its commercial activities. In practice, the Club will only further charitable work in furtherance of its objects while the trading company will carry on commercial activities to generate income for the Club. Otherwise the management committee could be acting ultra vires (i.e. outside the scope of) their conferred authority as set out in the Club's articles of association;
- ensure that the profits generated from trading activities are able to be retained tax efficiently by the Club;
- ensure the Club does not breach the non-primary purpose trading turnover limits permitted by HMRC (currently 25% of turnover where the Club's total income is £2000,000 or less, but subject to a maximum cap of £50,000) otherwise such income becomes taxable; and
- ring-fence the Club's assets from risk since the trading company trades independently.

Chair of Trustees, Dennis Crema, said, *"Incorporating the Club and achieving charitable status was a natural step for us to take in order to give the Club the best opportunity to improve both facilities and the players' football experience. We recognised that, as volunteers, we all have other commitments and a limited time to spend on Club matters, so this restructure was intended to allow us all to work smarter going forward, taking full advantage of the tax reliefs, Gift Aid and rate relief available to registered charities. The conversion process was relatively straightforward with professional legal support via The FA and we now have the perfect platform through which to expand and improve the Club's activities."*

For more information on this case study please contact Leatherhead Youth FC on 01372 362 725.

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